Developing Countries at Doha: A Political Economy Analysis

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1 Introduction

In a dramatic reversal of the outcome at Seattle, 142 World Trade Organization (WTO) members went on to launch a new round of trade negotiations at the fourth WTO Ministerial held in Doha during November 9-14, 2001. Two factors accounted for this reversal.

First, the September 11, 2001 attacks on the World Trade Center left the United States more determined than ever to launch the new round. The United States wanted to send a clear message that such attacks could not undermine its resolve to achieve progressively open world markets. The U.S. determination translated into a greater willingness to grant concessions than at Seattle. Other WTO members shared the U.S. goal and reciprocated by being more flexible than they were at Seattle.

Second, the switchover from a Democratic to Republican administration made it possible for the United States to drop its insistence on placing labor standards on the WTO agenda. This took what was perhaps potentially the most contentious issue off the table in Doha. Since a large majority of developing countries was opposed to the inclusion of labor standards into the agenda in any form and was firmly united in its stance on this particular issue, the launch of the round would have been nearly impossible without this switchover.

In this paper, I examine the achievements of the Doha Ministerial Conference from the viewpoint of developing countries. My emphasis is on understanding the politics of the negotiations with a view to assessing the influence developing countries had on the outcome. But in doing so, I also offer a political-economy analysis of the Uruguay Round (UR) Agreement and its relationship to the Doha outcome.

The main conclusions of the paper may be summarized as follows. First, with trade liberalization as its central focus, the Doha negotiating agenda is to be welcomed from the

viewpoint of developing countries. Second, the opposition by developing countries to the inclusion of at least some of the Singapore issues at Doha is defensible.[1] Among other things, the countries need more time before they can satisfactorily negotiate and undertake new obligations in these areas. Third, while the UR Agreement benefited both developing and developed countries, on balance, it benefited the latter more. The Doha outcome offers a better balance when taken by itself but does not go so far as to significantly correct the imbalance in the UR Agreement. Fourth, despite this better balance, the Doha negotiations offer little evidence of a shift in the relative bargaining powers of developing and developed countries. Nor do they suggest any softening of the tough negotiating stance developed countries took during the UR Round. Fifth, much of the negotiating power continues to reside with developed countries. Due to the absence of conflict on issues that divide along North-South lines and the presence of a few large players among them, developed countries are able to exercise this power more effectively than developing countries. Finally, developing countries continue to suffer from poor research capacity and a lack of strategic thinking. This is an area requiring serious attention if they are to wield their limited bargaining power more effectively.

The paper is divided into six sections. In Section 2, I offer a detailed description of the relevant documents produced at Doha emphasizing the items of critical interest to developing countries. In Section 3, I discuss why developing countries have a legitimate case against the inclusion of some of the Singapore issue into the negotiating agenda. In

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[1] The term "Singapore issues" refers to four issues first introduced into the WTO work program in the 1996 Singapore Ministerial Declaration: foreign investment, competition policy, trade facilitation, and transparency in government procurement. At Doha, EU insisted upon the inclusion of these issues into the negotiating agenda while many developing countries opposed it.

Section 4, I discuss the legacy of the UR Agreement and its relationship to the Doha outcome. In Section 5, I discuss the asymmetries that continue to exist between developed and developing countries and their implications for the Doha outcome. Finally, in Section 6, I summarize the main conclusions and offer suggestions for what developing countries could do to shift future outcomes in their favor at least marginally. Included here are some remarks on the importance of China to future negotiations.

2 The Doha Documents

The WTO Ministerial Conference at Doha produced three key documents: Declaration on the TRIPS Agreement and Public Health, Decision on Implementation-Related Issues and Concerns, and Doha Ministerial Declaration.[2] Consider each of these documents in turn.

2.1 Declaration on the TRIPS Agreement and Public Health

According to most analysts, the Declaration on the TRIPS Agreement and Public Health represents some weakening of the TRIPS Agreement in so far as access to medicines is concerned. Article 39 of the original TRIPS Agreement allows member governments to authorize third parties to produce a patented product through the so-called "compulsory licenses" to satisfy local needs. It requires, however, that this authorization be preceded by

[2] The acronym TRIPS stands for Trade-Related Aspects of Intellectual Property Rights. The Doha Conference also produced two waivers, a GATT Article XIII waiver for the EC banana regime and a GATT Article I waiver for the ACP-EC Partnership (Cotonou) Agreement. These waivers have no direct link to the Ministerial Declaration and could have been handled within the normal WTO procedures. But they had to be moved forward to Doha to get support of the ACP countries for the round. A final document on which agreement had been reached in Doha but was not issued until November 20, 2001 deals with procedures for extension of Article 27.4 of the Subsidies and Countervailing Measures Agreement for certain developing member countries. This document is also without direct bearing on the Ministerial Declaration.

efforts by the third party to obtain authorization from the patent holder on reasonable commercial terms. The requirement can be waived "in the case of a national emergency or other circumstances of extreme urgency."

The Declaration on the TRIPS Agreement and Public Health weakens the conditions under which member governments can issue compulsory licenses. It recognizes each member's "right to grant compulsory licenses and the freedom to determine the grounds upon which such licenses are granted." It adds that each member "has the right to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency." By giving members the right to decide what constitutes a "national emergency" or "extreme urgency," the Declaration seems to give them extra leeway in issuing compulsory licenses without prior effort by the potential licensee to obtain authorization at reasonable commercial terms. How far this provision can be pushed will not be clear, however, until its boundaries are tested in the Dispute Settlement Body (DSB).

It is important to note that there is an asymmetry in the way different members can benefit from the increased flexibility with respect to compulsory licensing. Article 39 of the TRIPS Agreement allows the authorization of production by third parties "predominantly for the supply of the domestic market of the Member authorizing such use." Therefore, members that do not have domestic capability for such production will effectively be unable to benefit from the flexibility. The Declaration has instructed the Council for TRIPS "to find an expeditious solution to this problem and report to the General Council before the end of 2002."

The Declaration gives the least developed countries an extra 10 years to implement the TRIPS Agreement in so far as pharmaceutical products are concerned. This moves the date of implementation of patents for medicines from January 1, 2006 to January 1, 2016 of these countries.

2.2 Decision on Implementation-related Issues and Concerns

Starting soon after the beginning of the implementation of the UR Agreement, developing countries had complained about a number of items that eventually came to be described as "implementation issues." At Seattle, they had pushed for an agreement on these issues but were unsuccessful principally due to opposition from the United States. The matter was taken up once again in Doha and culminated in the signing of the Declaration on Implementation-related Issues and Concerns.

Though the title of the package suggests that the issues in it relate to unsatisfactory implementation of the UR Agreement, virtually no item involves serious enough violation to warrant challenge in DSB. Indeed, upon close examination, virtually all of the issues involve either the implementation of non-binding, best endeavor clauses in the UR Agreement or new concessions. Virtually all the substantive implementation issues have landed on the future negotiating agenda of the Doha Ministerial Declaration with developed countries mainly offering further "best endeavor," "good-faith effort" clauses in the Decision.

The emptiness of the Decision is best captured in the official statement by the Pakistani representative at Doha, delivered prior to the finalization of the Declaration. The relevant paragraph in the statement states, "The package of implementation measures proposed for adoption at Doha is almost a bare cupboard. Some major countries want to

take away what little it contains – such as the provision for 'growth on growth' in textiles." As it happens, developed countries did not grant the developing country demands relating to growth-on-growth of textile and clothing quotas (see below for details). Instead, the Decision calls upon the Council for Trade in Goods to examine speeding up textiles liberalization with the aim of making recommendations for action by July 2002.

