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Integrating LDCs into the Multilateral Trading System

INTEGRATING LDCS INTO THE MULTILATERAL TRADING SYSTEM RHETORIC GALORE

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SAWTEE

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List of abbreviations

ACP	Africa, Pacific and Caribbean
AIE	Analysis and Information Exchange
AOA	Agreement on Agriculture
BOP	Balance of Payment
CSOs	Civil Society Organisations
DAC	Development Assistance Committee
DSB	Dispute Settlement Body
EBA	Everything But Arms
EPZs	Export Processing Zones
EU	European Union
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariff and Trade
GDP	Gross Domestic Product
ICT	Information and Communication Technologies
IF	Integrated Framework
IFTF	Integrated Framework Trust Fund
ILO	International Labour Organisation
IMF	International Monetary Fund
IPRs	Intellectual Property Rights
ITC	International Trade Center
ITU	International Telecommunication Union
LDCs	Least Developed Countries
MFA	Multi-Fiber Agreement
NGOs	Non Governmental Organisation
ODA	Official Development Assistance
OECD	Organisation for Economic Cooperation and Development
PRSPs	Poverty Reduction Strategy Papers
TNCs	Transnational Corporations
TRIMs	Trade Related Investment Measures
TRIPs	Trade Related Aspects of Intellectual property Rights
UNCTAD	United Nations Conference on Trade and Development
UNDAF	United Nations Development Assistance Framework

UNDP	United Nations Development Programme
UNIDO	United Nations Industrial Development Organisation
UR	Uruguay Round
USA	United States of America
WIPO	World Intellectual Property Organisation
WTO	World Trade Organisation

Executive summary

As per the data prepared by UNCTAD, LDCs, a group of 49 (with the recent inclusion of Senegal) countries in the world, have a combined share of less than 0.5% in the global trade, and estimates show that this share is on the declining trend. Efforts made to integrate LDCs into the multilateral trading system have by and large failed so far.

On the Marrakesh declaration signed by trade ministers of 125 countries on April 15, 2000, the decisions on measures in favour of LDCs; and measures concerning the possible negative effects of the reform programme on least-developed and net food importing developing countries were agreed upon. However, these decisions are to be implemented by developing member countries on a “best endeavour basis”. Their implementation is not mandatory and not legally binding. Developed countries are only responsible “morally”, but who cares about moral in the era of unfettered globalisation?

GATT 1994 contains special and differential provisions for the LDCs in 16 different agreements. These provisions allow LDCs to undertake smaller reduction commitments and longer time frame to implement some of the agreements. Some of the major agreements include Agreement on Agriculture (exemption from reduction commitment), TRIPS (higher transitional period of 11 years), and Agreement on Subsidies and Countervailing Measures (non-prohibition of export subsidies).

During the Singapore Ministerial Meeting held in December 1996, a Comprehensive and Integrated Plan of Action was devised, which, *inter alia*, talks of closer cooperation of WTO with five other agencies to help LDCs better integrate themselves into the multilateral trading system; enhanced market access conditions for LDCs and technical assistance to help them implement WTO Agreements. For this, LDCs were required to prepare and present their trade-related technical assistance needs. However, some of the LDCs have not so far been able to prepare needs assessment document.

A follow up plan was undertaken at the “High-level Meeting on LDCs” held in Geneva in October 1997. The outcome of the meeting was to entrust the tasks of preparing “trade related technical assistance needs” of the LDCs to a consortium of six agencies, namely, WTO, World Bank, IMF, UNCTAD, UNDP and International Trade Centre.

However, nothing concrete has been materialised so far out of the above-mentioned understandings, commitments and agreements. Factors such as hesitation among developed countries to implement their commitments; inability of LDCs to meet their obligations; difficult accession procedure and failure of the six-agency efforts to produce any visible impact are responsible for this.

In the area of providing increased market access to LDCs, the recent decision of the European Union to provide duty- and quota- free access to everything but arms for the LDCs is laudable. Some progress has also been observed in the area of providing trade related technical assistance to the LDCs under the Integrated Framework for Trade-Related Technical Assistance to Least Developed Countries, especially because of the pilot scheme that is going to be launched shortly. But how far these measures are going to help integrate LDCs into the multilateral trading system is yet to be seen. In order to make this happen, a bold and pragmatic vision is required, moving far beyond rhetoric.

The Third UN Conference on LDC (LDC-III) to be held in Brussels from 14-21 May 2001 (LDC-III) offers a window of opportunity, if the governments of LDCs make serious effort to best utilise this forum. They should make every possible effort to ensure that LDC-III does not become yet another “talk-shop”.

Finally, in order to make some dent during this Conference, the LDCs should press for providing meaningful market access and technical assistance to overcome their supply-side constraints. While it is necessary for them to keep their house in order in terms of initiating domestic policy reforms and becoming more inclusive in decision-making, it is also imperative for them to ask for implementation of commitments made by the developed countries and multilateral institutions. Similarly, in order to increase the strengths of the LDCs in the WTO, all the LDCs should be let in through a “fast track” approach. Finally, as unity among the LDCs is their principal strength, they should bargain collectively in each and every international forum to get their dues from the multilateral trading system.

Introduction

When the developing countries, especially the least developed among them, were cajoled into signing the Uruguay Round (UR) Agreements, they were promised heaven by the developed countries. They were led to believe that conclusion of UR and subsequent formation of the World Trade Organisation (WTO) would lead to increased market access for their goods and services in the territories of the developed countries. They were also assured that agreements concerning textile and clothing, agriculture, services, investment and intellectual property rights will be beneficial to them and would help them put their economies in the rapid and sustainable path of prosperity.

After the passage of six years since the WTO came into being, least developed countries (LDCs) are finding themselves isolated. They are feeling that they have been duped, misled, and stranded. As a manifestation of this realisation, the Commerce Minister of Bangladesh, the leader of the LDCs camp, threatened, in February this year, that LDCs would boycott the new round of trade talks if earlier decisions made in their favour were not implemented.ⁱ

The share of LDCs in world merchandise exports has been declining over the last 10 years. It has come down from 0.48 per cent in 1990 to 0.40 per cent in 1999. At the same time, the importance of foreign trade is increasing also in the LDCs. Currently (2001), exports and imports of goods and services together account for over 49 per cent of GDP on an average. This is a substantial increase of the trade/GDP ratio of 35.8 per cent in 1990. These figures indicate that trade in LDCs is growing. But, it has not been able to keep pace with growth in more advanced countries. While global merchandise exports grew at 5.6 per cent annually during the 1990s, LDCs had to be satisfied with a lower growth rate of 3.6 per cent per annum.ⁱⁱ

Although no study has been so far been conducted to quantify the magnitude of losses LDCs have had to suffer due to the implementation of commitments under the UR, a study done in the past by UNCTAD had predicted that it was likely to be close to US\$ 3 billion between 1995 and 2000.ⁱⁱⁱ If this turns out to be a reality, which is more likely, it will fuel the already burning fire of distrust among the LDCs in the multilateral trading system. There are a number of factors responsible for this growing distrust, which shall be explained later.

Those LDCs, who are already members of WTO, are finding themselves in a “Catch 22” situation. This has, however, not deterred the other aspirants from making hell-bent efforts to join this club. The choice for obtaining the

membership of the WTO is not dictated by the improved market access opportunities, which they have long been promised, but by the fact that they are caught in a cleft stick: if they did not join the WTO, they would be forced into costly and unbalanced bilateral negotiations, which they could not afford and in which they would be severely disadvantaged. But inside the WTO, those who are already members find that none of their legitimate concerns are being heard.^{iv}

The credibility of the multilateral trading system lies in its ability to ensure full participation of the LDCs in particular and of developing countries as a whole both in the rule making process and in deriving an equitable share of benefits from the global trade liberalisation. Integrating into the trading system and preventing further marginalisation of the LDCs – and indeed ensuring their continued faith in the system – could mean nothing less.^v But has this message been clearly put across? If so, how far the other side is responding to it? Given the fact that the answers to previous two questions are not likely to be positive, what should be done in order to reverse the trend? These are some of the questions this monograph will attempt to address.

