A DEVELOPMENT ASSESSMENT OF THE CURRENT WTO NEGOTIATIONS

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Introduction

We are at a critical crossroads in the Doha negotiations, just a few weeks before the Hong Kong Ministerial. So it is an important time to take stock of the current status of negotiations, from a development perspective.

The Doha Work Programme or DWP (this is the right technical term for it) is supposed to be guided by the Doha Ministerial Declaration's para 4, that the needs and interests of developing countries are at the heart of the DWP. The negotiations have been termed the Doha Development Agenda and are now called the Development Round.

So it is important and only right that we use the yardstick of development concerns to assess the present status of the negotiations. Unfortunately when we do that, we find that the negotiations are in very poor state. In fact there is a real danger that the outcome will not fulfil its development promise, but instead turn out to be against development interests and prospects. Let us examine the issues one by one to elaborate on this main theme, that the negotiations have gone against development interests.

"Development issues"

Before and at Doha, the developing countries argued that there must be a period spent at the WTO to "rebalance" the WTO agreements that came out of the Uruguay Round and that this should be done before new negotiations in other areas. This is because many of the existing WTO agreements are tilted against the developing countries. For example, the TRIPS agreement puts onerous burdens on them, the TRIMS agreement prohibits investment measures such as local content policy that are useful as development tools, and the agriculture agreement has allowed continued high protection in the North while requiring the South to liberalise its food imports.

At Doha, developing countries succeeded in putting two related "development issues" as part of the Doha work programme and part of the single undertaking. The two issues are: "implementation issues" (more than a hundred proposals by developing countries on how to resolve to problems arising from the implementation of the Uruguay Round agreements) and "special and differential treatment" (more than a hundred proposals by developing countries on how to strengthen SDT existing provisions).

These two issues were supposed to be resolved before new negotiations on agriculture, non-agricultural market access (NAMA) and services. This is reflected in the earlier deadlines for the two issues as compared with the deadlines for agriculture, etc.

Unfortunately there has been very little progress on these two issues. In fact the implementation issues seem to have mainly dropped off the radar screen. On the SDT issues, there was a set of 27 issues where conclusions were made, but these were issues that were commercially unimportant. Some consultations are going on regarding some issues relating to LDCs, but up to now there has not been the political will by the developed countries to have a solution. Some proposals by the Africa Group are also being discussed. However it is unlikely that there will be any meaningful outcome of these development issues before or at Hong Kong.

Agriculture

Much of the recent negotiating energy has gone into agriculture. However both in process and substance there is much to be desired. On the process, many developing countries, including the ACP Group through its coordinator have spoken forcefully about how only a few members seem to be dominating the negotiations. The "Five Interested Parties" (US, EU, Brazil, India and Australia) have been meeting. It would appear that the other WTO members are expected to wait for these five to reach agreement among themselves, and then to endorse their agreement. Often the rest of the members are kept waiting for the five to make a decision, without even knowing what is being discussed by them or where they are meeting.

On substance, the negotiations are now guided by Annex A of the July 2004 Framework. On export subsidies, there is a commitment to eliminate them by a credible date. The G20 wants the elimination within 5 years and the US has proclaimed 2010 as the date. However the EU has yet to give a date. So we do not know if there will be a consensus on the "credible date".

On domestic support, there is a lot of confusion (a) on the difference between the allowed levels and the applied levels of the various subsidies; and (b) between the different types or boxes of subsidies. On the first issue, the developed countries have high allowed levels of trade-distorting subsidies (known as the AMS or amber box; the de minimis and the blue box). They have been reducing the Amber Box type of subsidy and transferred it to other categories, i.e. the Blue Box and especially to the Green Box (whose subsidies are not under reduction discipline and thus can be raised without limit). Therefore the levels of real or applied support in the amber box is lower than the bound or allowed level. So the developed countries can afford to reduce the levels of allowable AMS or amber box support, and also of the total trade-distorting support.

Recently the US announced it would cut its AMS by 60%. That sounded like a lot. But according to one estimate (announced at a press briefing by the Argentina Ambassador), this would allow the US to actually raise its real or applied amber box subsidy from $23 billion to $25 billion. Oxfam also estimated that the total domestic support (amber, blue and green boxes and de minimis) would only have to be reduced from $75 billion to $73 billion with this proposal. Independent researchers have likewise estimated that the EU would not have to reduce its real level of subsidies with its proposal of 28 October. In fact there will be some "water" between what the EU is already planning to do in its CAP reform, and the proposed new level of allowed trade-distorting subsidies in its proposal; and thus the proposal enables the EU to have such domestic support beyond what it had planned in the CAP.

Moreover, the developed countries can continue to use the Green Box subsidies without limit as the July Framework does not put a cap on these. Some of these Green Box subsidies are actually trade-distorting (as the cotton dispute decisions have shown) and should have been allocated to the trade-distorting boxes such as amber or de minimis. It is likely that overall the domestic support in US and the EU will not go down, but only that many of the subsidies will shift from one box to other boxes. This is especially so because the "blue box" is to be amended, in order to allow the US to place some of its subsidies there. Thus there may be little or no benefits going to developing countries.

On market access, there is pressure from the US and the Cairns Group and some exporting developing countries to have a high ambition in cutting tariffs steeply. This is resisted by the EU and the G10 developed countries that have defensive interests. The US has proposed that tariffs in developed countries be cut sharply by 60 to 90 percent, according to a tiered formula. It wants developing countries to reduce by almost the same rates. The EU has proposed more lenient cuts for developed countries and the designation of 8% of tariff lines as sensitive products which are eligible for even more lenient treatment. The G20 is quite ambitious in the cuts it proposed for developed and developing countries. It suggested that developing countries will cut by an average of 36%. The ACP has recently tabled a proposal with more lenient reductions for developing countries.

From a development perspective, the developing countries will get a bad deal, because there is a likelihood that the developed countries' domestic subsidies will not be really reduced, or at best by a little. Thus they will continue to dump products that are subsidised onto the poorer countries that cannot afford to subsidise. The increase in imports of subsidised food such as chicken, tomato and rice from the EU and US into Africa is a result of such subsidies. The developing countries are only able to defend themselves through tariffs. Yet they are being obliged to cut their tariffs even more steeply than during the Uruguay Round, especially since they have to cut all their tariffs (line by line) by the formula, unlike the Uruguay Round when they only had to cut their tariffs by an overall average of 24%.

For countries with ceiling bindings, the problem is worse as they have bound all their agricultural tariffs at high levels. According to the tiered formula, this means that they have to cut all their tariffs by the highest or near the highest rate.

Countries that receive trade preferences will also suffer the erosion of their preference margin. The steeper the tariff cut on preference products, the more the erosion of preference.

The developing countries fought to have two instruments to assist them – special products (which do not have to be subjected to the tariff formula) and special safeguard mechanism (to be used to raise tariffs when there is an import surge). However, it is unclear whether these instruments will be effective because the negotiations on their treatment and use will be done seriously only when the other issues are settled, according to the present schedule. The G33's recent SSM proposal has attracted some resistance from others. The G33 has demanded (in a recent letter to the Chair of the negotiations) that SP and SSM be given the same level of specificity as other aspects of the agriculture agenda. However, it remains to be seen if this call will be heeded.