The Decision is divided into 14 sections dealing with issues relating to UR Agreements on Agriculture, Sanitary and Phytosanitary (SPS) Measures, Textiles and Clothing, Technical barriers to Trade (TBT), Trade-Related Investment Measures (TRIMS), Anti-dumping, Customs Valuation, Rules of Origin, Subsidies and Countervailing Measures, and TRIPS. In most cases, the measures take the form of "taking note" or "best endeavor" clauses. This is amply illustrated by the following discussion of the measures proposed in the more important areas.

Under the so-called "green box" provision, the *Agreement on Agriculture* exempts certain agricultural support programs in developing countries from inclusion into the calculation of the Aggregate Support Measure, which is subject to liberalization commitments. These programs, aimed at encouraging agricultural and rural development, include investment subsidies that are generally available to agriculture and agricultural input subsidies generally available to low-income or resource-poor producers in developing member countries. The Doha Decision on Implementation-related Issues and Concerns "urges" members to exercise restraint in challenging measures notified under the green box by developing countries to promote rural development and adequately address food security concerns. This is clearly a "best endeavor" provision that may bring additional moral pressure on developed countries at the margin but has no legal standing.

The UR *SPS and TBT Agreements* allow Members to introduce legitimate new technical standards and sanitary and phytosanitary measures. In some cases, the agreements provide the exporting countries short intervals of time to implement these standards and measures. They do not specify the precise lengths of intervals, however, and refer vaguely to "longer time-frame for compliance" or "reasonable interval" to introduce the standards, instead. The Decision makes this period precise by stating that it is to be understood to mean normally a period of not less than 6 months.

With respect to the *Agreement on Textiles and Clothing* (ATC), developing countries had sought a faster liberalization of MFA quotas on products of interest to them. In response, the Decision offers three clauses promising good-faith effort: (i) developed country members should effectively utilize the provisions in ATC for early elimination of quota restrictions; (ii) they should exercise particular consideration before initiating antidumping investigations of textile and clothing exports from developing countries previously subject to quantitative restrictions under ATC for a period of two years; and (iii) they shall notify any changes in their rules of origin concerning products falling under the coverage of the Agreement to the Committee on Rules of Origin which may decide to examine them.

First two of these items are promises of "good-faith effort" with little recourse in the event of non-fulfillment while the third one is simply a notification requirement. The first provision gives developing countries no extra leeway in challenging developed countries on the speed of elimination of quota restrictions beyond that available under ATC. It is not clear how, except as already provided under ATC, is one to determine that a country has failed to use the provisions relating to the elimination of quotas "effectively." Likewise, the

grounds under which a country can be deemed to have failed to exercise "particular consideration" before initiating antidumping investigation are not well defined. Moral force is all developing countries have to enforce compliance.

As already mentioned, the substantive and specific demands of developing countries relating to faster expansion of quotas through more liberal application of growth-on-growth provisions were not granted to them in the Decision. Instead, these have been referred to the Council for Trade in Goods for examination and recommendation by July 31, 2002.

Developing countries had complained for some time that in implementing the *Agreement on Anti-dumping*, developed countries had failed to keep good faith by investigating the same firms for dumping the same product repeatedly within a short period of time. The Decision offers a best endeavor clause whereby investigating authorities shall pay special attention to petitions targeting a member country for a product for which it had already been investigated during the previous 365 days and found not guilty. Accordingly, only if the pre-initiation examination indicates that circumstances have changed, should the investigation proceed. On several other matters relating to the Agreement on Anti-dumping raised by developing countries, the Decision instructs the Committee on Anti-dumping to make recommendations within 12 months.

Finally, with regard to the *Agreement on Subsidies and Countervailing Measures*, Venezuela had put forth the proposal that the subsidies measures implemented by developing countries to achieve legitimate development goals such as regional growth, technology research and development funding, production diversification and development and implementation of environmentally sound methods of production be treated as non-actionable. The Decision takes note of this proposal and places it among outstanding

implementation issues on which the Subsidies and Countervailing Measures Committee must report to the Trade Negotiating Committee by the end of 2002. It urges Members to "exercise due restraint with respect to challenging such measures" in the interim.

The Decision relegates all outstanding implementation-related issues, compiled in document Job(01)/152/Rev.1, to the Doha Ministerial Declaration. Developing countries have complained that this document has already watered down their original complaints. The Doha Ministerial Declaration makes the issues in the document an integral part of the future work program in the way described below.

2.3 Ministerial Declaration

The Doha work program, launched by the Doha Ministerial Declaration, can be divided into three broad parts: agenda with a clear negotiating mandate, agenda with ambiguous negotiating mandate and study program. In the following, I discuss each of these three parts in detail.

2.3.1 Agenda with a Clear Negotiating Mandate

The Doha negotiating agenda consists of seven items altogether: implementation, agriculture, services, market access for non-agricultural products, trade and environment, WTO rules, TRIPS and dispute settlement. The first six of these items are to constitute a single undertaking with January 1, 2005 as the deadline for their completion. The last item is to be wrapped up separately by May 31, 2003. As discussed in Section 2.3.2, there is some ambiguity with respect to the four issues jointly called the Singapore issues.

(i) Implementation

The negotiations on the outstanding implementation-related issues are to take place on two tracks: (a) issues that appear elsewhere on the agenda with a specific negotiating mandate are to be handled according to that mandate; and (b) any other outstanding implementation issues are to be addressed by the relevant WTO bodies, which must report to the Trade Negotiating Committee by the end of 2002 for appropriate action. These negotiations are an integral part of the single undertaking with early implementation on a provisional or final basis permitted on agreements reached prior to January 1, 2005 deadline. It may be emphasized that all significant implementation issues have been essentially incorporated into the explicit negotiating mandate and fall under (a); items covered under (b) are of lesser significance.

(ii) Agriculture

The Declaration recognizes the progress in negotiations in agriculture mandated by the UR Agreement and commits Members to comprehensive negotiations aimed at substantial improvements in market access; reductions, with a view to phasing out, of all forms of export subsidies; and substantial reductions in trade-distorting domestic support measures. On export subsidies, EU had objected to the expression "with a view to phasing out" but after a day's delay in concluding the negotiations the United States and Cairns Group prevailed upon it. At the same time, at the insistence of EU, "all forms of export subsidies" were included into the negotiations, possibly opening the door to export credits, food aid and state-trading enterprises. The United States had wanted the Declaration to refer to "export subsidies" only.

The Declaration provides strong language for special and differential treatment for developing countries: "We agree that special and differential treatment for developing

countries shall be an integral part of all elements of the negotiations and shall be embodied in the Schedules of concessions and commitments and as appropriate in the rules and disciplines to be negotiated, so as to be operationally effective and to enable developing countries to effectively take account of their development needs, including food security and rural development." The requirement that special and differential treatment be embodied into the "rules and disciplines to be negotiated, so as to be operationally effective" is seen as an improvement over the language promising good-faith effort in Article 15.1 of the Agreement on Agriculture.

The Declaration takes note of the non-trade concerns "reflected in the negotiating proposals submitted by Members" and confirms that non-trade concerns are to be taken into account in the negotiations as provided for in the Agreement on Agriculture. The reference to non-trade concerns "reflected in the negotiating proposals submitted by Members" is viewed as opening gates to the debate on the whole range of these issues. The EU Commissioner on Agriculture, Franz Fischler, interprets this as an avenue to the protection of the environment in rural areas as well as to EU proposals aimed at ensuring food safety for consumers regardless of whether such food originates at home or abroad.

(iii) Services

As in agriculture, the UR Agreement mandated negotiations in services and the Declaration essentially recognized the work in progress under that mandate. It provides 30 June 2002 as the deadline for initial requests for specific commitments and 31 March 2003 as the deadline for initial offers. The preamble to the Declaration reaffirms the right of Members under the general Agreement on Trade in Services (GATS) to regulate and to introduce new regulations on the supply of services.