Multilateral Trading System: winners take all

The completion of the Uruguay Round (UR) of global trade talks was hailed, in many respects, as an outstanding achievement. The culmination of more than seven years of negotiations involving 125 governments, the final 424-page documents extended multilateral fair-trade to almost every area of international commerce.^{vi} Despite the fact that some of the areas, which could not be completed during the UR and continued as built-in agenda items to be reviewed subsequently, the signing of this global trade accord was considered as a victory of multilateralism.

However, six years of implementation experience of the global trade accord points to the inherent lacunae that lie within the system. Some have now even started arguing that the WTO was meant, both by design and construct, to provide the opportunity for the developed countries to ‘ratchet’ market access.^{vii} It has so happened that there has not even been marginal increase in the market access to the products of LDCs in the market of the developed countries, but the latter’s markets are flooded by the imports from the richer nations. This phenomenon of one-sided market opening has created a havoc in the economies of the LDCs. How have they created havoc require some explanations, which are provided below:

The tariff reduction drama

Due to the various rounds of trade negotiations held under the GATT, tariff level had already come down drastically and they were already too low in all developed countries and most developing countries. For example the average tariff rate in Quad bloc (USA, Canada, EU and Japan) at present is between 3.7 and 7.1%. However, due to four different types of tariff distorting practices adopted by the developed countries, the market access opportunities of the LDCs, especially in the agricultural products, have not increased. They are dirty tariff, tariff peak, tariff escalation and tariff dispersion.

Dirty tariffication is a practice followed by the developed countries to protect their ‘sensitive’ agricultural products’ market from being taken over by the developing countries’ exporters. This was done by converting non-tariff barriers (such as quota, variable import levies, minimum import prices, discretionary licensing, non-tariff measures maintained through state trading enterprises etc.) in the agricultural products into tariff barriers – through a process known as tariffication as mandated by the Agreement on Agriculture.

What the developed countries actually did in this case was to simply inflate the monetary value of the non-tariff barriers with the sole objective of protecting their agricultural markets for some sensitive products. Examples of some of the so-called sensitive products in which high bound tariffs are prevalent in the Quad bloc include Canada imposing a tariff of 360% on butter, European Union levying a tariff of 213% on beef, Japan imposing 388.1% tariff on wheat products, and USA charging 244.4% duty on sugar. If one compares these figures with the prevailing rate of tariff on these products in most LDCs, one finds that they are between zero and 10 percent in all the above-mentioned cases.

The figures provided above also represent tariff peaks. These are the measures adopted by developed countries to impose an extremely high level of tariff on certain sensitive products, the market access of which is of crucial importance to the LDCs. In UNCTAD parlance, tariff peaks are defined as those tariff rates that are 12 percent ad valorem or above. This is mostly the case with agricultural products as outlined above, but industrial products, in some cases, do have peak tariffs. At present, 12.23% of tariff line of the EU, 9.04% each of Japan and the USA and 6.86% of Canada’s tariff lines face peak tariffs.

Tariff escalation, a practice where an importing country levies higher tariff on the higher stages of production, is a tax on sustained economic growth of the developing countries because it restricts market access for the

processed/manufactured products. For example, the tariff on leather goods is higher than finished leather, which in turn is higher than hides and raw skins. This encourages LDCs to export primary commodities and discourages them from exporting manufactured goods, reserving the more lucrative items for developed countries. Tariff rates for the industrial products in the developed countries, for example, are fixed at 0.8% for raw material import, 2.8% for the semi-manufactured products' import and 6.2% of the finished products' import.

Another obscure practice, which is never used by LDCs, is known as “tariff dispersion”. Through this method, developed countries raise the level of their tariffs on some products, within the bound tariff level, during the seasons in which they have high production of certain farm products thus preventing the entry of the goods from the developing countries and LDCs.

The end-loading of quota

Another example of dishonest implementation of the WTO agreement in the form of delaying tactics is manifested in the implementation of the Agreement on Textile and Clothing. A technical loophole in this Agreement is being exploited to delay the integration of items under the Multi-Fiber Agreement (MFA) into the WTO system. Under the Agreement, importing countries can decide which products to integrate at each of the four stages of integration. However, they have to meet the percentage requirements (16, 17, 18, and 49 percentages at first, second, third and fourth stage respectively).

As the Agreement defines the percentages of integration in volume terms, importing countries (developed countries) have ‘fulfilled’ their obligation by first integrating products that account for higher volumes with lower value. The integration of products for which the developed countries face sharp competition from developing and least-developed countries is delayed until the final stage of integration.

This phenomenon of end-loading has robbed the LDCs of their market access opportunities. This can be seen from the process of actual integration. In the first stage, the mandatory integration of 16 percent of 1990 import volumes was achieved without any restricted item being integrated except for work-gloves by Canada. Also the integration achieved in the second stage (i.e. 1998) does not show any encouraging sign for enhanced market opportunities. By the end of the second stage, 33 per cent of the 1990 import volumes of textile and clothing was integrated into the WTO disciplines. However, it represented only 6.77 per cent of items restricted under the MFA.^{viii}

Special and differential treatment held hostage

The WTO has adopted the principle of special and differential treatment for developing countries. Almost all WTO Agreements contain special provisions for LDCs. As indicated earlier, the Agreement on Establishing the WTO itself contains general provisions in favour of LDCs. In addition, as many as 16 Agreements have special provisions for them. Basically, these provisions allow the LDCs to undertake smaller tariff reduction commitments, and longer time frames to implement market access measures. In some cases, they even exempt the LDC Members from reduction commitments. For instance, the Agreement on Agriculture exempts the LDCs from reduction commitments on domestic support, export subsidies, and market access.

Similarly, the Agreement on Subsidies and Countervailing Measures exempts them from the prohibition on export subsidies. In the area of intellectual property rights, the TRIPS Agreement encourages technology transfer to the LDCs in order to enable them to create a sound and viable technological base. In the same spirit, the General Agreement on Trade in Services (GATS) recognises the particular needs of the LDCs and emphasises the strengthening of their domestic services capacity, efficiency, and competitiveness. It also underlines the need for improvement of their access to distribution channels and information networks as well as the liberalisation of market access conditions in sectors and modes of supply of export interest to them.

Special procedures for the LDCs are laid down also in the Understanding on Rules and Procedures Governing the Settlements of Disputes. This Understanding urges Members to exercise due restraint in raising matters under the dispute settlement procedures when they involve an LDC. This applies also in cases of compensation or authorisation to suspend the application of concessions or other obligations under these procedures.

All these measures adopted in favour of LDCs were meant to provide them opportunity to integrate themselves into the multilateral trading system. In spite of the “special and differential” provisions of GATT 1994, LDCs are being increasingly marginalised. And, the “measures” in favour of LDCs have not been of much help to them. There has been a gap between prescription and practice with regard to non-binding special and differential provisions. There is also a strong case for extending transition periods in areas where developing countries face real difficulties in meeting the deadline for trade policy reform. In fact, a number of measures supposed to have been adopted for the LDCs have remained unimplemented. There are three main reasons for this. Firstly, developed countries have not shown willingness to meet their obligations.

Secondly, the LDCs have remained too weak to implement their part of the programme. And finally, developed countries and multilateral agencies have, by and large, failed to come together to rescue the LDCs.

Food security endangered

One of the fundamental human rights as enshrined in the Universal Declaration of Human Rights and Covenant on Economic, Social and Cultural Rights, i.e., right to food has been put on jeopardy by the provisions of certain agreements of the WTO. They were included in the WTO on the insistence of the transnational corporations (TNCs) of the developed countries. They are: Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement which was designed to protect the interests of the TNCs engaged in manufacturing pharmaceutical and agricultural products; and Agreement on Agriculture (AoA) which was designed to protect the interest of the big agricultural traders.

The provision on patenting of life form mandated by Article 27.3 (b) of TRIPS Agreement has already resulted in bio-piracy of an unimaginable scale from LDCs to the developed countries. Due to this provision, selected agro-chemical giants are monopolising the market for agricultural inputs such as seed and chemicals at the victimisation of the farming communities of the poorer countries. As per Human Development Report 1999 of United Nations Development Programme, top 10 seed companies in the world collectively hold 32 percent market share of the commercial seed production.^{ix} Further, the provision relating to patenting of life form has resulted in seed companies making huge investments in creating sterile seeds by using ‘terminator technology’ so that farmers would not have any choice but to buy the seed from them, that too, at near-monopoly prices.^x

Moreover, the same section of the Agreement also calls for providing protection to the plant varieties either through patent or an effective *sui generis* system. Since the word *sui generis* has not been defined in the GATT, it is subject to various interpretations. But, it is clear that this provision was designed to accord better protection to the breeders than to the farmers. When the rights of the farmers are severely limited, their ability to exercise control over the resources will be heavily restricted. This could invite food security problem not only for the farmers but also for those who depend on the output of these very farmers.

