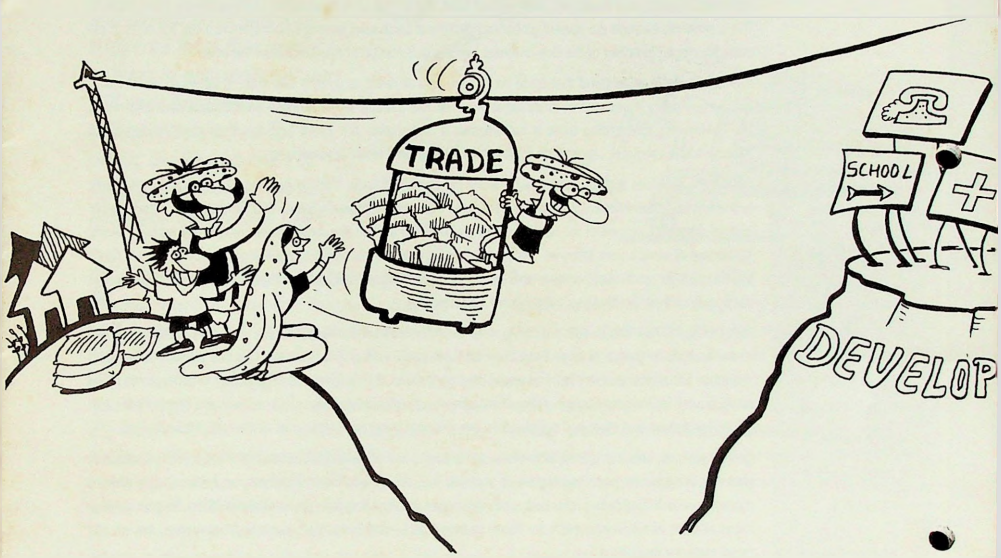
A Quarterly Trade Magazine of Centad

Vol-1 Issue 1 April - June 2005

TRADING UP

Centad
Centre for Trade & Development
An Oxfam GB Initiative



Trading for Development

Inside

Editorial

Trading for Development

Half of the world's population lives on less than US $ 2 a day and one-fourth on less than US $ 1 a day. The past decades have witnessed decline in relative poverty though the absolute numbers below poverty line has increased. One of the important policy tools to reduce poverty is aid. Notwithstanding the significance of aid, it can only play a modest role in poverty reduction. It is important to have a mechanism that develops the productive assets of people. In this regard an important policy tool is trade. Trade has enormous potential to lift millions of people out of poverty. According to an Oxfam study, an increase of 5 percent by developing countries in the share of world exports would generate US $ 350 billion. This is seven times as much as developing countries receive in aid. However, increasing integration of the global economy through international trade has also been accompanied by increasing disparity and inequality. Trade has not been able to live up to its potential of lifting people out of poverty. This is primarily because the present global architecture of trade rules lacks the development focus. The rules of the trade are rigged in favour of the rich countries and are detrimental to the interests of the poor.

It is important to understand that trade on its own cannot result in poverty reduction. It needs to be rooted in appropriate policy framework at multilateral, regional and national levels to make a substantial dent on poverty. The controversy surrounding trade is not whether it is desirable, but about how the multilateral, regional and national trading regimes can operate in ways that support and foster development.

One of the populous regions of the world where the impact of trade is felt on livelihoods and millions of people is South Asia. South Asia has population growing at the rate of almost similar to that for low-income countries in general. About 21 percent of the world's working population lives in this region. South Asia is also home to nearly 40 percent of world's poor living on less than $ 1 a day. Given these realities, the Millennium Development Goals (MDGs) such as eradicating extreme poverty and hunger and developing a global partnership for development is not possible till the South Asian region grows and develops.

Today, in South Asia there exists a growing need to understand the linkages between trade and development and its implications on people at large. The Centre for Trade and Development (Centad) is an innovative, not-for-profit institution initiated and promoted and established by Oxfam GB in response to this need. It is dedicated to make markets work for the poor through policy oriented research and active engagement on trade and development with the policy-makers and other key stakeholders. The principal geographical focus of Centad will be South Asia.

Centad seeks to enhance the abilities of the government and other institutions to make economic globalisation work for the poor by providing access to accurate and timely information analysis, promoting better policies through research, facilitating informed public discourses and building formations of stakeholders for advocacy, on issues of trade and development. I am happy to note that Centad has already published two working papers and many more are in pipeline.

This magazine is a part of the advocacy and capacity building initiatives of Centad. *'Trading Up'* will demystify the issues around trade and development by providing cogent information on different themes related to trade and development.

The first issue of *'Trading Up'* focuses on the India's third Patent Amendment Bill and the G20 alliance. The patent bill has drawn a lot of public glare and apprehensions have been expressed about its impact on public health and availability of medicines to the poor not only in India but for the entire developing world. *'Trading Up'* attempts to elucidate further on these issues through an easy to understand approach. The focus on G20 is important in the wake of its increasingly important role in the ongoing negotiations in the WTO in arguably the most important area i.e. agriculture.

We hope that the readers will find the style simple and the content useful in comprehending aspects of the complex dynamics of trade and development. We would welcome comments on the structure and focus of the magazine. Letters to the editor and short commentaries will be published.

■ Dr. Samar Verma
Regional Policy Advisor
Oxfam GB

Editor: Dr. Samar Verma

Editorial Board:
Robin Koshy and
Prabhash Ranjan

Inspiration for Magazine Name:
Loga Gnanasambanthan

Cartoons: Sharad Sharma,
World Comics

Caricatures: New Concept
Information Systems

The views expressed in the articles and interviews in the magazine are those of the authors, and may not necessarily reflect the views of Centad or Oxfam GB.