(iv) Non-agricultural Products

Many developing countries had opposed the inclusion of non-agricultural products into the agenda though they did not turn it into a make or break issue at Doha. As a part of their implementation-related concerns, developing countries had complained bitterly about the peak tariffs applying to products of export interest to them. The Declaration responds to this concern by explicitly agreeing to "reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries."

As in agriculture, the Declaration promises to "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." Included in the Declaration in this context are appropriate studies and capacity-building measures to assist least-developed countries to participate effectively in the negotiations.

(v) Trade and Environment

The subject of environment has been under study at the WTO under the auspices of the Committee on Trade and Environment for some time. But for the first time, the Doha Declaration brings it into the negotiating agenda. A large number of developing countries had been opposed to bringing environment into the negotiating agenda in any form but EU had insisted on it. Fortunately, the negotiating mandate in the Declaration is quite limited and unlikely to damage the interests of developing countries significantly. It calls for negotiations on (a) the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs); (b) procedures for regular information exchange between MEA Secretariats and the relevant WTO committees,

and the criteria for the granting of observer status; and (c) the reduction of tariff and non-tariff barriers to environmental goods and services. With respect to the first subject, the Declaration explicitly notes that the negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question. This means that trade sanctions by MEA signatories on non-signatories are ruled out.

Under the mandate relating to WTO rules, the Declaration includes fisheries subsidies in the negotiating agenda. It notes that participants shall aim "to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries." The effort to bring these subsidies, leading to over-fishing, had been led by Iceland and supported by the Philippines, Peru and the United States. Oddly, EU, which has otherwise championed the cause of environment, and Japan have been fiercely opposed to putting these subsidies on the negotiating agenda.

(vi) WTO Rules

The Declaration opens WTO rules in three areas to negotiation: (1) anti-dumping, (2) subsidies and countervailing measures, and (3) regional trade agreements. Negotiations on these items are to aim at clarifying and improving disciplines with special attention paid to the needs of developing countries. With respect to the first two items, the Declaration requires negotiations to preserve "the basic concepts, principles and effectiveness" of the Agreements on Anti-dumping and Subsidies and Countervailing Measures. Negotiations on subsidies are to include fisheries subsidies for which environmental groups and developing countries, supported by the United States, had pushed hard.

(vii) TRIPS Agreement

The Declaration explicitly mandates negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference in 2003. It goes on to state that issues related to the extension of the protection of geographical indications to products other than wines and spirits will be addressed in the Council for TRIPS as a part of the outstanding implementation issues. There remains disagreement on whether this amounts to a negotiating mandate on the extension of geographical indications to products other than wines and spirits. Countries opposed to such negotiations including the United States and Cairns group argue that no mandate has been given. Those favoring such negotiations include EU, Bulgaria, India and Sri Lanka.

(viii) Dispute Settlement

In a short paragraph in the Declaration, Members agree to negotiations on improvements and clarifications of the Dispute Settlement Understanding. The negotiations in this area are to be based on the work done to-date as well as any additional proposals Members may make. The Dispute Settlement negotiations are not a part of the single undertaking; they are to be completed by May 31 2003 and implemented as soon as possible thereafter.

2.3.2 The Singapore Issues: Ambiguous Mandate

At Doha, EU had insisted on the inclusion of negotiations for multilateral agreements on investment, competition policy, trade facilitation and transparency in government procurement. Since these issues had been made a part of the WTO study program under the Singapore Ministerial Declaration in 1996, they are jointly referred to as the Singapore issues.

A large number of developing countries, especially from Asia and Africa, had opposed the EU demand. India was the most vocal opponent and persisted in its demand to exclude the four issues from the negotiating mandate until the end at the Doha Ministerial Conference. According to the deliberately vague compromise language in the Declaration, members "agree that negotiations will take place after the fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations." Developed countries interpret this phrasing to mean that the Fifth Ministerial in 2003 is to decide only on the modalities while the agreement to kick off the negotiations soon after that Ministerial is already in place. Under this interpretation, the negotiations will be a part of the single undertaking with the January 1, 2005 deadline. Many developing countries take the view that the decision on modalities by explicit consensus gives them a veto against the launch of the negotiations themselves.

At Doha, India took the position that according to the Singapore Declaration, negotiations on the Singapore issues could not be launched without explicit consensus. Therefore, it insisted on clarification of the language in the Doha Declaration from the Conference chair, Yussef Hussain Kamal, in his concluding remarks. The chair obliged, providing the following clarification:

> "Let me say that with respect to the reference to an "explicit consensus" being needed … for a decision to be taken at the Fifth Session of the Ministerial Conference, my understanding is that, at that Session, a decision would indeed need to be taken, by explicit consensus, before negotiations on Trade and Investment and Trade and Competition Policy, Transparency in Government Procurement, and Trade Facilitation could proceed. In my view, this would give each Member the

right to take a position on modalities that would prevent negotiations from proceeding after the Fifth Session of the Ministerial Conference until that Member is prepared to join in an explicit consensus."

This clarification does not lay the differences between the proponents and opponents of the Singapore issues to rest, however. While the chair's concluding remarks form a part of the official conference proceedings, they do not have a legal standing. Therefore, there remains uncertainty as to whether negotiations on the Singapore issues will take place as a part of the single undertaking of the Doha Round.

On three of the four issues, investment, competition policy, and trade facilitation, the Declaration does not spell out the scope of potential negotiations. In the case of investment and competition policy, some inferences can be drawn from the charges for future study given to the relevant working groups as described below. On trade facilitation, the Declaration does not discuss the study program at all. On transparency in government procurement, the Declaration is slightly more explicit on the scope of negotiations. Accordingly, while the negotiations are to build on the progress made in the Working Group on Transparency in Government Procurement during the period until the fifth Ministerial Conference, the scope of negotiations is limited to the transparency aspect of procurement. The Declaration explicitly rules our restrictions on preferences given by countries to domestic supplies and suppliers.

2.3.3 Study Program

The Doha Declaration lays down a wide-ranging study program that includes trade and investment; trade and competition policy; trade and environment; intellectual property; electronic commerce; small economies; trade, debt and finance; trade and transfer of

technology; and special and differential treatment for developing countries. In addition, the Declaration calls for technical assistance to and capacity building in developing and least developed countries through a variety of mechanisms, agencies and forums. Some highlights of the study program are as follows.

The Declaration asks the Working Group on the Relationship between Trade and Investment to focus on a wide range of topics including scope and definition, transparency, non-discrimination, modalities for pre-establishment commitments based on a GATS-type positive-list approach, development provisions, exceptions and balance-of-payments safeguards, consultation and the settlement of disputes between Members. Any framework is to reflect the interests of home and host countries in a balanced manner and take due account of the development policies and objectives of host governments as well as their right to regulate in the public interest.

The Working Group on the Interaction between Trade and Competition Policy has been asked to focus its work on core principles including transparency, non-discrimination and procedural fairness, and provisions on hardcore cartels; modalities for voluntary cooperation; and support for progressive reinforcement of competition institutions in developing countries through capacity building. The charge on hardcore cartels has raised expectations in some quarters that eventually competition policy may take on global cartels such as the Organization of Petroleum Exporting Countries (OPEC), though it is not clear if that is the intention behind the inclusion of "provisions on hardcore cartels" in the Doha study program on competition policy.

The Committee on Trade and Environment has been asked to focus its future work on (i) the effect of environmental measures on market access including the identification of

situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development; (ii) the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and (iii) labeling requirements for environmental purposes. The Committee is to report to the Fifth Session of the Ministerial Conference and make recommendations on future action including the desirability of negotiations. Thus, the door to future expansion of trade and environment negotiating agenda is open.