It is because of these problems that the ACP group has now come up with its own proposal, which includes a formula in which the developing countries will have to cut their tariffs by lower rates than in the formulae of the US or G20. Also, countries with ceiling binding do not have to cut their tariffs according to the tiered formula. And some proposals are made to moderate the tariff cuts on products that are receiving preferences, so that the loss of preference margin will not be so great. It remains to be seen if the ACP proposals will be considered seriously by the other members.

The agriculture negotiations are made more complicated by the fact that the EU is demanding that its proposals are linked to the condition of extreme liberalisation commitments to be undertaken by developing countries in services and NAMA.

NAMA (Non agricultural market access)

This is an area where the outcome appears likely to be least development friendly. The July Framework on NAMA (in Annex B) is very tilted against the developing countries. A new system is being created that will remove or reduce the present development flexibilities in the GATT. As a result, the deindustrialisation process that is already taking place in many countries will accelerate.

First, members are asked to bind all their industrial tariffs. At present, each country can choose how many of their tariff lines they want to bind. The July framework requires all members to bind 100% of their lines, or at least 95%.

Secondly, unbound tariffs will have to be bound at low levels. This is because Annex B proposes that the applied rates of unbound tariff lines will be multiplied by two and then the formula will be used to reduce the tariff rates to the new bound levels. In many cases the new bound rates will be significantly below the applied rates which are already low because of structural adjustment.

Thirdly, for the first time, developing countries will be subjected to a formula to reduce tariffs. And it will be a Swiss formula, which cuts higher tariffs more deeply than lower tariffs. Since most developing countries have quite high industrial tariffs, their tariffs will be cut more steeply than the tariffs of developed countries (unless the developing countries are allowed to have vastly different coefficients than the developed countries). If developing countries have to cut their tariffs more than developed countries, this also goes against the principle of less than full reciprocity that is mandated in the Doha Declaration.

Fourthly, the cuts are to be done on a line-by-line basis. This means that every product will be cut by this drastic formula. In the Uruguay Round, the developing countries had to cut their tariffs by an overall target of 30%, and they could choose at which rate to cut which product's tariffs, so long as the overall average came to 30%.

Finally, there is a "sectoral approach" in which tariffs will be eliminated in products belonging to certain selected sectors. Developing countries want this approach to be on a voluntary basis. But pressures are being put on them to participate.

There are non tariff barriers (NTBs) which hinder the market access of our products to developed countries' markets. NTBs are supposed to be an integral part of the negotiations in NAMA. However this issue has been given low-priority treatment and it is unlikely that there will be any significant outcome in this area which is of high export interest to us.

Some flexibilities are provided in the July Framework to developing countries, but they are very few and very limited. The unfairness is even more marked when the very stingy or mean amount of flexibilities for developing countries in NAMA is compared with the generous flexibilities proposed by the EU for itself in agriculture. For example, 8% of developed countries' agriculture tariff lines can be self-designated as sensitive products and they are not limited to 8% or any level of total import value; compared to developing countries' flexibilities in NAMA where only 10% of tariff lines can enjoy less than full formula cuts (even then limited to half the formula cuts) and limited to 10% of total import value. Even then, the proponents of "high ambition" in NAMA want to remove or reduce the flexibilities or link them to the severity of the tariff reduction formula.

For countries that have bound less than 30% of their tariffs (known as the para 6 countries), there is a concession that they need not be subject to the formula. However Annex B requires them to bind all their tariffs, and at a level that is the average level of bound tariffs of developing countries. This is an inadequate concession, for it would still ask too much of these countries in terms of liberalisation. These countries have put forward their own proposal for more flexibilities. It remains to be seen if the requests will be heeded.

The aggressiveness of the developed countries in NAMA contrasts with the leniency with which they would like themselves to be treated in agriculture, where they have more defensive interests.

For many developing countries, the obligations they have to undertake if the NAMA negotiations proceed along the present lines will require them to cut their tariffs steeply, and this will only worsen in future Rounds. It will accelerate the deindustrialisation process that is already under way in many developing countrie, and darken the prospects of their industrial development.

Services

The services agreement is said to be rather development friendly because there are many development flexibilities built into the General Agreement n Trade in Services (GATS).

In the present GATS architecture, a developing country can decide whether to enter any sector in its schedules. Thus, sectors can be excluded. And if a sector is included in the schedule, the country can decide the extent of liberalization to commit in that sector, in each of the 4 modes. Restrictions and limits can be placed, for example restrictions on equity in mode 3.

Negotiations are based on the bilateral request-offer modality. Countries can make requests. However, it is up to each developing country to decide how to respond. The country can make as much or little in offers as it deems appropriate to its interests.

Additional "special and differential treatment" clauses have been established in GATS and in subsequent documents that clarify that developing countries should be allowed to liberalise less than developed countries and to choose their own pace of liberalization.
These development provisions are especially contained in **Article IV of GATS, Article XIX (2) of the GATS,** and the **Guidelines and the Procedures for the Negotiations on Trade in Services** of March 2001, which is the main document guiding the present GATS negotiations.

However these flexibilities and even the architecture of GATS itself is now coming under threat from the recent proposals for benchmarking or in more recent terminology, "complementary approaches" or "establishment of targets and indicators." The proposals are coming mainly from developed countries including the EU, Japan and Australia, supported by the US.

Under this approach, countries would be required to liberalise in a certain number of key sectors. The EU has on 28 October proposed that developing countries be required to improve their commitments or make new ones in 57% of the services sub-sectors. Other proposals are that developing countries would be required to bind in the GATS the present level of liberalization that they have, and then bring the liberalisation further. These proposed changes would, if accepted, affect the present architecture of the GATS Agreement, and violate the bottom-up and positive-list approach, thereby removing much of the present development flexibilities of the GATS.

The common theme of these papers is that under the "complementary methods", developing countries would have to commit to liberalise a significant number of sectors and to "deepen" the liberalisation by removing restrictions, under the GATS.

Particularly targeted is liberalisation of "commercial presence", or Mode 3 of the GATS. The developing countries are asked to open up a minimum percentage of sub-sectors for participation of foreign service enterprises and providers. Some proposals called for developing countries to bind existing levels of actual liberalisation, and then go further by committing to liberalise even more deeply.

If this approach is adopted, it would remove many of the current development-friendly aspects of the GATS and would coerce many developing countries to commit to liberalise in several important services sectors such as finance, telecoms, distribution and professional services.

The small service enterprises and professional services of developing countries will not be able to compete with the giant transnationals if developing countries' markets are rapidly opened up. A major component of our economies would be at the mercy of big foreign companies that choose to establish commercial presence. The prospects for local service firms to expand or even maintain their position in the local market would darken.

The developed countries argue that they need the new approach in order to get developing countries to liberalise at a faster rate. But this goes against the principle that developing countries be able to choose their own rate of liberalization, which is the centerpiece of the GATS.

Moreover, the developed countries themselves have moved very slowly, if at all, in the only area where most developing countries could benefit from the GATS, which is in Mode 4 or the movement of people. The offers by them have been few and of low quality. Thus, developing countries rightly argue that it is the developed countries that are not forthcoming in making services commitments, and that they should not pressurize the developing countries to liberalise faster than what they can bear.