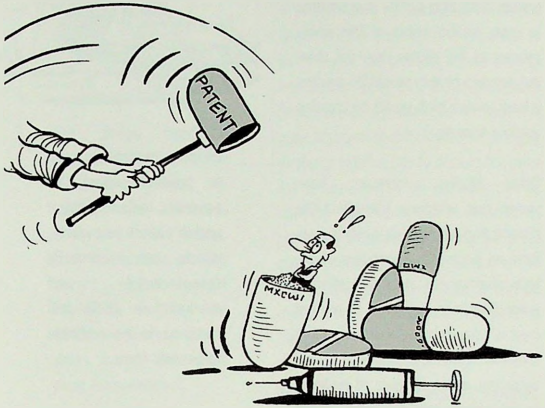
Published by
Centre for Trade & Development
(Centad)
An Oxfam GB Initiative,
(2005)
406, Bhikaiji Cama Bhavan
Bhikaiji Cama Place
New Delhi - 110066
India
Tel: + 91 - 11 - 51459226
Fax: + 91 - 11 - 51459227
Email: centad@centad.org
Web: www.centad.org

Design and printing:
New Concept Information Systems

TRIPping on Drug Prices?

■ S.K.Verma

The Patents (Amendment) Act, 2005 has provided for product patent in all fields of technology, including drugs, pharmaceuticals and chemicals. It has also triggered fears that product patents in pharmaceuticals will spur drug prices, which will adversely affect the public health and most of the drugs would be out of the reach of common man.



As mandated by Article 65 of the TRIPS Agreement, India has recently adopted the Patents (Amendment) Act, 2005 (assented by the President on 4th April 2005), by further amending the Patents Act, 1970. The amended Act has provided for product patent in all fields of technology, including drugs, pharmaceuticals and chemicals. The Act has also dropped Chapter IVA on Exclusive Marketing Rights (EMRs) and mailbox applications, introduced as transitory measure in 1999 by amending the Patents Act, 1970, to comply with the TRIPS obligations under Article 70 (8) and (9). It has triggered fears that the introduction of product patents in pharmaceuticals will spur the drug prices, which will adversely affect the public health and most of the drugs would be out of the reach of common man.

Product Patents and Drug Prices

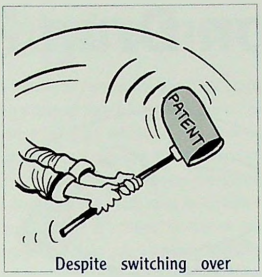
Before the adoption of Patents (Amendment) Act, 2005, drugs, pharmaceuticals and chemicals were subjected to process patents only and were protected for a shorter period (five years from the date of sealing of the patent). It was believed that by doing so, the prices could be kept at reasonable levels. Several studies have shown that patent protection is vastly more important to the pharmaceutical and chemical sectors than to other industrial sectors. This can be attributed to the ease, with which such products can be reversed-engineered. Patent claims to such products are easier to define and consequently infringement is easier to control by patents.

Given that India is a country where a large proportion of the population lives below the poverty line, the availability of medicines at reasonable prices has almost been of utmost importance to policy-makers. However, no serious attempts were made to estimate the quantum of the price-rise and welfare effects on the pharmaceutical sector, once the product patents are introduced. Studies conducted abroad, nevertheless, have thrown interesting issues and put definite numbers on the price changes and consequent welfare losses in India.

A study conducted in the USA in 2003 by a team of economists, based on empirical data on prices and market shares, has concluded that in the absence of any price regulation or compulsory licenses, the total losses to the Indian economy would be greater than the sales of all systemic (oral or injected) antibiotics (which form up to 17 percent of the retail drug sales) in 2000.[1] It has been pointed out that while the prices of patented drugs would definitely rise post-1 January 2005, prices of cheaper off-patent drugs in the same class too would increase when consumers opt for them and availability of drugs would also become an issue. Normally, for customers who cannot access a domestic brand of a drug substitute, there would be another brand. So far, they have been shuttling between the domestic brands because there are more local brands and more Indian companies than foreign. Once product

[1] Available at www.colombia.edu/~sc301/pharmaceutical-patents-2004-01.pdf

patent comes into existence, there will not be any copying (through process patent), and thus there will be loss of flexibility. It is also notable that the foreign firms may not be in a position to cater to the needs of the whole country as the supply may not meet the demand or they would be holding it back to earn high profits by creating artificial scarcity.



Despite switching over to product patent, all products, including those under patent elsewhere, which are currently manufactured and marketed in India will continue to be available in generic form.

Other studies, however, have shown that whatever the effect the introduction of product patents may have on prices, the proportion of the total pharmaceutical market affected is not likely to be more than 11 percent (rest is catered by generics and other forms of medicines). This is of course assuming, in the absence of evidence to the contrary, that a change into the product patent alone will not, in the short run, dramatically change this proportion. The overall picture that emerges by calculating the weighted mean change in prices is a price rise of 52 percent for the entire group of patented drugs, if these drugs are subjected to product patents. The highest changes, excluding acyclovir where elasticity is small, would be in ciprofloxacin and ranitidine, as both these drugs are important in their respective therapeutic groups. In India, price rise is expected above 60 percent in their case. However, where substitutes are available, or where there are existing monopolies, there may not be any price rise at all. It is concluded from these studies that, with the introduction of product patents, the maximum mean change in prices for the entire drug segment would be about 50 percent and only 40 percent of the patentable drug market (which translates to about 4 percent to the total pharmaceutical market) would experience a significant price rise. This is a substantial increase, and high monopolistic prices and the inability of producing new drugs by the domestic industry are expected to be experienced immediately. The newly amended Act has tried to ensure the availability of drugs through the following measures:

