

**THE WTO MULTILATERAL TRADE
AGENDA AND THE SOUTH**

SOUTH CENTRE

THE SOUTH CENTRE

In August 1995, the South Centre became a permanent intergovernmental organization of developing countries. In pursuing its objectives of promoting South solidarity, South-South co-operation, and coordinated participation by developing countries in international forums, the South Centre has full intellectual independence. It prepares, publishes and distributes information, strategic analyses and recommendations on international economic, social and political matters of concern to the South.

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PREFACE

The South Centre, with funding support from the UNDP, has recently established a pilot project to monitor and analyse the work of the WTO from the perspective of developing countries. The project comprises an attempt to respond to the extent possible to requests from the developing countries as a group for support in relation to their WTO work. The existence of this project is also an indication of the importance that WTO matters have for the future direction of development in the South, through their influence on both domestic policies and on the world economy.

This policy brief, prepared in the context of the pilot project, consists of an earlier working paper entitled, "The Uruguay Round Agreements and the WTO Work Programme : Tasks for Developing Countries". Part V is an addition to the earlier paper and deals with recent developments regarding the future multilateral trade agenda in the WTO. Three annexures containing the three WTO Ministerial Declarations adopted so far have also been added.

The policy brief focuses on the tasks before developing countries in the WTO. It is intended to provide signposts to the various areas and issues that need to be tackled by developing countries rather than constitute an exhaustive handbook setting out in detail each and every task and issue. It is structured according to types of activities to be undertaken rather than on thematic lines and, where detailed matters are referred to, these are usually in the nature of an illustration of the issue at hand.

It is hoped that this publication will be found useful by those routinely involved in WTO discussions and negotiations in Geneva and by officials, and policy- and opinion-makers in national capitals. For the latter, in particular, it will give an overview of the magnitude of the task ahead both at the domestic and the multilateral level.

OVERVIEW

A little more than three years ago the most comprehensive round of multilateral trade negotiations, launched in Punta del Este, Uruguay, in 1986, was concluded and a new organization, the WTO, came into being. The WTO has been entrusted with the implementation and enforcement of multilateral agreements negotiated during the Uruguay Round, covering wide-ranging aspects of the trade in goods and services, including the protection of intellectual property rights. These agreements entail an extensive programme of work with respect to implementation, reviews and further negotiations as mandated in the agreements. Moreover, provided there is a consensus among the WTO membership, new issues will be placed on the multilateral trade agenda. This is a formidable work programme requiring commitment of substantial human and material resources by all WTO members.

However, the experience of the past three years has demonstrated that the developing countries have not been able to participate in WTO matters in a way which effectively serves their interests, due to their lack of knowledge, resources and coordination. This has further tilted the balance of rights and obligations in the multilateral trading system as embodied in the WTO in favour of the developed countries. A major and sustained effort on the part of developing countries individually and as a group is therefore required to rectify the situation. The present document is an attempt to outline the challenges and broad directions that this involves.

First Major Set of Tasks: Implementation

Many developing countries have so far focused their attention on trying to fully understand and discharge their obligations with

respect to the implementation of these agreements. In so doing, however, they need to pay close attention to the following matters, which could make a substantial difference in the domestic impact of the agreements:

- Exploiting the room for flexibility in some of the Uruguay Round Agreements where the definitions of certain terms and procedures give scope for choice. Developing countries, however, must act swiftly to take advantage of this flexibility before practices become established and terms and procedures are elaborated by the respective WTO Councils/Committees and dispute settlement panels.
- Monitoring of the implementation of the agreements of vital importance to developing countries, such as the Agreement on Textiles and Clothing, Agreement on Agriculture, and also of the provisions concerning special and differential treatment, and provisions on technical and other assistance by developed countries. This is necessary to ensure that the few concessions wrested from developed countries during the Uruguay Round negotiations are implemented as stipulated.
- Articulation of the difficulties encountered by individual developing countries in preparing the considerable number of notifications to be submitted to the WTO, as well as of the unduly strict scrutiny and sometimes unnecessary examination of such notifications by developed countries. This will help to build the case for simplifying and reducing the burden imposed by such requirements on developing countries.

- Vigilance and active participation in the proceedings of different WTO bodies to ensure that the emerging interpretations and practices concerning provisions in the agreements do not result in either an increase in obligations or a dilution of the rights of developing countries.

Second Major Set of Tasks: The “Built-In Agenda”

The second set of key tasks confronting developing countries in the WTO, and which has even wider implications than implementation, concerns issues relating to the so-called “built-in agenda”. The Uruguay Round Agreements provide for reviews of specific provisions in some agreements as well as of whole agreements at specified times. Further negotiations are also envisaged in three areas e.g. trade in services, rules of origin and agriculture. This built-in agenda is expected to serve two purposes, namely, effecting improvements in the existing agreements in the light of experience gained during the implementation *and* continuing the process of liberalization in the two new sectors -- trade in services and agriculture.

Planned reviews, whether of specific provisions or of agreements, provide both an opportunity as well as a challenge to developing countries. The opportunity will arise from the fact that developing countries, in the light of their experience of the working of the specific provisions and agreements, can put forward their case for necessary improvements to ensure a better balance between their rights and obligations and those of the developed countries. They will, however, need to defend those stipulations in the existing agreements that are in their favour. This two-fold task will require:

- careful monitoring and analysis of implementation of specific provisions and agreements with a view

to identifying their benefits and shortcomings from the perspective of developing countries;

- exchanging information between developing countries on their individual experiences; and
- also ensuring effective participation in the review process.

The next round of negotiations in trade in services and agriculture, due to start in 1999/2000, will similarly require major preparations. With respect to trade in services, developed countries have made very insignificant offers in areas of interest to developing countries, for example, the movement of natural persons in relation to services. Many developing countries, however, have been pressured to join the Agreements on Basic Telecommunications and Financial Services -- areas that are primarily of interest to developed countries. Their experience in the area of agriculture has not been much better. The present Agreement on Agriculture prescribing conversion of non-tariff barriers into tariffs has in effect favoured the developed countries. They have taken advantage of the tariffication process to impose very high tariffs on many agricultural imports. Also the Agreement permits the continued use of the sort of subsidies applied particularly by developed countries in this sector. On the other hand, with respect to tariff bindings, developing countries have offered these on a very wide range of agricultural products. Moreover, under the terms of the agreement they have been constrained in the use of domestic support measures in this sector.

The situation therefore demands thorough preparation by developing countries to ensure that they get a better deal in the next round for further liberalization of trade in these sectors. In the area of trade in services, developing countries should focus on two broad areas: the identification of sectors of export interest to them and the equal treatment of capital and labour in relation to

the supply of services. Developing countries should also ensure that provisions dealing with safeguards, subsidies and government procurement in relation to the services sector are devised in a balanced manner.

For the next round of negotiations in agriculture, developing countries should prepare a strong case for a significant reduction of tariffs, domestic support and subsidies by developed countries. At the same time, developing countries should not be subjected to measures which prevent the development of their agriculture sector and which undermine their efforts to ensure food security for the whole population.

Third Major Set of Tasks: The Future Multilateral Trade Agenda

The third set of tasks before developing countries in the WTO relates to the future multilateral trade agenda, in particular the so-called new issues. To date, the developed countries have played a dominant role in setting the agenda of the GATT/WTO, showing particular perseverance in bringing issues of interest to them into this forum. This has often resulted in the extraction of considerable concessions from developing countries. The most notable examples are inclusion of trade in services and protection of intellectual property rights in the Uruguay Round Agreements and the conclusion of the Information Technology Agreement (ITA) in the WTO.

The negotiation and signing of the ITA, in particular, is a clear demonstration of the way in which current processes in the WTO prejudice developing countries, as well as of the strong hold of developed countries over this organization. Initial negotiations for a possible agreement in this sector were held among QUAD (US, EU, Japan and Canada) countries. A few other, mostly developed countries, later joined these negotiations and the agreement was concluded essentially among this small group of

countries. But the outcome of this process which was plurilateral in nature was converted into a multilateral agreement and many developing countries were pressured into joining. It is important to appreciate that this sector was not even included as an item on the built-in agenda of the WTO.

Investment is an example of developed countries' determined pursuit within the GATT/WTO of an issue of interest to them. They first made the proposal that GATT take up this subject in 1982, a proposal which met stiff opposition from many developing countries and which was thwarted. The proposal was pursued by developed countries on every conceivable opportunity and finally, in 1996, agreement was reached for the relationship between trade and investment to be a subject of study by the WTO.

In addition to the relationship between trade and investment, WTO working groups are also studying trade and environment and the interrelationship between trade and competition policy. Moreover, a separate Working Group has been established to study transparency in government procurement and to develop elements for inclusion in an appropriate agreement. Recently, on the insistence of a major developed country, it has also been agreed that a work programme be instituted in the WTO to examine the trade-related aspects of global electronic commerce and to impose a moratorium on the levy of customs duties on trade conducted through electronic means till the next Ministerial Conference of the WTO, to be held in late 1999 in U.S.A.

The Second Ministerial Conference of the WTO, held in Geneva on 18 and 20 May 1998, has directed the WTO General Council to formulate recommendations regarding the content and structure of future multilateral trade negotiations. These recommendations will be submitted to the Third Ministerial Conference that will take the final decision in this regard. Major developed countries have already indicated some of the issues that they would like to negotiate in the WTO in future, as well as

their respective preferences for the mechanism and structure to conduct these negotiations.

Developing countries need to articulate clearly and promote and defend effectively in the WTO their interests in these various new areas, particularly in the context of possible future multilateral negotiations that may be launched at the Third WTO Ministerial Conference in 1999. They also need to assess carefully and from their perspective the pros and cons of different proposals for the conduct of such negotiations. To do this they will need to:

- pool their limited individual resources to improve their understanding and their ability to discuss and negotiate the complex new issues on the WTO agenda;
- make strenuous efforts to develop their own positive agenda and initiatives, rather than limit themselves to responding to a WTO agenda set by the advanced industrial countries;
- propose changes in the manner of working of the WTO which would help them to promote and achieve their own aims and objectives.

The Need for Joint Efforts

Developing countries need to play a more incisive role in the WTO in pursuit of their interests. It is essential that they engage in discussions and consultations among themselves at different stages of their WTO work in order to evolve common perceptions and, on this basis, formulate specific proposals and positions to advance their objectives. Such efforts will require thorough technical preparation in each area of work. None of

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this, however, will be possible unless the desire of developing countries to improve their situation in and through the WTO is matched by a strong political will -- something that has not so far been much in evidence.

PART I

**IMPLEMENTATION OF THE URUGUAY
ROUND AGREEMENTS**

1. IMPLEMENTATION OBLIGATIONS

The implementation of a bilateral or a multilateral agreement -- in accordance with the commitments made in the agreement -- might seem to be a simple practical matter. However, in the case of the WTO Uruguay Round agreements, this is far from being an easy task. Indeed, the burden of implementation for developing countries is rather heavy. As explained later, a defective or inadequate step in implementation may result in the loss of some rights, as, for example, in the case of measures under the Trade-Related Investment Measures (TRIMs) Agreement. Moreover, the process of implementation may also create new rights and obligations as a result of the prescribed follow up through further negotiations. The steps involved in implementation, such as the abolition of import control measures in agriculture, may sometimes result in an immediate impact on trade and production. In some cases there will be a need to achieve a proper balancing of various domestic interests in the implementation measures, for example, in the choice of the products and the level of subsidy in the agriculture sector or in the incorporation of relevant provisions into domestic legislation on intellectual property matters.

WTO agreements are very specific about the timing of the implementation of various obligations and, except in a few areas, the obligations are clear, as will be explained shortly. Hence each country needs to monitor the implementation process very carefully.

Implementation of the agreements comprises the following four broad elements, each of which will be discussed briefly in the sub-sections below:

- formulation of legislation and procedures;
- establishment of institutions;

- elimination of some trade measures within a given time frame; and
- sending notifications to the WTO.

1.1. Formulation and enactment of laws, regulations, and procedures: use of flexibility

Developing countries have to formulate and enact laws and regulations and establish procedures for the implementation of some of the agreements. Legal provisions and procedures have to be established for taking anti-dumping action in accordance with the agreement on anti-dumping. A country has to establish procedures for taking safeguard action before any such action is taken. Procedures have to be formulated for introducing technical regulations and standards and also for the process of examining whether the products conform with the regulations and standards.

There are other areas too where legislation, regulations and procedures need to be introduced in order to achieve the proper implementation of the relevant agreements. For example, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) is to be implemented by the formulation and introduction of appropriate legislation in each country.

While formulating legislation, regulations and procedures, developing countries should first identify areas where the WTO agreements provide some flexibility. It would be easy for those drafting national legislation and procedures to copy the relevant expressions used in the agreements; but this may not be desirable. Several agreements contain certain terms and expressions which are not tightly defined. This leaves scope for a country to give its own definition and specification within the overall frame and context of the relevant provisions and developing countries

should use this flexibility to the maximum extent possible in their own interest. Opportunities are there for providing national specifications and definitions in order to incorporate national objectives into the new legislation and procedures. This will also ultimately reduce the burden on the judiciary, which will otherwise be called upon to interpret these terms and expressions in the future.

The TRIPs agreement, for example, provides scope in a small number of key areas for “own interpretation” and an example is given below of such flexibility with respect to this agreement, illustrating the importance of paying attention to these matters while formulating and introducing legislation to give effect to the agreement.

Intellectual property is a very sensitive area where the major developed countries have succeeded in gaining ground to their own advantage by ensuring enhanced protection for intellectual property rights (IPRs), particularly patents. Developing countries were put under persistent strong bilateral and multilateral pressure during the Uruguay Round negotiations on TRIPs as a result of which they finally made major concessions in this area.

The resulting agreement, namely, the agreement on TRIPs leaves several terms and concepts unspecified, thereby providing scope for flexibility in interpretation by the developing countries. This can be best illustrated by taking the subject of patents.

Patenting an innovation and granting some exclusive rights to the innovators may encourage further innovation. However, as the patent holder will have the exclusive right to manufacture this item or license its manufacture, this provides some degree of monopoly. This may have an adverse effect on consumers of the product produced by the innovation, giving rise to a conflict of interest between the innovators and the users. Furthermore,

there may also be a conflict between the interests of a well established research and development (R&D) enterprise and a small innovator. A country will have to evolve its policy on patents so as to balance these two sets of interests in the context of its own social, political and development objectives. Its options are, of course, circumscribed by clear obligations imposed by the provisions of the Agreement on TRIPs.

Some important examples of the flexibilities provided by this agreement, which could be used by a country to ensure balance in its best interests, are as follows:

- (i) The agreement prescribes that a patent must be available to any "invention", provided it is "new", involves an "inventive step" and is "capable of industrial application". These terms have not been defined in the agreement. The definitions of novelty and inventive step can, however, range from restrictive to liberal. If a developing country intends to protect its users against the monopolistic practices of patent holders, it may choose restrictive definitions to limit patentability. Similarly, if a developing country decides to encourage its small and marginal innovators, it can define invention, novelty and inventive step in such a way that an innovation on the margin will be eligible to be patented and will not be rejected on the grounds that some previous patented innovation already covers this marginal innovation.
- (ii) The limitations and conditions with respect to patentability may be used by a country to safeguard against the improper exploitation of its natural biological resources by unscrupulous innovators and to ensure adequate remuneration and

compensation to the communities which over generations have developed these resources.

- (iii) A developing country may also wish to provide safeguards against the scarcity of a patented product and the consequent high price of the product. For this purpose it may consider taking advantage of the flexibility allowed by the stipulations on “exhaustion” of the patent rights and provide for “parallel import” of the product.
- (iv) On the basis of the objectives and principles as contained in the agreement, a country may adopt appropriate measures to prevent (or control) the licensing practices of intellectual property rights holders having an adverse impact on competition.
- (v) Another important area of flexibility in this agreement is that related to the protection of plant varieties where the agreement requires an effective *sui generis* system, and not necessarily patents, for this purpose. Developing countries have a wide range of options in evolving their own protection system to achieve an appropriate balance between the interests of farmers and breeders. One example of such a system is the International Convention for the Protection of New Varieties of Plants (UPOV) 78. UPOV 91, which has recently been ratified, comprises a revised version of UPOV 78. This revised version tilts the balance much more in favour of breeders’ rights than those of the farmers; hence those developing countries who are anxious to protect their farmers’ interests may not wish to adopt UPOV 91. The more appropriate choice for developing countries may therefore be UPOV 78

or any other *sui generis* system which a developing country may devise.

- (vi) There is also some flexibility regarding possible government action in situations where a patent holder does not allow the patent to be used to manufacture domestically the patented product, a situation technically known as the “non-working” of a patent. One view is that compulsory licensing (i.e., permitting the use of the patent by some other person for domestic production without the consent of the patent holder) for non-working of patents cannot be allowed if the patent holder is prepared to import the product. Another view is that the agreement does not specifically prohibit this and thus compulsory licensing can be applied in accordance with the criteria laid down in the agreement. Brazil, for example, now has legislation permitting compulsory licensing in cases of the non-working of patents. Other developing countries also may adopt this course in order to ensure greater local availability of the product concerned, if the patent holder is not inclined to produce it locally.
- (vii) The agreement permits the use of the subject matter of a patent without the authorization of the right holder but stipulates payment of “adequate remuneration” taking into account the “economic value” of the licensing. However, these terms have not been defined. Hence a country may decide its own definition of these terms.
- (viii) There is also scope for amendments in national legislation already enacted to be made until 1 January 2000 when the agreement on TRIPs

becomes generally operative. Hence using the provisions permitting flexibility, some of which have been mentioned above, developing countries that have already formulated their legislation on IPRs may *reformulate* such legislation so as to ensure that, while not violating the agreement, the provisions conform to their own objectives as far as possible.

As indicated earlier, the case of TRIPs has been taken only as an illustration here. There are several other areas within the Uruguay Round agreements where governments can exercise their discretion in providing definitions and specifications.