On intellectual property, Article 27.3(b) of the TRIPS Agreement excludes plants and animals other than microorganisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes from being subject to patents. The Declaration instructs the Council for TRIPS to include in its work program the review of the relationship between this provision of the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments raised by Members under the review provisions in Article 71.1 of the Agreement. Brazil and India have championed the cause of the protection of traditional knowledge and folklore. They and many other developing countries have welcomed the language in the Declaration linking this subject to Article 27.3(b). The United States and EU had previously resisted WTO discussions on these issues arguing that the World Intellectual Property Organization should cover them.

Other areas covered by the work program are electronic commerce; small economies; trade, debt and finance; trade and transfer of technology; and special and differential treatment for developing countries. On electronic commerce, the Declaration calls for continuation of the Work Program initiated since the Ministerial Declaration of 20

May 1998 in the General Council and other bodies. On small economies, a work program is to be launched under the auspices of the General Council to examine issues relating to the fuller integration of small, vulnerable economies into the multilateral trading system. On trade, debt and finance, a Working Group is to be established to come up with recommendations on steps that might be taken within the mandate and competence of the WTO to enhance the capacity of the multilateral trading system to contribute to a durable solution to the problem of external indebtedness of developing and least-developed countries. On trade and transfer of technology, a working group is to be set up with the mandate to recommend steps that might be taken within the mandate of the WTO to increase flows of technology to developing countries. Finally, on special and differential treatment, the Declaration takes note of the Framework Agreement on Special and Differential Treatment proposed by some Members. All special and differential treatment provisions are to be reviewed with a view to strengthening them and making them more precise, effective and operational.

3 Why Developing Countries Oppose the Singapore Issues

Before I turn to an assessment of the Doha outcome, it is useful to discuss briefly the reasons why many developing countries in Africa and Asia opposed the inclusion of the Singapore issues into the negotiating agenda.[3] This is especially essential since the WTO

[3] The press reports published immediately following the Doha Ministerial Conference give the impression that the Singapore issues were opposed mainly by India. In reality, a broad spectrum of developing countries including the ACP countries and many Asian developing countries had expressed opposition to the inclusion of one or more of these issues at Doha. Official statements, delivered at Doha by Egypt, Indonesia, Kenya, Malaysia, Nigeria, Pakistan, Sri Lanka, Tanzania and Thailand among others, support this assertion.

Director General Mike Moore has recently argued in their favor, endorsing explicitly the EU position.[4]

To appreciate fully the position of developing countries, it must be recognized at the outset that their opposition to multilateral agreements on these issues is not to be equated with opposition to the policies underlying the latter. Few developing countries reject the positive role that trade facilitation, transparency in government procurement and investment and competition polices can play in the process of development. Indeed, many of them have introduced policy reforms in these areas as a part of their national reform programs in recent years and benefited from them. For instance, through progressive opening of the foreign investment regime, India has seen its annual foreign investment rise from a paltry 200 million dollars in 1990 to 5 billion dollars currently.

Furthermore, the opposition to multilateral agreements on all four issues by any one developing country is unlikely to be equally intense. Many countries would probably find a multilateral agreement on transparency in government procurement far less objectionable than that on investment. And some will go so far as to endorse it. From this perspective, placing the four issues into a single basket is misleading since it gives a country opposed to any one or more issues the appearance of being opposed to all of them. To alleviate this

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[4] See Moore (2002). Indeed, prior to writing this article, Moore had defended the EU Commissioner Pascal Lamy and by implication criticized the Indian Commerce Minister Murasoli Maran for the stance they took at Doha. Following the criticism of Maran in the *Financial Times* (November 15, 2001) as the "villain" of Doha, when a Member of the European Parliament (Greens, Sweden), Per Gahrton, wrote in a letter to the newspaper (November 24 2001) defending Maran as a "defeated hero of a common Third World cause" and offering Lamy as the candidate for the pejorative label of "villain" instead, Moore surprisingly came to Lamy's defense. In a letter written four days later (November 28 2001), he went on to defend Lamy on every one of his stances and in the process provided a spirited endorsement of his comprehensive agenda including even labor standards. For details, see Panagariya (2002).

problem, I begin by focusing first on the reasons why so many countries object to a multilateral agreement on investment and then transitioning into objections that are more generally applicable.[5]

First, when we consider political constraints to liberalization, there is a hierarchy of sectors: trade is easier to liberalize than investment, which is easier to liberalize than labor. Within trade, goods trade is easier to liberalize than services trade. Within investment, direct foreign investment is easier to liberalize than portfolio investment. And finally, within labor, opening to immigration of skilled labor is easier than to unskilled labor.

Today, despite full appreciation of the economic benefits of labor mobility, developed countries would find a binding international agreement on the movement of even skilled labor politically infeasible. They recognize the need for more flexibility in this sphere than an international agreement would permit. Many developing countries find themselves in a similar situation with respect to investment flows: politics demands discretion in how investment liberalization proceeds. Some countries are particularly worried with respect to acceding to a multilateral agreement that extends to portfolio investment since it happens to be more liquid and prone to a sudden flight leading to crisis.

This difficulty is amply illustrated by the experience with the liberalization of trade in services, which is intimately linked to the liberalization of investment and labor flows. Developing countries have been much more reluctant to make binding commitments in

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[5] According to the detailed postmortem of the Doha Ministerial Conference in ICSD (2001), there remain continued divisions between developed and developing countries on these issues. Referring to the vague wording on the launch of negotiations on them in the Doha Ministerial Declaration, the ICSD report states, "Many developed Members consider this as a mandate to launch negotiations at the fifth Ministerial or shortly thereafter, whereas most developing countries maintain that the negotiations may be years off, as a decision to launch them must be taken by *explicit consensus*."

services under GATS than in goods under the General Agreement on Tariffs and Trade (GATT). Where liberalization of trade in services requires labor mobility, even developed countries have taken wholesale exceptions in their GATS commitment schedules.

The second reason for the opposition to a multilateral investment agreement is that many developing countries feel that before they commit to negotiations, they should be reasonably sure that benefits of a future agreement outweigh the risks of trade sanctions. Unlike goods, which they export as well as import, on the investment front, they are only importers. In mercantilist terms, this means that under an investment agreement they will be making binding commitments without receiving anything in return.

This fact has substantive distributional implications. Thus, for example, suppose that the rate of return on investment in China is 10 percent and that in EU 5 percent. When the EU capital moves into China, it appropriates the excess return. While China also benefits from the inflow in many ways, should it nevertheless give up its right to tax away a part of the extra 5 percent return by committing to national treatment to foreign capital? Questions such as these have simply been ignored by those who are wedded to national treatment.

The third reason, which applies to all Singapore issues, is that many developing countries lack the capacity to negotiate effectively on a wide-ranging agenda. The problem is not merely one of financial resources. Even if developed countries were to offer a offer a liberal does of financial resources—which they have not done to-date despite promises under the UR Agreement—, human resources cannot be created overnight. Those of us who have worked with scholars and policy makers in developing countries are acutely aware of

the scarcity of human resources and the slow pace of capacity-building process there. Often too many competing objectives chase a tiny pool of such resources.

Fourth, based on the experience with the UR Agreement, some developing countries fear that they will fail to implement the negotiated agreements in a timely fashion and be left exposed to the risk of trade sanctions. This clearly turned out to be the case with the TRIPS Agreement. India was pursued by the United States in the WTO Dispute Settlement Body for its failure to comply with the letter of the Agreement even though it had complied with its spirit. And absent the ten-year extension given by the Declaration on the TRIPS Agreement and Public Health, many least developed countries would have found themselves in even greater difficulty in five years' time.