- Despite switching over to product patent, all products, including those under patent elsewhere, which are currently manufactured and marketed in India will continue to be available in generic form. The amended Act provides that in the case of mailbox applications, filed before 1 January, 2005 (and after 1 January 1995), the right to a patentee in respect of applications shall accrue from the date of grant of the patent and after a patent is granted, the patent holder shall be entitled to receive reasonable royalty from such enterprises which have made significant investment in producing and marketing the concerned product prior to 1 January 2005 and continue to manufacture the product, on the date of grant of the patent. No infringement proceedings shall be instituted against such enterprises (sec. 11 A).

- Parallel imports of cheap or generic drugs have been allowed by amending section 107A (b), (added in 2002) which provided imports with the authorisation of the patentee to sell or distribute the product in the local market. Now imports are allowed if the importer is 'duly authorised under the law".

- "Ever-greening" of a patent is not allowed, i.e., granting patents for relatively trivial changes. The amended Act provides patents only for new chemical entities. A new form of a known substance, which does not result in the enhancement of the known efficacy of that substance, shall not be eligible for patent (sec. 3(d)).

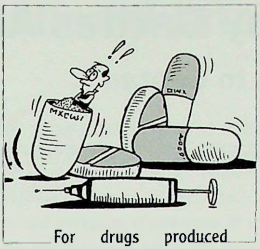
- Scope of patenability has been narrowed down by redefining the term "inventive step" (sec. 2(ja)) and new definitions of "new invention" and "pharmaceutical substances" have been added. The Act, however, does not provide any definition of "biotechnological invention" and "microorganism".

But these measures may not contain the drug prices or meet scarcity or non-availability of drugs. In such a situation, the liberal grant of compulsory licenses along with a strict regime of price-control may be the appropriate steps to be looked into.

India's Readiness to Control Drug Prices and its Compatibility with TRIPS

The amended Act has inserted a new section 92A, primarily to give effect to theTRIPS Council's Decision of August 2003,

adopted in furtherance of Paragraph 6 of the Doha Declaration, 2001, enabling the grant of compulsory licence for export of medicines to countries with insufficient or no manufacturing capacity, to meet emergent public health situations. This section has no relevance for the domestic market, for which other provisions of the Act in Chapter XVI (Ss. 82-94) will be relevant. In cases of extreme urgency or in case of public non-commercial use, compulsory licenses can be issued on notification by the Central Government. The Controller, while granting the compulsory licence has to ensure that the manufactured patented articles shall be available to the public at the lowest prices. As not many persons would be interested in compulsory licenses because of their non-exclusivity and limited duration, to give incentive to a licensee, the Act provides that even when compulsory licence is granted for pre-dominant purpose of supply in Indian market, the licensee may export the patented product as also when licence is granted to remedy a practice determined to be anti-competitive (sec. 90(1)(vii) and (viii)). The compulsory licenses may not be adequate to meet national health emergencies if the drug concerned is new. It would take at least 36-48 months, because the production of a new generic drug requires investment in plant and machinery, as well as bio-equivalence tests and regulatory approval.



For drugs produced outside India, the Government has to depend on overseas data and cost figures. It is feared that product patent regime might result in making the DPCO redundant as it deals mainly with bulk drug formulations.

In order to control prices, there already exists the Drugs (Prices Control) Order, 1995, (DPCO). The Order was passed to curb exorbitant profits in drug transactions and to make drugs available to a common man at affordable prices. Under the Order, the prices of drugs are fixed as per the formula: Retail Price (R.P.) = [Material Cost (M.C.) + Conversion Cost (C.C.) + Cost of Packaging Material (P.M.) + Packaging Charges (P.C.)] x [(1+ Maximum Allowable Post Manufacturing Expenses (MAPE)/100)]+ Excise Duty (E.D.) (sec. 7). However, for drugs produced outside India, the Government has to depend on overseas data and cost figures. It is feared that product patent regime might result in making the DPCO redundant as it deals mainly with bulk drug formulations. Under the Order, the Government is empowered to fix or revise the price of a bulk drug or formulation (sec. 11). Retail price once fixed cannot be changed without the prior approval of the Government. Every dealer or retailer has to display the price list as furnished by the manufacturer or importer at a conspicuous place in its premises. Besides, displaying the price clearly on the label of the container the sale of split quantity of a drug can be charged at a pro-rata price + 5 percent thereof.

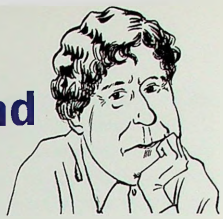
Doubts have been expressed, however, about the compatibility of price control mechanism with the TRIPS Agreement. TheTRIPS does not have any explicit provision on the issue. On the contrary, it provides that the protection and enforcement of Intellectual Property Rights (IPRs) should be "in a manner conducive to social and economic welfare, and to a balance of rights and obligations" (Art. 7). The Members are allowed, while formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development (Art. 8.). These measures may include drug price control as well, and thus their legality cannot be challenged. Control of drug prices by the governments is common even in some of the developed countries, viz., Japan, Spain and Portugal, where compulsory licenses are liberally granted to meet the healthcare needs, including keeping a check on prices. Nevertheless, an effective regulatory body to monitor the prices must be constituted. In the matter of issuing compulsory licenses, a transparent and speedy method needs to be evolved.