1.2. Establishment of institutions

Some agreements will require developing countries to establish institutions to carry out certain specified tasks, where appropriate institutions are not already in existence. For example, an authority should be designated to conduct investigations into the existence of subsidies and to determine whether this results in injury to domestic industry. Without such investigation, no countervailing duty can be imposed to offset the effects of subsidized imports. Similarly, an authority is to be designated to conduct investigations into the existence of dumping and to establish whether there is a link between dumping and injury to domestic industry. The same is the case with regard to safeguard action which may be taken only after an investigation by the designated authority that had established the existence of injury caused by increased imports. However, a country may designate the same authority to be responsible for all three of the above purposes or three separate authorities may carry out these duties.

Some agreements require national enquiry points to be established to store and disseminate important information. A case in point is the Agreement on Technical Barriers to Trade under which a country is obliged to establish an enquiry point which is able to respond to enquiries from other countries and interested parties on the technical regulations prevailing in the country. Similarly, the Agreement on Sanitary and Phytosanitary (SPS) Measures also requires a national enquiry point which provides information on the country's sanitary and phytosanitary measures and associated controls and procedures. There may be similar provisions in other areas.

Early establishment of these institutions is important to enable developing countries to exercise and defend their rights under the relevant Uruguay Round agreements.

1.3. Elimination of prohibited trade measures and other provisions inconsistent with obligations under the agreements

Some provisions in the Uruguay Round agreements require the elimination of certain trade measures before 1 January 1995, while others remain to be eliminated within specified periods. In the former category are measures such as non-tariff restrictions on the import of agricultural products not covered by specific provisions of GATT. (All these measures were required to be converted to equivalent tariffs on 1 January 1995.) Similarly, provisions in a country's laws and procedures in the field of intellectual property rights which violated the stipulations concerning most favoured nation treatment and national treatment were to be eliminated before 1 January 1995.

Specific time schedules have been set for the elimination of many other types of measures. For example, export subsidies have to be eliminated by developing countries by the end of 2002

at the latest. An exception is made for the least developed and other developing countries having a per capita GNP of less than US\$ 1000 a year. This deadline may only be extended with permission from the Committee on Subsidies. Further, the import substitution subsidies have to be eliminated by the end of 1999 at the latest. However, the least developed countries can maintain them for an additional period of three years.

The conditions attached to investments which are prohibited under the Agreement on Trade-related Investment Measures (TRIMs) have to be removed by developing countries by the end of 1999, and by the end of 2001 in the case of the least developed countries. The safeguard measures taken pursuant to Article XIX of GATT 1947 that were in existence on the date of entry into force of the WTO Agreement (1 January 1995) are to be eliminated by the end of 1999 or within eight years of their being first applied, whichever is later. Similarly, there are prescribed time frames for certain measures in various other agreements.

In the process of abolishing some measures, it will be necessary to try to balance various domestic interests, as was indicated earlier. This is a particularly important task with respect to the reduction of domestic support and export subsidies in agriculture. Countries have committed themselves to ceilings on their domestic support for agriculture. The choice of the products to be covered by the support, the specific measures of support and the level of support are left to the discretion of the country. These choices have to be made keeping in view various domestic interests. Similarly, with regard to export subsidies for agriculture, a country makes a commitment on an annual ceiling, a particular coverage of products and on an annual expenditure, all of which will require specific choices.

1.4. Notifying the WTO

The deadlines or time-frames for obligatory notifications are of two types: (i) those which had to be submitted within a prescribed period after the coming into force of the WTO agreements, that is, 1 January 1995, and (ii) those which are periodic, having to be sent in from time to time under a general continuing obligation or at the time of taking some specific action.

i. Initial notifications

The notifications of the first type were generally to be submitted within a few months of 1 January 1995, and it is presumed that the developing countries have complied with this obligation. In some cases the non-fulfilment of this obligation had serious consequences. For example, if a country failed to send information on the trade conditions it attached to foreign investment by 31 March 1995 as required by the Agreement on Trade-related Investment Measures, it would not be allowed to continue applying such measures. Those developing countries which sent this information on time are allowed to continue such measures until the end of 1999. (For the least developed countries, two additional years are allowed.) The drastic adverse consequence of failure to send this notification on time is obvious.

In the case of subsidies and safeguards still in place on 1 January 1995, immediate information had to be sent to the WTO secretariat. Even in cases where no subsidies were maintained, the information declaring that no subsidy was in operation still had to be notified to the WTO secretariat.

In general, the relevant bodies of the WTO had to be notified of any type of trade restriction still in existence on 1 January 1995, and it is presumed that developing countries would

have submitted all the necessary notifications. The receipt of notifications is monitored by the secretariats of various bodies in the WTO and the secretariat can bring to the notice of these bodies any failure on the part of any country in this respect.

ii. Subsequent notifications

The second category of notifications are again of two types, namely, those which have to be sent periodically, and those which have to be sent at the time of taking some specific action. Important examples of periodic notifications are: annual notification of subsidies which has to be sent by 30 June of each year; semi-annual notification of countervailing duties; and semi-annual notification of anti-dumping actions.

Examples of notifications regarding specific actions are: notifications of the preliminary action and final action in the case of the imposition of countervailing duties against subsidies; similar notifications of anti-dumping actions; and in the cases of safeguard, notifications on the starting of an investigation, on finding the existence of injury or threat of injury and on the decision to apply safeguard measures, etc.

Though the obligations relating to notifications appear simple, in actual practice developing countries have found that their fulfilment is not such an easy matter. In several cases preparation of the required notification is onerous: many facts have to be collected from various government organs and sometimes also from various regions of the country. Hence developing countries will need to give attention to establishing the relevant domestic procedures for the preparation of the periodic reports and *ad hoc* reports relating to specific actions. Their failure to do so may expose them to the charge of violation of their obligations, with possible adverse consequences.

This would suggest that there is a strong case for developing countries as a group to take up this issue in the relevant Councils/ Committees, as well as in the General Council/Ministerial Conference, pressing for the simplification and, where possible, elimination of those notification requirements that are particularly onerous for developing countries.

Furthermore, while developing countries devote considerable effort and resources to preparing and submitting notifications, during examination of their notifications they are often subjected to unsympathetic and, at times, harassing examination. They should protest about this attitude of their trading partners and should demand that the latter take due account of practical problems and sincere efforts of developing countries in this matter.

2. THE NEED FOR VIGILANCE CONCERNING EMERGING INTERPRETATIONS AND PRACTICES DURING IMPLEMENTATION

There is a need for vigilance over the operation of the WTO agreements as interpretation of some terms and provisions will emerge in the course of the implementation of the agreements. Similarly, practices may become established in this process which will become norms for the future. It is important for developing countries to be watchful in this respect in the WTO and to be aware of the healthy or unhealthy trends emerging in the course of the operation of the agreements.

Several agreements contain terms which are not specifically defined and interpretations of these terms will be made in various committees or panels. Developing countries have to take care that the evolution of the interpretations and practices takes into account their interests, and for this they will need to take an active part in this process. Some examples will make the task more clear.

2.1. Agreement on Agriculture

- (i) The agreement on agriculture contains a provision allowing import control measures by means of the special safeguards. One pre-condition is that the price of the imported product should be lower than a trigger price, which is the average of the 1986-88 reference price. A higher trigger price level will make it easier for the country proposing to restrict imports to introduce special safeguard measures. There is a general guideline for calculating this reference price, nevertheless, it is necessary to keep

a close watch on the practices developed in this calculation.

- (ii) Also in the area of agriculture, the term “due restraint” that is to be exercised in initiating actions against certain subsidies has not been specified. Hence, the interpretation of this term will develop in the course of the implementation of this provision.
- (iii) The commitment on domestic support to agricultural producers relates to the annual value of the subsidy. It is within a country’s discretion to choose the products which will receive the subsidy, the types of subsidies to be given in a particular year and the level of each type of subsidy. Within the restriction that the annual value of subsidy should not exceed the committed level, a country is free to have any combination of these three variables. Developing countries interested in the export of agricultural products must therefore keep a close watch on the practices which develop in this regard in major importing countries.

2.2. Agreement on Textiles and Clothing

- (i) The agreement on textiles and clothing contains a concept concerning sectoral balance of rights and obligations, and there is a provision that, if a country considers that another country has not adhered to the balance, it may bring the matter before a relevant WTO body. How this balance will actually be interpreted is not yet clear, as it will develop in the course of implementation.

- (ii) Again in the textile sector, there is a provision for punitive action for perceived circumvention of the restraints on imports. The importing country must conduct an investigation and, if there is sufficient evidence that circumvention has occurred, it may deny entry to the import or debit it against the quota of the country through which the circumvention has been carried out. At present there are no guidelines to determine what would constitute “sufficient evidence”. Since counteractions are serious, it is very important for textile exporting developing countries to keep a watch on how the process of such investigations in importing countries develops.

2.3. Agreement on Subsidies and Countervailing Measures

- (i) In the agreement on subsidies and countervailing measures, “serious adverse effect” must be substantiated as a pre-condition for initiating action against a non-actionable subsidy. There is a definition of “adverse effect” in the agreement in the context of an actionable subsidy, but what would make it qualify for being considered “serious” has not been specified in the context of a non-actionable subsidy. Again, while defining what would be considered “serious prejudice” in the context of the actionable subsidy, terms like “displacing” or “impeding” imports and “price undercutting” have been mentioned in the agreement. Some guidelines have been given for determining these situations, but how these situations will be determined in actual practice

should be of concern to developing countries. As these are preconditions for initiating actions against subsidies, it is in their interest to remain vigilant with regard to the development of the actual definitions of these terms in the course of implementation of the agreement.

- (ii) While determining the extent of injury as a result of subsidies, there is a provision for *de minimis* (minimum) limits within which action will not be taken. These minimum levels are set both in relation to the extent of subsidy and the volume of subsidized imports. Though the *de minimis* level for the extent of the subsidy has been specified in the agreement on subsidies, that for the volume of subsidized imports has not been specified. The relevant provision in the agreement merely states that the volume should not be “negligible”. What would amount to a “negligible” volume will become established in the course of the operation of the agreement.

2.4. Agreement on Technical Barriers to Trade

- (i) The agreement on technical barriers to trade stipulates that technical regulations must not create “unnecessary obstacles to international trade”, and the regulations must not be “more trade-restrictive than necessary to fulfil a legitimate objective”, taking into account the “risks non-fulfilment would create”. A number of cases have occurred recently where trade restrictions have been introduced for environmental reasons and perhaps more will occur in the near future. It is therefore important for

developing countries to ensure that the evolving interpretation of these concepts is not adverse to their interests e.g., by providing rationale for the introduction of protectionist measures in developed countries against their exports.

- (ii) The agreement on technical barriers to trade permits the formulation and implementation of regulations to protect the health of human beings, animals and plants. Similarly the agreement on sanitary and phytosanitary measures also permits measures for this purpose. It is stipulated that these regulations or measures should be based on scientific evidence and information. In many such disputes, the issue as to what would amount to adequacy of evidence or information has been the subject of considerable discussion. Developing countries will need to make efforts to ensure that there is no lowering of the standard of evidence in the determination of the danger to life or health, since, in most cases, they are likely to be the supposed transgressors.

2.5. General

- (i) The interpretation of “like products” for national treatment and most favoured nation treatment has to be watched very carefully. Sometimes, particularly in the context of environmental concerns, it is frequently suggested that “likeness” should not be determined merely by the content and characteristics of the product, but also by the way it is produced. The argument is that a product manufactured by a process which pollutes the air or water at the place of production should not be

considered to be “like” another product, which is produced by a non-polluting process, even though the two products may be exactly similar in content and characteristics. This may have serious implications for developing countries whose products may, in this manner, be discriminated against, on the ground that “process of production” is “unlike”, even though the products may be exactly the same.

In addition to the above examples, there are many other areas in which interpretations and practices may be developed over time, requiring developing countries to be continually alert to developments on these matters.

PART II

BUILT-IN AGENDA ISSUES

3. REVIEWS

Several agreements provide for reviews during the course of implementation. These reviews may cover specific provisions of the agreements or they may be periodic reviews of the overall implementation of the agreements.

The reviews will touch on matters affecting the interests of developing countries and should not be regarded as an innocuous technical exercise. There may be diverse, and sometimes conflicting, experiences of countries in the process of the working of these agreements, which may provide grounds for initiatives to establish new rights and obligations. In view of the importance of such reviews, it is very important that developing countries participate in them fully. For this they will require good preparation, for which they will first have to collate and analyse their own experiences. Second, they will need to keep themselves fully informed of the experiences of their important trading partners which will be discernible in bilateral talks as well as in the statements they make in multilateral bodies. Articles and reports in journals and other publications related to the trade and industry in those countries will also provide a useful input into this process.

3.1. Reviews relating to specific provisions

Some agreements contain provisions that have been included, on what amounts to, a trial basis. It has been stipulated that the working of these provisions will be reviewed at specified intervals as from 1 January 1995, with a view to seeing how practical and useful these provisions are. In other cases, the review is meant to bring about improvement in the operation of the provisions. Some of the important provisions for specific reviews are given below.

i. Agreement on Subsidies and Countervailing Measures

Specific reviews on four points have been provided in the agreement, namely, non-actionable subsidies, presumption of serious prejudice, export competitiveness of developing countries and research and development subsidies. These are explained below.

Non-actionable subsidies

In accordance with the underlying principles in the GATT/WTO framework, subsidies are considered to distort competition, and thus in general are not viewed favourably. However, some types of subsidies are treated as non-actionable, in the sense that no action will be taken against a country applying such subsidies. This is the case if a subsidy is not limited to a particular firm or industrial sector, but is generally applicable on the basis of some predetermined objective criteria. One example is the provision of cheap credit to small-scale industry, that is, those firms with a limited number of employees. In addition, three other types of subsidies are treated by the agreement as non-actionable, even if these are not generally applied. These are: (i) assistance for research and development, (ii) assistance to disadvantaged regions, and (iii) assistance to promote adaptation to new environmental requirements. It should be noted that all three of these types of subsidies defined as non-actionable are used more often by developed countries.

Under the agreement, these provisions relating to non-actionable subsidies are applicable until the end of 1999. Before the expiry of this period, there will be a review to determine whether to extend their application for a further period, either in the present or a modified form.

During this review, it would be advisable for developing countries to pursue the following objectives:

- The treatment of generally applicable subsidies as non-actionable should continue.
- The subsidies for research and development, disadvantaged regions and environmental adaptation should also be allowed to continue, but on condition that a substantial difference is introduced between the degree to which these can be applied in developed and developing countries. Firms in developed countries are already better able to expend, without government subsidies, on some of these activities than their developing country counterparts. Firms in developing countries, on the other hand, are generally weak, particularly with respect to their capacity to engage in research and development and hence to develop or adapt new and advanced technologies. Assistance in the form of government subsidies for firms in the North gives them an additional international competitive advantage, particularly in the current context of fast changing technologies. Hence in the interest of fairness, the permissible limit for subsidizing of research and development in developed countries should be quite small compared with that established for developing countries.
- Currently the types of subsidies which are generally prevalent in developed countries have been treated as non-actionable and the subsidies generally used by developing countries for diversifying and upgrading their productive system are deemed to be actionable or prohibited. This is highly inequitable. To redress the situation, developing countries should consider urging that subsidies for the improvement of their own productive capacity are also classified as non-actionable.

Export competitiveness of developing countries

A developing country has to phase out its export subsidy within a fixed time if it has reached export competitiveness, that is if its exports of a particular product amount to at least 3.25 per cent of world trade in that product for two consecutive years. A developing country with a per capita GNP of less than US\$ 1000 a year has to phase out the export subsidy eight years after achieving export competitiveness, whereas other developing countries have to do so in two years.

This provision is to be reviewed at the beginning of 2000. During the review, developing countries should urge the inclusion of a new provision which stipulates that if the export falls below the criterion of export competitiveness the phasing out of a subsidy should be halted immediately and the country be allowed to re-apply an export subsidy,

Presumption of serious prejudice

It is stipulated in the agreement that the actionable subsidies of developed countries will be deemed to cause serious prejudice under any one of the following circumstances: (i) when the subsidy on a product exceeds 5 per cent of the product's value, or (ii) when the subsidy covers the operating losses of an industry or more than a one-time loss of an enterprise, or (iii) when it takes the form of forgiveness of debt. Thus counter-action against such subsidies can be taken without having to prove serious prejudice. This provision is applicable for five years, that is, until the end of 1999. There will be a review to determine whether it should be extended in its present form or should be modified.

It is important to recognize that developing countries are exempted from this presumption. During the review, developing countries will no doubt wish to ensure that: (i) the presumption in case of developed countries continues, and (ii) the exemption of developing countries from this presumption also continues.

ii. Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

In the agreement on TRIPs, there are two subjects on which reviews are to be held, namely, the application of patents to plants and animals and the preconditions for starting the dispute settlement process.

Patenting of plants and animals

The agreement lays down that a country can exclude plants and animals and also essentially biological processes for their production from patentability. But, at the same time, the agreement stipulates that a country has to allow the patenting of micro-organisms as well as non-biological and microbiological processes for the production of plants and animals. Further, a country has to provide protection of plant varieties either by patents or by an effective *sui generis* system or by a combination of these methods. This provision is to be reviewed in 1999.

During the review process, the need for clarity in the definition of micro-organism is likely to come up as an issue, as no definition of this term has been established so far. Similarly, clarification as to what is a non-biological process or a microbiological process is also likely to be among the matters discussed. Multinational firms are likely to pressure for as large an area as possible to be covered by patents in these fields. For developing countries wishing to restrict patentability in the area of biological resources, it may be prudent to define micro-organism, non-biological process and microbiological process restrictively, so that few of the innovations in these fields would qualify for being patented.

The review may also include the issue of what defines the effectiveness of a *sui generis* system. In this respect, the evaluation of the effectiveness of a particular *sui generis* system should be left to the country introducing it. However, if it proves impossible to prevent steps being taken to develop a set of

universal criteria or guidelines, efforts should be made by developing countries to ensure that these are general and allow flexibility.

Preconditions for the dispute settlement process

In general, under the U.R. agreements, a country can trigger the dispute settlement process if it feels that any benefit accruing to it under an agreement is being nullified or impaired, or if the attainment of any objective of the agreement is being impeded by: (a) the failure of another country to carry out its obligations under the agreement, or (b) the application by another country of any measure, whether or not it conflicts with the provisions of the agreement, or (c) the existence of any other situation.