Finally, since developed countries already meet the standards likely to be negotiated with respect to the Singapore issues, as was the case with the TRIPS Agreement, these issues place a greater burden at the margin on developing countries. Effectively, developing countries will be the ones to take on to new obligations. Moreover, from the national standpoint, it is not clear that the implementation of these agreements on a priority basis represents the best use of the limited resources and political goodwill available to the governments. For example, one must ask if the return to the resources deployed to ensure speedy movement of goods at the border under a future agreement on trade facilitation might not be higher if deployed in speeding up the movement of goods internally or in altogether different projects. Likewise, we must ask if the government should give priority to competition policy over so many other more pressing reforms that preoccupy legislative bodies and enforcement authorities.

4 Legacy of the UR Agreement and the Doha Outcome

Let us now turn to an evaluation of the Doha outcome.[6] This requires a look back at some aspects of the UR Agreement. A recurring theme of many civil society groups and press reports in the post-UR years has been that the UR Agreement shortchanged developing countries. According to them, promises of large benefits made to developing countries during and immediately after the negotiations have not translated into reality.

Supported by these civil society groups, developing countries had demanded that the imbalance in the UR Agreement be corrected at Doha. The key question to be addressed in this section is whether the civil society groups and press reports were right about the imbalance and if yes, whether the Doha outcome corrects it. I argue that there is some truth in the complaint though the imbalance has perhaps been overstated and benefits from trade liberalization to developing countries somewhat understated. I then argue that while the Doha outcome is better balanced than the UR Agreement, we are in danger of making the opposite error here: overstating the benefits from the Declaration on the TRIPS Agreement and Public Health and Decision on Implementation-related Issues and Concerns. I conclude the section by arguing that the better-balanced outcome at Doha should not be confused with a softening of the negotiating stance on the part of developed countries.

4.1 UR Agreement: Developing Countries Shortchanged?

The case that the UR Agreement shortchanged developing countries is based on three principal observations.

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[6] Throughout the paper, I use the term "Doha outcome" to refer to the totality of the achievements at Doha, which include the three documents described in Section 2 as also those described in footnote 2.

First, the Cairns Group, which includes several developing countries from Southeast Asia and Latin America with high potential for agricultural exports, had expected the UR Agreement on Agriculture to deliver significantly increased market access for farm products of its member countries. This expectation was not realized.

The Agreement on Agriculture required members to covert all non-tariff barriers into tariff equivalents taking 1986-88 as the base period. These tariff equivalents were to be added to the existing tariffs and the total tariff bound. Developed countries were to then reduce each of these tariffs by at least 15 percent, achieving an overall average reduction of 36 percent over a six-year period ending January 1, 2000. Developing countries were allowed smaller reductions and given longer transition period.

Predictably, countries chose tariff equivalents of the 1986-88 non-tariff barriers that were far higher than their "true" counterparts. According to Ingco (1995), the proportion by which the announced equivalent tariff rate exceeded the actual equivalent tariff rate (i.e., "dirty tariffication") was 61% for EU and 44% for the United States. In addition, the modalities negotiated for the 36% average tariff reduction with 15% reduction in the tariff on each product allowed countries to get away with minimal tariff reductions. For example, a country with 100% tariffs on three products and 4% on the remaining one could lower the former by 15%, eliminate the latter, and achieve (15+15+15+100)/4 = 36.25% average reduction. The outcome of the dirty tariffication and this flexibility offered by the modalities of liberalization sealed the fate of effective liberalization in agriculture.

The second reason why the UR Agreement has been viewed as imbalanced is that in the area of market access in industrial products, developing countries committed to cutting their tariffs more deeply than developed countries. According to the calculations done by Finger

and Schuknecht (1999), the two sets of countries committed to tariff cuts of 2.7 and 1 percent, respectively, on approximately equal proportions of their imports.

A key concession in industrial products made by developed countries was the phase out of the MFA quotas by January 1, 2005. These quotas place strict limits on the imports of textiles and clothing into developed countries such as the United States, EU and Canada. ATC provides that the quotas be phased out over a ten year period. According to the timetable negotiated under the agreement, products accounting for 51 percent of textiles and clothing imports (based on 1990 import volumes) were to be freed up by January 1, 2002 in three separate installments. Quotas on products accounting for the remaining 49 percent of the imports are to be withdrawn on January 1, 2005. In addition, ATC provides modest increases in the growth rates of quotas established in the original bilateral MFA agreements.

Developing countries had complained prior to the Doha Conference that the liberalization under ATC in the initial phases had yielded them virtually no expansion of market access. Developed countries had been able to meet their obligations by removing quotas on products that were de facto unrestricted but included in the ATC schedule of sectors to be liberalized or commercially insignificant for developing countries.[7] Developing countries also complained that the growth in quotas during the transition had been inadequate and demanded higher growth rates.

Finally, in new areas such as intellectual property, developing countries are required to adopt standards already prevalent in developed countries. This means they have

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[7] In the first two installments, due on the first days of 1995 and 1998, respectively, developed countries were to eliminate quotas on products accounting for a total of 33 percent of their textiles and clothing imports. Among the products "freed up" as a part of these installments, restricted items accounted for 13 out of 750 for the United States, 14 out of 219 for EU and 29 out of 295 for Canada.

implementation obligations that effectively do not apply to the latter. After a review of the World Bank project experience, Finger and Schular (2000) concluded that implementation in just three areas, customs valuation, TRIPS, and sanitary and phytosanitary measures, would cost each country some 150 million dollars. For many least developed countries, this amount exceeds their full year's development budget.

This administrative cost is in addition to the economic costs that may result from the TRIPS obligations. For example, the TRIPS Agreement requires a 20-year patent on all innovations. Since much of the innovation activity is concentrated in developed countries, developing countries stand to pay potentially large sums of royalties to them. More importantly, given the low levels of income in developing countries and the lack of public resources, the patents can effectively deny them access to life-saving medicines altogether.

These factors point to substantial asymmetry in the distribution of the benefits from the UR Agreement between developing and developed countries. Some may even assert that on net the Agreement actually hurt the interests of developing countries. But such a conclusion is unwarranted. While the balance of benefits was in favor of developed countries reflecting their greater bargaining power, developing countries made significant gains as well.

To explain why, begin by considering four points with respect to concessions in trade. First, following the mercantilist logic, negotiators view a country's own liberalization to be a cost and that of its trading partners a benefit. But economics tells us that a country own liberalization is a benefit rather than cost since it eliminates domestic inefficiencies and stimulates growth as illustrated by the experiences of the large number of countries in Asia. This is especially true of economies that do not have market power, as is true of most

developing countries. Put this way, deeper tariff cuts in industrial products by developing countries are to be viewed as benefit, not cost.

Second, even if we insist on thinking in mercantilist terms, whether bargains were balanced or not depends on precise manner in which we evaluate them. For example, the calculations by Finger and Schuknecht (1999) report that tariff cuts by developed and developing countries applied to equal *proportion* of their imports. But in so far as developed countries import much more in absolute terms, the absolute market access given by them by 1 percent tariff cut is larger than one percent cut in tariffs by developing countries.

Also at issue is whether we should evaluate tariff cuts in terms of average reciprocity or marginal (first-difference) reciprocity. Developing countries had substantially higher industrial tariffs than developed countries prior to the Uruguay Round. If the eventual goal of the negotiations is to achieve worldwide free trade, which amounts to average reciprocity, developing countries must necessarily liberalize more at the margin.