Due to the AoA, which envisages liberalisation of agriculture and reduction of subsidies, the international prices of food products have already gone up. This has resulted in rising of food prices in most net food importing developing

countries, and LDCs. By not treating Agriculture as the special sector of the economy, this agreement assumes that trade is a means to ensure food security. However, excessive reliance on trade as a means of ensuring food security could prove dangerous as manifested by Indonesian Experience in the year 1997-98. When the financial crisis hit the country, 98 million people suffered from some kind of food deficiency or the other because the country’s traders had to pay four to six times higher prices to procure food from outside because of the devaluation of Rupiah.^{xi}

Structural weaknesses

Competitive ability

In the era of global competition brought about by the WTO, it is not sufficient for the companies to be locally competitive – they need to be globally competitive. In order for the companies to become globally competitive, they should possess some competitive advantage such as economies of scale, cutting edge technology, marketing calibre, efficient production and distribution set up or cheap labour. Out of the attributes mentioned above, by way of example, the LDCs do not have comparative advantage in any one of them except for labour. This strength of the LDCs is also likely to come under severe attack because of the pressure from developed countries to include labour standards within the WTO proscenium.

The issue of labour standards is a complicated one. The developed countries are presenting the concept as a human concern. It may not be taken for granted. It is rather a trade concern. For a number of economic reasons, an erosion of trade union power has been leading to considerable deterioration of labour standards in the West itself. For example, while the US does not see it necessary to sign the ILO Convention against the background of the “constitutional guarantees of the rights of workers”, observers feel that it has not been able to comply with some of the ILO’s core labour standards consisting of freedom of association, collective bargaining, freedom from forced labour, non-discrimination, and abolition of child labour.^{xii}

The precarious socio-economic situation and structural weaknesses inherent in the economies of the LDCs relegate these countries to weak competitive position in the current global economic setting.^{xiii} However, without improving the competitive ability of businesses in the LDCs, they will not be able to achieve any significant success in integrating themselves into the multilateral trading system. As UNCTAD LDC Report 1999 succinctly puts it:

Developing and sustaining competitiveness and productive capacities, like all other aspects of development, is a long, difficult and often frustrating process, but one which must be confronted by the Governments of LDCs and their development partners with unwavering resolve in a renewed spirit of solidarity and shared responsibility.^{xiv}

Supply-side constraints

As per UNCTAD's Least Developed Countries 1999 Report, the major elements of structural weaknesses that underlie the poor performance capacities and competitiveness of the LDCs are supply-side constraints, including:

- The lack of linkages within and between productive, services and infrastructural sectors, which limit the potential for specialisation and gains in productivity;
- Insufficiently developed human resources, which lead to a paucity of managerial, entrepreneurial and technical skills;
- Shortcomings in production units related to weak technological capability and adaptive research;
- Deficiencies in the physical infrastructure (e.g., transport, power and storage facilities) and such other support services as telecommunications, financial services and other technical support service institutions, particularly for marketing inputs and outputs; and
- The inability of LDC economies to generate adequate resources for investing in alleviating the above constraints in order to enhance productive capacity. The expected levels of financial and technical support from the international community that were meant to complement domestic resources, have, in turn, not materialised.

Specific infrastructural bottlenecks include transport and communication problems, lack of requisite credit facilities, cumbersome bureaucratic procedures, lack of data on exportable items, and lack of awareness among the business communities of the rules and procedures.

Besides these constraints, the small size of these economies, their disadvantaged geographical locations far away from the major metropolitan centres of international trade and finance place formidable constraints on their integration into WTO system. LDCs suffer from a number of other deficiencies, especially in the area of export promotion. On the face of poor infrastructural services and administrative inefficiencies many countries are creating specially designed export processing zones (EPZs) and providing support services to industries.

The LDCs are also lagging behind in this endeavour. Basically, they lack financial and human resources. On the other hand, access to capital is limited for entrepreneurs. Even if available, the cost of capital is very high. Labour productivity is another major problem. With a generally high degree of politicisation of labour, industrial enterprises in LDCs are losing to their competitors from more advanced countries. It may also be observed that many LDCs often fail to focus on their competitive strength when it comes to promote exports. There is, therefore, a need for rethinking in policy terms. Unless these problems are addressed, the LDCs will not be in a position to integrate them into the multilateral trading system.

Box : 1

Land-lockedness: a major constraint for LDCs

Land-lockedness is a serious problem for one-third of the LDCs. This has constrained both import as well as export activities of these countries. Due to land-lockedness, the ratios of transportation and insurance payment as percentage of total exports of goods and services for these LDCs are exceptionally high. As per UNCTAD, such ratios are as high as 65% in the case of Rwanda; 60% in the case of Malawi; 52% in Chad and 47% in Mali. Asian LDCs are slightly better off with Afghanistan at 35% and Nepal at 13%, but these figures too are high compared to the average percentage of such charges paid for the exports of developed countries, which is only 9%.

Even a supposedly better off country as per the UNCTAD's data is facing severe constraints because of this. For example, in the case of Nepal, the nearest port is Calcutta, which is 600 miles away from the capital city where most economic activities are concentrated. Because of difficult terrain, access to sea through China is virtually impossible. Another sea route for Nepal opens up in Chittgaon port in Bangladesh, for which Indian Territory must be used. An Agreement to this effect was signed with India in 1998. However, due to various problems, this has not been as favourite as the other route for third-country trade. Nonetheless, opening up of this route has facilitated trade between Bangladesh and Nepal. Due to heavy reliance on the Indian port, about 25% additional freight costs have to be borne by the Nepalese exporters vis-à-vis their Indian counterparts.

Sources: Adhikari et. al (2000), p. 50 & www.unctad.org/en/subsites/lfdc

Dependence on single commodity

LDCs have not been able to diversify their domestic production structures, not just to manufactured goods, but even to other primary goods. It renders them

especially vulnerable to international market volatility. The disconcerting fact is that such dependence has hardly changed over nearly 20 years, the period when globalisation was supposed to transform economies all over the world.^{xv} Of the 4162 products exported by LDCs to 30 major trading partners, 127 products account for 90 per cent of the total export trade. On an average, the top three commodities for each LDC account to over 70 per cent of its total exports.^{xvi}

The export concentration ratios (defined as the share of only one item of exports in total export value) have remained high and broadly stable since 1980 for all LDCs, after rising somewhat over the 1980s and coming down slightly thereafter.^{xvii} Several countries very greatly depend on particular primary commodity exports (Table 1). Such concentrations tend to be highest in the sub-Saharan Africa. Out of 14 countries shown in table 1, 12 are Sub-Saharan LDCs and only two are Asian. Because of the prevalence of tariff escalation in the developed countries, these countries are forced to export primary commodities, either agricultural or mineral.

What makes the situation even worse for many of them is that, while such exports (of any single item) may dominate their export basket, they count for relatively little in terms of the international supply, so that they are also unable to influence world prices in a way beneficial to themselves.^{xviii}

Table 1
Countries with high dependence on single commodity export

Commodity	Country	Percent share of total export value
Copper	Zambia	58.3
Cotton	Burkina Faso	56.8
Cotton	Mali	54.9
Cotton	Benin	51.9
Diamonds	Liberia	54.7
Diamonds	DR Congo	50.4
Coffee	Uganda	82.7
Coffee	Rwanda	69.4
Coffee	Ethiopia	63.6
Coffee	Burundi	57.3
Timber	Cambodia	68.7
Timber	Myanmar	46.3
Tobacco	Malawi	65.8
Iron ore	Mauritania	43.7

Source: Chandrasekhar C.P. and Jayati Ghosh (2000), pp. 3-4

Implementation problems

For a variety of reasons, many LDCs have not been able to comply with several WTO provisions. At the time of signing of the UR accord, it was decided to provide certain transitional period for the implementation of some agreement such as TRIPS and TRIMs. However, pointing out the need to extend the transitional period for the LDCs, an UNCTAD report states that such “time bound transitional periods” given to LDCs have serious shortcomings. The report further says:

Because of their limited duration, the transitional periods, have limited impact on capacity creation for trade and production.... Such time bound derogation from obligations also assumes existence of both institutional and resource capacities in LDCs to take maximum advantage of relevant provisions. For most LDCs these capacities don't exist.^{xix}

The LDCs are also required to bring their trade policy regime in line with the WTO rules. This requires new laws, new institutions, and skilled manpower. Even the administrative machinery has to undergo change. In the LDCs, where the salary structure for civil servants is extremely poor, these changes are difficult to implement. This is particularly true in the case of Trade Related Intellectual Property Rights (TRIPS). In many areas of the TRIPS Agreement, many LDCs have only a limited previous experience. This renders the implementation of the Agreement a very costly initiative.