Control of drug prices by the governments is common even in some of the developed countries, viz., Japan, Spain and Portugal, where compulsory licenses are liberally granted to meet the healthcare needs, including keeping a check on prices. Nevertheless, an effective regulatory body to monitor the prices must be constituted.

■ S.K.Verma is Professor of Law, University of Delhi and Former Director, Indian Law Institute, New Delhi. She can be contacted at in_sk_verma@yahoo.com

Patents: Many Battles Ahead

James Love Speaks to Centad



Centad: How is the international community looking at the recent Indian Patent Law amendment? Has India's adoption of the product patent regime been a setback to the global campaign of improving the accessibility of medicines to the poor?

James: The initial reaction, looking mostly at the Ordinance that was proposed by the government, was extremely negative. The proposal included a number of provisions that were quite restrictive. The law that was actually passed by the parliament addressed some of these issues, particularly the narrowing of the grounds for patentability, which will reduce ever greening of patents, and the mandatory compulsory license on all mailbox patents that apply to products now being manufactured in India. This will give India a lot of experience with setting remuneration for patents on medicines. Also, according to Article 92 of the Indian law, India can easily issue compulsory licenses on new products, if it wants to. Today, the concern is not so much about the Indian law, but the political will in India to use the compulsory licensing provisions.

Centad: India has emerged as a big exporter of generic medicines to many small countries, especially in Africa and has helped them to fight epidemics and diseases at considerably less cost. Will the switchover to the product patent regime hamper this ability of India, once product patented medicines start entering the Indian market?

James: In the short run, nothing will change. But over time, it will depend upon the willingness of the government to protect its own poor. Novartis says it considers the Indian market to be 50 million people. The government will have to do something to protect the interest of the rest of the population who will not be able to afford medicines sold as a monopoly.

Centad: Will the provision of producing for export under the compulsory licensing regime, as provided in the new patent law, take care of this concern?

James: The Parliament fixed the problems with the export provision. For drugs now in the market, they will be about available for export. The big question will be the new drugs that are not yet manufactured in India. If India protects its own poor, the poor in other countries will also benefit. If India does not protect its poor, other countries will have to look elsewhere for suppliers. India is not the only country that is facing a test of political will. Brazil is yet to issue a compulsory license. Thailand is timid. China has not issued compulsory licenses. There are many countries that are unwilling to use the TRIPS flexibilities. At least India is starting with a large number of compulsory licenses on Mailbox patents, thanks to the amendments.

Centad: Do you envisage the possibility of big multinational pharma companies using the new Indian patent regime towards establishing strong monopoly power in one of the biggest pharmaceutical markets to the detriment of the poor of the world?

James: Of course, that is what the big pharma companies want. They not only want to charge high prices in India, a country they think of as potentially rivaling Canada or the UK as a market, but they want to eliminate India as a source of supply for cheap generics. The future will depend upon the strength of the Indian social movement. Will the poor in India persuade their own government to protect their interests?

Centad: How can civil society organisations focus their campaigns for improving the accessibility of medicines to the poor of the world in the context of the growing reality of product patenting of medicines under TRIPS?

James: The global battles have gone well. The local battles are largely ahead of us. In recent years, Brazil has threatened but not actually issued a compulsory license on a drug patent. China was pressured by the European Union and the USA to forgo compulsory licenses on drug patents in 2003. Thailand needs to move ahead. No member of the Bangui Agreement in West Africa has issued legal compulsory licenses yet. If these countries want cheap sustainable sources of generic medicines, they will have to face up to the need for a transparent and legal framework for generic medicines. One solution may be the creation of a global patent pool for essential medicines. The local social movement could pressure governments to issue compulsory licenses on patent owners who do not voluntary license to the pool, and the global social movements could directly pressure patent owners to license to the pool. By making it a big global project, it might be easier to obtain local action and buy-in.

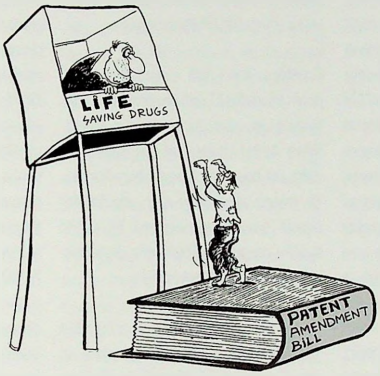
■ James Love is Director of Consumer Project on Technology (CPTech), Washington DC, United States.
http://www.cptech.org

Patently in National Interests?

■ Robin Koshy

If the product patent regime leads to an era where even Indian domestic firms move on to more lucrative segments of the markets, then the repercussions on public health in the developing world could be catastrophic.

In 1977, Donald Smith and his father, Frank Smith, of Orlando, Florida secured the US Patent No. 4,022,227 for a hairstyle that would enable 'patients' with partial baldness to cover their pate by growing hair longer on the sides and combing it over. While the prevalence of this patently unflattering 'combover' style precedes the Smiths' patent, its popularity has remained unabated to this day. The Smiths have, however, failed to garner even a dime through royalty, despite the sanction of the law. An Ig-Nobel Prize for absurd and improbable research in 2004, with no monetary benefits, is the biggest reward they have yet got for their thought.



Not all frivolous patents go unrewarded. When such patents are in the realm of medicines and have a public health implication, then the reward for the patent holder can be at considerable costs to the larger public good. India has been the key protagonist of a long-drawn-out drama, to set in place a national patent regime that provides incentives for research and development (R&D), prevents abuse of patents and protects public interests (public health in particular) while meeting its international obligations under the Trade Related Intellectual Property Rights (TRIPS) Agreement. A stage show, that has had global and national audiences and actors comprising civil society groups, national and multinational pharmaceutical firms, least developed, developing and developed country governments; economists, lawyers and lawmakers.