However, until the end of 1999, the agreement on TRIPs limits the use of the dispute settlement process to situation (a) above, and excludes the other two grounds for action. During this period, the scope and modality for complaints relating to these excluded grounds for initiating a dispute will be examined and recommendations will be made to the first Ministerial Conference taking place after 1999. Developing countries are unlikely to be the complainants in the area of TRIPs. Rather they are more likely to be the targets of complaints. Hence, in any such examination, it would be prudent for developing countries to urge the continuation of the restricted options for raising a dispute. For, if provisions (b) and (c) were also included in the preconditions for embarking on the dispute settlement process, this would expand the opportunity for developed countries to take action.

iii. Agreement on Implementation of Article VI of GATT (anti-dumping): restrictions on the panels

In the normal process of dispute settlement within the WTO, a panel has to give a finding on whether the action in question is in conformity with the relevant agreement or whether it violates any

of its provisions. In disputes concerning anti-dumping, however, the role of the panels has been severely curtailed and is limited to determining whether the facts have been properly and objectively established by the domestic authorities and whether the evaluation of the facts has been objective. Further, if the relevant provision of the agreement admits of more than one interpretation, and if the action is based on one of these, the action will be declared to be in conformity with the agreement, even if the panel does not agree with this interpretation. The Marrakesh meeting of the Ministers took a decision that this provision would be reviewed after the end of 1997 with a view to considering whether it is capable of application to areas other than anti-dumping.

This provision renders the dispute settlement process almost ineffective in the area of anti-dumping. If extended to other areas of the WTO, the entire dispute settlement process of the WTO -- hailed as one of the major achievements of the Uruguay Round -- would be almost nullified. Hence, in the review process, developing countries should not support the extension of this process to other areas, but rather work towards its elimination even in the area of anti-dumping.

iv. Negotiating rights for small suppliers

Prior to the coming into force of the Uruguay Round Agreements on 1 January 1995, when a country wished to raise the tariff on any product beyond the "bound" (that is, committed maximum) level, it had to enter into negotiations with the country with which it had initially negotiated this bound tariff and with other countries whose exports of the same product to this country were or, would have been in the absence of discriminatory quantitative restrictions, higher than the exports of the country with whom the initial tariff binding was negotiated. In general, therefore, only the bigger exporting countries were engaged in such negotiations which normally resulted in them being granted some

compensation. However, as a result of the Uruguay Round Agreements, an Understanding on the interpretation of this provision has been agreed, according to which negotiations must take place also with the supplying country which has the highest ratio of exports of the product affected by the proposed tariff increase to its total exports. This change has been introduced in order to widen the negotiating rights in favour of small and medium exporting countries.

This provision is to be reviewed in 2000 to ascertain whether it has worked effectively and then, if necessary, agree on improvements in the criteria for eligibility for this right. Developing countries, most of whom are small and medium exporters of products, should actively participate in this review .

***v. General Agreement on Trade in Services (GATS):
Most favoured nation exemptions***

A country may have claimed exemptions from the most favoured nation treatment in services and an agreed list of each country's exemptions is part of the agreement. Subsequent exemptions can only be gained by means of a waiver process which is very cumbersome. A review of these exemptions is to be held in 2000 in order to examine whether the conditions which created the need for the exemption still prevail.

In the services sector, most developing countries do not have an exporting interest at present. Some countries, however, may have an interest in one or a few sectors such as computer software, accountancy, construction or consultancy. Where such an interest exists, developing countries would do well to examine closely the exemptions claimed by the developed countries, which constitute the main markets for such services and, during the review, try to have these exemptions eliminated or limited. If developing countries themselves claim exemptions for

development purposes, for example, to promote the transfer of technology or investment, they should be prepared to defend their exemptions effectively.

3.2. General reviews

General reviews of various agreements are to be conducted at specified intervals. There will be an annual review of the implementation and operation of the agreements on customs valuation, safeguards, subsidies and countervailing measures, anti-dumping, technical barriers to trade, rules of origin (parts II and III) and trade-related investment measures (TRIMs).

In the Agreement on Trade-Related Investment Measures (TRIMs) provision is made for review in 1999 so as to consider whether the text should be amended and whether the agreement should be complemented with provisions on investment policy and competition policy. (Matters relating to investment policy and competition policy will be discussed later in this document in the sections on new issues under examination in the WTO.) However, one amendment which developing countries could promote to their advantage would be to make permissible the requirement that foreign investors adhere to rules about minimum levels of local content. The benefit accrued in terms of increased domestic employment and saving of scarce foreign exchange may outweigh the extra costs incurred by investors.

The implementation and operation of the agreement on import licensing procedures will be reviewed once in two years. The implementation and operation of the agreement on pre-shipment inspection was to be reviewed at the end of 1996 and, thereafter, every three years. The review of the implementation of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) will be held in 2000, and every two years thereafter. In accordance with a Marrakesh Ministerial Decision,

there will be a full review of the rules and procedures regarding dispute settlement by the end of 1998 to enable the Ministerial Meeting taking place after that to decide whether to “continue, modify or terminate” these rules and procedures. To oversee the implementation of the Agreement on Textiles and Clothing, there is to be a major review before the end of each stage of the liberalization process. The first stage of the liberalization process took place on 1 January 1995 and another on 1 January 1998. The dates for other stages are 1 January 2002 and 1 January 2005.

These general reviews of the implementation and operation of the agreements are intended to assess the extent to which these agreements are achieving their objectives, identify the problems experienced in their implementation and to see whether the agreements need to be improved. It will be important for developing countries to take part effectively in these reviews. After the first one or two years, these reviews will be more than a mere technical exercise, since matters affecting national interests may come up for consideration and negotiation. Hence, as is the case with any negotiation, the reviews in practice will be both a technical and political process.

In order to participate effectively in this exercise, developing countries need to prepare themselves well with respect to the following matters among others:

- Developing countries need to evaluate carefully their experience in implementing these agreements. Any problems faced by institutions in these countries in the process of implementation should be noted carefully. The overall impact of the implementation should also be examined, particularly in case of important provisions.
- Ways in which the agreements are being implemented by other countries also need to be

examined. Any deficiencies in this regard should be noted. Further, if the implementation of the agreements by others has created problems for one or more developing countries these should also be listed. Some examples are as follows:

- (a) The implementation of the provisions relating to the progressive liberalization in the textiles sector by the developed countries has been highly unsatisfactory. It should be recalled in this connection that this sector has remained covered by a special set of rules in derogation of the normal GATT rules, because the textile industry in the developed countries was unable to face competition from producers in developing countries. Developed countries requested this derogation as a temporary measure but, in actual practice, it has continued for nearly three decades. The WTO agreement on textiles and clothing requires an importing country to bring the textiles and clothing products amounting to a specified percentage of its total volume of textiles and clothing imports under the normal GATT/WTO rules, on 1 January 1995, 1 January 1998 and 1 January 2002. Finally, on 1 January 2005, the remaining textile products are to be treated similarly. The agreement, however, leaves the choice of products to be brought under normal WTO/GATT rules at each of the four stages, to the importing country. The developed countries have taken advantage of this flexibility and have chosen the products for liberalization

at the first two stages in such a way that they fulfil the obligation technically, without bringing the restricted products under the normal rules. (It is important to note that not all textiles and clothing imports are subject to restrictions in the importing countries.) Thus on 1 January 1995, all restricted products -- with the single exception of one product in the case of Canada -- continued to be covered by the restrictive regimes in the developed importing countries. The notifications for the coverage of the products for liberalization on 1 January 1998 indicate that even at the second stage of implementation only a very small proportion of the restricted products will be brought under the normal GATT/WTO rules by these countries.

The developing countries should call attention to this manner of implementing the agreement and call upon the developed countries to accelerate the liberalization process, so that the past lack of liberalization is properly compensated by a higher percentage of coverage in the subsequent liberalization process.

It is also important that developing countries urge the developed countries to adopt a positive process of structural adjustment in the textiles sector in order to facilitate its adjustment under the liberalization process. Without a positive set of actions, governments in developed

countries may continue to be inclined to maintain the restrictive trade regime in textiles.

- (b) In reviewing the agreement on anti-dumping, it may be desirable to point out those cases where developing countries have faced harassment, for example, by means of the repeated initiation of investigations regarding the same products after minor changes in the description of the products; by requiring information which may be difficult for developing countries to furnish; by an over-zealous investigation process with prompt findings on the existence of dumping, injury and the linkage between the two.
- (c) With respect to the review of the Understanding on Rules and Procedures Governing the Settlement of Disputes (agreement on dispute settlement), several points which developing countries may choose to raise have been summarized elsewhere in this document.

4. CONTINUING NEGOTIATIONS

Some WTO agreements contain provisions mandating further negotiations in specific areas, including trade in services, rules of origin and agriculture. Some of these negotiations have already started, while others are to take place in the near future.

4.1. New negotiations on trade in services

Three sets of negotiations are envisaged in the area of services, namely:

- negotiations in some specified sectors of services,
- negotiations on specific subjects which could not be covered in the Uruguay Round, and
- rounds of negotiations for further liberalization of trade in all service sectors.

i. Negotiations in specified sectors

Following decisions taken at the Marrakesh Ministerial Meeting, negotiations were to be undertaken on: the movement of natural persons as a means of providing services, financial services, maritime transport services, basic telecommunications and professional services including accountancy services.

The movement of natural persons as a means of providing services is naturally of deep interest to developing countries. But the negotiations on this matter were concluded in July 1995 with insignificant results from the perspective of developing countries. The work on maritime transport services has been suspended and will be taken up during the comprehensive negotiations on

services due to start in the year 2000. The work on professional services including accountancy services has been assigned to a working party which is currently negotiating multilateral disciplines in the area of accountancy. The negotiations concerning financial services and basic telecommunications were conducted with a great deal of urgency and agreements have been reached in these sectors.

These separate sub-sector by sub-sector negotiations in services have not worked to the advantage of developing countries. Most developing countries do not have an export interest in sectors like financial services, telecommunication services or maritime services; and hence are not able to ask for concessions in these sectors. On the other hand, they are pressured into making concessions to allow the entry of these services into their own countries. But they obtain nothing in return. It would be appropriate for developing countries to seek concessions in return in service sectors which interest them. A more practical approach for developing countries in future maybe to have negotiations to exchange concessions taking a number of sectors together, so that some balance is obtained among various interests.

ii. Negotiations on specific subjects

The Agreement on Trade in Services envisages the continuation of negotiations on three specific subjects, namely, safeguards, subsidies and government procurement. A WTO working party is engaged in this work. The 1996 Singapore Ministerial Meeting set the aim of completing the negotiations on safeguards by the end of 1997. In respect of the other two subjects, the Meeting considered that more analytical work was needed but no timetable for the completion of negotiations in these two areas has been set. The main issues arising in these subjects from the point of view of developing countries are reviewed below:

Safeguards

One basic question which needs to be addressed is whether there is a need for safeguards provisions in the field of services. For goods, there is a provision in the GATT 1994 which allows a country to take safeguard measures such as restraining imports of a product, if the domestic industry suffers material injury from increased imports, or even if there is a threat of material injury. In the case of services, safeguard measures could be particularly appropriate for developing countries, when domestic service providers need protection against a sudden surge in the entry of foreign service providers. But doubts have been raised about the need for safeguards provisions in the case of services, on the grounds that the agreement on services already provides for limitations on and conditions regarding the entry of services from abroad. However, this is not a sound argument. The limitations and conditions prescribed with respect to services are defined by a country at the time of making its commitments regarding market access, based on anticipation of a normal situation. The provision for safeguard measures, however, is to meet emergency situations experienced by a particular domestic service sector. Since developing countries are users of services and scarcely exporters, it is important that they have an effective system of safeguards to protect their domestic service providers from injury caused by imported services. Developing countries should, therefore, work towards establishing an effective and easy safeguards mechanism in the area of services.

Subsidies

Developing countries also need to be able to provide subsidy to their services sector, as these are not very well developed and there is a long way to go before they achieve international competitiveness. Modern services make an important contribution to upgrading manufacturing and trading. A provision in the Agreement on Trade in Services rightly directs any negotiating process on subsidies to recognize the role of

subsidies in relation to the development programmes of developing countries and to take into account the needs of developing countries in particular.

In the negotiation on subsidies, therefore, it will be necessary for developing countries to introduce concrete provisions enabling them to grant subsidies to domestic services. As the services sector in developed countries is already highly developed, there is hardly need for subsidies. In any case, there should be a substantial difference between the types and levels of subsidies permitted in developing countries and developed countries. Importantly too, any resulting agreement on subsidies should stipulate that subsidies are exempted from the “national treatment” principle (whereby there should be no discrimination between national and foreign providers) as is already the case with subsidies on goods under the current GATT provisions.

Government procurement

In negotiations on government procurement, developing countries will be under pressure to agree to have the two principles of *most favoured nation treatment* and *national treatment* included in the agreement. The implication of *most favoured nation treatment* will be that, in the government procurement of services, there must be no discrimination between the service providers of different countries. Similarly, the implication of *national treatment* is that no discrimination can be allowed between a foreign service provider and a domestic service provider. As most developing countries do not export many services, they will hardly gain by obtaining non-discriminatory treatment in the developed countries. On the other hand, if the *most favoured nation* principle is adopted, developing countries will not be allowed to select preferred sources of services, and by adopting the *national treatment* principle, they will lose the discretion to give preference to domestic service providers.

In conclusion, therefore, since developing countries would not benefit from the introduction of *national treatment* and *most favoured nation treatment* principles into an agreement on government procurement of services, it may not be in their interest to support any proposal in the negotiations for their inclusion.

iii. Negotiations to achieve further liberalization in the services sector

The agreement envisages several rounds of negotiations to achieve further liberalization in the area of services, the first such round beginning in 2000. In such negotiations, developing countries should insist on the mandatory provisions on these matters being fully respected, namely that, developing countries may open up fewer sectors, may liberalize fewer types of transactions, may extend market access progressively in line with their development situation, and may attach conditions to market access with a view to developing their own services sectors.

Special caution and perseverance in this regard are needed, as, notwithstanding the above, major developed countries have been demanding substantial concessions from developing countries during the recent sectoral negotiations, particularly in relation to financial services and telecommunications.

Another major task facing developing countries in this is to ask for specific concessions in service sectors which are of export interest to them. (A few may be interested in computer programming, construction services, and consultancy, among others.) They should also insist on better commitments regarding the modes of supply of services where they have a comparative advantage. Thus, for example, the movement of natural persons is one such mode which is of interest to a large number of developing countries. It may still not be too late to put forward

specific proposals in the area of movement of labour and press for their serious consideration. This is particularly relevant, since major developed countries are putting forward in a forceful manner proposals for sectors of interest to them, as, for example, electronic commerce.

4.2. Rules of origin

The agreement on rules of origin stipulates that the WTO members should harmonize their rules of origin applicable to non-preferential trade and to this end negotiations are currently underway. This seemingly technical subject has serious implications for national interests in relation to the market access for goods. Rules of origin lay down the criteria for determining the source of an imported product. Thus, wherever there are restrictions or quotas on the import of a particular product from a particular country, these rules guide the determination of whether an imported product is from a restrained source or from another source. This determines whether the product is allowed to enter the market of the importing country. Hence, these rules clearly have an important bearing on the market access.

It is necessary for developing countries to participate effectively in these negotiations in order to protect their market access prospects.

4.3. New negotiations concerning trade in agriculture

The agreement on agriculture specifies that negotiations to continue the process of reducing protection and domestic support in this sector will start before the end of 1999. Barring a few exceptions, non-tariff measures have been converted to equivalent tariffs. Negotiations on the reduction of protection will therefore focus on the reduction of tariffs. With respect to

reduction in support, the negotiations will cover domestic support and export subsidy measures.

It is in the interest of developing countries that the levels of tariffs, domestic support and export subsidy of developed countries be reduced significantly. It is important to appreciate that developed countries have substituted very high tariff equivalents for their non-tariff barriers. For some products, the tariffs are in the range of 250 per cent to 300 per cent. Similarly, the levels of their domestic support and export subsidy also are very high.

In the agreement on agriculture, the developed countries committed themselves to reduce their tariffs, domestic support and export subsidy by 20 per cent to 36 per cent over a period of six years, that is, by the end of the year 2000. It is clear that, even at the end of this period, their general level of tariff protection, their domestic support and their export subsidies will remain very high. Hence, their domestic markets for agricultural products are still inaccessible and their high subsidies undermine the capacity of others to compete in third markets.

Developing countries had a raw deal in this sector in the Uruguay Round. Most developing countries did not have non-tariff barriers to convert to tariff equivalents. Likewise, most of them had hardly any domestic support and export subsidy for agriculture. They are now prohibited from raising their tariffs, and introducing domestic support and export subsidy measures, even if their overall development strategy would suggest the wisdom of such a policy in future.

The resulting situation is highly inequitable, and it has serious practical implications. For example, some developing countries may wish to enhance their food production, because importing food, even if cheap, may not be feasible because of a chronic shortage of foreign exchange. They may therefore like to have the option of protecting and subsidizing this sector, even if

the protection is not to be granted immediately or if the resources for subsidizing agriculture are currently lacking. During the forthcoming negotiations it will therefore be necessary for developing countries to try to restore the possibility of adopting such measures, so that they are not prohibited from having recourse to them if and when they decide to do so.

Moreover, in the negotiations to be started in 1999, developed countries should be asked to reduce their levels of tariffs and subsidies, substantially. Mere reduction by a certain percentage may not be enough, as the existing levels are extremely high. What is needed is a commitment to have low ceilings for tariff and subsidies.

Other features of this agreement may also require the attention of developing countries during these negotiations. It is therefore important that developing countries immediately start to analyse their own experience and consult with each other to identify their overall objectives, major areas of interest and negotiating strategies for the next round of negotiations on trade in agriculture.

5. PROPOSALS FOR CHANGES IN SOME AGREEMENTS

The deficiencies and inequities in the WTO agreements from the point of view of developing countries -- some of which have been outlined in earlier sections of this document dealing with reviews and continuing negotiations -- need to be rectified to ensure that the multilateral trading system is fair and equitable for both developed and developing countries. Developing countries should, therefore, submit proposals to effect necessary changes in these agreements. In addition to creating a true balance in the rights and obligations of developed and developing countries in the WTO, these proposals will also serve to counter the proposals by developed countries regarding the introduction of new subjects for negotiations in the WTO. Thus when developed countries from time to time propose new subjects in the WTO, it would be appropriate for developing countries to suggest suitable amendments in the existing agreements.