There is a broad recognition that protection of intellectual property rights (IPRs) under the TRIPS Agreements can play a significant role in stimulating health-related research and development in less developed countries. The subject of IPR protection is also associated with the promotion of foreign investment, technology transfer, and joint research programmes focused on the local needs of developing countries and LDCs. However, there are also costs related to IPRs. They are sometimes too heavy for poorer countries to bear. In the health sector, for example, they can have life-or-death consequences. For poor people, access to medicines is largely determined by prices. Obviously, the way in which IPRs are enforced will determine their access to medicines. There is no denying the fact that an IPR regime must create incentives for innovation. It is, however, equally important to secure consumers' interests in the availability of and access to goods protected by the IPR regime.

This has found an eloquent expression in the recent withdrawal of a lawsuit against South Africa by multinational drug companies. They had challenged the South African law that allows the government to import or produce generic

versions of patented drugs in certain circumstances. Key elements, which have been upheld, are generic substitutions - which will bring the costs of medicines down – greater competition in public drugs procurement, drug quality, and the use of medicines.^{xx} It is interesting to note that both WHO and WTO have welcomed the decision. In fact, the TRIPS Agreement leaves considerable room for LDCs to develop their own IPR system in response to the characteristics of their developmental needs. Article 7 of TRIPS allows countries to adopt regulations that ensure a balance between IPR protection and the need for social and economic welfare. The Agreement foresees no single “patent system” for all countries. This underlying principle runs, however, counter to the increasing pressures on developing and least-developed countries to adopt an IPR system that is prescribed to them by the developed countries.

Some of them tend to deny the rights granted to the developing countries by the Agreement. For instance, the US pressure on Argentina to put in place all provisions of TRIPS much ahead of the internationally agreed timelines shows how the benefits of a multilateral agreement could be nullified in designing the framework of bilateral trade negotiations. On the other hand, there is a growing concern that over-emphasis on IPR protection may lead to a proliferation of poor quality IPR instruments that promote litigation and stifle innovation. Referring to the American case, James Gleick argues, for example, that “the patent system is in crisis....The (US) patent office has grown entangled in philosophical confusion of its own making; it has become a ferocious generator of litigation; and many technologists believe that it has begun to choke the very innovation it was meant to nourish”.^{xxi}

It is literally beyond the capacity of the LDCs to implement the TRIPS Agreement in its letter and spirit. For instance, within the deadline of December 31, 1999, more than 70 developing countries had failed to implement this agreement. If developing countries themselves did not have the capacity to implement this agreement within the prescribed deadline, how could LDCs implement the same within deadline prescribed to them by the UR (i.e., December 31, 2005)?

On the other hand, TRIPS is not only a legislation issue. It is a more important issue in terms of looking at the country’s interests in bio-diversity conservation and consumer protection. The conflict between TRIPS and the Convention on Bio-diversity also needs to be resolved. Of course, there is a growing tendency among international agencies to supply ready-to-enact laws to the LDCs. This has eased the work of the country concerned. However, such arrangements heavily erode the capacity of the countries at the receiving end. Policy ownership itself becomes a critical question in this context.

Non-compliance of notification obligations has been yet another noticeable weakness. The WTO system puts great emphasis on transparency, which requires Members to notify the WTO about their trade policy measures. Altogether there are 215 notification obligations. The LDCs have lagged far behind in terms of notification obligation with a poor compliance rate of less than 16 percent.

These problems are being aggravated by new obligations arising from the built-in agenda of the WTO Agreements and the debate over the inclusion of “new issues” (e.g. environment, investment, competition policy, labour, and government procurement) in the WTO framework.

Digital exclusion

In the era of globalisation, the ICT (information and communication technologies) revolution offers genuine potential, but also raises the risk that a significant portion of the world will lose out.^{xxii} Since LDCs are excluded from the digital global economy, it has created a sharp digital divide in the already divided world. As per the ILO Employment Report 2001, digital divide looms large in the global economy. The report says:

Despite phenomenal growth of ICT the industrialised world and its increasing penetration into developing countries, “vast swathes” of the globe remain “technologically disconnected” from the benefits of the electronic marvels that are revolutionising life, work and communication in the digital era. The report finds that nearly 90% of all Internet users are in the developed countries, with the United States and Canada alone accounting for 57% of the total. In contrast, Internet users in Africa (which is home to 33 LDCs) and the Middle East together account for only 1% of the global Internet users.

The report further highlights the very real constraints facing developing countries in their capacity to join the communications revolution. “Only some countries in East Asia appear to be keeping up with the developed countries in the diffusion of the technological progress,” it adds. Those countries and regions that fail to make the “technological leap” risk not only missing out on the large and growing trade in information and communications technology products, but will be unable to profit from the economic efficiency and productivity gains that derive from these industries, the report says.

Such a development has created, by implication, additional barriers to the LDCs for their integration into the global economy. Overcoming this barrier is not easy, as the access to these technologies will continue to be restricted

because a vast majority of the institutions and individuals cannot afford to buy the technology. For example, an average Bangladeshi has to spend seven years of his salary to buy a personal computer and an average Nepali has to spend six years of his salary to purchase a reasonably good “branded” personal computer. On the other hand, users have to be “empowered” to benefit from the available technologies. Massive programmes on human resource development in this field have to be mounted.

This has created three major problems for the LDCs. Firstly, given the fact that competitiveness is determined by the technological advancement, firms within LDCs are bound to lose out. Secondly, the players from LDCs, both at the individual level and firm level, are increasingly excluded from the knowledge economy, which will again make them less competitive in the global market. Finally, they will not be able to exploit the potential offered by modern means of doing business, such as electronic commerce due to their inaccessibility to ICT.

Efforts made so far and their impact

Integrated Framework

Realising the rapid marginalisation of the LDCs from mainstream trade liberalisation, the Member countries of WTO Agreed on the WTO Plan of Action for the Least Developed Countries, during the Ministerial Conference of WTO in December 1996. In order to provide concrete shape to this idea The Integrated Framework (IF) for Trade-Related Technical Assistance to Least Developed Countries was brought into existence. Six agencies involved in trade and development issues (i.e., the World Bank, IMF, ITC, UNCTAD, UNDP and WTO) agreed to develop and apply it on a case-by-case basis to meet the needs identified by individual LDCs, to assist them to enhance their trade opportunities, to respond to market demands and to better integrate them into the multilateral trading system. The Integrated Framework approach was endorsed by the High-Level Meeting on Integrated Initiatives for LDCs' Trade Development held at WTO in October 1997 and subsequently by all participating organisations. It seeks to increase the benefits that LDCs derive from the trade-related assistance provided by the core agencies and other development partners. This approach is based on being:

- **Demand-driven**, to ensure that trade-related technical assistance activities are demand-driven and meet each LDC's needs effectively;

- **Ownership-oriented**, to enhance each LDC's ownership of trade-related technical assistance programmes; and
- **Resource-efficient**, to enable each agency and other development partners to increase their efficiency and effectiveness in the delivery of trade-related technical assistance.^{xxiii}

The IF approach envisages five steps to be followed in order to achieve its goal. They are: a) country needs assessment; b) integrated response by six agencies; c) Broadening the Integrated Response; d) Round Table Meeting and Multi-Year Country Programme; and e) Implementation and Evaluation.