Conclusions

At present the prospects that Hong Kong will have a successful outcome, or that the Doha Work programme can conclude by the end of 2006, do not look bright.

It is much more important that there be a development oriented outcome, one in which the main benefits accrue to the developing countries, in terms of better trade balance, production, jobs and income.

There should not be an agreement rushed through rapidly, just so that there is an agreement. The success of an agreement is not in its mere existence, but in whether its effects will benefit the people in developing countries.

At present the balance sheet of the Doha Work Programme is not in favour of development or developing countries. At the least, the Doha programme should not lead to more development problems. Better still, it will help developing countries in their development programmes. At the moment, it is a faint hope that is vanishing fast.

Annex 1

KEY DEVELOPMENT ISSUES IN CURRENT WTO NEGOTIATIONS ON NAMA (non-agricultural market access)

This is based on a statement by Martin Khor (Director, Third World Network) on the WTO negotiations on NAMA (non agricultural market access) at the public hearing on the WTO organised by the European Parliament's International Trade Committee, Brussels, 11 October 2005.

Introduction

The issues at stake in the negotiations on market access for non-agricultural products are very crucial to the prospects of industrialisation in developing countries.

Three aspects need to be considered in industrial development. The first is production and employment. Developing countries need to produce more industrial products and to employ more people in this sector to contribute to economic development. There is need to build the capacity of their industrial sector to produce. Many developing countries have relatively weak supply capacities, and this has to be corrected.

The second aspect is exports. It would be very good if developing countries can increase their industrial exports through better market access. However, market access as many countries do not have the supply capacity to take advantage.

The third aspect is imports. Further liberalisation will enable imports to enter faster and at cheaper prices. This would reduce consumer prices. However, cheaper imports can also cause serious disruptions in the industrial sector of developing countries. Many local firms and industries are still too weak to withstand full import competition. In many developing countries, rapid import liberalisation has led to reduced production and closure of local firms and job losses, whilst there has been no evidence of shifting of the displaced capital or labour to more efficient industries. In these countries, there has been a process of "deindustrialisation". There has also been significant loss of government revenue due to tariff reduction.

What is of importance to developing countries is the maintenance and development of their industrial sector, which means more industrial output, better technology, and more manufacturing jobs. The development of the industrial sector in developing countries must be the major objective of the NAMA negotiations.

Recent Experiences Of Liberalisation And Industrial Performance

According to the orthodox approach used by the Bretton Woods institutions, and often assumed within the WTO, import liberalization necessarily has positive effects on developing countries. Consumers benefit from cheaper imports, and local producers become more efficient under import competition or else shift to another sector in which they have comparative advantage. Any adjustment costs are taken as temporary. From this perspective, the faster and deeper is the liberalization, the greater the benefits.

In the real world, there are countries that benefit from (or at least do not suffer from) import liberalization, where the local industries could withstand import competition and increase efficiency, whilst the consumers enjoy real income gains from cheaper products. However, many other countries have experienced negative effects from liberalization. The effects of liberalization depend partly on the conditions present in the liberalizing country, the rate of liberalization, the sectors chosen, the sequencing, and so on. Countries that liberalise too fast or in the wrong sectors may end up with damage to local firms and industries and labour retrenchment. The adjustment that is assumed to take place automatically in many cases does not take place or is of an inadequate extent. The result could and has led to deindustrialisation, net job loss and a worsening of the trade deficit. There is no automatic link between liberalization and industrial growth or income growth. When conditions are not present for success, or when the liberalization process is done incorrectly, there can be significant adverse effects.

UNCTAD's Trade and Development Report 1999 showed that "big bang liberalization" contributed to developing countries (excluding China) increasing their average trade deficit by 3 percentage points of GDP between in the 1970s and 1990s (while the average growth rate was lower by 2 percentage points). "It (trade liberalization) led to a sharp increase in their import propensity, but exports failed to keep pace, particularly where liberalization was a response to the failure to establish competitive industries behind high barriers. With the notable exception of China, liberalization has resulted in a general widening of the gap between the annual growth of imports and exports in the 1990s."

Recent studies by academics have also provided increasing empirical evidence of many developing countries experiencing these negative consequences. Professor Edward Buffie's book "Trade Policy in Developing Countries" has collated what he calls "the most disturbing evidence" of post-1980 liberalisation:

- Senegal experienced large job losses following a two-stage liberalization program that reduced the average effective rate of protection from 165% in 1985 to 90% in 1988. By the early nineties, employment cuts had eliminated one-third of all manufacturing jobs (Weissman, 1991; African Development Bank, 1995, p.84).

- The chemical, textile, shoe, and automobile assembly industries virtually collapsed in Cote d'Ivoire after tariffs were abruptly lowered by 40% in 1986 (Stein, 1992). Similar problems have plagued liberalization attempts in Nigeria. The capacity utilization rate fell to 20-30%, and harsh adverse effects on employment and real wages provoked partial policy reversals in 1990, 1992, and 1994.

- In Sierra Leone, Zambia, Zaire, Uganda, Tanzania, and the Sudan, liberalization in the eighties brought a tremendous surge in consumer imports. The effects on industrial output and employment were devastating.

- The beverages, tobacco, textiles, sugar, leather, cement, and glass products sectors have all struggled to survive competition from imports since Kenya initiated a major trade liberalization program in 1993.

- Manufacturing output and employment grew rapidly in Ghana after liberalization in 1983 increased access to imported inputs. But when liberalization spread to consumer imports, employment plunged from 78,700 in 1987 to 28,000 in 1993 as "large swathes of the manufacturing sector had been devastated by import competition"

Other regions have undergone similar experiences. According to the author: "Liberalisation in the early nineties seems to have resulted in large job losses in the formal sector and a substantial worsening in underemployment in Peru, Nicaragua, Ecuador and Brazil. Nor is the evidence from other parts of Latin America particularly encouraging."

The record shows that wrongly implemented liberalisation can devastate local industries, contradicting the orthodox theory that import liberalization necessarily lead to growth.

The use of tariffs for industrial growth

There is a myth that rich countries and successful developing countries industrialised because they had low or zero tariffs, and that the lower the tariff the higher the industrial growth. In fact, developed countries have made use of high tariffs to protect their industries during their industrialization phase. Also, the successful East Asian economies of Taiwan, South Korea and Japan resorted to tariff measures to pursue their industrial development. Two recent papers, by Ha Joon Chang (Cambridge University), and by Yilmaz Akyuz (former Chief Economist, UNCTAD) have demonstrated this.

For example, the US maintained average applied industrial tariffs of 40 to 50 per cent from 1820 to 1931. France had average tariffs of 20 to 30 per cent in 1913 to 1931. Spain had 41% tariff in 1913 and 1925, rising to 63% in 1931. Germany's tariff was 20-21% in1925 and 1931 and 26% in 1950. (Chang 2005).