Developing countries should carefully choose the most appropriate time and forum for submitting the proposals for changes in the existing agreements. Some changes could be proposed at the time of the review of the agreements, while others could be submitted as substantive proposals in the course of the normal work programme of the relevant committees or councils. Efforts may also be made to have some of these proposals put on the agenda of the WTO Ministerial Meetings. In any case, it should be made clear that these proposals are not part of any new agenda. In fact these should be treated as part of the built-in agenda process because they relate to the effective and proper operation of existing Agreements.

Some problem areas as well as proposals to address them are mentioned below as illustrations.

5.1. Dispute settlement

The dispute settlement understanding has been acclaimed as one of the most significant achievements of the Uruguay Round of multilateral trade negotiations. Indeed it has improved the enforcement of rights and obligations by fixing time frames for various stages in the dispute settlement process and by making the decision making process automatic. However, from the point of view of developing countries it has a number of major deficiencies, some of which are listed below.

Lengthy time frames

The time frames set for the process are such that it may be about twenty-eight months before a country obtains final relief after a dispute process is formally initiated. Moreover, the initiation of the dispute settlement process generally takes place a few months after the affected country first notices the subject of the potential dispute. By the time the final relief (in the form of elimination of the offending measure, compensation or retaliation) becomes available, the delay may have been such that the country's exports may have suffered materially, especially in those cases of developing countries with weak trading links and structures. They may therefore suffer irreparable damage by the adverse effects of measures which might continue for more than two years, before final relief is available.

Lack of compensation

Even if the erring country removes the measures promptly, relief is obtained by the affected country only from the time these measures are removed. No compensation is given for the possibly lengthy period of time during which the measures continued in force following notification of the dispute and before the measures declared to be inadmissible are finally removed at the end of the dispute settlement process. This has a particularly adverse effect on developing countries, which do not have the

economic strength to absorb the economic effect of the possible lengthy continuation of such measures.

Weakness regarding retaliation

If the erring country does not remove the measures found to be inadmissible, the affected country is permitted to take retaliatory measures (that is, withdrawal of trade concessions that it has accorded to the offending country in the context of the WTO agreements) commensurate with the loss which it suffers. But for developing countries, which are generally economically weak, retaliation is hardly a practical option. They will always hesitate to take retaliatory action, particularly if the erring country is a major economic power. Besides, any retaliation has an economic cost, which a weak country would normally choose to avoid. There is no provision in the agreement for joint action by all WTO members against the erring country, in the case of its failure to take corrective measures.

Costly process

To take recourse to the dispute settlement process is very costly. The process involves consideration of highly technical matters and is similar to a civil judicial process. On the whole, developing countries do not have the legal expertise to handle these cases on their own, seldom finding a suitably qualified person in their country to prepare their case. Consequently, in most cases, help is sought from legal firms from major developed countries, which is very costly. Considering the heavy costs involved, sometimes developing countries have to assess whether it is wise to resort to the dispute settlement process. Thus there is a clear asymmetry in the choices facing developed and developing countries in seeking relief in the WTO.

Proposals for a change

In all the first three of the above cases, developing countries should demand special and differential treatment which would allow them to claim speedy relief, compensation for the period inadmissible measure remained in force, and which would allow

joint retaliatory action against the erring developed country. However, cases brought by developed countries against developing countries should continue to be governed by existing provisions.

Moreover, developing countries should propose that the inequity in terms of costs of access to the dispute settlement in the WTO be offset by taking one or more of the following actions:

- by lowering legal requirements for cases brought by developing countries;
- by forming a panel of eminent trade and legal experts, paid from the regular WTO budget, to assist developing countries in the preparation/presentation of their complaints;
- by establishing a special technical assistance fund to pay for legal expertise required by developing countries on a case by case basis;
- by initiating special training to establish and build up the necessary legal expertise in individual developing countries;
- by developing regional and sub-regional teams and networks of legal experts whose services can be enlisted for this purpose.

5.2. Subsidies and anti-dumping

Complex and costly procedures

Developing countries often have to defend themselves against allegations on the part of developed countries of subsidization and dumping. The provisions of these agreements are very complex and very detailed information has to be collected by the defendants, often from the developed country which has initiated the proceeding. Similarly, developing countries also find it extremely difficult to initiate such proceedings in their own countries and follow them to successful conclusion, due to cost of collection and analysis of the supporting facts. As in dispute settlement cases, they often have to depend on expert law firms from major developed countries to prepare their case which generally involves very high costs.

Proposal for change

Developing countries should therefore argue for simplifying the procedures in these areas and for the provision of advisory and legal services through multilateral and regional initiatives.

5.3. Balance of payments measures

Preference for price-based measures

Under GATT 1994, if a developing country faces a balance of payments problem, it may take steps to limit its imports. Before the coming into force of the Uruguay Round agreements, developing countries could choose the type of measure which they would take to deal with the situation. However, in the provisions in the Understanding on Balance of Payments negotiated during the Uruguay Round, there is a clear stipulation that the countries must give priority to tariff-type price measures, and only when they are able to demonstrate that such measures are not effective or practical, can they proceed to take direct import-restrictive measures such as quantitative restrictions on imports. Direct import control measures clearly have an immediate impact on the level of imports and hence an immediate positive effect on the balance of payments, whereas price

measures take time to generate the desired effects. It is necessary that flexibility with respect to choice of measures be restored for developing countries.

Inadequate and unsatisfactory criteria

While the experience of recent years has shown that developing countries facing foreign exchange pressures may need to restrain imports in critical situations, they are likely to run into difficulty in the WTO in taking effective measures because of problems with regard to the criteria used to determine the existence of a balance of payments problem. The relevant provision in the GATT 1994 does not define this criteria. Lately there has been insistence by major developed countries that the total foreign exchange reserves and the foreign exchange requirement based on the recent past should be used to determine whether a balance of payments problem exists. These are highly unsatisfactory and inadequate criteria. First, what matters is the *composition* of the foreign exchange reserves. That part of the reserves which is extremely volatile and unstable, such as investment in the equity market or in short term deposits, should not be taken into account, since these are too risky a basis on which to make foreign exchange expenditure commitments. Second, future needs for foreign exchange should not be assessed only on the basis of past uses, since much depends on future development programmes.

Proposal for change

Developing countries should propose that the criteria to determine the existence of a balance of payments problem should be defined to take due account of the composition of foreign exchange reserves and the level of need for foreign exchange that is in line with the problems and development needs of developing countries.

5.4. Services

Asymmetric treatment of labour and capital

There is a strong asymmetry in the treatment of capital and labour in the agreement on services. A country is prohibited from applying restrictions on the flow of funds for current transactions relating to its specific commitments to provide market access in the service sectors included in its schedule. Further, when the cross-border movements of capital are an essential part of the service (for example financial services) which is covered by a country's market access commitments, such movement of capital also forms a part of the commitment. Thus the capital flow, if it is related to the market access commitment given by a country, is automatically covered by such commitment and no separate commitment or provision is required to remove barriers to this flow. There are no similar provisions in respect of the movement of labour where concessions by developed countries are limited to very few specific commitments in very few sectors.

Proposal for change

Developing countries should demand necessary amendments in the relevant provisions to ensure symmetry in the treatment of capital and labour as modes of supply of services. They should also press for significantly improved commitments by developed countries in the area of movement of natural persons.

5.5. Trade-related intellectual property rights

Focus on the protection of IPRs holders

The agreement on intellectual property rights (TRIPs) is basically unbalanced as it primarily focuses on the protection of the rights of owners of intellectual property, without giving much attention to the interests of the users of intellectual property.

However, the provisions in the Agreement dealing with objectives and principles can be used to achieve a degree of balance. For example, the agreement states as an objective that the protection of intellectual property rights “should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations”. Similarly, the agreement states the principle that countries “may promote the public interest in sectors of vital importance to their socio-economic and technological development”. However, there is hardly any specific provision in the operative parts of the agreement which prescribes any concrete positive steps to achieve these objectives and principles.

Proposal for change

Developing countries should insist for the inclusion of specific operative provisions in the agreement in respect of all these objectives and principles in the agreement.

PART III
NEW ISSUES

6. EVOLUTION OF THE WTO AGENDA

For more than a decade major developed countries have tried to bring new issues into the ambit of GATT and now of WTO. GATT had been traditionally concerned with the import and export of goods. In the early 1980s, however, some of the major developed countries perceived that a number of important emerging areas -- services, high technology and investment -- were going to play a much bigger role in their economies than did trade in goods. Thus, during the GATT Ministerial Meeting of 1982, these countries suggested that the GATT consider these three subjects. The proposal was not, however, accepted. In the field of services, nevertheless, it was decided that countries should carry out national examination of the matter and exchange information. Later, the Contracting Parties would consider whether a multilateral framework for services would be desirable and appropriate.

When the proposals for a new round of multilateral trade negotiations began to be considered seriously and the Uruguay Round was finally launched in 1986, the major developed countries again brought in the subjects of services and investment and also another new subject, namely intellectual property rights, which was closely related to the 1982 proposal concerning high technology. In the event, investment was subsumed in the Uruguay Round agreements on trade in goods, but comprehensive agreements were worked out in the two new areas of services and intellectual property rights.

Environment was also a subject that developed countries tried to put on the GATT/WTO agenda. While no comprehensive agreement was possible on this issue in the Uruguay Round, it was nevertheless reflected in the preamble of the Agreement establishing the WTO and in certain provisions of the TRIPs Agreement. It also resulted in two Ministerial Decisions. One of the Ministerial Decisions, adopted in

Marrakesh, set the terms of reference and elements of a work programme for the WTO Committee on Trade and Environment which was asked to report to the first WTO Ministerial Conference. Subsequently, the first WTO Ministerial Conference in Singapore decided to continue the work of the Committee on Trade and Environment.

Hardly a year had passed after the WTO agreements came into force on 1 January 1995, when some major developed countries again began to propose new subjects for inclusion in the WTO agenda. These were: investment, competition policy, government procurement, trade facilitation and labour standards.

The first Ministerial Meeting of the WTO, held in Singapore in December 1996, decided to establish two Working Groups in the WTO to study the relationship between trade and investment and the interaction between trade and competition policy, respectively. (That the subject of investment liberalization, which was first proposed in 1982 and again pursued in 1986, was reintroduced in 1996 is an example of the determination and perseverance with which major developed countries pursue subjects of serious interest to them in the GATT/WTO.)

Singapore Ministerial Conference also decided to assign for consideration the subjects of transparency in government procurement and trade facilitation, to a separate Working Group and the Council for Trade in Goods -- an existing body in the WTO -- respectively.

However, as a result of the combined and firm resistance of a large number of developing countries, the Singapore Ministerial Meeting decided to keep the subject of labour standards out of WTO.

Lastly, the Second WTO Ministerial Conference, held in Geneva in May 1998, has agreed to initiate a work programme related to global electronic commerce.

This, the menu of new work in the WTO, is one largely determined by North interests. There are two obvious reasons why the major developed countries attempt to introduce new subjects in the GATT/WTO. First, the WTO is an organization in which developed countries have been traditionally very active in taking the initiative to push ahead with their ideas and proposals and in general try to set the agenda. This has been facilitated by thorough and comprehensive preparation on their part and often effective coordination of their positions and stand. They have also exercised a dominant influence over decision making, even though the normal decision making process in this organization is on the basis of one country, one vote. Hence, the developed countries have come to feel that they will continue to have an effective and dominant say in this forum, and are thereby encouraged to take initiatives on new subjects of great interest to them.

Second, this forum provides what the developed countries regard as an effective enforcement mechanism, in that adherence to commitments extracted from developing countries is obtained by means of the threat of retaliation which can have severe consequences for economically weak countries. Traditionally this was trade retaliation, but there is now provision for cross-retaliation among all the areas covered by the WTO. Thus the perceived non-fulfilment of an obligation in the area of services or intellectual property rights can, under certain circumstances, be met by restrictions on the recalcitrant country's export of goods. If new subjects like investment and competition become part of the WTO agreements, it is almost certain that the obligations in those areas will also be enforced through threats of action against the export of goods.

With these new issues now already under examination in the WTO, developing countries need to identify their own interests and preferred alternatives. These are complex areas, requiring thorough preparation in each subject. The following sub-sections explain some of the important issues in these areas and their implications.

7. TRADE AND ENVIRONMENT

The link between trade and environment has been under consideration in the WTO for some years now. The process started with the consideration of the trade restrictive measures to be taken by a country in pursuance of implementation of the multilateral environmental agreements (MEAs). The problems associated with eco-labelling were also being considered. Developing countries then introduced the idea of linking environment with market access, transfer of technology and intellectual property rights. Despite discussions over a long period, and clarification of several of the ideas and issues concerned, consensus on the issues is not within sight.

The present WTO agreements refer explicitly to the links between trade and environment in four places, namely, in Article XX on general exceptions in GATT 1994, in the agreement on technical barriers to trade, in the agreement on sanitary and phytosanitary measures and in the agreement on trade-related aspects of intellectual property rights (TRIPs). The main contents of the relevant provisions are highlighted below. They set out specific criteria to be used to judge whether trade measures applied for environmental reasons were justly introduced.

- Article XX of the GATT 1994 permits a country to deviate from its obligations and take measures for the protection of the life or health of human beings, animals and plants. It also permits taking measures relating to the conservation of exhaustible natural resources. The condition is that such measures not be applied in a manner which would constitute a disguised restriction on trade. In the case of the measure for the protection of life or health, the built-in condition is that it should be “necessary”, thus there is need for an examination to establish whether

this is so and also the intensity of such a measure. In the case of exhaustible natural resource clause, there is no clear stipulation regarding necessity; but it would be relevant to examine whether the natural resource in question is exhaustible and whether the particular measure relates to its conservation.

- The provisions in the Agreement on Technical Barriers to Trade involve examination of technical regulations to determine whether the regulations are more trade-restrictive than necessary in order to fulfil the objective of the protection of life or health, taking into account the risks which non-fulfilment would create.
- The Agreement on Sanitary and Phytosanitary Measures authorizes a country to take measures for the protection of the life or health of human beings, animals and plants. Here again, the conditions are that the measures should be necessary and not applied in a manner which would constitute a disguised restriction in trade. (In the cases of technical regulations and sanitary and phytosanitary measures, an important condition is that these should be based on scientific evidence.)
- In the agreement on TRIPs, a country is allowed to exclude an invention from patentability if the prevention of its commercial exploitation is necessary to protect the life or health of human beings, animals or plants or to avoid serious prejudice to the environment. This provision is not related to a trade measure, but it links the environment with patents.

Serious difficulties arise in handling the trade restrictive measures taken as a result of actions in MEAs. The rights and

obligations of countries under the WTO agreements would require that any such measure under an MEA must be in full conformity with the provisions of the WTO agreements. However, some developed countries are proposing that a trade measure pursuant to the implementation of an MEA should be automatically implemented without regard to the aforementioned criteria in relevant WTO agreements.

Similarly, suggestions have been made that the WTO agreements should be amended to enable a country to take trade action in pursuit of the decisions of the MEA. There have also been suggestions that there should be a general waiver from the obligations of the WTO agreements for implementation of these decisions.

There are many problems with these suggestions. First, the question arises as to which agreements are to be considered valid MEAs for this purpose. Sometimes even a small group of countries may formulate an MEA and make decisions regarding trade measures. Automatic acceptance of such measures will naturally not be acceptable to the non-members of such an MEA. Second, some countries are members of the WTO but are not members of an MEA. It would hardly be proper to curtail their rights under WTO for decisions taken in the discussions in which they have not participated. Third, restrictions on trade are complex matters and have serious implications for countries, particularly the developing countries. Hence it may not be appropriate to leave this matter entirely in the hands of the intergovernmental bodies of the MEAs, which do not have adequate background information and experience in this field.

Apart from the trade measures related to decisions in MEAs, another important issue which has come up for discussion in the WTO is how far trade restrictions should be imposed against “unrelated” processes and production methods (PPMs), that is, those PPMs which do not modify the product at all. An

example will make the problem clear. Let us suppose that a processed food product is prepared with the use of certain chemicals which leave harmful chemical residues in the product, with the result that, in the process of production, the product has acquired some harmful contents. This will be considered to be a “related” PPM, as it relates to the content and characteristics of the product. Again suppose the process of production is such that dangerous chemicals are discharged into a neighbouring water stream and harmful gases pass into the atmosphere, though the product itself has no harmful content. Here the PPM does harm the environment, but the content and characteristics of the product itself are not affected. This is called an “unrelated” PPM.

The point under discussion is whether trade measures should be taken only for related PPMs or also for unrelated PPMs. So far the practice in the GATT is that only related PPMs have been considered for deciding on trade restrictions. It is now being suggested by some developed countries that even unrelated PPMs should justify restriction on the import of the product. But a product should not be restricted on the grounds that the country of origin is not taking adequate action to protect the environment. If such restriction is allowed for “unrelated” reasons in the area of environment, this could open door to massive discrimination against the products of developing countries, and could also give rise to the temptation to extend it to other areas as well.

A related problem under discussion is that related to eco-labelling, whereby some countries use special labels to indicate that a particular product conforms to certain environmental standards. An important issue is whether such standards should include unrelated PPMs as well. Another issue is whether the eco-labelling process applied by consumer bodies and other non-governmental organizations but not explicitly sanctioned by governments conform fully to the spirit and not only the letter of the WTO agreements. Developing countries have rightly

expressed concerns about the trade restrictive nature of these practices, particularly if unrelated PPMs are included in the eco-labelling standards.

For developing countries it is important to focus on the development aspects of the problem. Developing countries fully subscribe to the overall concern for the protection of environment. However, there may well be differences in the priority they give to this problem, particularly with respect to the environmental problems limited to the domestic scene. Thus, while it is, no doubt, important to improve or maintain environmental quality, many developing countries may find it necessary, within the available means, to treat other problems, such as hunger, as being of higher national priority. Where environmental effects spill across borders, there is a case for shared responsibility, though shared differentially based on the economic and technical capacity of the countries concerned.