Each of the six agencies is responsible for agreeing with the government of each LDC concerned, the specific modality and timing of its technical assistance. The concerned LDC bears primary responsibility for coordinating the implementation and monitoring of the Multi-year Country Programme, which is subject to regular review and evaluation by the six core organisations and the LDCs.

However, this initiative has been largely ineffectual. The participants of the Sun City meeting of the LDC trade ministries advisors organised during the run up to the Seattle Ministerial Conference of the WTO have put on record their dissatisfaction with the process. Later, an independent report (WT/LDC/SWG/IF/1) criticised the IF as being ineffectual in meeting its objectives. It says implementation of the framework has suffered from confusion about its activities and goals, including different perceptions between LDCs and donors about the objectives of the framework.

On 6 July 2000 heads of the six agencies met in New York to consider the results of the review. In a joint statement they said the issues raised in the report and its conclusions “made clear the need for strengthening the framework and improving its functioning.” They agreed to support the integration of trade-related technical assistance and capacity building into the national development strategies and plans of LDCs, principally through such instruments as Poverty Reduction Strategy Papers (PRSPs) and United Nations Development Assistance Framework (UNDAF).

The agency heads also agreed to seek “donor support for and voluntary contributions to an Integrated Framework Trust Fund (IFTF) for the purpose of mainstreaming trade and trade-related assistance into development architecture.” The fund will be administered by UNDP.^{xxiv} Nonetheless, of late

there has been some progress in terms of what IF is expected to deliver, thanks to WTO sub-Committee on LDC (Box 2).

Box : 2

LDC Committee breathes life into Integrated Framework

WTO Sub-Committee on Least-Developed Countries (LDCs) played critical role in February this year to provide fresh lease of life to Integrated Framework (IF). In its meeting held on 12 February, WTO Members agreed to adopt a proposal to improve the implementation of the IF. The proposal – which launched a new Pilot Scheme under which the IF will assist LDCs that have demonstrated a clear commitment to “mainstream a trade integration chapter” into their overall development strategies – was reportedly well-received by both LDCs and developing countries. The Pilot Scheme is expected to operate on the basis of a trust fund and on complementary activities by donors.

Money has already been committed to the IF Trust Fund (IFTF) by the British, Dutch, Swedish, and EC governments. Canada and Denmark are waiting for their financial year to progress, but have indicated that funds will be forthcoming. Further funding is expected from Japan and from the IMF and the World Bank.

Central to the new scheme is the devising of a trade integration chapter into LDCs' trade plans. According to the Pilot Scheme proposal, a trade integration chapter would encompass a number of issues. These include, *inter alia*: establishing the link between trade and development on the one hand and poverty reduction on the other; the impact of trade reform on economic growth and development in the country; market access issues; and an assessment of the trade-related capacity requirements of LDCs.

Source: ICTSD (2001)

Recent initiatives of the six core agencies indicate that they want to see trade mainstreamed into country development strategies, especially Poverty Reduction Strategy Papers. The argument is that trade as a growth strategy is yet to be integrated into the development plans and poverty reduction strategies of many LDCs. Although it is logical to argue in this line, such policy shifts undermine the credibility of the system. Further, it erodes self-confidence among LDCs in “indogenising” their own policy regime, including economic development strategies.

It has now become imperative for the LDCs to write a new chapter on “trade integration strategies” in their development plans. The recently adopted Integrated Framework Pilot Scheme requires them to do so. The Pilot Scheme will be implemented (first in three countries) by the World Bank, depending upon a Pilot Phase Work Programme. The implementation will be subject to reviews by donors, LDCs, and also by the Fourth Ministerial Conference of the WTO to be held in Qatar this year.^{xxv}

Trust funds

In accordance with the recommendations of UNCTAD IX, Trust Fund was established in order to facilitate the start-up of new activities of LDCs in the four main areas of the UNCTAD, namely: globalisation and development; international trade in goods and services, and commodity issues; investment, enterprise development and technology; and services infrastructure for development and trade efficiency.

As per the Trust Fund Document it is intended to be used to provide technical cooperation to LDCs, *inter alia*, in the following areas:

- Support for implementing macro-economic reforms, particularly in the areas of trade policy and trade diversification, and financial and fiscal sector reforms, including for the mobilization of public and private resources for development of LDCs;
- Strengthening export supply capacities at the national level, to produce tradable goods and services on a competitive basis;
- Assisting countries in the preparation of projects and programmes in areas which strengthen their supply capacities;
- Providing support for national authorities in the evaluation of existing and new programmes in the areas of trade, investment and services; and
- Providing support to complement national programmes which require rapid agency response and support (e.g. requests for assistance on debt management, WTO accession, etc.).

An important objective of the Fund would be to seek contributions from as many countries and institutions as possible. In particular, the Trust Fund should be seen as a collective endeavour involving all States members of UNCTAD and relevant NGOs.

Further there is an Integrated Framework Trust Fund (IFTF) (see Box 3), which was recently created. During the recent meeting of WTO IF Steering Committee the Chairman announced that five countries and two agencies have contributed a total of US \$ 4.5 million to this fund. The fund is going to be used to start a “pilot phase”, wherein three LDCs would be selected to receive trade-related technical assistance in the areas they request.^{xxvi}

Duty- and quota free access

During the Singapore Ministerial Meeting of the WTO the then Director General of the WTO, Renato Ruggiero, brought in a proposal that developed countries provide duty- and quota free access to the products emanating from LDCs. But the proposal was greeted with opposition from the most powerful country in the world, and consequently, it failed. The issue was in deep sleep for a while, just to wake up for a short moment during the WTO sponsored High Level Ministerial Meeting of the LDCs in October 1997. Then it again went to take a long pause until Seattle Ministerial Meeting when EU said that it was interested in providing duty free and quota free access to “essentially” all products emanating from LDCs, and it wanted all other countries in the quad bloc to follow suit. This approach of the EU continued till the end of UNCTAD X.

When the new trade commissioner Pascal Lamy took over the hot seat, he slightly modified the proposal in September 2000 and announced that EU would be willing to grant duty- and quota-free access to imports from LDCs, with the provision that some sensitive agricultural commodities like sugar, rice and banana will be phased in by the year 2003. This proposal named “Everything but Arms” was initially designed to provide duty free access to all the products from LDCs except for arms and ammunitions.

Before LDCs could breathe a sigh of relief, the proposal met with strong opposition from the EU farm lobby, in particular the sugar industry. An internal study released by EU Farm Commissioner Franz Fischler in December 2000 showed that the impact of the initiative on the farming sector would be greater than originally thought and that the sugar industry might face costs of more than one billion euros.

When the final decision was made, the European Commission decided to extend the originally envisaged three-year transitional period for sugar, rice and bananas to nine years coupled with higher quotas for duty-free access during the transition – causing some critics to re-dub the initiative “Everything but

Farms”. Complete duty-free access for LDCs would then come into force around 2009. Further, there are other in-built protection mechanisms, such as, possibility of imposing safeguard if there is a surge of imports from the LDCs and revoking the preference altogether. These possibilities are likely to play a critical role in making the process highly unpredictable – which will prevent exporters LDCs from making long-term investments with an eye on the European market.

Out of 49 LDCs, 39 LDCs belonging to Africa, Pacific and Caribbean (ACP) have opposed this move due to the possibility of erosion of their preferences in the EU market. Similarly, other developing countries, which have been exporting their products to the EU market in a competitive manner, are likely to see their competitiveness erode due to preferential treatment being accorded to the LDCs as a whole. There is nothing to suggest that these developing countries will not oppose the move.

There has been speculation from many quarters that by showing itself sympathetic to the needs of the world's 49 poorest countries, the EU's EBA initiative could effectively divide developing countries' solidarity in opposition to the launching a new round of trade talks. Extending unrestricted market access to the 49 LDCs could dramatically alter this political impasse.

Whether or not this initiative of the EU will fly at the multilateral forum is yet to be seen, but the decision like this coming just three months prior to the Third UN Conference on LDCs and within the same month of the venue and date for the Fourth Ministerial Meeting of the WTO being decided definitely carry some meaning. While the US is still mute on this issue, Canada and Japan are likely to support this initiative. But so far only one developed country, i.e., New Zealand has announced that it would offer duty free access to all the LDCs products.^{xxvii}

In the final analysis, unless and until technical assistance is provided to the LDCs to remedy their supply side constraints they are not likely to see dramatic improvement in their trade performance. Added to that is the issues of a host of standards imposed by developed countries in the form of non-tariff barriers, which unless lowered down to accommodate the products of export interests to LDCs, there is hardly any possibility for the LDCs to improve their market performance.