From a simplistic and narrow pharmaceutical perspective, instituting a patent regime that is compliant with the TRIPS Agreement, required repealing the controversial feature of the Indian Patents Act 1970 that enabled process patents whereby domestic firms could develop generic copies of patented drugs by following a different manufacturing process. This needed to be replaced with a system that allowed product patents with 20-year validity for pharmaceutical products. Successive amendments of the Act in 1999 and 2002, an Ordinance in 2004 and the recent Amendment Bill in March 2005 have all been key milestones on the route to compliance. While campaigners for access to cheaper medicines express disappointment at amendments that exceed the requirements of the TRIPS Agreement, coalition equations and rediscovery of 'national interests' by political parties paved way for a final bill that was not as excessive as it could have been.

Several questions abound about the efficacy and impact of the new law. Is it all good and does it reflect a consensus of national interests, as the government believes? Will it be able to ensure affordable drugs and treatment in a country where the per capita health expenditure was as low as US$ 22 in 1998? Will the current Bill improve access to more effective treatments and drugs for diseases prevalent in India? Can the domestic industry cope with the opportunities and challenges that will arise?

Some Good, Mostly Bad?

Indeed, there are many broad positives in the new bill. Pre-grant opposition that would enable a member of public to challenge a patent application before it is granted has been restored. The process of issuing a compulsory licence (CL), that will enable the government to authorise a third party to produce a patented drug in the event of a national emergency (for example, a plague epidemic) has been sped up. Further, exports to countries

with inadequate manufacturing capacities are also permitted under CL. The bill also provides a measure of immunity to producers of generic versions of drugs that have application pending in the mailbox, from excessive royalty demands and litigation.

However, considerable ambiguities that could dilute the gains persist. Firstly, what can be patented (scope of patentability) under Section 2 of the Bill that accepts 'inventive step' as a feature that involves technological advance, economic significance or both, opens up possibilities for pharmaceutical firms to file patents for marginal improvements on known molecules or by merely citing economic potential. Not specifying pharmaceutical substance as a new 'chemical' entity could allow formulations, isomers and other incrementally modified drugs to be considered as new inventions. If one views the 8926 mailbox applications for patents that the Indian Patent Office received during 1999-2004 against the 274 new chemical entities that the US Federal Drug Administration approved during 1995-2004, it would be naive to conclude that we are in the midst of a pharmaceutical revolution. Evergreening of patents to extend monopoly rights by citing trivial advances, therefore, still remains a possibility.

Secondly, while the Bill allows for public and interested parties to oppose patents before they are granted, it is unclear whether challengers to patent applications will have access to all relevant information. What is clear, however, is that the controller of patents has the final say and contestants will have no room for appeal at the pre-grant stage.

Thirdly, producers of generic versions of new drugs in the mailbox can continue to produce them even after grant of patent, if they were producing them before 1 January 2005. These generic manufacturers who have made 'significant investment' will however, have to pay a 'reasonable royalty'. The subjectivity over 'significant investment' and 'reasonable royalty' opens them for interpretation. Besides, where a web of patents (patent thickets) covers a single pharmaceutical product, the prohibitive cumulative royalty that the generic producer might end up paying could make drugs frightfully expensive.

Fourthly, the Bill stipulates that applications for CL will be considered only three years after the grant of a patent. When better drugs that can save lives exist, the issuance of compulsory licences to ensure availability and affordability should have been weighed by public health concerns, albeit with justifiable royalties to the patent holders.

The Bill assigns considerable discretionary powers to the office of the Controller of Patents in framing rules and in deciding on pre-grant opposition. While such powers might enable faster decision-making process, it is worth debating whether the Patents Office has the requisite management, technical and infrastructural capacity to face up to the challenges that the new Bill brings.

A Consensus through Consultations?

Nevertheless, civil society organisations (CSOs), public health campaigners and the domestic pharmaceutical firms have been celebrating the minor gains that moderated the final Bill significantly from the December 2004 Ordinance. In all fairness, the turn of events that swayed the governments to incorporate some of the TRIPS flexibilities was perhaps more a fallout of realpolitik and political realignments than a willingness on the government's part to listen to civil society and public opinion. This is disconcerting. For one, in a democracy, defining and protecting national interest is not the sole preserve of the government. For all the competence that the government machinery might embody, public sentiments, even if India were insular to the pleas of other developing countries dependent on it for cheap generic drugs, needs to be respected.

Besides, popular opinion was not predominantly in favour of India reneging on its commitments, but to operate within the flexibilities that the TRIPS Agreement and Doha Declaration allowed to ensure access to cheaper medicines and drugs. In a country where public health expenditure was 0.9 percent of the GDP in 2002 (WDR 2004), 97 percent of the private expenditure on health is out of the pockets of patients (WHO, 1998), and less than 50 percent of the population have access to essential drugs or have been immunised (WHO, 1998), public health concerns need to be accommodated sufficiently while defining national interests.

Cheaper Drugs, Better Drugs?