In protecting the environment, threats of trade restrictive measures vis-à-vis developing countries are coercive, inequitable and discriminatory in character. There are other more positive measures to assist developing countries in their pursuit of environmental protection and improvement. For example, the dissemination of information, training, making available and improving the transfer of relevant technology, enhancement of market access, provision of funds, etc., are all effective measures to encourage and help developing countries to adapt their production to environmentally friendly processes. These are areas where little or no progress has been made since the adoption in 1992 of the Agenda 21 at United Nations Conference on Environment and Development.

In the area of environment, therefore, it is desirable for developing countries to adopt the following approach in the WTO:

- (i) Even though practical means of implementing the decisions of the MEAs must be found, developing countries should urge that the relevant conditions of the GATT/WTO agreements are applied to the use of trade restrictive measures in the context of an MEA. No amendment of the relevant provisions of the GATT/WTO agreements is needed for this purpose.
- (ii) There should not be a general prior waiver from WTO obligations to allow use of trade restrictive measures for the implementation of the MEAs. However, specific waivers for specific measures can be granted on a case by case basis and following the normal procedure for the grant of such waivers.
- (iii) There should be no amendment or interpretation of the existing GATT/WTO agreements to legalize trade restrictive measures for unrelated PPMs.
- (iv) Eco-labelling should generally be based on the content and the characteristics of the product and not on the unrelated PPMs. Moreover, the negative trade impact of eco-labelling sponsored by non-governmental bodies should be carefully examined.
- (v) Preference should be given to positive measures to encourage developing countries to adopt processes and methods which are supportive of environmental protection. In particular, there should be expanded market access in the developed countries for the goods of developing countries, so as to increase the resources available to developing countries for investment in new and

environmentally more appropriate processes and methods. In addition, financial assistance should be made available to developing countries to facilitate conversion to environment-friendly processes and methods, and there should be easy availability of relevant technology which can be absorbed and adapted by developing countries for this purpose.

8. TRADE AND INVESTMENT

Currently the relationship between trade and investment is under study in the WTO, as well as in UNCTAD which is studying this subject under its own mandate. These studies should help developing countries to identify the key issues at the interface of trade and investment and in particular identify those matters which are of particular concern to them in their development efforts.

External financial resources (grants and loans, portfolio investment, and foreign direct investment) can make an important contribution to the development process in developing countries, including their trade potential. For example, if the rate of net domestic saving is not adequate for financing the level of investment necessary to achieve fast economic growth, including the production for trade and related infrastructure, foreign finance may also be needed. Moreover, developing countries need to upgrade their technology; and high technology is often acquired through foreign direct investment. Furthermore, even if domestic savings for investment are adequate, developing countries may still need adequate foreign exchange with which to import essential items like food, raw materials and other industrial inputs or for buying or licensing new technologies from abroad.

However, on careful analysis each type of flow is seen to have drawbacks as well as benefits and developing country governments need to consider their policy with regard to external flows with great care if the maximum advantage is to be derived and serious economic instabilities are to be avoided.

Official development assistance (bilateral and multilateral grants, loans on concessional terms) has been dwindling in recent years and there is little encouragement to think that the volume

will rise substantially in the future or that the increase in “conditionalities” imposed by the donors will be reversed.

Portfolio investment by foreign entities and other short term capital flows are, by their very nature, rather volatile. Indeed recent experience under financial liberalization has indicated that countries need to pursue sophisticated and watchful policies to lengthen the maturity of these capital flows and reduce their volatility, in order to reduce the risk of undesirable effects on the exchange rate or balance of payments.

Foreign direct investment (FDI) is often deemed to be more suitable for developing countries as, under certain circumstances, it can help upgrade the technological level of the host country. Nevertheless, there are serious problems associated with FDI also which need to be taken into consideration, such as:

- (i) While the general perception is that FDI is a stable element normally invested in the form of capital goods and other immovable assets, it can nevertheless give rise to economic instabilities. Financial deregulation and international financial liberalization giving rise to new market instruments like derivatives trade and hedging, borrowing by firms against their plant and machinery, and the consequent foreign exchange transactions can introduce a high degree of instability associated with even this seemingly stable form of foreign investment.
- (ii) For the investor, FDI can present a greater risk than either loans or equity market investments since, in case of a loan, there is an assurance of payment of interest and capital installments. Equity investments can be withdrawn almost instantaneously if there is a perception of risk. Considering the higher risk involved in the FDI, the investor will naturally expect

a higher return on the investment, which may make this form of investment more costly for the host economy.

- (iii) The unrestricted entry of big investors may undermine or discourage local entrepreneurs and investors, as they may not find it easy to compete with them. Unless governments pursue an industrial policy to encourage local industrial and technological development, there is a danger that, in the medium and long term, foreign investors will have an excessive influence on national economic conditions and even policies.
- (iv) Foreign investment may be highly import intensive, since investors may favour foreign sources of supply of raw materials and intermediate goods, with which they are more familiar and which they know to be dependable. This is a matter of considerable importance because of the current account implications for host countries, if imports are not covered by export revenues.
- (v) While selecting the sites for their units, foreign investors are likely to prefer areas which are already developed. This may result in geographical concentration of new units and may thus operate against the domestic objective of regional balance in development.

While recognizing the potential contribution of FDI, developing country host governments need, however, to take a view as to the sectors in which they wish FDI to play a role and the extent of involvement by foreign investors. Moreover, policies towards FDI must be part of a set of clear overall policies regarding,

among other things, industrial structure and the evolution of the balance of payments to ensure that:

- FDI is an additional source of funds for investment in the production of goods and services or the development of infrastructure, rather than merely resulting in a change of ownership of existing enterprises with little or no consequent change in management or production methods.
- FDI produces goods and services which have immediate export potential or contributes to the improved efficiency and competitiveness of the economy in other ways, whether in the field of production or infrastructure.
- FDI contributes to an upgrading of technology in the enterprise in which it is involved and to the wider absorption and adaptation of higher technology in the country at large.

Developing countries need to put forward their views on these important matters in the study process in the most effective manner.

As against these development concerns of the host developing country, the main concern of the foreign investor will be to obtain an assured profit, though for some this may involve taking a long term view. Moreover, foreign investors will feel more confident if there are good prospects for stability in the host government's policy towards FDI and in the working environment.

The examination of these issues is likely to increase the awareness of developing countries regarding the implications of a

possible multilateral agreement on investment. As explained earlier, since 1982 major developed countries have made efforts to have the subject of investment included on the GATT/WTO agenda and a major new thrust was made just before the Singapore Ministerial Meeting in December 1996. The main aim has been to obtain agreement that negotiations should take place in the framework of GATT/WTO for a multilateral agreement to liberalize national policies regarding investment, such that the discretion of host countries in this matter was considerably curtailed and full freedom given to foreign investors.

Developing countries need to be fully prepared in case these developed country proposals surface once again, as they are likely to do, if past experience is any guide. In any case, there is to be a review of the agreement on trade-related investment measures after 1999, in which one point for consideration will be whether the agreement should be complemented with provisions on investment policy and competition policy. There is therefore a strong possibility that the subject of a multilateral framework for investment will be taken up in the course of that review.

Among the major issues which developing countries need to examine is that regarding the advantages and disadvantages of agreeing to help evolve a multilateral framework for investment in the ambit of the WTO.

If a host country considers it desirable to give more freedom of action to investors, it may do so by amending its domestic rules, procedures and investment regime, including measures to provide a stable framework for investors and judicial protection against possible adverse administrative action. Nevertheless, note should be taken of the fact that some developing countries with extremely liberal investment regimes have attracted very little foreign investment and others which are highly selective in the matter of investment have very substantial inflows. This seems to indicate that infrastructure, the size of

domestic or neighbouring markets, and other important economic and political factors are more important than the degree of liberality or otherwise of the rules relating to foreign investment.

To summarize, in the course of the study process, the developing countries will need present effectively their perception of the relationship between trade and investment, seen from a development perspective. This will include indicating the risks as well as the benefits associated with FDI and the consequent need for host developing countries to have the discretion to guide foreign investment to priority sectors and priority geographical areas and to seek certain conditions to be fulfilled so that the investment contributes positively to, among other things, wider technological change and the growth of domestic economic activities.

9. TRADE AND COMPETITION POLICY

Competition among producers and suppliers is generally deemed to be beneficial -- providing consumers with better quality and lower priced goods and services. Healthy and fair competition can be beneficial to producers themselves, by keeping them alert to the possibilities of improving quality and reducing costs. There may be, as well, substantial benefits for the economy as a whole. However, competition between a large entity and a comparatively small and weak one may not be conducive to the health of the latter or to that of the economy as a whole.

Most competition policy measures developed so far are applicable to transactions and behaviour within a country, and have been introduced by developed countries to deal with their domestic competition matters. It is important to appreciate that these policies vary considerably among developed countries. Many developing countries do not yet have domestic competition laws or have difficulty in implementing them.

Attention has been given in the past in various UN bodies to the matter of competition policy with a view to controlling or eliminating anti-competitive and restrictive business practices. As yet, however, there are no agreed multilateral instruments to govern international competition.

Although competition is intimately related to trade and, as such, would seem to be a clear matter for GATT/WTO, it is only recently that it has been included in the WTO's work programme. As mentioned earlier a Working Group in the WTO has been asked to examine the issues concerning the relationship between trade and competition policy.

From the developing country perspective it will be useful to have a constructive examination of competition matters in the

WTO. But whether or not this examination is helpful will depend very much on how the matter is handled, which aspects are included and how, in the end, the varying interests are harmonized. The manner in which the subject has been approached so far by some developed countries (which brought up the issue in WTO), gives grounds for apprehension as to whether the subject will be examined in a comprehensive and balanced manner.

It is a matter of considerable concern from the perspective of developing countries that developed countries appear to be focusing most on domestic competition policy matters in order to ensure that foreign firms are not faced with impediments in other countries. Towards this end, their immediate objective is to examine the difficulties arising from domestic competition laws and the enforcement process in various countries. And consistent with this approach, perhaps the subsequent main objective of these developed countries will be to have a framework in which countries commit themselves to certain standards in their domestic competition laws and enforcement processes.

However, from the developing country perspective, the following points need to be kept in mind:

- (i) Often countries adopt rules and procedures as safeguards against possible prejudicial practices by large firms which may try to take advantage of their strength and position. Such measures are taken for reasons of public interest, even though firms may feel constrained by such measures. Similarly, developing countries sometimes adopt rules and procedures to safeguard the interests of their domestic firms which are small and weak in comparison with most multinational corporations. Faced with serious handicaps, the measures

comprise efforts to secure a more level field for domestic firms.

- (ii) A set of competition rules which may be appropriate for a highly developed country may not be appropriate for developing countries, bearing in mind their different levels of development, local conditions and development objectives. To create a set of common rules and standards for competition policy for all countries may not be advisable.

A competition policy to cover the concerns of developing countries should be framed in a way which provides the flexibility needed to safeguard the interests of domestic producers and also, importantly, of their consumers. Overly rigid constraints on domestic producers and traders may cause undue constraints on growth and development. This will be particularly harmful to them in the current environment of globalization-liberalization, in which developing country firms need to be able to attain the size and capacity required to render them competitive at the international level.

Another important aspect of the relationship between trade and competition policy concerns the policy tools appropriate for curbing anti-competitive practices in international trade and investment. In view of the on-going globalization-liberalization process where multinational firms are trying to expand in developing countries, it is particularly important to seek ways to curb the trans-border anticompetitive practices used by multinationals, such as transfer pricing, predatory pricing, collusive tendering, private sharing of markets, tied purchases and sales, formation of export cartels and import cartels, etc. There are also practices, such as strategic alliances among firms, which may not appear to be directly anti-competitive, but may result in

curbing competition indirectly. Proposals to curb such practices have been considered in various UN bodies in the past, but without reaching final agreement. Now that the subject of competition is under examination in the WTO, the matter needs to be addressed seriously once again. Domestic rules and procedures may not be adequate to the task of eliminating or at least curbing and controlling these international practices and new effective multilateral action may well be required. It is also to be noted that the argument that WTO's remit covers only the actions of governments and not the activities of firms is not at all convincing. For a long time now the WTO has been dealing with matters concerning dumping actions of firms, but, more importantly, it would effectively exclude vital aspects of the problem from multilateral discipline.

Among other things, therefore, the current examination of competition matters in the WTO should include the consideration of the following: how to identify prejudicial practices such as those described above; how obligations can be put on firms; what should be the respective responsibilities of the host and home country; how obligations can be enforced; in what manner the dispute settlement process of the WTO can be used.

Another important matter concerning competition in the field of international trade is the control of trade in some products by a limited number of firms, thereby creating an oligopoly situation. The points needing examination in this connection are: what should be the criteria to determine which product areas require attention; what level of concentration should trigger attention; what should be the obligations of firms and host countries; and how should the disciplines be enforced, etc.

There is also the problem of mergers and acquisitions by large firms which reduce the degree of competition in international trade. The sort of problems requiring examination

here are: what criteria should be used to decide on the size of firms to be covered by any possible monitoring and discipline; how to determine the anti-competition effect of proposed mergers; what type of obligations should apply to firms; what would be the responsibilities of the home countries of these firms; and how should these responsibilities and obligations be implemented.

In addition, the GATT had often been severely affected by constraints on competition arising from governmental measures. For example, certain trade measures taken by governments such as countervailing duties against subsidies, anti-dumping duties against dumping, import control measures taken as safeguard action also have anti-competitive effects. These matters are therefore also valid subjects for examination in the WTO study process.

Though there has been considerable improvement in the rules on anti-dumping duties and subsidies, what is tantamount to harassment of developing countries, particularly in the area of anti-dumping, which was common practice in the 1980s and the early 1990s, has not ended completely. There is a need to examine how such government anti-competitive trade practices can be curbed.

Similarly, sometimes as a result of governmental action, the GATT rules have been circumvented, and on other occasions a new framework has been established in derogation of the normal GATT rules. Examples of the former are the so-called "grey area" measures, that is, "voluntary" export restraints, in which exporting countries are pressured by the developed countries to agree to restrict the export of certain products to a predetermined limit, under the threat of possible unilateral imposition of import restraint by the importing country if the exporting country does not agree to this "voluntary" restraint. (The WTO agreement on safeguards has now prohibited the introduction of new such

arrangements and has prescribed the winding up of existing measures within a specified time span.) An example of the derogation of GATT rules is the Multi Fibre Arrangement concerning textiles, whereby developed importing countries prevailed on the developing exporting countries to agree to suspend their normal GATT rights and agree to limit their textiles exports to certain annual volumes. The examination of competition matters in the WTO should include consideration of how to prevent the emergence of new forms of such restrictive measures in the future.

Consideration should also be given to ways of enabling firms in developing countries to overcome their natural handicaps in competing with large developed country firms in developed country markets.

To summarize,

- (i) Competition is generally desirable, and the WTO should have a comprehensive examination of this subject, keeping various aspects in view.
- (ii) Laying down a common standard or minimum standard for the domestic competition policies of all countries is not desirable, if developing countries are to meet their development objectives. While protecting consumer interests, they need to refrain from stifling their producers and traders unduly and thereby inhibiting growth and the achievement of international competitiveness.
- (iii) A policy framework that ensures that domestic consumers and, in particular, domestic enterprises in developing countries do not suffer unduly from competition from large foreign firms will need to be developed.

- (iv) There is also a need for a multilateral framework intended to eliminate or curb anti-competitive practices in international trade and investment, and which sets out the obligations of firms and home countries and the means of their enforcement.
- (v) Anti-competitive policies and measures implemented by governments should receive full attention in the study. Ways of encouraging governments to implement structural adjustment in sectors not able to withstand competition should be worked out.

10. GOVERNMENT PROCUREMENT

For most countries, government procurement, that is, purchase of goods and services for use by government, has been normally within the discretion of their governments. In other words, it has not been subject to the normal GATT rules of non-discrimination as between countries (most favoured nation treatment -- MFN) and as between an imported product and domestic product (national treatment). A country is, of course, free to assume these obligations. Indeed, a plurilateral Agreement on Government Procurement, under which the obligations of MFN and national treatment in government procurement are assumed, was concluded at Marrakesh in 1994 but only a limited number of countries, mostly developed countries, are parties to this Agreement.

In preparation for the Singapore Ministerial Meeting, some major developed countries proposed that WTO study the subject of transparency in the process of government procurement and delineate the elements of a possible multilateral agreement. The proposal was accepted and work has been undertaken in the WTO on a study of transparency in government procurement practices and to develop elements for an appropriate agreement on this subject.

The underlying objective of the proposal was to improve the opportunities for foreign firms to participate in these transactions by means of increasing transparency. Transparency is being emphasized because of the suspicion that foreign firms do not get adequate information on tender notices and other aspects of the government procurement, and thus they do not get the opportunity to file their bids and take part in this process. There is also concern that bidders do not know how bids have been evaluated and the decisions on the choice of suppliers taken. There are proposals to introduce transparency at various stages of

the process -- on the issue of the tender notice, receipt of tenders, criteria for the evaluation of offers, the decision-making process, and the means of obtaining redress against grievances.

Introducing transparency into the process of government procurement has a lot to recommend. Participating in this study, developing countries will be able to present their own experiences as inputs into the process.

In the first place, however, care should be taken to avoid becoming committed to undertaking what could be unreasonably heavy burdens in the matter of disseminating information. Thus it will be necessary to ensure that there is no obligation to disseminate excessively detailed information on the evaluation of bids, though broad parameters should certainly be given to the bidders in order to enable them to seek relief against grievances. Also there should be different responsibilities with respect to the provision of information in general and that given to the actual bidders in any purchase transaction.

There are indications that the major developed countries are treating the current study on transparency as an initial and interim exercise with the final aim of introducing proposals for the expansion of the markets for their goods and services by introducing the principles of MFN and national treatment in government procurement. Developing countries need to guard against this, since it will not benefit them and may, in fact, put them at a serious disadvantage.