Third UN Conference on LDCs – a window of opportunity

In its resolution 52/187 of 18 December 1997, the General Assembly decided to convene the Third United Nations Conference on the LDCs in the year 2001 and set the mandate of the Conference as follows:

- i. To assess the results of the Programme of Action during the 1990s at the country level;
- ii. To review the implementation of international support measures, particularly in the areas of official development assistance, debt, investment and trade; and,
- iii. To consider the formulation and adoption of appropriate national and international policies and measures for sustainable development of the least developed countries and their progressive integration into the world economy.^{xxviii}

The main focus of this Conference will be the Paris Declaration and the Programme of Action for the Least Developed Countries for the 1990s. In this declaration, the international community committed itself to urgent and effective action, based on the principle of shared responsibility and strengthened partnership, to arrest and reverse the deterioration in the socio-economic situation in the Least Developed Countries and to revitalise their growth and development. At the global level, UNCTAD has been entrusted with the focal role of the review, appraisal and follow-up of the implementation of the Programme of Action. The 1990s have been a decade of poverty and marginalisation for LDCs. Despite various political and economic efforts, the LDCs were not able to benefit from unprecedented increase in global prosperity. The goals of the Paris Plan of Action have remained, thus, unrealised. In fact, globalisation has seriously challenged the capacity of LDCs to adjust to a competitive international environment.

Against this background, the Conference would do well to make objective assessments with regard to commitments made in the areas of Official Development Assistance (ODA), debt relief, investment promotion, and international trade. It needs no emphasis that earlier commitments have not been met in these areas. Ironically, ODA has fallen to a record low level in recent years. The problem is getting more complex with the growing debt burden of LDCs and falling commodity prices at the world market. As a result,

poverty alleviation, which has been receiving policy priority in most LDCs and donor agencies, has become a remote possibility, if at all.

This Conference, which is now known as United Nation's Third Conference on the Sustainable Development of LDCs (LDC III), is going to be held in Brussels from 14 to 20 May. Considering the fact that credibility of the multilateral trading system depends on integrating the developing countries, in particular the least developed among them, into the multilateral trading system, emphasis has been placed on paving the way towards achieving this objective. If the world leaders are serious about this, which they should be by now, LDC III is the right venue to pledge their support for the same. It must also be mentioned here that LDCs, which are also landlocked, deserve special attention at this Conference. While the LDC III Conference will provide the moral guidelines for the developed countries leaders, the major decision on this issue will have to be made during the Doha Ministerial Meeting of the WTO. Therefore, the beginning has to be made at the LDC III itself. Otherwise, LDC III will also become yet another talk-fest.

The way forward

The foregoing discussion shows that the WTO system has failed to integrate the LDCs into the multilateral trading system. It is so despite the best intentions of the Uruguay Round negotiators. If, despite all the problems associated with the WTO, many LDCs are still anxious to gain entry into the WTO, it is because the fragility of their economic conditions makes them long for some degree of multilateralism and basic ground rules. With all its weaknesses and secretive processes, the WTO is still a better option for most such countries than overt bilateral control by a particular power, which is the state many of them find themselves in otherwise.

The sustainability of the multilateral trading system depends largely upon the participation of developing countries, LDCs included. Enhancing LDCs' participation in the system is urgent and important. Therefore, the following interventions are required:

Improved market access

Enhanced market access is important in accelerating the integration of LDCs into the multilateral trading system. This has also been acknowledged by UNCTAD Least Developed Countries Report 1999 in the following words: "A number of commodity exports of interest to LDCs continue to face restrictions

in the markets of some of their major trading partners. Some of their exports are subject to tariff escalation and tariff peaks, as well as a number of non-tariff barriers. Although the members of the WTO have acknowledged the particular interests and concerns of LDCs, including the latter's limited capacity to participate the multilateral trading system and derive meaningful benefits from it, much remains to be done in terms of turning market access into a potent force for enhancing development prospects for LDCs.^{xxxix}

As per UNCTAD's observation, tariff peaks and tariff escalation represent two major barriers for the improved market access. Tariff escalation limits the scope for the establishment and promotion of industries higher up in the value chain. Improved access would also involve reduction or even elimination of WTO-inconsistent non-tariff measures being imposed on LDC products. Practical solutions should be worked out also for problems arising from significant distortions and barriers to non-traditional commodity exports and processed agricultural products. The distortive forms of domestic support, including export subsidies, must also come to an end. The proposal to eliminate all tariffs on LDC products needs serious consideration. Market access to LDC exports can be enhanced not only by the developed countries but also by more advanced developing countries, considering the importance of neighbouring and regional markets. As agriculture forms the backbone of LDC economies, these measures need to be implemented with priority in this sector. It may also be mentioned here that commitments with regard to special and differential treatment for LDCs should have a binding effect, and there should be a mechanism for monitoring of the implementation of S&D provisions.

It is also necessary to adopt some flexibility with regard to the rules of origin for products from LDCs. Developed countries could consider a flexible application of origin requirements on a case-by-case basis, or introduce a cumulative criterion for determining the origin of LDC products.

Whatever may be the main motive of bringing in the "Everything but Arms" initiative, the EU has set precedence by trying to help the LDCs gain greater market access. The New Zealand government's proposal to follow suit is exemplary. Though zero tariff access is not the panacea to the problem of LDCs' exclusion from the global trading system, it does help the process of integrating them into multilateral trading system inch forward. Therefore, all other developed countries should unilaterally and unconditionally provide this facility to the LDCs.

Overcoming supply-side constraints

It is important to address the difficulties in LDCs with regard to strengthening the supply-side capability so that available market access opportunities could be effectively utilised. Measures in this area include implementing policy reforms, enhancing human, physical, and institutional capacity, and diversifying export structures. Similarly, achieving greater cooperation between LDCs and international organisations and strengthening competitiveness can reduce the burden of supply-side constraints. Technical assistance focussed on supply-side issues needs to be increased. Solutions have also to be found to the vulnerability of LDC economies in adverse climatic and geographical conditions.

In addition, governments have to provide an enabling environment to foster private sector development. The elements of such an environment include: a reliable physical infrastructure; an efficient and solvent financial system; a transparent legal and regulatory system with effective mechanism for the enforcement of contracts; an effective competition policy that is conducive to the utilisation of investment and trade opportunities; and simplified tax regimes to reduce the levels and multiplicity of taxes in order to encourage compliance.^{xxx}

Greater involvement of the stakeholders

There is a tendency in most of the LDCs governments to view civil society organisations (CSOs) as their competitors and not compatriots. The process of shutting door for the CSOs during the policy formulation process, whether at the local, national, regional or international level is not uncommon in the LDCs. The decision-making is hardly transparent and any process aimed at ensuring better transparency and facilitating inclusive decision-making process are viewed as counterproductive by the government agencies. In such countries, government agencies and politicians tend to feel that they are the 'ex-officio scholars' and believe that they have the 'monopoly of wisdom'. Such attitude has not only hindered the process of involvement of the stakeholders in the decision-making process, but also accentuated the divide between the government agencies and the CSOs.

Just the opposite is true in the case of developed countries. For example, the OECD countries have developed codes for the consultation of the government with the private sector, CSOs and media on each and every major international decision they make.

The private sector and civil society need to be involved in policy formulation and implementation if they are to understand the thrust of the policy reforms, have confidence in them and understand the benefits they stand to derive from them. The involvement of all stakeholders would also provide policy reforms with a strong political base, without which reforms could falter.^{xxx1}

Implementation of the WTO agreements

For a number of reasons, the LDCs have not been able to implement some parts of the WTO Agreements. Their difficulties should be given particular attention. The strategic interests of LDCs in the built-in agenda should be identified and pushed. Provisions of the Agreement on Agriculture constraining food production for domestic consumption in LDCs should also be reviewed. Further, the LDCs should be able to take import control measures in order to improve agricultural production. The limited commitments undertaken by developed countries with regard to transborder movements of labour have not allowed the LDCs to fully benefit from their manpower resources. Developed countries should undertake an effective liberalisation in this area.