Third, in so far as the back loading of the MFA liberalization is concerned, it must be acknowledged that developed countries should have liberalized this important sector faster in their own interest. Given that quota rents associated with the MFA restraints accrue to the exporting countries, the benefit to developed countries from the removal of quotas is even larger than from the removal of tariffs. That said it bears reminding that during the UR negotiations, many of the poorer developing countries themselves did not want faster dismantling of the quotas on products exported by them.[8] They were not confident that after

[8] B. K. Zutshi, the Permanent Representative and Ambassador of India to GATT from 1989 to 1994, conveyed this to the author in personal conversations.

the quotas are dismantled they would be able to retain the share guaranteed them by the quotas. For some countries such as India, quota utilization rates had been well below 100 percent in many products implying that their ability to compete would be reduced once quotas are dismantled. Even at Doha, the specific demands by poorer developing countries in this area focused on quota expansion rather than their faster removal and on reductions in peak tariffs.

Finally, while the Cairns Group did fail to achieve its expectations in agriculture, the UR Agreement helped it lay down the foundation of future liberalization in this important sector. The hopes of liberalization under the Doha round are derived from the success achieved in tariffication of non-tariff barriers and identification of export subsidies and domestic support measures made possible by the UR Agreement.

The evidence for asymmetry in the distribution of benefits from the UR Agreement must thus be sought in areas outside of trade liberalization. Here the balance has been against developing countries. In addition to the administrative costs of meeting new obligations, outcomes in these areas are not necessarily mutually beneficial. In the case of the TRIPS Agreement, developing countries do stand to make substantial transfers to developing countries in terms of higher prices of patented products, especially medicines.

Thus, as I noted in Panagariya (1999a), and Finger and Nogues (2001) have document more systematically, the imbalance in the bargain between developing and developed countries is the result of a bargain that tried to balance *trade* concessions, particularly the dismantling of MFA quotas, against *non-trade* concessions such as TRIPS Agreement. Developed countries benefited from trade liberalization on both sides as well as the non-

trade concessions given by developing countries. Developing countries benefited from trade liberalization but were damaged in non-trade areas.

But even this last conclusion must be qualified in one important way. A strengthened WTO under the UR Agreement is worth substantial intangible benefits to developing countries. Its dispute settlement process protects their trading rights the same way as of developed countries.[9] In addition, despite the dominance of developed countries and skewed distribution of the bargaining power, WTO offers them a rules-based forum at which to defend their trading interests and rights. For example, it is the strength of WTO that allowed them to successfully deflect the pressures for a link between trade and labor standards. In its absence, in principle, developed countries could have simply resorted to trade sanctions against countries deemed to have lower labor standards than some pre-specified level.

A final point must be made with regard to the manner in which civil society groups and developing countries came to view the UR Agreement. The disappointment of these entities resulted at least in part from the unrealistic expectations built up during the negotiations by researchers and officials at international institutions, especially the World Bank. Researchers at these institutions produced numerical estimates of benefits to developing countries that were overly optimistic. Many of the studies went so far as to predict large benefits from liberalization in agriculture notwithstanding the fact that meaningful liberalization in this area was not even a part of the proposed Agreement on Agriculture. Public relations officers at these institutions added to the optimism by choosing

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[9] For example, challenges by Costa Rica and India to the introduction of new MFA quotas by developed countries in the DSB successfully put an end to the practice of bringing competitive exporters under a new bilateral quota even as ATC was being implemented. See Reinert (2000).

to publicize through press releases the largest of the estimates rather than those regarded as most plausible even by the authors themselves.[10]

In the policy writings originating in these institutions, there was rather limited appreciation of the point that the TRIPS Agreement would result in a substantial redistribution of income from the poor to rich countries and that it would severely limit poor countries' access to cheap medicines. There was a natural tendency on the part of the authors to downplay this redistributive effect and focus instead on the presumed benefits to developing countries from increased innovation, research on tropical diseases and favorable impact on investment.[11] Moreover, simulation studies that generated numerical estimates of benefits from the UR Agreements uniformly left the TRIPS Agreement out of consideration thereby overstating the benefits to developing countries and understating those to developed countries.[12]

4.2 Doha Outcome: Balance Restored?

The Doha documents have the appearance of taking a more development-friendly approach to the next round of negotiations and perhaps attempting to correct the imbalance in the UR Agreement. For example, the Doha Ministerial Declaration uses the expression

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[10] For details, see Panagariya (1999b). In some of his public speeches in 1999, Rubens Ricupero, Secretary General, UNCTAD, questioned these predictions, characterizing them as "extravagant". Jagdish Bhagwati had warned even as the Uruguay Round was approaching closure that appeals to overly optimistic predictions that were close to PR fiction could undermine the credibility of trade liberalization.

[11] For example, see Primo Braga (1996).

[12] Raising the issue of appropriate governance in his widely read recent book, Bhagwati (2002, p. 76) draws a contrast between the work done on intellectual property protection (IPP) at GATT and World Bank. According to him, the only institution whose staff was allowed to write clearly and skeptically about IPP at the time of the Uruguay Round was the GATT whereas "the World Bank played along with IPP, even trying to produce reasons why it was good for the poor countries."

"least developed" countries 29 times, "developing" countries 24 times, and "LDC" 19 times. While this appearance fails to stand up to a closer, more critical scrutiny, let me explain first why some analysts think the Doha outcome has gone some ways towards correcting the imbalance in the UR Agreement.

4.2.1 The Positive Case

The Declaration on the TRIPS Agreement and Public Health gives developing countries some reprieve in the area of medicines through increased flexibility in the use of compulsory licensing. It also gives the least developed countries an extra ten years to implement patent protection in the area of medicines. The Decision on Implementation-related Issues and Concerns addresses a number of complaints put forth by developing countries.

The Doha Declaration contains repeated mentions of the special circumstances of developing and least developed countries that must be taken into account by the negotiations and contains innumerable references to "special and differential" treatment for them. It also offers a separate section on the problems of "small economies." As much as 15 percent of the space in the Declaration—one and a half page out of a total of ten pages—is devoted exclusively to sections entitled "Technical Cooperation and Capacity Building" and "Least Developed Countries."

The negotiating agenda of the Doha Declaration explicitly includes the outstanding implementation issues raised by developing countries as a separate item. In agriculture, the objective of complete removal of export subsidies sought by the Cairns Group has been incorporated into the negotiating mandate. Developed countries have formally placed the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-

tariff barriers on products of export interest to developing countries on the negotiating agenda. For the first time, subsidies on fisheries have appeared on the negotiating agenda. Arguably, extension of protection to geographical indications to products other than wines and spirits, demanded by some developing countries, has also been placed on the negotiating agenda.

The study program of the Doha Declaration contains a number of new items that were put on the agenda by developing countries. The agreement to study the problems of "small economies" under the auspices of the General Council and to appoint Working Groups on Trade, Debt and Finance and Trade and Transfer of Technology are the direct outcome of the demands of developing countries. As per the demands of developing countries, especially Brazil and India, the Declaration also instructs the TRIPS Council to examine the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore, and other relevant new developments.

4.2.2 The Negative Case

Consider first the Declaration on the TRIPS Agreement and Public Health. Other than the ten-year extension to the least developed countries on the implementation of the TRIPS Agreement in the area of medicines, the key concession in it is that relating to compulsory licensing. Recall that the provision for compulsory licensing had existed in the original TRIPS Agreement. What the Declaration does is to possibly weaken the conditions under which such licenses may be granted. It gives countries the right to determine what constitutes a national emergency or other circumstances of extreme urgency when it chooses to issue a compulsory license without prior effort by the licensee to obtain manufacturing

rights from the patent holder on reasonable commercial terms. Will this provision yield substantial additional gains over the provision in the original TRIPS Agreement?