If the principle of MFN is introduced into government procurement, the suppliers of all countries (members of WTO) will have the right to take part in the bid. It will enhance the opportunities for foreign suppliers, including those from developing countries, to make bids for supplying governments in other countries, including the developed countries. The amount of money involved in government procurement in developed

countries is large and the opportunity to tender is therefore tempting. But in reality, the benefits for developing countries may well be limited, since they will seldom have the production capacity to supply these markets in the face of international bidding. At the same time, opening up their government procurement to almost open international bidding will involve surrendering their discretion to consider suppliers from selected countries only, and taking into account important factors like financial assistance from other governments, the transfer of technology, availability of other resources, etc. There is no reason why developing countries should lose this discretion and advantage which they have at present.

Similarly, the introduction of the principle of national treatment would mean that foreign suppliers would have to be treated on a par with domestic suppliers, that is, no preference could be given to domestic suppliers of products and services. This will have serious implications for developing countries as domestic firms may lose important opportunities, if unable to withstand competition from big international firms.

It needs to be appreciated by developing countries that the exclusion of government procurement from the principles of MFN and national treatment is part of their existing rights and obligations under the GATT, and is largely beneficial to them. To surrender them will bring no great advantage, for the reasons explained above. Once a country considers it has the capacity to compete internationally in this field, it could in any case consider joining the existing plurilateral agreement in this area.

In conclusion, therefore, the main points for developing countries to note are as follows:

- There should be active participation by developing countries in this exercise. They should, however,

refrain from agreeing to undertake any unreasonably heavy burdens regarding transparency.

- The current work should not extend to an exercise in expansion of market access for foreign firms.
- MFN treatment and national treatment should not be introduced in the area of government procurement.

PART IV

**ISSUES RELATED TO LEAST DEVELOPED
COUNTRIES AND ACCESSION TO THE WTO**

11. ISSUES OF SPECIAL RELEVANCE TO THE LEAST DEVELOPED COUNTRIES

All that has been said earlier in this document about developing countries applies with equal if not more force to the least developed ones among them. It is important for them to follow the work in the WTO closely and take an active part in the discussions. They will in any case have to make special efforts to establish appropriate machinery for the implementation of the agreements.

In those instances where the WTO agreements have incorporated the concept of differential and more favourable treatment for developing countries in the form of longer implementation periods, the least developed countries (LDCs) have been given a longer time span. However, wherever they find that implementation is not feasible within the prescribed time frame, they may propose a longer period in the relevant committees and councils. These requests are likely to find favour, particularly if fully supported by other developing countries.

In addition to the actions outlined earlier for developing countries, in general the LDCs would also be advised to take into account the following:

- It is worth noting that the Agreement on Agriculture is particularly onerous for the LDCs for, along with other developing countries, the LDCs must adhere to the commitment of binding of tariffs on all agricultural products. Similarly, the commitments on domestic support and export subsidy are also applicable to them, which may constrain their special efforts to enhance production of food and of other exportable agricultural products. The LDCs should therefore

request that a general relaxation of the stipulated measures with respect to direct import control measures, domestic support and export subsidy in the agricultural sector be granted them.

- A specific provision in the Agreement on TRIPs puts a clear obligation on the developed countries to “provide incentives to enterprises and institutions in their territories for the purpose of promoting and encouraging technology transfer to least developed country Members in order to enable them to create a sound and viable technological base”. To make this provision effective, LDCs should propose that periodic notifications be made by the developed countries on the action they have taken and that these notifications be considered by the Council on TRIPs.
- Developed countries should be encouraged to give higher market access for goods from LDCs. Specific responsibilities in this regard should be undertaken in the textile sector, as some LDCs have begun to export these goods and others, if encouraged, may find it convenient to establish a production and export base in this sector. An important step which the developed countries could take in this sector is to free all textile imports from these countries from the current quantitative restraint barriers and declare that no new restraint will be imposed before the end of the year 2004, as from when the normal GATT rules for this sector would apply.
- Part IV of GATT provides that developed countries should take steps to encourage the

consumption of products of export interest to LDCs and introduce trade promotion measures for this purpose. There should be a system for collecting information on the relevant measures of the developed countries. LDCs should also demand that the specific measures taken in pursuance of this part of the GATT are regularly and rigorously monitored by the relevant body of the WTO.

- Developed countries should be encouraged to establish special monitoring and advisory mechanisms to enhance their imports from LDCs.

12. ISSUES RELATING TO ACCESSION TO THE WTO

Membership of WTO is open to countries as well as to autonomous customs territories, for example Hong Kong, China. Presently, 30 countries including 14 developing countries are in the process of negotiating accession to the WTO. In view of the role that WTO has assumed in the area of multilateral trade, as well as in respect of many other issues, it would seem desirable for all developing countries to seek membership of this organization. Moreover, the more developing country members of WTO there are, the better their chance of influencing the content of the agenda, assuming, of course, that they participate actively and collaborate on issues of common interest.

There are two sets of conditions to be fulfilled by those acceding. Firstly, countries seeking accession have to undertake and assume all legal obligations under all the WTO Agreements and if there is any impediment to this in existing national laws, the necessary amendments have to be effected. Some allowance is given in respect of the time required to conform to certain WTO Agreements, including the agreements on Customs Valuation and TRIPs. Secondly, countries seeking accession have to give commitments in respect of market access in goods and services. The process of accession allows all member countries to be in the Working Parties that process individual applications for accession and thus negotiate better market access in the country requesting accession for the goods and services in which they have an interest.

The process for accession is as follows:

- (i) On submission of the application for accession by a country, the General Council of WTO establishes a Working Party that determines the terms and

conditions on which the applicant country could be admitted.

- (ii) The applicant country submits a detailed Memorandum on its economy, and economic and trade policies. This Memorandum is examined in depth by the Working Party. The purpose of this process is to understand the nature of the economy and rules and regulations governing or having an impact on the trade of the applicant country.
- (iii) While this process is underway, the applicant country is called upon to present its offers on market access in both goods and services. These offers become the subject of bilateral negotiations with all interested member countries with a view to arriving at agreements on trade concessions in goods and commitments on services to be agreed by the applicant as part of the terms and conditions of its accession.
- (iv) The Working Party draws up the proposed terms of accession and draft Protocol of Accession as well as agreed market access schedules resulting from the bilateral negotiations. The final and formal decision to admit a new member is taken by the General Council.
- (v) Thereafter the applicant country is asked to sign the Protocol of Accession, thereby becoming a member of WTO within a specified time though this can be extended depending on the domestic procedures for ratification of such protocols in the applicant country.

Of course, it would be desirable for developing countries to seek membership on terms that facilitate their economic growth and development. However, it has been observed that developing countries face many problems in the process of accession to WTO. These include the following:

- (i) Many developing countries, particularly smaller countries and LDCs, lack the institutional capacity to prepare a comprehensive case for accession, negotiate terms of accession with a large number of other countries and bring about the necessary changes in domestic laws in the least costly manner.
- (ii) Developed countries often pressure the applicant developing countries into foregoing some of the concessions that presently exist for developing countries and/or into offering concessions in areas not covered by universally applicable WTO agreements, such as, for example, in government procurement or in relation to the Information Technology Agreement.
- (iii) There are no arrangements whereby applicants can learn from the accession experience of existing developing country members. Moreover, no attempt has been made to set standard terms of accession for developing countries in general.

In the light of the above, it would be desirable that developing countries already members of WTO assist the applicants in the light of their own experience. Both developing country members and applicants should raise the issue of setting standard terms of accession for developing countries in all the relevant fora, such as the Ministerial Conference, General Council and Accession Working Parties. They should not allow the developed countries

to make excessive demands on applicant developing countries as the price for their accession.

Indeed, developing countries that are not members of WTO need to be assisted if they are to be able to negotiate their accession in such a way as to preserve as far as possible the advantages of their present status, while ensuring that all the benefits due to developing countries from WTO membership accrue to them.

PART V

**THE FUTURE MULTILATERAL TRADE
AGENDA IN THE WTO**

13. AGENDA AND STRATEGY OF MAJOR DEVELOPED COUNTRIES

13.1 Geneva Ministerial Conference of the WTO

The Second Ministerial Conference of the WTO was held in Geneva on 18 and 20 May 1998. The Conference adopted two Declarations, one dealing with the preparations for the Third Ministerial Conference and the other, with electronic commerce.

The first Declaration established a process under the direction of the General Council of the WTO intended to ensure full and faithful implementation of existing agreements and to prepare for the Third Ministerial Conference. The General Council has been directed to hold special sessions -- starting from September 1998 -- to conduct this process and submit to the Third Ministerial Conference its recommendations concerning the WTO work programme including implementation of existing agreements, the built-in agenda, new issues (provided there is a consensus) and organization and management of the work programme.

The other Declaration, adopted by the Ministerial Conference at the insistence of the US, declared a moratorium on the imposition of customs duties on electronic transmissions, e.g. goods and services delivered through electronic means including software, music, etc. This Declaration also directed the General Council to establish a comprehensive work programme to examine all trade-related issues relating to global electronic commerce and present a report to the Third Ministerial Conference which will take further action in this area including a review of the moratorium on the imposition of customs duties on electronic transmissions.

The two Ministerial Declarations adopted by the Conference, discussions among the ministers in the working

sessions and the statements by the heads of state/government attending the 50th anniversary celebrations of the multilateral trading system held at the same time, give a fairly clear idea of the future agenda and strategy of developed countries in the WTO. This agenda and strategy is mainly determined by the dominant business interests and influential domestic lobbies in individual major developed countries. These countries often first negotiate among themselves to agree on a joint policy stance, which in most cases is not in the interests of developing countries. The outcome is then brought onto the multilateral trade agenda. It is therefore useful to review briefly the elements of the agenda and strategy of major developed countries as reflected in the statements of their representatives to the Second WTO Ministerial Conference.

13.2 Objectives and positions of major developed countries

The main thrust of U.S. trade policy is to open up foreign markets for manufacturers, service providers and innovators in sectors in which it has a comparative advantage, which include knowledge-based industries such as information, tele-communications, biotechnology and financial industries. The share of these industries now accounts for about half of annual growth in the US gross national product (GNP), and the level of employment in these sectors has been increasing. They are considered to be the main pillars of prosperity in the U.S. as it enters the next century.

In order to open up foreign markets for these industries, the U.S. will continue to press for liberalization in these and related product and service sectors. Another major US objective will be to get agreement on liberalized, regulation and duty free electronic commerce, that straddles trade in both goods and services.

Two other components of an agenda to facilitate the growth and outward expansion of US knowledge-based industries are expanded and more stringent intellectual property rights protection and recognition and enforcement of investors' rights.

The US agriculture sector has also undergone a major transformation in recent years and is now a significant contributor to US exports. With its present level of domestic support to agriculture being only a fraction of that of the EU, the US position is closer to that of the CAIRNS group of agricultural exporting countries and it is keenly interested in the further opening up of foreign markets for agricultural exports. Another reason for the assertive US position on trade in agriculture is the fact that the US administration needs the support of the influential agricultural lobby to get fast track negotiating authority from the US Congress to negotiate regional and multilateral trade liberalization agreements.

There are, however, strong domestic lobbies for the protection of the environment and of workers' rights. These lobbies often view trade and investment liberalization as detrimental to higher environmental and social standards and have been instrumental in stalling the passage of fast track authority for the US administration since last year. The US position in negotiations can reflect these interests without jeopardizing its vital business interests. In most cases the knowledge-based industries, which are the engine of growth for the US economy, can be projected as friendly to the environment and contributing to employment generation and hence areas in which further liberalization can be pursued without major opposition by labour and environmental lobbies. However, in sectors where the U.S. has lost competitive advantage, as, for example, textiles and clothing, steel, and light electronics, environmental and social considerations may well be used as protectionist devices

The US strategy, since the conclusion of the Uruguay Round, has been to adopt a sectoral as opposed to a comprehensive approach to trade negotiations. The objective is to conclude agreements in the WTO in sectors of export interest to it, as outlined above, without offering anything in other sectors. This has not served the interests of developing countries as the

liberalization of financial and telecommunication services and trade in information technology products is of little value to the vast majority of these countries. The U.S. will try to continue with this strategy as it allows it to obtain maximum advantage without giving much. For the U.S. it is also a more feasible way of conducting trade negotiations in the absence of fast track authority, as this allows the US negotiators to conclude sectoral agreements in areas that either do not require Congressional approval or are expected to get that approval in view of the strong domestic lobbies in these sectors.

The European Union (EU) agenda is not vastly different from that of the US. For example, the EU is also in favour of expanded and stronger intellectual property rights protection, liberalization of trade in services and the protection of investors' rights. Similarly, the environmental and labour rights lobbies are, if anything, stronger in many EU countries than in the U.S. and these countries, particularly in South Europe, will use these concerns in order to protect their sunset industries like textiles and clothing, leather and footwear and electronics etc. But the EU agenda is at variance with that of the US in at least the following three respects:

- the EU needs to protect its agriculture which is perhaps the most cushioned from competitive pressures. While the EU realizes the need to change its much criticised Common Agricultural Policy (CAP) in order to carry out certain internal reforms and to facilitate its eastward expansion, it will try hard to obtain concessions from its trading partners in exchange for opening its agricultural market.
- the knowledge-based industries in the EU are in the process of trying to catch up with their US competitors. The EU is therefore interested in some degree of governmental regulation to ensure a level playing field for its industries in this area.

- the EU is not as enthusiastic as the U.S. about concluding a “high standard” agreement to liberalize foreign investment. Hence it appears to prefer to negotiate such an agreement in the WTO than in the OECD. In the WTO, due to the larger group of participants and the possibility of exchanging concessions in other areas, there is a better chance of protecting its vulnerable industries, particularly cultural. Similarly, it prefers to discuss competition issues in a multilateral forum like the WTO rather than bilaterally with the U.S. Negotiating in the WTO offers two other advantages: it is easier to resist the US pressure in a multilateral as compared with a bilateral setting, and any bilateral understanding with the U.S., when multilateralized, opens third markets for the EU.

The EU has therefore suggested that the Third Ministerial Conference of the WTO should launch the so-called millenium round of trade negotiations which should cover not only the built-in agenda negotiations in agriculture and services but also new issues like investment, competition and environment etc. This strategy aims to ensure that the EU is adequately compensated for whatever it has to concede in agriculture. This also allows the EU to balance the interests of its members and claim something for each of them in the final outcome.

The respective agendas of the other two QUAD (U.S., EU, Japan, Canada) countries, namely Canada and Japan, have many elements of the US and/or EU agenda. While both these countries are closer to the US position on electronic commerce, they have similar concerns as those of the EU in the area of investment. Japan, like the EU, is also interested in protecting its agriculture and hence supports the idea of a round of negotiations. Canada, on the other hand, seems to prefer a compromise formula on this issue that allows the EU to bring other issues to the table but which does not preclude the possibility of concluding sectoral agreements without waiting for

the successful conclusion of negotiations on all issues. Canada also shares the environmental and social agenda of the U.S. and the EU, for similar reasons.

There are, however, two areas where Japan does not see eye to eye with its QUAD partners. First, Japan is not enthusiastic about putting social issues on the trade agenda. Second, it is interested in looking at competition issues holistically to cover not only private but also government anti-competitive measures including anti-dumping and safeguards actions etc. This is due to the fact that Japan, like many developing countries, has faced protectionist measures disguised as anti-dumping and safeguards actions in North American and European markets.

Australia and New Zealand are the other two developed countries that have expressed ideas about the content and format of the future multilateral trade negotiations. Both are members of the CAIRNS group of agricultural exporting countries and their main objective is to ensure significant liberalization of trade in agriculture in the next round of negotiations on agriculture. They also realize that this will not be possible without active EU participation which can be facilitated only by broadening the agenda for negotiations so that EU can gain some trade-off in other sectors for the concessions that it gives in agriculture.

Australia and New Zealand have also reduced their tariffs on industrial products unilaterally. Hence they will be keen to include negotiations on the reduction of tariffs on industrial products in the next round. Some other countries, including developing countries that are members of regional trade liberalization agreements, will also support this proposal. These countries are already in the process of reducing tariffs for their regional partners and can use this as a bargaining chip to wrest concessions, in tariff and possibly other areas, from other countries if the reduction of industrial tariffs is included in the agenda of a round of multilateral trade negotiations.

14. OUTLINE OF POSSIBLE ISSUES AND STRUCTURE OF FUTURE MULTILATERAL NEGOTIATIONS

As discussed earlier, a number of issues are likely to be proposed for future multilateral negotiations in the WTO. These proposals will be considered by the General Council with a view to formulating recommendations to the Third Ministerial Conference to be held in the U.S. in late 1999 which will take the final decision regarding the content and structure of future multilateral trade negotiations. The following is an outline of possible issues and the structure for future negotiations, as well as some elements of a possible response by developing countries.

14.1. The built-in agenda

The Uruguay Round agreements envisage a review of existing agreements at stipulated intervals and also new negotiations in the areas of trade in agriculture and trade in services. These reviews and negotiations have already been mandated and the next Ministerial Meeting will take decisions related to organizational aspects only.

i. Reviews

Developing countries should support the timely conduct of reviews under the built-in agenda particularly of the Understanding on Rules and Procedures Governing the Settlement of Disputes, the Agreement on Sanitary and Phytosanitary Standards, and the Agreement on Textiles and Clothing. They also need to prepare for active and effective participation in these reviews.

ii. Agriculture and services

Developing countries should clearly identify their interests in relation to the planned next round of negotiations in agriculture and in services. This will require technical expertise and political commitment to deal with at least the following three kinds of challenges:

- reconciling the apparent conflict in the positions of different groups of developing countries. This conflict is most obvious in the area of agriculture. While some developing country members of the CAIRNS group are focussing on further liberalization of this sector, net food importing developing countries (NFIDCs) are more concerned with finding a satisfactory solution to their food security problems. Elements of a compromise between these two groups could include efforts to liberalize developed country markets for developing country agricultural exports while working to achieve the establishment of an adequate mechanism in the WTO to deal with the food security concerns.
- identifying sectors of export interest to at least a majority of developing countries in the area of services. This will require a critical assessment of their individual national capacities in the services sectors and the sharing of information between them in order to identify the services sectors that are of interest to many of them.
- ensuring that the elements of “special and differential treatment” are clearly defined and incorporated in the multilateral trade agreements on trade in services and trade in agriculture. The issue of special and differential treatment should not be left to vague interpretations and declarations of noble intent that are of little practical use to developing countries.

iii. Intellectual property protection

Developing countries also need careful preparations for the review of the TRIPs agreement due to take place in the year 2000. The U.S. supported by other developed countries, is expected to push for widening the scope of intellectual property protection by incorporating substantive obligations of the 1996 WIPO Copyright Treaties, UPOV 91 Convention and the WIPO Trademark Law Treaty, into the TRIPs Agreement during this review. Developing countries can respond to such proposals by pointing out their inability to assume their full obligations under the existing TRIPs Agreement by the end of 1999. Under these circumstances, any proposal to adjust the TRIPs standards upwards would not be feasible.