The US had 44% tariff in 1913 when its per capita income (at 1990 prices) was $5301, and 14% tariff in 1950 when its per capita income was $9561. Germany had 26% tariff in 1950 when its per capita income was $3881, and the UK's tariff in 1950 was 23% ($6907 per capita income). In 2001, the average applied tariff was 13.6% for LDCs ($898 per capita income), 8.1% for developing countries ($3260 per capita income), 10.4% for Brazil ($5508 per capita income), 12.3% for China (3728 per capita income) and 24.3% for India ($1945 per capita income). [Per capita incomes are on a PPP basis at 1990 prices]. (Akyuz 2005: p14).

Asking developing countries to reduce their tariffs to very low or zero levels is akin to industrial countries, having reached the roof, kicking away the ladder which others are climbing.

The ability to use tariffs for industrialization is all the more important since the use of other tools (which other countries had used during their industrialization) are also recently constrained by WTO rules, for instance on TRIMS and subsidies. Also, for many developing countries, custom revenues constitute 20 to 30% or more of government revenue, while for developed countries this is less than 1%. Cutbacks on government revenue could result in decreased in social spending such as on health and education.

Another relevant point is that developing countries need the policy space and flexibility to be able to modify its tariff levels at various phases of industrialization, as Akyuz (2005) has shown. In an early phase, a country would be wise to have higher tariffs on consumer goods it wishes to produce, while having low or zero tariff on inputs and machinery. In a second phase, it can lower the tariff on consumer products as it gets more efficient, while raising tariffs on inputs that it may now want to produce. In a third phase it may increase the tariff on machinery so as to produce capital goods, while reducing tariffs on consumer goods and inputs. In an advanced phase it can afford to have low tariffs on the various categories of goods. Thus, it should not be the case that countries bind tariff at low or zero levels on products it does not presently produce. It should have the space to increase its applied tariffs in some products as it develops. It is important to maintain the policy space, i.e. a difference between the bound and applied rates.

The Desired Outcome in NAMA

In the Doha Ministerial Declaration, on which the Doha Work Programme (DWP) is based, the Ministers stated that they seek to place the needs and interests of developing countries at the heart of the Work Programme. Thus, this has been termed the Doha Development Agenda and lately the Development Round.

For the DWP to live up to its Development status, each component should indeed place development concerns at the centre. NAMA is a major component. To be at the service of development, the NAMA negotiations and outcome should contribute to the industrial development of the developing countries, ensure the viability of their local industrial enterprises, increase industrial jobs, enable maintenance of government revenue, facilitate an increase in export opportunities. The outcome should ensure that developing countries can maintain or expand the national policy space, policy options and policy instruments that promote industrial development. Therefore, the outcome should ensure that developing countries will not be expected to make commitments that are inconsistent with their development, financial and industrialisation needs.

An exercise in liberalization should be a means to achieve (and be in line with) these goals. The objective is development. It is not the maximum degree of import liberalization in developing countries.

The Doha Mandate on NAMA

Paragraph 16 of the Doha Ministerial Declaration on NAMA states that the negotiations "shall take fully into account the special needs and interests of developing and least developed country participants, including through less than full reciprocity in reduction commitments, in accordance with the relevant provisions of Article XXVIII *bis* of GATT 1994 and the provisions cited in Paragraph 50 below."

It is clear that special and differential treatment (SDT) and less than full reciprocity (LTFR) in commitments are major principles in the NAMA mandate. LTFR should not be narrowly interpreted as merely a lower rate of tariff reduction for developing countries vis-à-vis developed countries. The two provisions cited in the Doha Declaration in support of this LTFR are the following:

- Article XXVIII *bis* of GATT 1994. Paragraph 3 of this Article states that "Negotiations shall be conducted on a basis which affords adequate opportunities to take into account: (a) needs of individual contracting parties and individual industries; (b) the needs of less-developed countries for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes; and (c) all other relevant circumstances, including the fiscal, developmental, strategic and other needs of the contracting parties concerned."

- Paragraph 50 of the Doha Declaration states that the negotiations shall take fully into account the principle of special and differential (S&D) treatment for developing and least-developed countries embodied in Part IV of GATT 1994; the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries; the Uruguay Round Decision on Measures in Favour of LDCs and other relevant WTO provisions.

In relation to the provisions mentioned in Paragraph 50, the following are among the more relevant:

(a) The non-reciprocity principle was established in Paragraph 8 of Article XXXVI, which is in Part IV of the GATT. Paragraph 8 states that: "The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less developed contracting parties". An interpretative note to this paragraph adds that the developing countries "should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments".

(b) The concept was further elaborated in the Tokyo Round Decision on "Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries", also known as the "Enabling Clause", which was adopted on 28 November 1979. It states: "The developed countries *do not expect reciprocity* for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries i.e. the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make concessions that are inconsistent with the latter's development, financial and trade needs…Having regard to the special economic difficulties and the particular development, financial and trade needs of the least-developed countries, the developed countries shall exercise the *utmost restraint* in seeking any concessions or contributions for commitments made by them to reduce or remove tariffs and other barriers to the trade of such countries, and the least developed countries shall not be expected to make concessions or contributions that are inconsistent with the recognition of their particular situation and problems." (GATT, BISD, 26 Supp. P.204)

It is clear that the LTFR principle entails that developing-country Members should be fully enabled to exercise their rights to make decisions on their commitments which they consider to be consistent with their development, financial and trade needs, and that they cannot be expected to make commitments inconsistent with their needs, their particular situation and problems.

Background to NAMA negotiations and Text

The NAMA negotiations began in early 2002 at the WTO. Drafts of a Ministerial text for Cancun were produced, with the final one being issued at Cancun on 12 September 2003 by the Mexican Trade Minister (Derbez). There continued to be strong differences of views on this text, as there were on previous drafts. As is well known, the Cancun meeting ended without any agreement. Following Cancun, the NAMA discussions continued to be divisive, with the Chairman of the NAMA negotiating group making use of the Derbez text on NAMA as the basis for negotiations, while many members (especially the African and Carrubean countries) were very critical of the Derbez text, and requested that a different approach be used instead. The controversy increased when the Chairman insisted on placing the Derbez text unchanged as the NAMA framework document in the draft of the "July Package". Despite the strong objections of the ACP Group (whose Ministers strongly criticised it at a Ministerial Conference just a few weeks before the WTO July meeting), the Derbez text ended up as Annex B of the July Package. However, a new paragraph 1 which was heavily negotiated was added to the front of the Derbez text on NAMA, which enabled the objecting developing countries some space with which to continue to negotiate important elements contained in the Derbez text. It is thus important to note that the NAMA annex in the July Package has had a troubled and controversial history.

The history of and case for a flexible approach

Up to now the developing countries in particular have had significant flexibilities and policy space in determining their pace and scope of liberalisation in industrial imports in GATT and WTO. In the history of GATT and the WTO up to the Uruguay Round, WTO members have not been subjected to a single formula approach in tariff reduction. There was flexibility, particularly for developing countries, to choose (i) the scope of their tariff bindings (the number of products to be bound); (ii) the level at which the bindings are to take place; and (iii) and the rate of tariff reduction in each tariff line.

In the Uruguay Round, developing countries were given a overall target of 27% average reduction. The negotiations were conducted using the request-offer technique. Within this parameter, countries could choose the rate of reduction in each tariff line. There was flexibility to assign different rates of reduction to each tariff line as long as the overall average reduction target was met.