Will the prices of drugs and healthcare rise? Kamal Nath, Union Minister for Commerce and Industry, has tried to allay fears of galloping drug prices by pointing out that 97 percent of the drugs are off patent and none of the drugs on the Essential Medicines List are on patents. Estimates of the value of drugs that would get into the product patent regime vary from US$140 million based on the Minister's figures to US$ 700 million according to the Pharmaceutical Research and Manufacturers Association of America (PhRMA). How much of these estimated values get transferred to the end-customer as a mark-up on price and by when, remains to be seen. India will have to plan ahead to establish a credible and comprehensive mechanism to monitor and enforce affordability

and accessibility of essential medicines, once they come under patents. Canada's Patented Medicines Prices Review Board that exclusively monitors the prices of patented drugs provides a model for emulation.

Will the current Bill improve access to treatment and R&D for new drugs in a largely poor nation with a high incidence of tropical and communicable diseases? Reverse engineering facilitated by the Indian Patents Act 1970 helped create a strong domestic pharmaceutical industry with the capability to develop cheaper generic versions of patented drugs. As a consequence the share of domestic pharmaceutical firms in India increased from 32 percent in 1968 to 77 percent in 2003 (UNCTAD, 2004). Although India accounts for only 1.5 percent of the global pharmaceutical market of US$ 480 billion, it accounts for an estimated 20 percent of the global consumption (Goldman Sachs, 2004). The difference in value and volume would indicate that Indian firms service the high volume–low priced segment of the market.

Domestic Industry to the Fore?

Can the domestic industry shift from being primarily a producer of cheap generics to a developer of proprietary drugs, new drug delivery systems and new chemical entities? India has several advantages. It has 64 United States Federal Drug Authority approved producing plants, the most outside the US. It has cheaper, yet highly skilled labour, low clinical trial and fixed asset costs. (UNCTAD, 2004) Indian firms, such as Ranbaxy and Dr. Reddy's are committed to increasing their R&D expenditure to 10 percent of their revenues from around 7 percent today (Economist, Sept 2003).

However, these advantages have to be put in perspective. Pfizer's global R&D expenditure of US$ 7.1 billion is roughly the size of the entire Indian pharmaceutical industry's domestic and export market. It is estimated that the industry spends up to US$800 million to bring a new molecule to the market (DFID Report "The Effect of Changing Intellectual Property on Pharmaceutical Industry Prospects in India and China", 2004). Even if money can buy more in India, drug development costs are astronomical. Which is perhaps why domestic firms, namely, Ranbaxy, licenses new discoveries to multinational firms for trial and development (Economist, September 2003). So long as this remains a viable strategy, R&D of these companies might focus on drugs that are relevant to the market of the multinational partner. Observers point out that even if R&D expenditure by Indian firms go up, it is likely to focus on areas where they can make quick money – diseases more prevalent in rich countries, such as cancer and diabetes. In 1999, only 16 percent of the R&D expenditure in India was spent on infectious and parasitic diseases prevalent here (DFID, 2004). Product patents will be beneficial to India if it leads to research and development for the supply of new drugs relevant to its disease profile.

For this to happen, Indian firms will have to buck the current trend and invest more in diseases such as AIDS, dengue, malaria and tuberculosis. Current figures are heavily skewed against poor man's diseases. The Commission on Intellectual Property Rights reported in 2002 that firms tend to spend on drugs that have a market potential of around $1 billion per annum or more, which is not often the scenario for drugs meant for developing country markets. Of the 1223 drugs introduced between 1975 and 1996, only 13 were aimed at tropical diseases. Only US$ 400 million of the US$70 billion spent on health research was spent on research on AIDS and malaria in 1998 (Sudip Chaudhari, 2003).

If the product patent regime leads to an era where even Indian domestic firms move on to more lucrative segments of the markets, then the repercussions on public health in the developing world could be catastrophic. Public policy initiatives to address this market failure have to be strengthened. Public-private partnerships, public investment in R&D, providing incentives to private firms for research could be some of the strategies. Bold approaches are also called for. The Institute for OneWorld Health, a US based not-for-profit pharmaceutical company follows an interesting model. It gets owners to donate intellectual property on drugs for diseases with huge public health impact but no market potential (for example, diarrhoea, which kills 2m people a year in developing countries), raises funds from donors and gets researchers to contribute their expertise, mostly for free.

Defining National Interests...

The US Special 301 Report of 2004 states rather unabashedly that the United States will advance its national interests in guaranteeing a higher degree of intellectual property protection through a variety of mechanisms including the negotiation of free trade arrangements and the use of Generalised System of Preferences. If the Indian government were ever to articulate its national interests in such a manner, it would be welcome to see it defining the accessibility and availability of drugs to millions of poor in India and elsewhere as one of the key guiding principles while administering the new patent regime. A patent regime that ensures access to new drugs for diseases prevalent here at affordable prices. And keeps innovative hairstyles and frivolous patents out.

■ Robin Koshy is Programme Officer with Centad. Views are personal. He can be contacted at robin.koshy@centad.org.

G20: The Road Ahead

Celine Charveriat Speaks to Centad

Centad: Today, the G20 has acquired a position in the multilateral trade negotiations that is much stronger than other existing or past coalitions. What makes the G20 different?

Celine: One distinctive feature of the G20 is that this alliance includes the political and economic heavyweights from the developing world. These key countries, especially Brazil, South Africa, India and China have forged an alliance at the highest political level that goes beyond the remit of the World Trade Organisation (WTO). They also seem to share a grand vision, which is to change the "geography of trade" and reduce the dependence of the South on the North.

Centad: The countries in the G20 are of varied nature and have different priorities. For instance, Brazil's interest in agriculture is diametrically different from that of India. How has the G20 been able to remain a cohesive unit in spite of these differences? Are there any apparent fissures that developed countries will try to exploit?