14.2. New issues

i. Work programme initiated at Singapore

The Geneva Ministerial Conference has mandated the General Council to consider making recommendations to the third Ministerial Conference concerning possible future work on the basis of the work programme initiated at Singapore. This work programme includes:

- examination of the relationship between trade and investment,
- study of issues relating to the interaction between trade and competition policy, including anti-competitive practices,
- study on transparency in government procurement practices to develop elements for inclusion in an appropriate agreement, and

- exploratory and analytical work on the simplification of trade procedures (trade facilitation) to assess the scope for WTO rules in this area.

The Singapore Ministerial Conference established Working Groups to undertake the first three tasks and directed the Council for Trade in Goods (CTG) to carry out the fourth. It further directed the Working Groups on Trade and Investment and Trade and Competition Policy to report after two years. However, it is understood that the Working Groups will be allowed to delay the submission of their final reports till the middle of 1999.

Developing countries need to participate more actively than has been the case so far in the work of the Working Groups and the Council for Trade in Goods on these issues to make sure that their interests are reflected in the final recommendations to the General Council. Earlier sections of this document have set out some of the key issues from a developing country perspective in this respect.

ii. Issues related to protectionism in developed countries

While concerns for environmental protection and protection of worker rights can be genuine and are not always protectionist in intent, often they become so in effect. There have been repeated attempts by developed countries to bring these issues to the WTO. These attempts are expected to intensify in the run up to the next Ministerial Conference. Developed countries have made many proposals to strengthen the WTO work programme particularly in the area of trade and environment. These include the proposal by the European Parliament to convene an Eminent Persons Group and the proposal by EC Vice President, endorsed by the US President, to convene a high level meeting on trade and environment in early 1999. Developing countries should be prepared to contest increased pressure by the developed countries

and their civil societies to create linkages between trade and environment and trade and labour standards under the WTO.

iii. New WTO work programme related to electronic commerce

As mentioned earlier, the General Council has been directed to establish a comprehensive work programme on issues related to global electronic commerce. Electronic commerce is a new but fast emerging area where the developed countries have a competitive advantage over the majority of developing countries. Developing countries, individually and as a group, should conduct a thorough analysis of different aspects of electronic commerce. This will include, though not be limited to, the following:

- identification of trade-related aspects of global electronic commerce, especially as they relate to the existing framework for trade in goods and trade in services under the WTO;
- identification of existing WTO Agreements which would require adjustment to accommodate the conduct of electronic commerce;
- assessment of the economic, financial and development implications of electronic commerce for developing countries;
- assessment of the revenue potential from customs duties on electronic commerce;
- analysis of the impact of non-tariff electronic transmissions on other aspects of domestic economic regulations, for example, on the ability of governments to control short term capital movements by imposing regulatory duties.

iv. Other new issues

The Geneva Ministerial Conference Declaration has provided interested members the opportunity to raise additional new issues in the preparation process for the Third Ministerial Conference. Developed countries are going to use this opportunity to bring still more issues of interest to them to the WTO which, in the light of the statements made by their Ministers to the Conference, will, inter alia, include the following:

- *Bribery and corruption:* The U.S. has indicated that its objective will be to conclude, by the time of the Third Ministerial Conference, an agreement on transparency in government procurement. The U.S. would also like the WTO to begin a more direct consideration of bribery and corruption. This might be done by bringing the elements of the relevant OECD Convention into the WTO. Developing countries should resist attempts to discuss corruption and bribery in the WTO because: (a) the causes of corruption are little understood; (b) the definitions of corruption vary widely; and (c) it is hard to establish a link between trade and corruption.
- *Reduction in industrial tariffs:* Many developed countries, including the European Union, Australia and New Zealand have proposed new negotiations to further reduce tariffs on industrial products. While these countries would prefer to negotiate tariff reductions as part of a trade round where negotiations are held simultaneously on a number of issues allowing trade-offs across sectors, the U.S. has indicated its preference for negotiating tariff reductions in selected sectors e.g., information technology, new pharmaceuticals and areas identified for liberalization by the Asia Pacific Economic Cooperation forum (APEC) including environmental goods and services, forest products, medical

equipment and instruments, energy sector and chemicals. It is a fact that average industrial tariffs in industrialized countries are much lower than those in developing countries and hence any future agreement to reduce tariffs on industrial products, based on uniform percentage reductions by all WTO members, will require larger absolute concessions by the latter. Nevertheless, tariffs in developed markets on industrial products of export interest to developing countries, for example, textiles and clothing, leather and footwear, are still quite high and hence there is room for substantial reductions by developed countries in these sectors. Moreover, many developing countries have some flexibility in this area, for, as a result of either unilateral liberalization or IMF/World Bank conditionalities, they apply lower tariffs than their bindings in the Uruguay Round. In any case, developing countries must not allow WTO to become a vehicle for further tariff reductions in sectors of interest to developed countries only. Instead, whenever any such proposal is made, developing countries should match it with a demand for a reduction in tariffs in sectors of export interest to them, in order to minimize emerging biases and to maintain mutuality of benefits in tariff reductions.

- *Openness and transparency in the WTO:* The Geneva Ministerial Conference Declaration has promised to consider “how to improve the transparency of WTO operations”. The Director General of the WTO has indicated that he would devote more time in dialogue with civil society. Other proposals by developed countries in this regard include the establishment of a formal consultative mechanism to allow regular and continuous contact with the private sector and NGOs and giving the interested public the opportunity to observe dispute settlement proceedings or to file unsolicited briefs with the dispute settlement panels.

If implemented, these proposals will work against the interests of the developing countries as very few NGOs from these countries would be able to take advantage of such arrangements. Transparency means access to information and not the right to participate. The WTO represents contractual agreements among governments and it is the responsibility of individual governments to involve civil society in the national process of consultations before entering into contractual obligations in the WTO. Moreover, priority should be given to improve the transparency of WTO negotiations for all its members. At present, a considerable amount of work is undertaken in informal meetings which are sometimes plurilateral and hence exclude a large number of smaller developing countries. The developing countries should demand that all informal meetings be announced well in advance, that they be open-ended, and that a short factual summary of their proceedings be circulated among all WTO members. This should improve transparency in WTO activities and proceedings.

14.3. Structure of future negotiations

The WTO General Council has also been directed to submit recommendations regarding the organization and management of the work programme including the scope, structure and time-frames. The European Union, supported by many CAIRNS group countries and Japan, is in favour of having a comprehensive round of negotiations. The U.S., however, prefers to conclude sectoral negotiations. The elements of a compromise among the major powers -- which may then be presented to developing countries as a *fait accompli* -- may include:

- i. simultaneous negotiations on many issues including new issues that are not part of the WTO built-in agenda but represent a broad balance of interests of major developed countries -- and of developing countries if they have effectively formulated their views and presented their proposals in the preparatory process for the Third Ministerial Conference;
- ii. shorter than Uruguay Round time-frame to complete the negotiations,
- iii. the possibility of “early harvest”, for example, conclusion of agreements in two or more sectors without waiting for the results of negotiations in all areas.

Developing countries need to carefully assess the pros and cons of these possible approaches before taking any final position.

14.4. Response by developing countries

Developing countries face a daunting task in the run-up to the Third Ministerial Conference. They face the prospect of developed countries pressing for the inclusion of a large number of issues in future WTO negotiations. Obviously, there is little of interest to developing countries in many of the areas to be proposed by developed countries. While resisting attempts to broaden the scope of negotiations beyond the built-in agenda, developing countries also need to adopt an assertive posture in areas of interest to them. Unless developing countries are able to present their own demands forcefully, the WTO future agenda will not reflect their interests. The following are some elements that could provide the basis for a forward looking agenda of developing countries:

i. Implementation of Uruguay Round agreements

Full and faithful implementation of Uruguay Round agreements, particularly in areas of interest to them, is the first and foremost concern of a large number of developing countries. The heads of state/government of developing countries participating in the 50th anniversary celebrations, as well as the ministers from developing countries participating in the GMC, have clearly and forcefully stated their disappointment with different aspects of the implementation of the Uruguay Round agreements so far. They have been successful in including “implementation issues” in the process under the General Council. It is now important to build on that success. Following are some suggestions in this regard:

- The review of implementation should not be a mechanical exercise based only on an analysis of whether notifications by members comply with the letter of the Agreements, particularly those in areas of interest to developing countries. The exercise should also specifically analyse the imports and exports data of developing and developed countries over the past three years and also the old and new non-tariff barriers against the exports of developing countries in developed country markets. It may be useful to present the experience of individual/groups of developing countries in this respect. This analysis of tariff, non-tariff and trade data, before and after the coming into force of the Uruguay Round agreements, is essential to determine whether implementation of these agreements has provided the promised benefits to developing countries.
- Developing countries should insist on the immediate and full implementation of the Marrakesh Ministerial Decisions, particularly the Decision on Measures in Favour of Least-Developed Countries, the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-

Developed and Net Food-Importing Developing Countries and the Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policy Making. With regard to the latter, the Geneva Ministerial Declaration has agreed that the member countries would “work together in the WTO, as in the IMF and the World Bank, to improve the coherence of international economic policy-making.” The WTO can implement this Declaration: 1) by contributing to a durable solution to the chronic foreign debt problem of many developing countries by granting, among other things, better market access for developing country exports in developed country markets; 2) by participating in the development of new international financial architecture that fosters stable growth for economies at all levels of development; and, 3) by extending the scope of the present Trade Policy Review Mechanism to ensure a thorough review of the macro-economic policies of the major developed countries, in view of the substantial impact that these policies have on the growth and development of other smaller countries.

- As highlighted earlier in this document, there are a number of shortcomings in many Uruguay Round agreements from the point of view of developing countries. Developing countries may point out the difficulties they have experienced in implementation as a result of such shortcomings. For example, many domestic support measures, often used by developing countries, are included in the reduction commitments under the Agreement on Agriculture. If implemented, this will have strong negative impact on the development of agriculture in these countries. They should demand that the necessary action be taken to rectify the situation.

- A review of the implementation of all the provisions concerning technical and financial assistance to developing countries is also important in order to demonstrate clearly that the balance of rights and obligations in the Uruguay Round Agreements has not been maintained.
- Developing countries were given transitional periods to assume equal obligations under different agreements. In most cases these transitional periods will be over at the end of 1999. But many developing countries are still not in a position to assume their full obligations, particularly those under the Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement, the Trade-Related Investment Measures (TRIMs) Agreement and the Agreement on Customs Valuation. The reasons include the lack of significant human, technical and financial resources required to work out the full implications, draft and approve the necessary legislation, establish administrative and judicial mechanisms, and educate and train people in the public and private sectors. More importantly, the obligations should be linked to the level of development. For many years now, many developing countries have witnessed little or no economic progress. The recent East Asian financial crisis has caused a dramatic reduction in growth and output in a number of newly industrialized developing countries. Given these problems, developing countries are justified in demanding longer transitional periods to assume full obligations under different agreements.
- The Geneva Ministerial Declaration has agreed on the need for effective implementation of special provisions in favour of developing countries. Developing countries should therefore present concrete proposals on how such provisions,

particularly those in the Understanding on Rules and Procedures Governing the Settlement of Disputes, TRIPs Agreement, and Agreements on Agriculture and Sanitary and Phytosanitary Standards can be made fully operational.

ii. Initiatives to reduce the marginalization of least developed countries

Another important achievement for developing countries in the Geneva Ministerial Conference is the clear direction by the GMC to the General Council to make recommendations regarding the follow-up to the High-Level Meeting on Least-Developed Countries (LDCs). The developing countries should take the initiative in this area and demand that:

- the Round Tables to finalize the integrated programmes for assistance in respect of all the LDCs are held as soon as possible, preferably by the end of 1998. The required technical assistance to prepare for these Round Tables should also be provided to the LDCs;
- the developed country members who had announced market-access commitments at the High-Level Meeting should implement these commitments immediately;
- the commitment made in the Geneva Ministerial Conference Declaration to, “continue to improve market access conditions for products exported by LDCs on as broad and liberal a basis as possible” should be implemented;
- the quantitative assessment of the impact on individual LDCs of the market-access commitments announced in the High-Level Meeting is undertaken

to determine the extent of actual benefits that may accrue to the LDCs as a result of the implementation of these commitments; and,

- the developed countries and relevant international organizations should assist the LDCs to build up their supply capacities so that they can take advantage of new market access opportunities.

iii. Positive trade agenda of the South

In addition to the above-mentioned implementation issues and issues related to the initiatives in favour of LDCs, developing countries should also bring new issues of interest to them to the WTO agenda. This is perhaps the only effective way to ensure a balance of interests in the WTO. This would also improve the negotiating position of developing countries in any future negotiations so that a real process of give and take between developed countries on the one hand, and developing countries, on the other, is ensured. This will, however, require the commitment of substantial resources and cooperation among developing countries to develop and elaborate the elements of a positive agenda of their own. The following ideas may help to start the work in this direction.

Development dimension of the multilateral trading system

The developmental concerns of developing countries in the multilateral trading system were previously taken care of through the provisions regarding special and differential treatment in favour of developing countries. However, these provisions were much diluted during the Uruguay Round and, in most cases, are now limited to either providing a longer period of time for developing countries to assume their full obligations or declarations of noble intent unaccompanied by implementation mechanisms. Developing countries should demand that their developmental concerns be placed at the centre of the multilateral trading system. This should go beyond making fully operational

and strengthening the existing provisions regarding special and differential treatment. It requires changes which gear the multilateral trading system in a concrete way to the achievement of economic growth and development in developing countries. Moreover, the obligations of WTO members should be related to their level of development.

Equal participation in the WTO

A large number of developing country members of the WTO have not been equal participants in the WTO. This is due in part to their limited human and institutional resources, both in Geneva and in their capitals. But their participation in WTO has also been hampered by the negotiating process in the WTO which is opaque and is greatly influenced by a few major developed countries. The fact that the secretariat of the WTO is also dominated by developed countries has not been very helpful either.

Developing countries should demand that the principle of “decision by consensus” should be strictly adhered to; that decision-making should be transparent; that informal and back door deals and pressure tactics be discouraged; and that the staffing of the WTO secretariat should reflect more closely the composition of its membership.

Liberalization of the movement of labour

While barriers to trade in goods, services and even ideas have been greatly reduced and efforts are underway to remove the impediments to the free movement of capital, the movement of labour is still subject to stringent conditions. Developed countries have not allowed the liberalization of labour flows, a factor of production in abundant supply in most developing countries.

Developing countries should insist that the removal of barriers to the movement of labour keep pace with the liberalization of capital movements. Negotiations in this area should not be limited to the movement of natural persons under

the General Agreement on Trade in Services (GATS). Instead, this issue should be pursued parallel to the work programme on trade and investment.

15. CONCLUDING REMARK

Clearly, the two Declarations adopted by the second WTO Ministerial Conference in Geneva have increased the tasks for developing countries beyond those envisaged as a result of the Uruguay Round. Developing countries need to pool their limited technical and human resources not just to ensure that these new tasks do not result in additional undesirable obligations for them, but also to promote and defend their interests more effectively than in the past so that they have an important role and influence in shaping the negotiating process and its outcomes in the WTO. Technical and intellectual support will need to be mobilized for this purpose from relevant UN organizations -- particularly UNCTAD and Regional Commissions -- and from the existing networks of the national, regional and global institutions of the South.

ANNEXES

ANNEXE I

Singapore Ministerial Declaration of the WTO

Purpose

1. We, the Ministers, have met in Singapore from 9 to 13 December 1996 for the first regular biennial meeting of the WTO at Ministerial level, as called for in Article IV of the Agreement Establishing the World Trade Organization, to further strengthen the WTO as a forum for negotiation, the continuing liberalization of trade within a rule-based system, and the multilateral review and assessment of trade policies, and in particular to:

- assess the implementation of our commitments under the WTO Agreements and decisions;
- review the ongoing negotiations and Work Programme;
- examine developments in world trade; and
- address the challenges of an evolving world economy.

Trade and Economic Growth

2. For nearly 50 years Members have sought to fulfil, first in the GATT and now in the WTO, the objectives reflected in the preamble to the WTO Agreement of conducting our trade relations with a view to raising standards of living world-wide. The rise in global trade facilitated by trade liberalization within the rules-based system has created more and better-paid jobs in many countries. The achievements of the WTO during its first two years bear witness to our desire to work together to make the

most of the possibilities that the multilateral system provides to promote sustainable growth and development while contributing to a more stable and secure climate in international relations.

Integration of Economies; Opportunities and Challenges

3. We believe that the scope and pace of change in the international economy, including the growth in trade in services and direct investment and the increasing integration of economics offer unprecedented opportunities for improved growth, job creation, and development. These developments require adjustment by economics and societies. They also pose challenges to the trading system. We commit ourselves to address these challenges.

Core Labour Standards

4. We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration.

Marginalization

5. We commit ourselves to address the problem of marginalization for least-developed countries, and the risk of it for certain developing countries. We will also continue to work for greater coherence in international economic policy-making and for improved coordination between the WTO and other agencies in providing technical assistance.

Role of WTO

6. In pursuit of the goal of sustainable growth and development for the common good, we envisage a world where trade flows freely. To this end we renew our commitment to:

- a fair, equitable and more open rule-based system;
- progressive liberalization and elimination of tariff and nontariff barriers to trade in goods;
- progressive liberalization of trade in services;
- rejection of all forms of protectionism;
- elimination of discriminatory treatment in international trade relations;
- integration of developing and least-developed countries and economies in transition into the multilateral system; and
- the maximum possible level of transparency.