In the earlier rounds, the developed countries also had significant flexibility. Negotiations took place mainly through the request and offer approach and there were no general targets or formulae. In the Tokyo and Kennedy Rounds there was a linear formula used for the first time by developed countries. In the Uruguay Round, there were proposals for a Swiss formula but countries in particular the US objected to its application as it still had high industrial tariffs. In the end, countries agreed to an average 33% reduction through a formula of their choice, whilst the US "stuck to its approach of following the request-offer, item by item, technique." (Hoda 2001, p36). With regard to the Uruguay Round, according to the WTO report, "Market Access: Unfinished Business"(2001): "The average tariff on developed countries' imports of industrial products was cut by 40% on imports from all sources and by 35% on imports from developing countries. For developing countries the reductions averaged 25% for industrial products imported from developed countries and 21% for industrial products imported from developing countries. These tariff reductions, it should be noted, were negotiated line by line rather than through the use of a formula approach."

Therefore the proposed adoption of a Swiss or Swiss type formula for tariff reductions, binding on all Members in the current negotiations would be an unusual and major departure for developing countries, which does not correspond to their level of economic development. Developed country members have taken a significant period of time over successive rounds to have their levels of tariffs reduced gradually in line with their own economic growth, and up to now have not been subjected to a Swiss formula approach themselves. For this reason, developing countries cannot therefore be denied the necessary flexibility required for their development.

Given the above, WTO members should not assume that a formula approach must be adopted during the current negotiations. Developed countries enjoyed flexibility and did not adopt a harmonization approach even in the Uruguay Round. It would not be appropriate to impose a general formula applicable to all countries in the current negotiations. Developing countries should be allowed to choose the rate and type of liberalization appropriate to their needs, as called for by the ACP Trade Ministers.

Erosion of development flexibilities under current NAMA negotiations

There is a danger that developing countries will be required to drastically lower their tariffs, in excessive degrees, under the current NAMA negotiations. The existing flexibility in the use of tariffs and in tariff liberalisation would be removed. The application of July Package Annex B on NAMA would erode flexibilities in through:

- The requirement to bind all (or almost all, i.e. 95%) tariffs.
- Unbound tariffs will be subjected to extremely harsh treatment (para 5 tiret 2). For an unbound tariff, the applied rate will be multiplied by (two) to obtain the base value and the formula will be applied. Many developing countries have low applied rates (partly due to structural adjustment), and will end up with their unbound tariffs being bound at very low levels, many even below the present applied rate.
- Very sharp reduction of tariffs through a Swiss formula (para 4). The developed countries members such as the US, EU and Japan have been pushing for a very dramatic reduction in the level of tariffs generally through the use of the Swiss non-linear formula, with higher percentage cuts the higher the tariffs. Since developing countries have on average higher bound tariffs, they would most likely reduce their tariffs at higher rates than developed countries. This would contradict the LTFR principle, even if narrowly defined.
- The formula cut will apply line by line, to each product (para 4). This largely eliminates the flexibility of the obligation of an average reduction, as was the case during the Uruguay Round.
- Very limited "flexibilities" available for developing countries (para 8). They can choose either to have 5% of tariff lines unbound (limited to 5% of total import value) or have less than formula cut (but up to 50% of the formula reduction rate) on 10% of tariff lines (limited to 10% of total import value).
- Elimination of tariffs in selected sectors in a "sectoral approach". Developing countries argue that participation should be voluntary.
- Even the use of the limited flexibilities is being contested, by some countries arguing for a trade off, i.e. that a developing country would forgo the use of flexibilities if they want to avail themselves of a more lenient formula reduction. The US agrees to dual coefficients (for developed and developing countries) only if flexibilities are removed. The EC argues for a single coefficient, with developing countries earning credits for lower reduction if they forgo flexibilities.

In particular, the Swiss formula would have a drastic effect. Developed countries have an average bound rate of 5% and developing countries around 30%. Using a single coefficient of 15 would lead to the developed countries' average tariff being reduced from 5 to 3.75%, while the developing countries' average would fall from 30 to 10%. The developed countries' average tariff would fall by only 1.25 percentage points, and by 25%. The developing countries' average tariff would fall by 20 percentage points and by 67%.

A central drawback of the formula is that Members make reduction commitments by a certain percent. Basing a formula on the basis of percent reduction may seem equitable, but in fact it is not so. This is because those countries that in general have higher tariffs would have to reduce their tariffs by more, in *percentage points*, even if all countries reduce their tariffs by the same *percent.* In effect, the countries with higher tariffs would be undertaking higher commitment. This may be so, even if they are allowed a lower percentage reduction. Since developing countries have in general much higher tariffs than developed countries, the developing countries would be making far higher commitments than the developed countries.

Let us take an example to illustrate this point. Developed country A has average industrial tariff of 4% while developing country B has an average tariff of 40%. If both are asked to reduce their tariffs by 50%, then the tariff of A would reduce from 4 to 2 percent, while the tariff of B would drop from 40 to 20 percent. A's tariff falls by only 2 percentage points whilst B's tariff falls very significantly by 20 percentage points. The differences in the effects of this are vast.

In the example, B is exporting a product to A at the price of $100; and A is selling a product to B also at $100. Country A imports the product at $100 and used to sell it at $104; after tariff reduction the price falls to $102. Although the tariff is reduced by 50%, it is reduced by only 2 percentage points, and the sale price falls only slightly by 1.9%, from $104 to $102. Country A loses only a small amount of customs revenue. Also, the increase in market access in A for the product of B is very small, as the price has fallen by only 1.9%..

Country B imports the product at $100 and used to sell it at $140; after tariff reduction the price falls to $120. Due to the tariff reduction of 50%, the tariff is reduced by 20 percentage points, and the sale price falls significantly by 14.3% from $140 to $120. This would mean that market access to B for the product of A would increase significantly as a 14% fall in price can be expected to increase the demand for the imported product. The local producer would also face stiff competition from the import.

The above example uses a linear formula. Should a Swiss formula apply, the imbalance is much heightened as the developing country with 40% tariff would face a reduction percentage rate much higher than the developed country with a 4% tariff. With a coefficient of 15, the developed country would reduce by 20% and the developing country by 73%.

Under the formula approach, developing countries would be at a disadvantage and would suffer losses in the following ways:

(a) Developing countries have higher bound tariffs than developed countries, and would thus have to make greater commitments in tariff reductions in percentage and even more so in percentage points

(b) Market access to developed countries would be increased only marginally for the products of developing countries in general, due to the generally existing low tariffs in developed countries. In contrast, market access to developing countries would be increased very significantly. There would thus be imbalance in the increase in market access between developed and developing countries

(c) Developing countries will suffer a significant decline in customs revenue, with adverse effects on their fiscal situation and social spending.

(d) The very significant decline in tariffs in percentage points would lead to very significant price declines for imported products. This can be expected to compete effectively with local products, leading to loss of market share or closure of local industries and significant loss of jobs.

(e) Many developing countries can expect imports to grow more than exports, with adverse effect on the trade balance, with potential to increase debt problems..