Celine: Any alliance which includes such a large range of members, from middle income agricultural exporters to net food importing least developing countries, is bound to have tensions, which will increase as agricultural talks proceed and details of market access commitments become more specific. But the G20 seems well aware of the need for continued unity to oppose a common front to the continuation of export dumping by developed countries. It is a matter of political necessity if they want to achieve any results in this area.

Centad: Some people argue that the G20 continues to speak in generic terms on different facets of agriculture, in particular, on market access issues of tariff reduction and special safeguard mechanism. Even the New Delhi Declaration does not say anything new. There is a wide divergence between the G20 members on these issues. Do you reckon that the G20 is avoiding the specificities of contentious issues to prevent the possibility of any rift between the countries in the G20?

Celine: There is a time for everything. At this stage of the market access negotiations, which are still blocked by AVEs, the G20 can easily hide its contradictions. But it is crucial that the alliance works on its internal dilemmas on market access so that the G20 can make joint technical proposals on market access when the time comes.

Centad: G20 has predominantly focused on agriculture. However there are indications that the G20 may also focus on issues such as Non Agricultural Market Access (NAMA) and Services. Will expanding the agenda of the G20 weaken the group and its existing position on Agriculture?

Celine: The G20 confirmed in New Delhi that it would not seek to achieve common positions on other issues. A larger mandate would have made it even more difficult if not impossible to reach consensus. However, the G20 is considering progress in other areas to guide its approach to the agricultural negotiations, which will be crucial to its success this year, as big trade offs will occur between agriculture, industry and services negotiations.

Centad: What role will political factors play in deciding the future of the G20? How will the strengthening trilateral axis between India, Brazil and South Africa (IBSA) and the political equations between Brazil and the US affect the G20?

Celine: Political factors will continue to play an important role, as well as progress in other areas such as the reform of the Security Council. What happens to regional integration in the Americas, and most specifically the Free Trade Area of the-Americas (FTAA), will also affect Brazil's strategy. How much and how this will affect the G20 still remains to be seen.

Centad: What should be the agenda of the G20 in the coming days in order to make the ongoing round of negotiations a truly development round?

Celine: To prevent another decade of dumping, the G20 should continue to push for effective reductions in trade domestic support, promote the rapid implementation of the cotton and sugar panels, and oppose any new renegotiation of the blue box by the United States. It should also ensure that market access commitments of developing countries are limited and flexible so that they do not threaten rural livelihoods and food security.

■ Celine Charveriat is Head of OXFAM International's Advocacy Office, Geneva, Switzerland.
http://www.oxfam.org

Key Agricultural Indicators of the G20 Countries, 2001

Compiled by the Centad Team

Country	Total GDP (US $ billion)	Agricultural GDP (US $ billion)	Agricultural GDP as a percent of Total GDP	Total Population (million)	Agricultural Population (million)	Agricultural Population as a percent of total population	Total Exports (US $ million)	Agricultural Exports (US $ million)	Agricultural Exports as a percent of total exports	Agri Imports (US $ million)	Agricultural Balance (US $ million)
Argentina	269	13	4.8	37	4	10.8	26,610	10,989	41.2	1,210	9,779
Bolivia	8	1	12.5	9	4	44.4	1284.8	400	31.1	234	166
Brazil	503	47	9.3	173	27	15.6	58,223	16,060	27.5	3,209	12,851
Chile	66	6	9	15	2	13.3	17,661.4	3,169	17.9	1,063	2,106
Guatemala	20	5	25	12	6	50	2,466	1,294	52.4	806	488
Paraguay	7	1	14.2	6	2	33.3	1,174	772	65.7	295	477
Philippines	71	11	15.4	77	30	47.1	32,664	1,444	4.4	2,429	-985
South Africa	113	4	3.5	44	6	13.6	28,996.7	2,255	7.7	1,217	1,039
Thailand	115	12	10.4	64	31	48.4	63,190	7,423	11.7	2,923	4,500
Indonesia	141	24	17	215	93	43.2	56,320.9	4,368	7.7	4,085	283
China	1,159	177	15.2	1,292	853	66	581,134.6	12,993	2.2	16,393	-3,401
India	477	120	25.1	1,025	545	53.1	44,292.9	5,282	11.9	4,062	1,220
Pakistan	59	15	25.4	145	73	50.3	9,238	1,020	11	1,519	-500
Nigeria	43	15	34.8	117	38	32.4	17,261	324	1.8	1,455	-1,132
Cuba	26	2	7.6	11	2	18.1	1,660.6	753	45.3	738	15
Zimbabwe	9	2	22.2	13	8	61.5	2,000	897	44.8	71	825
Mexico	618	27	4.3	100	23	23	83,000	7,631	9.1	10,830	-3,199
Egypt	98	17	17.3	69	25	36.2	7,068.2	628	8.8	3,222	-2,594
Tanzania	9	4	44.4	36	28	77.7	776.4	410	52	311	99
Venezuela	125	6	4.8	25	2	8	27,409	314	1.1	1,900	-1,585
G20	3936	509	12.9	3485	1802	51.7	1,062,432	78,426	7.3	57,972	20,952

Source:
1. G20 - Statistics, http://www.g-20.mre.gov.br/conteudo/statistics_01.pdf (Visited on 10 March 2005),
2. Compendium of food and agricultural indicators-2004 at http://www.fao.org/es/ess/compendium2004/list.asp (Visited on 10 March 2005)
3. Centad's calculations

Fair Trade: For Better or Worse?

