

# PR 5411 WTO: What Strategies for the South? 194

10/9/99  
by Yash Tandon

**Yash Tandon is Director of the International South Group Network (ISGN). \***

The world's trade ministers are meeting in Seattle, USA, in November-December 1999 to negotiate on trade matters under the World Trade organization (WTO). The main objective of the South at Seattle should be to identify and insist on applying certain basic principles of fair play and justice in trade negotiations; restore sanity to a system that has become pathological in its dogmatism; and, broadly, provide a vision of a civilized, sensible, world. The South should go to Seattle on a high moral ground. This is the developing countries' first line of defence. If they do not succeed, then their second line of defence should be to deny consensus until their just demands are met, and aim for "damage control".

## Rule-Making in the WTO

The WTO prides itself in bringing about a "rule-based" system. That, in theory, is good. The question is: how are these "rules" made? What principles guide the making of these "rules"? The answer is: NONE. Under the WTO everything is "tradable", everything is negotiable — you get something only if you give something in return. That is how the "rules" are made. This is an extremely dangerous principle. It violates all sense of justice and fair play. It puts inordinate power in the hands of the powerful, and it discriminates against the weak and the defenceless. If the "rule" is defined by the powerful to impose a system of injustice on the weak and the defenceless, as is presently done at the WTO, then that "rule-based" system is not worth the paper on which it is inscribed. It is an immoral system.

What role should the South play in the process of restoring a sense of fairness and justice into rule-making at the WTO? It should insist on making the rule-making at the WTO — and concretely the negotiations at Seattle — informed, guided and nuanced by recognized principles of human rights, justice, fair play, and common sense. These are enshrined in several United Nations resolutions, carefully crafted by wise men and women of our civilization. These recognize, among others, the right to life and the right to development, both of which are threatened by thoughtless liberalization.

## Some fundamental principles for Seattle Unconditional removal of built-in injustices

Horse-trading is in the nature of WTO negotiations. But if one's rights have already been prejudiced even before the horse-trading and bargaining starts, then it does not make sense to "acquire" those rights only on condition that one makes further concessions. It is against all principles of natural justice. Let us take just two examples.

The whole area of subsidies in the Uruguay Round Agreements is a minefield of inequities affecting the developing countries. For example, the sort of subsidies used by industrialized coun-

tries — such as those for research, regional development and environmental adaptation — are non-actionable, in other words, neither countervailing duties nor disputes settlement procedures should be applied to them. Not so for those mostly of interest to developing countries, such as developmental subsidies to encourage diversification or upgrading of industry. This is unconscionable. The South should ensure that subsidies for production and for export needed to protect their food security and for industrialisation and diversification are non-actionable too.

Or take another example. Article XVI of GATS provides for cross-border movement of capital as an essential part of the movement of a service on which a commitment is made. No similar provisions exist on the movement of labour. This is a clear anomaly that needs to be redressed to the satisfaction of the developing countries without them giving any further *quid pro quo*.

These are just two random examples of the 50 or more inequities identified by experts in the multilateral trading system which are prejudicial to developing countries. These should be rectified unconditionally, not by negotiation which would compound the injustice of the system, and make it that much more immoral and illegitimate.

## Revitalize the issue of Special and Differential treatment

This is a recognized principle of equity and fair play in the conduct of civilized international relations, just as good governance and protection of human rights are. It goes against all sense of justice to force a lion and a lamb to negotiate for peace on "equal" terms and conditions. "Equal" relations between unequals reinforces inequality.

For example, Part IV of GATT 1994, which provides for development concerns of the developing countries is more or less the forgotten part of the WTO system. Indeed, the Special and Differential (S&D) "commitments" are not only not honoured but actively undermined, creating "Special and Discriminatory" behaviour on the part of the industrialized countries. For instance, they continue to use escalated tariffs affecting the manufactured exports of developing countries that prejudice these countries' chances of industrialization.

The Uruguay Round Agreements were made more or less above the heads of the countries of the South. The result is that S&D provisions came in an ad hoc manner, often as afterthoughts, and indeed, as a corruption of the principle behind it. Some of these came as negotiated items. But negotiated "concessions" — concessions in which you give something in return for something — are no concessions. Other S&D provisions were related to what were called "transitional" measures, enabling developing countries longer "grace periods" to comply with some of the provisions of the Agreements.

But these "transitional" measures are themselves a corruption of the principle behind S&D treatment, for they imply that after the end of the transitional periods (4 or 10 years as the case may be), the developing countries would "rise" to the level of the industrialized countries and therefore would no longer need S&D Treatment. Evidence, such as that presented in UNDP's Human

Development Reports, indicates that, if anything, the gap between the rich and the poor nations is widening, not narrowing. Hence the idea of "transition" periods by which time the poor will "level up" to the rich is quite absurd; it is a negation of both logic and history, and it counters the very spirit behind the S&D concept. The developing countries need to restore the legitimacy of the principle of S&D treatment (outside of negotiated "concessions" and transition periods) for the weaker members of the international community.