Defining Reciprocity and "Less than Full Reciprocity"

In view of the above, the meaning of "less than full reiciprocity" should be properly defined and operationalised.

If "less than full reciprocity" is defined only as a higher coefficient in a Swiss formula, it would still result in developing countries having higher percent tariff cuts, unless the coefficients are sufficiently far apart. Even if coefficients are agreed on that lead to lower percent reduction of developing countries' tariffs, the result will still be that developing countries will make relatively heavier commitments than developed countries, i.e. they will make more than full reciprocal commitments. Therefore "percent reductions in tariffs" should not be the basis for calculating the relative commitments of developing and developed countries.

A definItion of "reciprocity" which is closer to our meaning can be found in the traditional method of product-by-product "request and offer" that was a common practice in previous GATT Rounds on industrial tariff negotiations. As described by the international trade expert Bhagirath Lal Das (1998, 1999), reciprocity was achieved by tariff cuts on both sides in a way that equalised the reduction of total customs duty on each side. Reciprocity means an equalising of loss of customs revenue. It is proposed that this definition of reciprocity be explored as part of a more useful and appropriate method in the modalities. In this sense, "less than full reciprocity" means that developing countries should be expected to have less reduction in customs revenue as compared to developed countries.

As a central part of the modalities, developing countries should be allowed to apply the request-offer method if they so choose to do so, rather than abide by a standard formula approach.

The Uruguay Round approach, of requiring countries to attain an overall target of reduction, rather than using a formula or a line by line approach, is much more appropriate.

Finally, in the context of "taking fully into account the special needs and interests of developing and least developed country participants", the meaning of "less than full reciprocity in reduction commitments" should be taken to mean the following:

(a) Developing countries should not be obliged to make equal commitments as developed countries, and in fact should be entitled to make less reduction commitments;

(b) These lower commitments should also translate into higher benefits for developing countries, in comparison to the developed countries;

(c) In line with para 2 of the Doha Declaration, the higher benefits to developing countries should also translate into an increased share in global exports of non-agricultural products.

(d) At the least, higher benefits to developing countries should mean that the modalities should result in their having a positive effect in the trade balance (exports minus imports) of these countries. The modalities would be inappropriate if they lead to a worsening of the trade balances of developing countries.

In other words, "taking into account the developing countries' needs and interests" and their being enabled to enjoy "less than full reciprocity in commitments" must be operationalised in having the appropriate modalities. The test of the appropriateness of otherwise of the modalities is whether the methods and modalities being proposed lead to tangible benefits for developing countries. Therefore "less than full reciprocity in commitments" must be operationalised to become "more than reciprocal or more than average trade benefits for developing countries " in results and in practice.

One of the best estimates of benefits and costs is the effect that a proposed modality will have on a country's exports and imports. The modalities should lead to developing countries having a more positive trade balance.

Conclusions

The current NAMA framework (Annex B) is inappropriate for meeting the desired goals of facilitating industrial development in developing countries.

The aim of the developed country members, including the EU, seems to be to effect the sharpest possible reduction in bound as well as applied tariffs in developing countries.

The proposed outcome would seriously erode the present flexibilities available to developing countries.
A standard tariff –reduction formula to apply to all affected members is inappropriate. This is all the more inappropriate when a non-linear Swiss formula is chosen and hat it applies line by line.

The flexibilities remaining, as provided for in para 8 of Annex B, are too limited and even then there are proposals to further limit these flexibilities or even remove them.

Moreover there is a double standard in that the EU is against application of a Swiss formula in agriculture, where it is argued that the EU itself requires time for adjustment, and the EU proposes several flexibilities such as special treatment for "sensitive products" and flexibilities in applying a formula rate within a range. However, there is no sensitivity to the effects on developing countries of a Swiss formula in NAMA or their need for flexibilities.

There should be a rethinking of the modalities as Annex B is inappropriate and potentially extremely damaging to the industrial prospects of developing countries.

A more suitable approach for developing countries is that of the Uruguay Round, in which developing countries commit to reduce tariffs by an overall and average target rate.

During the Uruguay Round, members could choose the method by which to cut their tariffs, as long as they meet the minimum target.

Thus, members that choose to apply the Swiss formula to themselves can also choose to do so. But developing country members should not be obliged to do so.

There should also be adequate flexibility in the treatment of unbound tariffs. The Annex B method of multiplying by two the applied rate and then applying the formula is unsuitable. Members should have the flexibility to retain a significant percent of their tariff lines unbound, and also to bind their unbound tariffs at levels of their choice, as is the current system.

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Annex 2

BASIC DEVELOPMENT ISSUES IN THE WTO SERVICES NEGOTIATIONS
Martin Khor, Third World Network

1. General

Before the Uruguay Round was launched, many developing countries had tried to resist the inclusion of new areas like trade in services and trade-related intellectual property rights as they believed agreements in these areas would be against their interests as they would not have the capacity to gain from them, whist they and their local companies would stand to lose.

Despite this reluctance, services became a part of the Round on the understanding that developing countries would gain in other areas, especially in enjoying more market access for their goods in agriculture, textiles and clothing and other areas in which they have comparative advantage.

In the meanwhile, there are many problems and potential problems associated with GATS, including the imbalances in the agreement, the unequal outcome of benefits and costs, the continuous pressures (through successive rounds of negotiations) for developing countries to liberalise and the narrowing of options for governments in taking measures in services, or in operating public services.

2. Imbalances in services outcome, with little reciprocal benefits to South

There is an inherent imbalance in the services agreement . This is due to the vast difference in services capacity between developed and developing countries. Most developing countries hardly have any supply capacity services sector for export to the developed countries. Thus the opportunities in GATS have opened mainly for the developed countries as the developing countries undertake the liberalization of services imports. There has been no effective commensurate benefit to the developing countries in the way of liberalization commitments of the developed countries in the services sector. This is clear in the lack of meaningful offers in Mode 4. This imbalance was accentuated by the accelerated negotiations in the financial services and telecommunications sectors.

In sum:

- Within the services trade, there are imbalances in the distribution of benefits between industrialized and developing countries. The commitments undertaken in GATS do not reflect the interests of developing countries in terms of commercially meaningful sectoral and modal coverage.

- Developing countries have not derived benefits through scheduled commitments from their industrialized-country partners in terms of Article IV and Article XIX of GATS (Mashayekhi 2000).

Since the two sides have unequal capacities, therefore if the two sides are to be treated equally, there will be an unequal outcome. For example, if a developed and a developing country were to commit to liberalise Mode 3 in banking, theoretically each country's banks can invest in the other; but in practice the banks of the developing country are too small to establish themselves in the developed country. However the developed country's banks can overwhelm the local banks in the developing country.

This is quite unlike the case of goods, where developing countries have more export possibilities, and there is greater likelihood of a balance in trade in goods.

3. Supply constraints and barriers to services exports of developing countries

In the implementation of GATS, developing countries face structural problems hindering their ability to export services. As an UNCTAD study put it: "The efforts of developing countries to develop services as a major export item and contributor to development and to penetrate the world market for services have faced considerable barriers. These include barriers to market access and national treatment, as well as difficulties in market entry caused by anti-competitive practices, subsidies and so forth." (UNCTAD 1999: p9).