The Understanding on Dispute Settlement should encompass the special difficulties of LDCs in seeking a dispute resolution. Justice must not be too expensive for them. In this context, Advisory Centre for WTO Law, which was established in December 1999 during the Seattle Ministerial Meeting, is to be considered as a noble and useful initiative. However, other resourceful countries also need to join the initiative so as to make it more accessible to all the LDCs.

The Balance of Payment (BOP) provision of GATT 1994 should be modified to take account of the structure and nature of reserves and flows in determining whether a country is facing a BOP problem. Further, LDCs should be in a position to exercise flexibility in the choice of measures to control imports in the event of such a problem.

The TRIPS Agreement foresees transfer of technology to LDCs. Operational measures are needed to promote technological innovation as well as technology transfer. Article 27.3 (b) of TRIPS enabling patents in life forms needs to be thoroughly reviewed as provided for in the Article itself. It should be brought in line with the Convention on Biological Diversity. Further, the term “micro organism” used in this Article should be clearly defined.

The WTO rules of origin contain “substantial transformation” as the basis of determination of the origin of a product. In the absence of multilateral rules,

market access is restricted often as a result of unilateral, national, or regional interpretation of the term “substantial transformation”. This should be clearly defined. Further, treatment of products under the Rules of Origin should be adapted to LDC production capabilities.

LDCs should continue to benefit from existing preferential schemes until market access barriers have been dismantled. The preferential scheme under the Lome Convention should also continue. Loss of preferential advantages as a result of the implementation of WTO Agreements should be duly compensated for.

Participation in the WTO processes

In order to achieve meaningful participation of the LDCs, assistance should be provided to them in multilateral trade negotiations. Process of the High Level Meetings should be linked more strongly to trade policy training of LDC officials. The WTO trade policy courses can be expanded and alternative modes of delivery of such courses may be considered. At the same time, scope for establishing training programmes for trainers both in the WTO in respect of WTO-related activities as well as in UNCTAD/ITC in relation to national capacity building should be considered.

Similarly, during the review of the built-in agenda^{xxxii} and one of the most controversial Article of the TRIPS Agreement^{xxxiii} LDCs have largely remained passive. The review of these Agreements or Article are designed to provide the space for the Member countries to propose amendment to them, if required, based on the difficulty in implementation they faced during the period between the Agreement being enforced (the date on which WTO came into being i.e., January 1, 1995) and now. For example, during the Analysis and Information Exchange (AIE) Process initiated by WTO Committee on Agriculture for a period of about 18 months, no LDC member countries of the WTO made any submission. Similarly, during the first phase of the review process of the Agreement on Agriculture, which completed as recently as March 2001, LDCs did not make any substantial contribution.

The dispute settlement body (DSB) of the WTO is a powerful instrument through which LDCs could get their grievances redressed if they are in severe jeopardy due to the action of any trading partner. Because of extremely complicated and legalistic approach taken by DSB, development of top class in-house trade lawyers has become mandatory even for the LDCs. Considering the fact that LDCs too will have to actively use this platform in the future, it is necessary for them to get prepared for the same.

In order to help the weaker nations take advantage of this opportunity, some developing countries have catalysed the establishment of what is known as ‘Advisory Centre for the WTO Law’ with the support from some developed Member countries of the WTO. Further support is required from various countries as international agencies to make this an effective platform.

Integrated Framework for Technical Assistance

The Integrated Framework for Technical Assistance is an important initiative. The outcomes of the High Level Meeting should be fully and faithfully followed up to avoid losing cohesion in the WTO. Round tables in respect of all LDCs should be organised without any delay. They will have to be scheduled in a way that maximises opportunities for participation of relevant officials and experts from capitals. Needs assessments and round table meetings should be published as provided for in the Integrated Framework.

Programmes under the Integrated Framework should be demand-driven. There is also a need for continuing focus on the role of recipient LDCs in identifying needs and taking responsibility to follow through with policy reforms and in ensuring adequate policy coherence. The proposed administrative unit under the Integrated Framework should become operational. The WTO should assume nodal responsibility for this unit. On the other hand, coordinated and well-integrated efforts from the WTO, other international organisations, and bilateral donors are needed to assist the LDCs. There is also the need for more integrated approach to establish country-specific programmes tailored to individual LDCs. Joint efforts need to be continued with other agencies to put “associated experts” at disposition of LDCs. Participation in Integrated Framework need not be limited to the present six agencies.

Further, dialogue may be sought with other multilateral agencies in this regard. Closer work should also be undertaken with United Nations Industrial Development Organisation (UNIDO), United Nations Food and Agriculture Organisation (FAO), World Intellectual Property Organisation (WIPO), International Telecommunication Union (ITU), and the Development Assistance Committee (DAC) of the OECD. It is also important to establish coordination and coherence in the activities of IMF, World Bank, and the WTO. The cooperation with these institutions should focus on macroeconomic problems.

The LDCs should ensure that donors are aware of and involved in national follow-up activities to the High Level Meetings. Bilateral donors should be able to support the process through assistance programmes. In this context, meetings

with private sector donors may continue in round tables or other consultative groups. Technical assistance from the WTO should increase, and it should be financed from WTO’s regular budget. It is also important to avoid duplication and to have proper evaluation of technical assistance activities to better utilise funds made available.

Collective bargaining

The dictum that “united we stand, divided we fall” is particularly valid in the context of LDCs’ participation in the multilateral trading system. Twenty-nine LDCs are already members of the WTO. If they are united and prepare and maintain their collective as well as cohesive stand in the WTO meetings, they can make a lot of difference. Since WTO is a consensus based system and the required number to pass any resolution is 100%, LDCs could play a major role in altering the political balance during the WTO meetings, if not always twisting the decisions in their favour. They can then “trade-in” with one group or the other to gain required concessions.

Unity among the developing countries and LDCs during the Seattle Ministerial Meeting has shown that if they do not bow down to the pressures of economic superpowers, they can make them bend. If the Seattle episode makes for that realisation and helps to provide more unity among the LDCs, then those four days may turn out to have been very fruitful after all.^{xxxiv} One more lesson to be learnt from this episode is that it might be possible for the economic powers to divide some LDCs sometime but not all the LDCs all the time.

The Challenge of Integrating LDCs into the Multilateral Trading System: Coordinating Workshop for Senior Advisors to Ministers of Trade in LDCs too had endorsed the strategy of collective bargaining in furthering the interest of LDCs in a rule-based multilateral trading system and further resolved to establish a working group to be entrusted with the task of the following up on the proposals and issues related to LDCs within the WTO programme.^{xxxv}

Simplified accession process

Of the 49 LDCs only 30 are WTO members. Out of them, only Myanmar was the original GATT contracting party, while 28 LDCs acceded to GATT under Article XXIV through simple declaration and thus also became original members of the WTO. By contrast, the LDCs, which are presently acceding to the WTO, are obliged to undergo a full-fledged and extremely complicated process of accession negotiations under Article XII of the Agreement establishing the WTO.

The acceding LDCs have been frustrated by the discriminatory standards that WTO has been using for new applicants. As a result, none of them outside the WTO has been able to take this important first step for entering the global mainstream. LDCs aspiring to obtain membership of the WTO are, therefore, required to invest considerable amount of time, energy and resources to fulfill the demanding requirements of the Article XII, which they ill afford to do. Even UNCTAD feels that “they should not be required to shoulder a higher level of commitment than those applicable to the LDC members of the WTO.”^{xxxvi} The proposal of the EU in this context is welcome as it provides for a “fast track” accession for the WTO. UNCTAD also says, “in the light of the exceptionally heavy burden that the accession process imposes on the limited human and institutional capacities of LDCs the process might be reviewed in order to reduce the obligations it entails for them, without compromising the transparency and integrity of the WTO multilateral rules and disciplines.”^{xxxvii}

This concern was aptly highlighted in the Sun City Workshop. Acknowledging that acceding LDCs are being required to make more stringent commitments than those previously applied to LDCs the workshop mentioned that they have to negotiate every aspect of membership, including special and differential treatment, and that the whole process is protracted and burdensome. The meeting concluded that a clear and simplified procedure should be established for acceding countries so as to get their membership accepted within a year, and consensus was reached on the fact that LDCs seeking accession should automatically have their status recognised and not be subject to commitments that go beyond those of LDCs member of the WTO.^{xxxviii}

Similarly, the Country Presentation by the Government of Nepal made to the LDC III Conference highlights the importance of having to provide straightforward accession to the LDCs. The presentation states “accession of LDCs that are not yet members of the WTO should be put on a simplified fast track to complete the process. In no case should LDCs be asked to undertake WTO-plus commitments.”^{xxxix}

To sum up, rapid accession of LDCs to the WTO is desirable. As noted earlier, the accession process is long and expensive. Accession process for LDCs should therefore be facilitated and expedited. Serious consideration should be given for instituting a “fast-track” for LDCs in process of accession. And, the terms of accession should be able to ensure rights and obligations comparable to those of current LDC Members. Further, the benefits accruing to LDCs from the WTO measures and decisions should not be denied to acceding LDCs in the meantime. In addition, human and institutional infrastructure should be strengthened to enable the LDCs to deal with heavy burden of accession process.