## Keep technical assistance off the Seattle agenda

One of the biggest hoaxes of "development" is the idea of "technical assistance" to developing countries. By this virtual "sleight of hand" issues of substance are turned into "technical" matters. It is as if to say, "agree to this or that provision, and we'll provide you with the necessary technical assistance to enable you to fulfil your commitments." And the underlying issues get obscured or obfuscated.

This is not to discount the value of technical assistance. But it should come in its own time, place and specificity. Only after the substantive matters are satisfactorily resolved should developing countries get into the technicalities of implementation, including such technical assistance that could be negotiated, its different levels, phasing, capacity building, the varying contexts of different countries, and so on.

## Demand fairness in the Disputes Settlement mechanism

No system of governance is legitimate or moral unless it has a judiciary that is independent of those who exercise power in the system. A judiciary should function on the principles of justice and fair play. It should defend laws and rules of governance that are arrived at democratically (not autocratically), and it should protect the weak against the strong.

Measured against these principles of "civilized" behaviour, the Disputes Settlement system of the WTO is a den of inequity. First, it imposes rules that are arrived at by a process of horse-trading and not by a process of democratic governance. As we already saw, the rules are essentially rules of "claws and teeth". Secondly, litigation in the WTO system is extremely expensive. The result is that, whilst there are potentially hundreds of cases the South could bring to the WTO on non-implementation by the developed countries of their obligations to them, they cannot afford to use the Disputes Settlement system of the WTO. Thus the rich get off the hook simply because the developing countries cannot afford the cost of litigation.

In October 1998, some concerned members proposed the setting up of an "Advisory Centre on WTO Law". This would provide legal counselling to primarily developing countries and economies in transition on a reduced cost basis. This is an excellent idea. Beyond the idea of the Centre, however, there are many other aspects of the Understanding on Disputes Settlement that the developing countries should ask to be reviewed, and changed.

## "New" issues need study before inclusion on the negotiating agenda

The WTO regime, based as it is on the Uruguay Agreements which are unfair to developing countries, imposes an unfair system on the developing countries. To bring "new issues" onto the negotiating agenda without remedying the existing injustices of the system is overloading an already heavy burden.

What are the "new" issues? Definitions vary according to who is defining them and for what purpose, but the developing countries should stick to the definition that anything that falls beyond the so-called "built-in agenda" (mainly agriculture and services), matters related to implementation, and those of rectifying the existing asymmetries of the system, constitute "new issues". Thus, the Ministerial Meeting at Singapore introduced four new issues — investment, procurement, competition policy and trade facilitation. Since Singapore three more new issues have been added: environment, electronic commerce, and industrial tariffs. To some extent the environment, in general, has been on the agenda, but specific new issues related to it (such as ecolabelling and Products, Processes and Methods (PPM), are being mooted. And now another new issue, that of Genetically Modified Organisms (GMOs) is hovering in the background.

These open up a vast Pandora's box. To some extent they do present a reality to which the developing countries will have to face, willy-nilly. For example, the reality of E-commerce cannot be put at bay for long; it is a creeping, expanding, inexorable reality. Nonetheless, developing countries should refuse to be dragged into negotiating on issues they do not feel competent to negotiate. Each of these issues is a minefield, with explosive and intrusive implications for their economy and sovereignty.

## Conclusion

Liberalization is a current orthodoxy of international trade. However, some economists have shown empirically and theoretically that there is no necessary correlation between liberalization and growth. In fact, growth has been quite consistent with closed economies such as those of the former USSR and China. Russia is a good example of what happens to a country when force-marched into thoughtless liberalization. So the developing countries must not let themselves be force-marched to further liberalization of trade; they must choose when and how to integrate into the globalized market and on what terms.

**\* The ISGN is a South-South network of peoples' movements and NGOs. It carries out research and advocacy on issues related to development, human rights, gender, the environment, debt and trade. For further information write to: isgn @tri-isys.com or seatini.zw@undp.org**

**-The South Letter**

National Digitization Project

*National Science Foundation*

Institute : National Science Foundation


1. Place of Scanning : Sanje (Private) Ltd, Hokandara

2. Date Scanned : 02/06/2017

3. Name of Digitizing Company : Sanje (Private) Ltd, No 435/16, Kottawa Rd,  
Hokandara North, Arangala, Hokandara

4. Scanning Officer

Name : Angelo Melvin Luwis

Signature : 

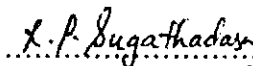
Certification of Scanning

*I hereby certify that the scanning of this document was carried out under my supervision, according to the norms and standards of digital scanning accurately, also keeping with the originality of the original document to be accepted in a court of law.*

Certifying Officer

Designation : Information Officer

Name : Renuka Sugathadasa

Signature : 

Date : 02/06/2017

*"This document/publication was digitized under National Digitization Project of the National Science Foundation, Sri Lanka"*