Among the major ***supply constraints*** that prevent the building of a competitive service sector in developing countries are the lack of the following factors: human resources and technology to ensure that professional and quality standards are met; telecommunications infrastructure; a national strategy for export of services; government support to help service firms, especially small and medium enterprises; an increase in financial capacity of firms; and a presence in major markets; and the ability to offer a package of services. (UNCTAD 1999a: p5).

Among the ***barriers to market access*** discouraging exports from developing countries from entering the developed countries are: lack of commitments on movement of natural persons; prohibition of foreign access to service markets reserved for domestic suppliers; price-based measures (discriminatory airline landing fees and port taxes, licensing fees); subsidies granted in developed countries that have an adverse impact of developing-country exports; technical standards and licensing with restrictive effect; discriminatory access to information channels and distribution networks; and practices of mega firms. (UNCTAD 1999a: p7).

Anti-competitive structures and practices also affect developing-country exports. Many markets for services are dominated by a few large firms from developed countries and a number of small players. As a result, in most service sectors, the larger operators face little effective competition as the size of the next tier of competitors is so small. For example, 80 per cent of the market in tourism belongs to Thomson, Airtours, First Choice and Thomas Cook. Service providers from developing countries are mainly small and medium sized, and they face competition from large service multinationals with massive financial strength, access to the latest technology, worldwide networks and a sophisticated information technology infrastructure.

4. GATS Flexibilities and Special treatment for developing countries

Given this inequality in supply capacity, the developing countries were reluctant for services to be treated the same way as goods. During the Uruguay Round negotiations, they asked for and established in the GATS several safeguards and flexibilities.

1. The GATS model is based on the "positive-list" approach, i.e., countries list their liberalization commitments in a particular sector or sub-sector (subject to limitations on MFN, national treatment, etc.) in their country schedules. Except for these, they retain autonomy and were not subject to any further specific commitments.

There were, however, attempts in the Uruguay Round, in the beginning and again towards the end, to have a "negative-list" approach, i.e., everything would be liberalized in terms of market access, except where specific limitations or exceptions were listed in a country schedule. Such attempts were not accepted.

2. In the present GATS architecture, a developing country thus has the following flexibilities:

(a) To decide whether to enter any sector in its schedules. Thus, sectors can be excluded.
(b) If a sector is included in the schedule, the country can decide the extent of liberalization to commit in that sector, in each of the 4 modes. Restrictions and limits can be placed, for example restrictions on equity in mode 3.

3. Negotiations are based on the bilateral request-offer modality. Countries can make requests. However, it is up to each developing country to decide how to respond. The country can make as much or little in offers as it deems appropriate to its interests.

4. Additional “special and differential treatment” clauses have been established in GATS and in subsequent documents that clarify that developing countries should be allowed to liberalise less than developed countries and to choose their own pace of liberalization.

Article IV of GATS, “Increasing Participation of Developing Countries” has three sub-paras:

Para 1 states that the increasing participation of developing country members shall be facilitated through specific commitments by different Members, relating to (a) strengthening of their domestic services capacity and its efficiency and competitiveness; (b) improvement of their access to distribution channels and information networks and (c) the liberalisation of market access in sectors and modes of supply of export interest to them.

Para 2 states that developed country members shall establish contact points to facilitate access of developing country members' service suppliers to information on aspects of supply of services, recognition of professional qualifications and availability of services technology.

Para 3 states that "special priority shall be given to the LDC members in implementation of pars 1 and 2. Particular account shall be taken of the serious difficulty of the LDCs in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs."

Article XIX (2) of the GATS, provides that "the process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transaction, progressively extending market access in line with their development situation and, when making access to their market available to foreign services suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV".

The **Guidelines and the Procedures for the Negotiations on Trade in Services** (S/L/93), dated 28 March 2001, which is the main document guiding the present GATS negotiations, contains relevant provisions in Paragraphs 2, 3, 4, 11 and 12.

Paragraph 2 states the negotiations shall aim to increase the participation of developing countries in trade in services. There shall be appropriate flexibility foe individual developing country Members, and special priority shall be granted to LDCs.

Para 3 states that "the process of liberalisation shall take place with due respect for national policy objectives, the level of development and the size of economies of individual Members, both overall and in individual sectors. Due consideration should be given to the needs of small and medium sized service suppliers, particularly those of developing countries.

Paragraph 4 states that "the negotiations shall take place within and shall respect the existing structure and principles of the GATS, including the right to specify sectors in which commitments will be undertaken and the four modes of supply".

Paragraph 11 establishes that "liberalization shall be advanced through bilateral, plurilateral or multilateral negotiations", but then makes clear that "the main method of negotiation shall be the request-offer approach".

Paragraph 12 (in the section on modalities and procedures) reiterates the same elements contained in the GATS paragraph XIX (2). It states: states that "there shall be appropriate flexibility for individual developing country members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation, and when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV."

5. Does the degree of liberalization matter for development?

Developed countries advocate for developing countries the fastest and broadest liberalization in services. Institutions such as the World Bank also encourage or pressurize developing countries to liberalise services so that they can become more efficient. However it is wiser for developing countries to take a cautious approach towards services liberalization.

There are several reasons why it is important for a developing country to maintain or expand beyond a certain degree of local participation (including ownership and control) over services. During the colonial period, the foreign firms were able to control a large and overwhelming share of the services sectors in many countries, including the financial and distribution sectors. Following independence, governments took measures to increase the share of citizens in services. There developed significant local ownership and control in banking, insurance, construction, wholesale and retail trade, transportation, professional services, etc. Governments tended to have monopolies in railways, telecommunications, water, postal services, energy and power resources. When these were privatized or partly privatized, or when private companies were allowed to compete in these areas, local companies were among those that took up local shares. The increased participation of local firms and persons usually developed with the assistance of the government, including preferential treatment to locals and restraint over the growth of foreign companies.

Presently, services sector is in many developing countries the largest sector, and it is the area where local firms have larger participation and are better able to compete, as compared with the manufacturing sector. While it is important to upgrade technology and techniques, this can often be done by the local firms including through importing modern technology. It does not necessarily require that large foreign firms take over, in order for a country to have modern and efficient services.

While there are **benefits to foreign investment, there are also costs,** and thus a balance is required. The services sector usually produces services that are "non-tradables". Thus, there is significant foreign exchange loss associated with foreign service providers, as there is an outflow of profits, while most of the output is for local use.

For **strategic and security reasons,** it is also important that there be local control over several services sectors, including water, electricity, finance, telecommunications, etc. To avoid or cushion financial crises, there should also be significant local participation in banking, insurance, etc.

Public services that meet basic needs, such as water, education, health and electricity, should also be carefully guarded. Primary importance should be placed on meeting the needs of the public, especially the poor.

6. Need for a comprehensive national services plan

Developing countries need to have a comprehensive national services master plan, in order that there be a coherent policy framework. Based on such a plan and framework, the country can formulate positions to take in its national interests.

Among the issues to resolve in such a services plan is the degree of local and of foreign participation in the various sub-sectors, and the development of each sub-sector. Strategic and public consideration has to be given to key sectors such as finance, telecommunications, water, health services.