There are two separate reasons why the answer is in the negative. First, the country will still need to justify the circumstances constituting national emergency or extreme urgency. A simple assertion by it is unlikely to go unchallenged in the Dispute Settlement Body. Under the most favorable scenario, the Declaration may have weakened the standard of proof for this purpose. But under the worst-case scenario, it may have done the opposite by implicitly defining the standards for emergencies and extreme urgencies in terms of HIV/AIDS, tuberculosis, malaria and other epidemics. The force of the provision in the Declaration will become clear only after the countries test its boundaries through grant of compulsory licenses under circumstances that are then disputed as non-emergency situations.

Second, most developing countries simply do not have domestic capacity to produce medicines. As such, they are not in a position to take advantage of the provision in the first place. Developing countries had sought the rights to issue compulsory licenses to producers in other countries but developed countries ducked the issue at least temporarily by referring the matter to the TRIPS Council.

Next, consider the Decision on Implementation-related Issues and Concerns. From the detailed discussion above, it is clear that in terms of actual concessions, this document delivers little to developing countries. It fails to grant even the relatively minor concession of applying the most favorable methodology to growth-on-growth provisions of ATC in calculating the quota growth for the remainder of the transition period. All substantive issues have been relegated to future negotiations.

Therefore, any hope of reversing the imbalance in the UR Agreement must rest on future negotiations. But the realization of such a hope is unlikely. Any new concessions from developed countries will have to be matched by new concessions by developing countries. The Doha Declaration makes ample mention of special and differential treatment but much of it is of cosmetic nature. The main substantive provision relates to trade liberalization. But even here, an important qualification applies. Trade liberalization by developing countries is in their own interest. Therefore, any special treatment in this area, though viewed as such by the countries, ultimately hurts their own interest.[13]

4.2.3 The Bottom line

Lest this discussion leaves a pessimistic impression of the Doha outcome, let me hasten to point out that the failure of the Doha outcome to significantly correct the imbalance in the UR Agreement is no reason to conclude that it fails to advance the interests of developing countries. When taken by itself, the Doha negotiating agenda is to be welcomed from the viewpoint of developing countries. It manages to exclude trade and labor from the mandate entirely. Arguably, it also excludes the contentious Singapore issues from negotiations. The core negotiating agenda focuses on trade liberalization, which offers the scope for "win-win" bargains. While many developing countries would have preferred to keep trade and environment out of the negotiating agenda, so far the mandate in this area is limited. Given the pressures that have existed on bringing environment into the WTO negotiating agenda, they could have fared worse. Finally, in the area of WTO rules, at least

[13] See Bhagwati and Panagariya (2001) on this issue.

prima facie, developing countries are likely to gain rather than lose. Therefore, on balance, the Doha outcome is an unambiguous improvement over the UR Agreement.

4.3 Did Developed Countries Soften their Negotiating Stance at Doha?

Given some success in pushing through the Declaration on the TRIPS Agreement and Public Health and a negotiating agenda that includes a large number items championed by developing countries, it is tempting to conclude that there has been some softening of stance on the part of developed countries towards granting genuine concessions to developing countries. I will argue, however, that little has changed in this regard: developed countries remain as hard-nosed as in the UR negotiations.

The credit for pushing through the Declaration on the TRIPS Agreement and Public Health must go largely to civil society groups from both North and South, which spoke with one voice and rallied behind an undeniably worthy cause. Their efforts, backed by repeated front-page stories of the AIDS epidemic in Africa and the inability of most Africans to afford life-saving medicines in newspapers sensitized the public in developed countries to a point that inaction was no longer an option. If we combine this fact with the doubts expressed above with respect to the true extra value of the concessions given, it stands to reason that developed countries have walked away with as good a deal as was feasible under the circumstances.

More direct evidence of the continued tough stance of developed countries comes from the outcome on the implementation issues on which developing countries had to carry the fight almost entirely on their own and without the benefit of the support of civil society groups or a subset of developed countries. The disconnect between the expression of the desire to accommodate the interests of developing countries in the Doha Declaration and

what developed countries were willing to concede to them in this Decision is stark. For example, take the developing country demand for a commitment that member countries will not bring another anti-dumping suit against the same country for one year following a negative finding in an anti-dumping suit against it. By all standards, such a commitment would seem to be a reasonable insurance against harassment suits with protectionist motives. Moreover, the number of actual suits filed against the same party within less than one year of a negative finding against it is probably small. Therefore, the political cost of the concession facing developed countries was small. Nevertheless, they did not agree to such a commitment, instead agreeing only to a best-endeavor clause in the Decision on Implementation-related Issues and Concerns. As discussed in detail above, the fate of other implementation-related demands was similar.

With a handful of exceptions noted below, developing country demands resulted in positive outcomes only when accompanied by support from one or more major developed countries. In the grant of Article I exception to the ACP-EC Partnership (Cotonou) Agreement, EU was a major player. The phrase relating to the phase out of export subsidies was inserted at the behest of the United States. The provision that the negotiations on the relationship between MEAs and existing WTO rules not prejudice the WTO rights of members not party to the MEA in question was sought by the United States. The "friends of fish" including Iceland and the United States supported the inclusion of fisheries subsidies into the negotiating agenda. Japan pushed for the inclusion of anti-dumping rules into the agenda and EU that of the extension of geographical indications to products other than wines and liquors.

The lack of softening of the negotiating stance is further evidenced by the divide between the rhetoric on technical cooperation and capacity building in the Ministerial declaration and the willingness of developed countries to commit resource for this purpose. Much is made of technical assistance to and capacity building in developing countries throughout the Declaration and was cited as a major achievement of developing countries by WTO Director General Mike Moore in his *Financial Times* article (Moore 2002) wooing them to come on board the negotiations on the Singapore issues. Yet, in terms of actual commitment, the Declaration is limited to ensuring "long-term funding for WTO technical assistance at an overall level of no lower than of the current year." Given the hugely inadequate level of funding for capacity building in the past year, few developing countries can feel reassured by this commitment.[14]

There are three main areas in which developing countries may be said to have won battles entirely on their own. First, they managed to put the reductions in or elimination of peak tariffs and tariff escalation in products of export interest to them explicitly on the negotiating agenda. Second, they successfully pushed a number of items of direct interest to them on the study agenda. Among other things, these include protection to traditional knowledge and folklore, which had been opposed by both the United States and EU. Finally, they had at least partial success in keeping the negotiations on the Singapore issues from being launched.

Even this partial success of developing countries must be explained, not in terms of any softening of developed country stance in the negotiations but two other reasons, both

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[14] Recently, an agreement has been reached to allocate $17.6 million for this activity, which, though twice of the sum made available last year, remains tiny when spread over the large number of countries that need technical assistance.

special to Doha. First, as noted in the introduction, following the attacks on the World Trade Center, the United States was determined to launch the new round as a signal of America's strength and resolve to maintain an open global economy. Therefore, it was prepared to make some concessions that it would have resisted making under more normal circumstances. Second, having promoted the proposed round as a development round, to some degree, developed countries found it difficult to proceed without the participation of one or more major developing countries. This fact gave India just enough leverage to insert the language requiring "explicit consensus" on the modalities for launching negotiations on the Singapore issues. Even then, India's Commerce Minister paid a heavy cost in terms of personal reputation: the *Financial Times* (November 15, 2001) branded him the "worst villain" and the *Economist* (November 17, 2001) accused him of "almost scuttling" the Doha deal.

5 Asymmetries between Developing and Developed Countries

A recognition of the asymmetries between developed and developing countries is essential to thinking about future negotiating strategies for individual developing countries as well as groups of them. Two broad sources of symmetry may be considered.