Policy reforms in LDCs

The GATT/WTO system at its best can only provide a healthy and helpful environment; it is up to the LDCs themselves to implement policies that will enable them to derive benefits from it, while at the same time minimising any losses. Similarly, they themselves have to improve their institutional capacity to identify their trade and development interest in the multilateral trading system.^{xl}

No amount of support from external agencies would be enough unless the LDCs themselves initiate the process of policy reform. In fact, the LDC governments should be proactive in creating an enabling environment for the promotion of trade. This involves adopting macroeconomic policies, including the trade policy, with external orientation. Similarly, the intended shift from primary commodities to manufactured products requires a heavy emphasis on human resource development. Another important aspect of policy reform is the development of technologies that would, among others, be able to cope with the challenges of the TRIPS Agreement.

Finally, keeping in view the vast economic potential of the agricultural sector, modernisation programmes should be launched. Such a measure would increase agricultural output not only for domestic consumption but also for export diversification. Of vital importance is also a policy regime that encourages cooperation and collaboration between reform programmes to ensure that other international agencies do not demand more liberalisation than what LDCs are committed to. In-house discussions and consultations with other stakeholders, including the civil society, can enhance both content and quality of policies in LDCs.

Endnotes

ⁱ www.bangla2000.com

ⁱⁱ WTO Sub-Committee on Least-Developed Countries (2000), Market Access Conditions for Least Developed Countries (WT/LDC/SWG/IF/14).

ⁱⁱⁱ Cf. SUNS (n.d) “LDCs to lose \$ 3 billion from Uruguay Round, says UNCTAD” in South-North Development Monitor (SUNS) No. 3620, Geneva:2

^{iv} Chandrasekhar C.P. and Jayati Ghosh (2000), “WTO and Poor Countries” *CUTS-CITEE Briefing Paper*, Jaipur: 3-4

^v UNCTAD (1999a), *Future Multilateral Trade Negotiations: Handbook for Trade Negotiators for Least Developed Countries*, United Nations, New York and Geneva: viii-ix

^{vi} Evans, Phillip and James Walsh (1995), *The EIU guide to world trade under the WTO*, The Economist Intelligence Unit, London: vii

^{vii} See Chatterjee, Bipul and Raghav Narsalay (1998), *Rachetting Market Access*, CUTS-CITEE Discussion Paper, Jaipur.

^{viii} Ghimire, Hiramani (2000), Integrating the Least-Developed Countries into the Multilateral Trading System: Need for a Bond between Promise and Performance, SAWTEE Briefing Paper No. 1, February 2000, Kathmandu: 5

^{ix} Cf. Shallat, Lezak (2001), Corporate Citizenship in the Global Market: Accountability and the Consumer Perspective, Consumers International, London: 3

^x See generally Adhikari, Ratnakar, Narayan Belbase and Yamuna Ghale (2000), *Seed of Monopoly: Impact on TRIPS Agreement on Nepal*, Forum for Protection of Public Interest (Pro Public) and ActionAid Nepal, Kathmandu.

^{xi} See generally Ghimire, Hiramani and Ratnakar Adhikari (2001), *Agricultural Liberalisation and Its Impact on South Asia*, Discussion Paper, South Asia Watch on Trade, Economics and Environment (SAWTEE), Kathmandu and CUTS Centre for International Trade, Economics and Environment (CUTS-CITEE), Jaipur.

^{xii} See Singh, Ajit and Ann Zammit (2000), *The Global Labour Standard Controversy: Critical Issues for Developing Countries*, The South Centre, Geneva, pp 10-11.

^{xiii} UNCTAD (1999b), *Integrating Least Developed Countries into the Global Economy: Proposal for a Comprehensive New Plan of Action in the Context of the Third WTO Ministerial Conference*, adopted at The Challenge of Integrating LDCs into the Multilateral Trading System: Coordinating

Workshop for Senior Advisors to Ministers of Trade in LDCs, Sun City, South Africa: 21-25 June 1999: 1

^{xiv} UNCTAD (1999c), *The Least Developed Countries Report 1999 Overview*, United Nations, New York and Geneva: 4

^{xv} Chandrasekhar, C.P. and Jayati Ghosh (2000), *above*, note 4: 4

^{xvi} WTO (2000), *above* note 2:5.

^{xvii} Chandrasekhar, C.P. and Jayati Ghosh (2000), *above*, note 4: 3

^{xviii} Chandrasekhar, C.P. and Jayati Ghosh (2000), *above*, note 4: 4

^{xix} Cf. SUNS (n.d), *above*, note 3: 2

^{xx} See The Kathmandu Post, 20 April 2001, Kathmandu and The Wall Street Journal Europe, 20 April 2001, Brussels.

^{xxi} Cited in Correa, Carlos (2000), Integrating Public Health Concerns into Patent Legislation in Developing Countries, the South Centre, Geneva, p. 5.

^{xxii} Cf. UNNGLS (2001), *Go Between*, no. 84, January-February 2001, United Nations Non-government Liaison Service, Geneva: 30

^{xxiii} <http://www.ldcs.org/how.htm>

^{xxiv} UNNGLS (2000), *Go Between*, No. 82, August-September, 2000, United Nations Non-government Liaison Service, Geneva.

^{xxv} WTO (2000), Progress Report on the Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries, Report by the Director (WT/LDC/SWG/IF/17).

^{xxvi} ICTSD (2001) *BRIDGES Weekly Trade News Digest* - Vol. 5, Number 13, 10 April 2001, Geneva.

^{xxvii} The New Zealand Government has decided to grant LDCs duty-free access to their market from 1 July 2001. A press release to this effect states, “the (NZ) government’s decision supports international efforts to improve access for the world’s poorest countries. Globally steep barriers to some imports from LDCs are seen to critically impede their economic development.” See www.mft.govt.nz/help/file/ldcs.html for further details.

^{xxviii} www.unctad.org/en/subsites/ldcs/3-review.htm

^{xxix} UNCTAD (1999b), *above*, note 13: 10

^{xxx} UNCTAD (1999b), *above*, note 13: 6

^{xxx} UNCTAD (1999b), *above*, note 13: 6

^{xxxii} Built-in-agenda includes four agreements, namely, TRIPS, TRIMS, AOA and Services, which were due to come under review within five years for the date of their implementation. They were part of unfinished agenda during the UR. However, their review process has been delayed.

^{xxxiii} Article 27.3 (b), which deals with patenting of life forms and protection of plant varieties through patent or effective *sui generis* (home grown) system.

^{xxxiv} Chandrasekhar, C.P. and Jayati Ghosh (2000), *above*, note 4: 5

^{xxxv} UNCTAD (1999b), *above*, note 13: 3

^{xxxvi} UNCTAD (1999a), *above*, note 2: x

^{xxxvii} UNCTAD (1998), *The Least Developed Countries 1998 Report Overview* by the Secretary General of UNCTAD, United Nations, New York and Geneva: 17

^{xxxviii} UNCTAD (1999b), *above*, note 13: 6-7

^{xxxix} NPC/HMG/N (2000), *Nepal Country Assessment and Programme of Action for 2001-2010, Report prepared for Third United Nations Conference on Least Developed Countries*, National Planning Commission/His Majesty's Government of Nepal, Kathmandu: xvii

^{xl} UNCTAD (1998), *above*, note 37: 26.