Many countries do not have such a comprehensive plan. At best they have a plan for subsectors, such as financial services or health services.

Before such a services plan is established, it would be premature for a developing country to make broad or deep commitments in GATS on a wide range of sectors. Once a commitment is made, it is difficult to withdraw or modify it, unless the country is prepared to give adequate compensation. Thus, if a country were to later find it has made a mistake in making some of its commitments, or it later decides it would like to develop the capacity of local firms in particular sectors in which it has made commitments, it would face serious difficulties in attempting to modify the relevant commitments. In other words the commitments in GATS are constraints to policy options in the future.

Thus, a country may decide that it is ready to liberalise and allow greater foreign participation in a number of sectors. This could be undertaken autonomously, without necessarily binding the liberalization in GATS, thus allowing for the policy space to reverse the policy to some extent if circumstances change.

This policy flexibility would be eroded through the complementary approaches being proposed.

7. ***The Challenge of Proposals in the WTO on Benchmarking or Complementary Approaches***

The GATS architecture is more friendly to developing countries (compared to other agreements such as TRIPS) as commitments apply only in sectors offered by the country (the "positive list" approach) and to the chosen extent of liberalisation as entered in each country's schedules. This allows each country to liberalise at its own chosen pace and at levels in the various sectors which they believe to be appropriate. There is the principle of "progressive liberalisation" rather than a minimum standard of liberalisation, and Article XIX inscribes "appropriate flexibility" for individual developing country Members for opening fewer sectors and liberalising fewer types of transactions."

The architecture of GATS, especially its development aspect, is coming under immense challenge from the proposals for benchmarking or in more recent terminology, “complementary approaches.”

Under this approach, countries would be required to liberalise in a certain number of key sectors. Other proposals are that developing countries would be required to bind in the GATS the present level of liberalization that they have, and then bring the liberalisation further. These proposed changes would, if accepted, affect the present architecture of the GATS Agreement, and violate the bottom-up and positive-list approach.

The proposals on this new approach have come from among others the EU, Japan, Australia, Korea and Taiwan.

The common theme of these papers is that under the “complementary methods”, developing countries would have to commit to liberalise a significant number of sectors and to “deepen” the liberalisation by removing restrictions, under the GATS.

Particularly targeted is liberalisation of “commercial presence”, or Mode 3 of the GATS. The developing countries are asked to open up a minimum percentage of sub-sectors for participation of foreign service enterprises and providers. Some proposals called for developing countries to bind existing levels of actual liberalisation, and then go further by committing to liberalise even more deeply.

The following are some reasons why the proposals are counter to the development principles and spirit of the GATS and the current negotiating mandate.

1. The proposals are counter to the GATS positive list approach, in which members can choose which sectors to make commitments in, and to what extent. Through the benchmarking system, the freedom of choice is significantly eroded because members are obliged to make commitments in a number of sectors out of a total number to be decided on. Thus, members have to make commitments in sectors which they may otherwise choose not to. For example, if the sectors are chosen, and developing countries are asked to make commitment in five or six: This would mean that a country that did not intend to commit in any of these sectors, or in only a few, would now be obliged to commit in many extra sectors. The argument that the country still has a choice of which sector to commit in, is inaccurate since there is a mandatory minimum number of sectors. In the current positive list system, no minimum number of sectors or minimum level of liberalization is specified. Thus a most important type of flexibility is eroded.

There is also a violation of Article XIX (2) of the GATS, provides that “the process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and individual sectors”. This is because developing countries are forced to liberalise in more sectors and in greater depth than they might otherwise choose to do.

2. **The proposals are counter to the flexibility of the request and offer negotiating method.** In this system, members are free to make requests of a member. The member can choose what response to make in the form of offers to the requests. The negotiations are on a bilateral basis. This flexibility allows a member to receive requests and to respond in a manner suitable to its own national circumstances and interests. There is no pressure to conform to any mandatory standard or level. The "multilateral" benchmarking approach on the other hand overturns this request-offer approach by requiring developing countries to meet standards that are set higher than deemed appropriate by them.

3. **The proposals will result in serious loss of policy space and policy flexibility in relation to the ability of developing counties to make binding commitments that are lower than the actual levels of liberalization.** At present developing countries can keep a space between the actual level of liberalization and the committed level. This "space" is important: in case circumstances or policies change, the country is able to backtrack to the extent required. This policy space would be lost through the proposals that require the developing countries to "bind" the present levels of liberalization of various sectors by making commitments in GATS to at least equal the present levels ("status quo") and then go further.

4. The proposals will require developing countries to undertake far heavier new commitments under this Round than the developed countries. Under the proposals, developing countries would be obliged to commit in a lower percentage of sectors than developed countries. But since the developed countries have already made commitments in more sectors, the proposals are clearly targeted at the developing countries.

For example, if ten key sectors are selected for "benchmarking", then developed countries may be asked to make commitments in 8 or 10 sectors, developing countries in 5 or 6, and LDCs in 3 or so sectors.

However since developed countries have already liberalized in most of the sectors (except in relation to mode 4), they are not required to do anything further, or much more. In contrast, developing countries may not have made much offers in the sectors, and would have to make heavy new commitments.

The developed countries would get a Round for free in services, whereas the developing countries would have to pay heavily.

This would violate the substance and spirit of **Article XIX (2) of the GATS,** which states that "There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transaction, progressively extending market access in line with their development situation."

5. The proposed approach would also make it difficult or impossible for domestic services enterprises and suppliers in developing countries from maintaining their position in their own domestic markets. This is because developing countries would have to liberalise in more sectors and to a deeper extent than they would otherwise choose to do according to their national condition and the capacity of their domestic suppliers. The outcome would be lower participation of developing countries' suppliers in their own markets, let alone the world market.

This would be counter to GATS Article 4 on increasing participation of developing countries, and to the Guidelines which states in Paragraph 2 states "the negotiations shall aim to increase the participation of developing countries in trade in services. There shall be appropriate flexibility foe individual developing country Members, and special priority shall be granted to LDCs." It is counter to the spirit of Para 3 which states that "the process of liberalisation shall take place with due respect for national policy objectives, the level of development and the size of economies of individual Members, both overall and in individual sectors. Due consideration should be given to the needs of small and medium sized service suppliers, particularly those of developing countries.

6. The proposals are also not within the scope of the Doha mandate, and not in the spirit of the Guidelines for the services negotiations in the Doha programme.

Suggested Positions on Proposals

1. There should not be the artificial creation of an atmosphere of "crisis" in the services negotiations. This "crisis atmosphere" is being generated to put pressure on developing countries to accept the new multilateral approach. Instead, there should be respect for the principles an structure of GATS that allow developing countries to choose what sectors to commit in, and the extent.

2. A more positive approach by developed countries would be for them to increase their commitments in sectors and modes of export interest to developing countries, particularly Mode 4.

3. The present request-offer method is adequate and appropriate and should not be replaced by other methods. The term "complementary" should not be used for what is in fact the replacement of the bilateral request-offer system with a mandatory system of minimum standards.

4. The proposals for "benchmarking" and complementary methods cannot be accepted and should not be further pursued. Further pursuit would cause complications for the negotiations.

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