Regional Agreements

7. We note that trade relations of WTO Members are being increasingly influenced by regional trade agreements, which have expanded vastly in number, scope and coverage. Such initiatives can promote further liberalization and may assist least-developed, developing and transition economies in integrating into the international trading system. In this context, we note the importance of existing regional arrangements involving developing and least-developed countries. The expansion and extent of regional trade agreements make it important to analyse whether the system of WTO rights and obligations as it relates to regional trade agreements needs to be further clarified. We reaffirm the primacy of the multilateral trading system, which includes a framework for the development of regional trade agreements, and we renew our commitment to ensure that regional trade agreements are complementary to it and consistent with its rules. In this regard, we welcome the establishment and endorse the work of the new Committee on Regional Trade Agreements. We shall continue to work through progressive liberalization in the WTO as we are committed in the WTO Agreement and Decisions adopted at Marrakesh, and in so doing facilitate mutually supportive processes of global and regional trade liberalization.

Accessions

8. It is important that the 28 applicants now negotiating accession contribute to completing the accession process by accepting the WTO rules and by offering meaningful market access commitments. We will work to bring these applicants expeditiously into the WTO system.

Dispute Settlement

9. The Dispute Settlement Understanding (DSU) offers a means for the settlement of disputes among Members that is unique in international agreements. We consider its impartial and transparent operation to be of fundamental importance in assuring the resolution of trade disputes, and in fostering the implementation and application of the WTO agreements. The Understanding, with its predictable procedures, including the possibility of appeal of panel decisions to an Appellate Body and provisions on implementation of recommendations, has improved Members' means of resolving their differences. We believe that the DSU has worked effectively during its first two years. We also note the role that several WTO bodies have played in helping to avoid disputes. We renew our determination to abide by the rules and procedures of the DSU and other WTO agreements in the conduct of our trade relations and the settlement of disputes. We are confident that longer experience with the DSU, including the implementation of panel and appellate recommendations, will further enhance the effectiveness and credibility of the dispute settlement system.

Implementation

10. We attach high priority to full and effective implementation of the WTO Agreement in a manner consistent with the goal of trade liberalization. Implementation thus far has been generally satisfactory, although some Members have expressed dissatisfaction with certain aspects. It is clear that further effort in this area is required, as indicated by the relevant WTO bodies in their reports. Implementation of the specific commitments scheduled by Members with respect to market access in industrial goods and trade in services appears to be proceeding smoothly. With respect to industrial market access, monitoring of implementation would be enhanced by the timely availability of

trade and tariff data. Progress has been made also in advancing the WTO reform programme in agriculture, including in implementation of agreed market access concessions and domestic subsidy and export subsidy commitments.

Notifications and Legislation

11. Compliance with notification requirements has not been fully satisfactory. Because the WTO system relies on mutual monitoring as a means to assess implementation, those Members which have not submitted notifications in a timely manner, or whose notifications are not complete, should renew their efforts. At the same time, the relevant bodies should take appropriate steps to promote full compliance while considering practical proposals for simplifying the notification process.

12. Where legislation is needed to implement WTO rules, Members are mindful of their obligations to complete their domestic legislative process without further delay. Those Members entitled to transition periods are urged to take steps as they deem necessary to ensure timely implementation of obligations as they come into effect. Each Member should carefully review all its existing or proposed legislation, programmes and measures to ensure their full compatibility with the WTO obligations, and should carefully consider points made during review in the relevant WTO bodies regarding the WTO consistency of legislation, programmes and measures, and make appropriate changes where necessary.

Developing Countries

13. The integration of developing countries in the multilateral trading system is important for their economic development and for global trade expansion. In this connection, we recall that the

WTO Agreement embodies provisions conferring differential and more favourable treatment for developing countries, including special attention to the particular situation of least-developed countries. We acknowledge the fact that developing country Members have undertaken significant new commitments, both substantive and procedural, and we recognize the range and complexity of the efforts that they are making to comply with them. In order to assist them in these efforts, including those with respect to notification and legislative requirements, we will improve the availability of technical assistance under the agreed guidelines. We have also agreed to recommendations relative to the decision we took at Marrakesh concerning the possible negative effects of the agricultural reform programme on least-developed and net food-importing developing countries.

Least-Developed Countries

14. We remain concerned by the problems of the least-developed countries and have agreed to:

- a Plan of Action, including provision for taking positive measures, for example duty-free access, on an autonomous basis, aimed at improving their overall capacity to respond to the opportunities offered by the trading system;
- seek to give operational content to the Plan of Action, for example, by enhancing conditions for investment and providing predictable and favourable market access conditions for LLDCs' products, to foster the expansion and diversification of their exports to the markets of all developed countries; and in the case of relevant developing countries in the context of the Global System of Trade Preferences; and

- organize a meeting with UNCTAD and the International Trade Centre as soon as possible in 1997, with the participation of aid agencies, multilateral financial institutions and least-developed countries to foster an integrated approach to assisting these countries in enhancing their trading opportunities.

Textiles and Clothing

15. We confirm Our commitment to full and faithful implementation of the provisions of the Agreement on Textiles and Clothing (ATC). We stress the importance of the integration of textile products, as provided for in the ATC, into GATT 1994 under its strengthened rules and disciplines because of its systemic significance for the rule-based, non-discriminatory trading system and its contribution to the increase in export earnings of developing countries. We attach importance to the implementation of this Agreement so as to ensure an effective transition to GATT 1994 by way of integration which is progressive in character. The use of safeguard measures in accordance with ATC provisions should be as sparing as possible. We note concerns regarding the use of other trade distortive measures and circumvention. We reiterate the importance of fully implementing the provisions of the ATC relating to small suppliers, new entrants and least-developed country Members, as well as those relating to cotton-producing exporting Members. We recognize the importance of wool products for some developing country Members. We reaffirm that as part of the integration process and with reference to the specific commitments undertaken by the Members as a result of the Uruguay Round, all Members shall take such action as may be necessary to abide by GATT 1994 rules and disciplines so as to achieve improved market access for textiles and clothing products. We agree that, keeping in view its quasi-judicial nature, the Textiles Monitoring Body (TMB) should achieve transparency

in providing rationale for its findings and recommendations. We expect that the TIMB shall make findings and recommendations whenever called upon to do so under the Agreement. We emphasize the responsibility of the Goods Council in overseeing, in accordance with Article IV:5 of the WTO Agreement and Article 8 of the ATC, the functioning of the ATC, whose implementation is being supervised by the TWM.

Trade and Environment

16. The Committee on Trade and Environment has made an important contribution towards fulfilling its Work Programme. The Committee has been examining and will continue to examine, *inter alia*, the scope of the complementarities between trade liberalization, economic development and environmental protection. Full implementation of the WTO Agreements will make an important contribution to achieving the objectives of sustainable development. The work of the Committee has underlined the importance of policy coordination at the national level in the area of trade and environment. In this connection, the work of the Committee has been enriched by the participation of environmental as well as trade experts from Member governments and the further participation of such experts in the Committee's deliberations would be welcomed. The breadth and complexity of the issues covered by the Committee's Work Programme shows that further work needs to be undertaken on all items of its agenda, as contained in its report. We intend to build on the work accomplished thus far, and therefore direct the Committee to carry out its work, reporting to the General Council, under its existing terms of reference.

Services Negotiations

17. The fulfilment of the objectives agreed at Marrakesh for negotiations on the improvement of market access in services - in financial services, movement of natural persons, maritime transport services and basic telecommunications -- has proved to be difficult. The results have been below expectations. In three areas, it has been necessary to prolong negotiations beyond the original deadlines. We are determined to obtain a progressively higher level of liberalization in services on a mutually advantageous basis with appropriate flexibility for individual developing country Members, as envisaged in the Agreement, in the continuing negotiations and those scheduled to begin no later than 1 January 2000. In this context, we look forward to full MFN agreements based on improved market access commitments and national treatment. Accordingly, we will:

- achieve a successful conclusion to the negotiations on basic telecommunications in February 1997; and
- resume financial services negotiations in April 1997 with the aim of achieving significantly improved market access commitments with a broader level of participation in the agreed time frame.

With the same broad objectives in mind, we also look forward to a successful conclusion of the negotiations on Maritime Transport Services in the next round of negotiations on services liberalization.

In professional services, we shall aim at completing the work on the accountancy sector by the end of 1997, and will continue to develop multilateral disciplines and guidelines. In this connection, we encourage the successful completion of international standards in the accountancy sector by IFAC, IASC,

and IOSCO. With respect to GATS rules, we shall undertake the necessary work with a view to completing the negotiations on safeguards by the end of 1997. We also note that more analytical work will be needed on emergency safeguards measures, government procurement in services and subsidies.

ITA and Pharmaceuticals

18. We welcome the initiative taken by a number of Members who have agreed to MFN tariff elimination for trade in information technology products, as well as the addition by a number of Members of over 400 products to their lists of tariff-free products in pharmaceuticals.

Work Programme and Built-in Agenda

19. Bearing in mind that an important aspect of WTO activities is a continuous overseeing of the implementation of various agreements, a periodic examination and updating of the WTO Work Programme is a key to enable the WTO to fulfil its objectives. In this context, we endorse the reports of the various WTO bodies. A major share of the Work Programme stems from the WTO Agreement and decisions adopted at Marrakesh. As part of these Agreements and decisions we agreed to a number of provisions calling for future negotiations on Agriculture, Services and aspects of TRIPS, or reviews and other work on Anti-Dumping, Customs Valuation, Dispute Settlement Understanding, Import Licensing, Preshipment Inspection, Rules of Origin, Sanitary and Phyto-Sanitary Measures, Safeguards, Subsidies and Countervailing Measures, Technical Barriers to Trade, Textiles and Clothing, Trade Policy Review Mechanism, Trade-Related Aspects of Intellectual Property Rights and Trade-Related Investment Measures. We agree to a process of analysis and exchange of information, where provided for in the

conclusions and recommendations of the relevant WTO bodies, on the Built-in Agenda issues, to allow Members to better understand the issues involved and identify their interests before undertaking the agreed negotiations and reviews. We agree that:

- the time frames established in the Agreements will be respected in each case;
- the work undertaken shall not prejudice the scope of future negotiations where such negotiations are called for, and
- the work undertaken shall not prejudice the nature of the activity agreed upon (i.e. negotiation or review).

Investment and Competition

20. Having regard to the existing WTO provisions on matters related to investment and competition policy and the built-in agenda in these areas, including under the TRIMs Agreement, and on the understanding that the work undertaken shall not prejudice whether negotiations will be initiated in the future, we also agree to:

- establish a working group to examine the relationship between trade and investment; and
- establish a working group to study issues raised by Members relating to the interaction between trade and competition policy, including anti-competitive practices, in order to identify any areas that may merit further consideration in the WTO framework.

These groups shall draw upon each other's work if necessary and also draw upon and be without prejudice to the work in UNCTAD and other appropriate intergovernmental fora. As regards UNCTAD, we welcome the work under was as provided for in the Midrand Declaration and the contribution it can make to the understanding of issues. In the conduct of the work of the working groups, we encourage cooperation with the above organizations to make the best use of available resources and to ensure that the development dimension is taken fully into account. The General Council will keep the work of each body under review, and Will determine after two years how the work of each body should proceed. It is clearly understood that future negotiations, if any, regarding multilateral disciplines in these areas, will take place only after an explicit consensus decision is taken among WTO Members regarding such negotiations.

21. We further agree to:

Transparency in Government Procurement

- establish a working group to conduct a study on transparency in government procurement practices, taking into account national policies, and, based on this study, to develop elements for inclusion in an appropriate agreement; and

Trade Facilitation

- direct the Council for Trade in Goods to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area.

22. In the organization of the Work referred to in paragraphs 20 and 21, careful attention will be given to minimizing the burdens on delegations, especially those with more limited resources, and

to coordinating meetings with those of relevant UNCTAD bodies. The technical cooperation programme of the Secretariat will be available to developing and, in particular, least-developed country Members to facilitate their participation in this work.

Finally, we express our warmest thanks to the Chairman of the Ministerial Conference, Mr. Yeo Cheow Tong, for his personal contribution to the success of this Ministerial Conference. We also want to express our sincere gratitude to Prime Minister Goh Chok Tong, his colleagues in the Government of Singapore and the people of Singapore for their warm hospitality and the excellent organization they have provided. The fact that this first Ministerial Conference of the WTO has been held at Singapore is an additional manifestation of Singapore's commitment to an open world trading system.

ANNEXE II

Geneva Ministerial Declaration of the WTO

1. This Second Session of the Ministerial Conference of the WTO is taking place at a particularly significant time for the multilateral trading system, when the fiftieth anniversary of its establishment is being commemorated. On this occasion we pay tribute to the system's important contribution over the past half-century to growth, employment and stability by promoting the liberalization and expansion of trade and providing a framework for the conduct of international trade relations, in accordance with the objectives embodied in the Preambles to the General Agreement on Tariffs and Trade and the World Trade Organization Agreement. We agree, however, that more remains to be done to enable all the world's peoples to share fully and equitably in these achievements.
2. We underline the crucial importance of the multilateral rule-based trading system. We reaffirm the commitments and assessments we made at Singapore, and we note that the work under existing agreements and decisions has resulted in significant new steps forward since we last met. In particular, we welcome the successful conclusion of the negotiations on basic telecommunications and financial services and we take note of the implementation of the Information Technology Agreement. We renew our commitment to achieve progressive liberalization of trade in goods and services.
3. The fiftieth anniversary comes at a time when the economies of a number of WTO Members are experiencing difficulties as a result of disturbances in financial markets. We take this opportunity to underline that keeping all markets open must be a key element in a durable solution to these difficulties. With this in

mind, we reject the use of any protectionist measures and agree to work together in the WTO as in the IMF and the World Bank to improve the coherence of international economic policy-making with a view to maximizing the contribution that an open, rule-based trading system can make to fostering stable growth for economies at all levels of development.

4. We recognize the importance of enhancing public understanding of the benefits of the multilateral trading system in order to build support for it and agree to work towards this end. In this context we will consider how to improve the transparency of WTO operations. We shall also continue to improve our efforts towards the objectives of sustained economic growth and sustainable development.

5. We renew our commitment to ensuring that the benefits of the multilateral trading system are extended as widely as possible. We recognize the need for the system to make its own contribution in response to the particular trade interests and development needs of developing-country Members. We welcome the work already underway in the Committee on Trade and Development for reviewing the application of special provisions in the Multilateral Trade Agreements and related Ministerial Decisions in favour of developing country Members, and in particular the least-developed among them. We agree on the need for effective implementation of these special provisions.

6. We remain deeply concerned over the marginalization of least-developed countries and certain small economies, and recognize the urgent need to address this issue which has been compounded by the chronic foreign debt problem facing many of them. In this context we welcome the initiatives taken by the WTO in cooperation with other agencies to implement in an integrated manner the Plan of Action for the least-developed countries which we agreed at Singapore, especially through the High-Level Meeting on Least-Developed Countries held in

Geneva in October 1997. We also welcome the report of the Director-General on the follow-up of this initiative, to which we attach great importance. We commit ourselves to continue to improve market access conditions for products exported by least - developed countries on as broad and liberal a basis as possible. We urge Members to implement the market-access commitments that they have undertaken at the High-Level Meeting.

7. We welcome the WTO Members who have joined since we met in Singapore: Congo, Democratic Republic of Congo, Mongolia, Niger and Panama. We welcome the progress made with 31 applicants currently negotiating their accession and renew our resolution to ensure that the accession processes proceed as rapidly as possible. We recall that accession to the WTO requires full respect of WTO rules and disciplines as well as meaningful market access commitments on the part of acceding candidates.

8. Full and faithful implementation of the WTO Agreement and Ministerial Decisions is imperative for the credibility of the multilateral trading system and indispensable for maintaining the momentum for expanding global trade, fostering job creation and raising standards of living in all parts of the world. When we meet at the Third Session we shall further pursue our evaluation of the implementation of individual agreements and the realization of their objectives. Such evaluation would cover, *inter alia*, the problems encountered in implementation and the consequent impact on the trade and development prospects of Members. We reaffirm our commitment to respect the existing schedules for reviews, negotiations and other work to which we have already agreed.

9. We recall that the Marrakesh Agreement Establishing the World Trade Organization states that the WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to the Agreement, and that it may also

provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference. In the light of paragraphs 1-8 above, we decide that a process will be established under the direction of the General Council to ensure full and faithful implementation of existing agreements, and to prepare for the Third Session of the Ministerial Conference. This process shall enable the General Council to submit the recommendations regarding the WTO's work programme, including liberalization sufficiently broad-based to respond to the range of interests and concerns us to take decisions at the Third Session will meet in special session in September 1998 and periodically thereafter to ensure full and timely completion of its work, fully respecting the principle of decision-making by consensus. The General Council's work programme shall encompass the following:

- (a) recommendations concerning:
 - (i) the issues, including those brought forward by Members, relating to implementation of existing agreements and decisions;
 - (ii) the negotiations already mandated at Marrakesh, to ensure that such negotiations begin on schedule;
 - (iii) future work already provided for under other existing agreements and decisions taken at Marrakesh;
- (b) recommendations concerning other possible future work on the basis of the work programme initiated at Singapore;
- (c) recommendations on the follow-up to the High-Level Meeting on Least-Developed Countries;

- (d) recommendations arising from consideration of other matters proposed and agreed to by Members concerning their multilateral trade relations.

10. The General Council will also submit to the Third Session of the Ministerial Conference, on the basis of consensus, recommendations for decision concerning the further organization and management of the work programme arising from the above, including the scope, structure and time-frames, that will ensure that the work programme is begun and concluded expeditiously.

11. The above work programme shall be aimed at achieving overall balance of interests of all Members.

ANNEXE III

WTO Ministerial Declaration on Global Electronic Commerce

The General Council shall, by its next meeting in special session, establish a comprehensive work programme to examine all trade-related issues relating to global electronic commerce, including those issues identified by Members. The work programme will involve the relevant World Trade Organization ("WTO") bodies, take into account the economic, financial, and development needs of developing countries, and recognize that work is also being undertaken in other international fora. The General Council should produce a report on the progress of the work programme and any recommendations for action to be submitted at our third session. Without prejudice to the outcome of the work programme or the rights and obligations of Members under the WTO Agreements, we also declare that Members will continue their current practice of not imposing customs duties on electronic transmissions. When reporting to our third session, the General Council will review this declaration, the extension of which will be decided by consensus, taking into account the progress of the work programme.