5.1 Bargaining Power

Three factors contribute heavily to the asymmetry in the effective bargaining power exercised by developed and developing countries. First, developed-country members account for the bulk of the world trade. This means they are in a better position to offer carrots and sticks in the negotiations and thus to divide and rule than their counterparts. Second, developed country members are fewer in number, with three of them—the United

States, EU and Japan—being very large. This fact allows them internalize the benefits from negotiations with relative ease and thus overcome the free-rider problem. In turn this permits a more effective exercise of the bargaining power. Finally, being at relatively similar levels of per-capita incomes, these countries exhibit greater similarity and coherence in policy regimes in areas such as intellectual property rights, environmental regulations, and investment policies where negotiating positions often divide along North-South lines. This makes compromise among them easier even when their detailed individual positions differ. For instance, the United States was not keen on launching negotiations on trade and environment at Doha but could make common cause with EU on it at a relatively low or no political cost to itself. Likewise, at Seattle, EU was not keen to bring labor standards into WTO but was willing to aid the United States in promoting its position.

Developing countries, on the other hand, have very limited bargaining power due to their much lower share in the world markets. Even more importantly, they are too numerous, lack truly large players, are at very different levels of income, and subject to diverse policy regimes. This makes the development of common positions among them difficult. And even when such positions exist among many of them, its effective exercise is difficult. The possibility of a free ride on the common cause makes it more attractive for them to expend their individual negotiating capital on narrowly defined objectives. This makes them easier targets for being "bought off" on the common objective in return for concessions on the narrowly defined objective.

These points are well reflected in the dynamics of negotiations on the Singapore issues as it unfolded at Doha. A significant number of developing countries had been opposed to negotiations on these issues. But the opposition could not claim the unanimous

support of developing countries. Given their generally open capital markets, higher levels of incomes, and preoccupation with agricultural liberalization, countries in Latin America were not especially opposed to the negotiations. Much of the opposition came from countries in Africa and Asia.

The countries in African were eventually co-opted, however, once they were granted the Article I waiver on the EC-ACP (Cotonou) Partnership Agreement. These countries expended all their negotiating capital on the waiver, choosing to free ride on the Singapore issues. Likewise, the countries in Southeast Asia, Indonesia, Malaysia, Philippines and Thailand, chose not to push the issue presumably because they too found it unattractive to devote resources to a battle that India had already made its own. Therefore, at the end of the day, only India, which felt it had enough at stake to carry on the fight and was regarded as an important player by developed countries perhaps in recognition of its very large size in terms of population, persisted. It had partial success albeit at a high cost in terms of public image as noted above.

5.2 Asymmetries in Research and Strategic Thinking

In terms of research and strategic thinking and preparation, there is no match between developed and developing countries. In developed countries, there are a number of think tanks and independent researchers researching the issues and providing intellectual input to the government negotiating agencies. Such is the sophistication of this activity that sometimes researchers even simulate the negotiations to predict the likely responses of their rivals. In addition, both executive and legislative branches of the government maintain staff, which study and analyze the impact of negotiations on various constituencies on a regular basis. Interest groups in turn are able to lobby for their positions with these agencies.

In contrast, a large number of developing countries are simply too small to be able to muster any resources at all for either research or strategic thinking. But even the larger ones have limited capacity and organization to carry out research and strategic thinking to define negotiating positions and develop response strategies. There are few think tanks or independent researchers to provide serious intellectual input. Indeed, most countries ultimately depend on international agencies such as WTO and multilateral development banks, which are not neutral players themselves.

6 Summary and the Way Forward

The main conclusions of this paper may be summarized as follows:

1. The Doha agenda, which focuses principally on trade liberalization, is a welcome development from the viewpoint of developing countries. The agenda includes several items of specific interest to developing countries and excludes labor standards even from the study program.
2. Developing countries have legitimate reasons for objecting to the inclusion of some of the Singapore issue in the negotiating agenda. These include asymmetries in the obligations that they must undertake in these areas and in the distribution of benefits, limited capacity to negotiate and limited resources for implementation.
3. While both developing and developed countries benefited from the UR Agreement, the balance was in favor of developed countries. The Doha outcome does not correct this imbalance but does offer a better balance between the interests of developing and developed countries when taken by itself.

4. The more balanced nature of the Doha outcome does not signify a discernible shift in the relative bargaining powers of developing and developed countries. Nor does it suggest any softening of the negotiating stance on the part of developed countries.

5. In negotiations, developing countries face several asymmetries. Given their very large share in world trade, developed countries have much of the bargaining power. Moreover, since three of them—the United States, EU and Japan—are large, they are better able to solve the free-rider problem of negotiations. The position of developing countries is the opposite.

6. Developing countries also suffer from poor research capacity and a lack of strategic thinking. In contrast, research and strategic thinking are carried out at a highly sophisticated level in developed countries.

Evidently, it is too much to expect dramatic changes in the relative bargaining power and its exercise. But developing countries can make a difference at the margin. In particular, the following suggestions can be made to enhance and effectively deploy their negotiating power.[15]

First, countries need to pay greater attention to the negotiating teams they assemble. They need to include economists and lawyers in these teams. Economic issues with which negotiations deal and the legal framework underlying them is far too complex to be left to regular career bureaucrats. Developed countries typically employ several lawyers and economists specialized in trade, investment, intellectual property and any other areas relevant to the negotiations.

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[15] For an elaboration of some of the points made in the following paragraphs, see Panagariya (2000).

Second, developing countries must think strategically prior to negotiations. The first step in this direction is to develop a clear idea of the final outcome the country seeks. It should then ask if there is a feasible path to achieving the outcome. If not, it must modify the outcome and repeat the exercise until the most desirable outcome that is also feasible is identified. Such an exercise will lead to defining a realistic negotiating position.

Third, developing countries need to build their native research capacity at least to the point that they can assess the studies done by outside researchers. They should be able to minimally evaluate whether the claims made by the studies of costs and benefits to them from the proposed agreements are realistic. Of course, for larger developing countries, it is important to have the capacity to do their own research. They must also invest resources in disseminating this research to developed countries to make their case more forcefully and to gain its acceptance.

Fourth, developing countries must learn to persist and negotiate very hard. Persistence is crucial to achieve almost anything in the highly competitive environment that exists in these negotiations. In this respect, there was marked difference between their performances at Doha and UR negotiations. For instance, the African countries showed remarkable organization and persistence in extracting the Article I waiver for the ACP-EC Partnership (Cotonou) Agreement. While the EU support was a crucial ingredient, this would not have come about without the African countries being vigilant and organized as well. Likewise, by sheer persistence, India was able to put the Singapore issues on hold.

Fifth, some thought may be given to cultivating an environment conducive to the growth of civil society groups. Doha offered an excellent example of the power of these groups in making the plight of the poor and weak heard. In the current international

environment, civil society groups have almost as good a chance of being heard as developing country governments. This course is not without risks, however. The interests of specific civil society groups themselves need not always coincide with the country's national interest. Being relatively new to the game and short of financial resources, developing country groups may also be "captured" by developed country groups, which may or my not serve the national interest.

Finally, where their interests coincide, developing countries must form alliances with other developing and developed countries. For any issues that cut across North-South lines, it is very important that the larger developing countries speak with one voice. Indeed, larger developing countries must try to develop joint positions on the issues of common interest. This factor becomes particularly important with the entry of China into WTO. Together India and China account for more than two billion people and well over half of the poor in the world. Therefore, if they were to speak with one voice on issues of concern to the poor, they are bound to have a major impact on the outcome. Conversely, if they are divided, developed countries will most surely have their way. This diagnosis will likely be tested at the Fifth WTOP Ministerial Conference. If China decides to support negotiations on the Singapore issues at this Conference, India will have to give up all hope of carrying the day. On the other hand, if China and India jointly oppose negotiations on one or more of these issues, developed countries will find it difficult to ignore them.

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