■ Robin Koshy

In 2003, the United States exported 3.8 million tonnes of rice, making it the third largest exporter in the world, trailing only behind Thailand and Vietnam. This is despite the fact that it costs twice as much in the US to grow rice than it does in the other two countries. Such sterling export performance has been aided by the US$ 1.3 billion (72 percent of the total cost) that the American rice farmers got as subsidies in 2003! (Oxfam Briefing Paper 72 : Kicking Down the Door, 2005)

Not all countries can afford to bankroll their way to a comparative advantage in trade, especially when there is none. Certainly, not the developing countries. The dictum of classical economic theory where trade specialisation takes place according to comparative advantages is out of operation in a trading architecture riddled by trade distorting domestic support and high tariff boundaries. Will free trade that removes these distortions especially in developed countries, restore comparative advantages of developing countries in agricultural commodities, increase their export earnings, boost wages of their unskilled labour and stimulate economic growth in general?

Arvind Panagariya of Columbia University, thinks otherwise. His conclusions are born out of the fact that most of the least developed countries (LDCs) are net importers of agricultural commodities – 45 of the 49 LDCs import more food than they export. In his paper, 'Agricultural Liberalisation and the Developing Countries: Debunking the Fallacies' (2004), he contents that if subsidies are removed, the net importers will end up paying more for food. This loss will not be offset, unless they can become sufficiently large net exporters. Cut in rich country subsidies will therefore benefit only big agricultural exporters such as Brazil and Argentina, while most LDCs will be worse off than they were before. Although his arguments are not backed by substantive empirical analyses, some other studies estimate that larger countries will benefit, while smaller countries in the same regions will suffer (for example India will benefit, while the rest of South Asia will lose out). If poor countries emerge as net losers, it could stem their enthusiasm for the Doha Development Agenda and jeopardise liberalisation of trade in future.

Therefore, he argues that the poorest nations are better off with high domestic subsidies in developed countries so long as they get preferential access, while larger developing country exporters are kept out by high tariffs. He cites the European Union's Everything but Arms (EBA) initiative (or more precisely, Everything but Arms, Bananas, Rice and Sugar initiative!), that gives duty and quota free access for LDCS to sell at the high prices prevalent in the EU markets.

William Cline of the Centre for Global Development draws diametrically different conclusions about the impact of trade liberalisation on the basis of his empirical analysis and economic modeling in his book 'Trade Policy and Global Poverty' (2004). He argues that liberalisation of agricultural markets is the most important way to reduce global poverty as three-fourth of the world's poor (living on less than US$2 a day) are in rural areas. Rural poor are more likely to be dependent on farming and any increase in export opportunities will increase their income. The gains of the rural poor will outweigh the losses of the urban poor and there will also be a redistribution of income from cities to villages. Cline estimates that global free trade could increase agricultural prices by 10 percent, hike real wages of unskilled labour in developing countries by 5 percent and boost global economic welfare of developing countries by $90 billion annually. This, he estimates could pull 200 million people out of poverty, or 650 million people, if one factors in capital investment and a longer term period of 10-20 years. Welfare gains are highest from liberalisation of agriculture, followed by textiles and apparels.

The US$90 billion that developing countries could gain will dwarf the US$ 50 billion that developing countries receive as aid. Yet another argument, in favour of freer and fairer trade over aid and preferences. Interestingly, this corroborates Oxfam's calculation in its trade report in 2002 (Rigged Rules, Double Standards) that put the loss to developing countries due to rich country trade restrictions at US100 billion a year. Cline cites evidence that only a sixth of the world's poor live in the net food importing countries and estimates that over 130 million people could be pulled out of poverty in India and China alone. If this were put in the perspective of the global target of halving poverty by 2015, it would reflect significant advances in the two biggest battlefields. Here, one of Pangariya's arguments merits consideration – trade

Continued on page 15

Demystifying TRIPS and Public Health

■ Centad Team

Is the agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) within the World Trade Organisation (WTO) in conflict with public health concerns?

Yes, the TRIPS Agreement is in conflict with public health concerns such as accessibility to medicines. The fundamental idea behind the TRIPS Agreement is that the inventors should be allowed to patent rights in order to foster research and development. People would be encouraged to innovate and invent only if they are assured of protection in terms of having the exclusive right over the invented product or process. This gives the patent holder a monopoly right to reap benefits of his intellectual property. However, such a right over a medicine or a drug may lead to a situation where the patent holder sets the price at such high levels that the medicine is out of the reach of common people. Hence, the conflict between TRIPS Agreement and public health concerns.

What are the flexibilities in the TRIPS Agreement to take care of the public health concerns?

The TRIPS Agreement provides some flexibilities to take care of the public health concerns. The Agreement allows member countries of the WTO to permit non-patent holders to manufacture patented drugs and medicines (compulsory license). It also allows governments to manufacture patented drugs or medicines for public non-commercial purposes without the approval of the patent holder (government use). However, the Agreement states that certain conditions need to be fulfilled while issuing compulsory licenses to safeguard the interests of the patent holder. For instance, an effort must have been made to obtain a voluntary license on reasonable commercial terms. Or, the patent holder should be paid adequate remuneration in each case taking into account the economic value of the license.

About TRIPS Agreement

TRIPS Agreement establishes minimum level of protection that each member country in the WTO has to give to the intellectual property of fellow WTO member countries. The areas covered by the TRIPS Agreement are – Copyright and related rights, Trademarks, including service marks, Geographical Indications, Industrial Designs, Patents, Layout-designs (topographies) of Integrated Circuits, Undisclosed Information, including Trade Secrets.

The Agreement recognises the right of countries to take measures against anti-competitive practices. In cases of anti-competitive practices, the agreement provides more flexible conditions to grant compulsory licenses such as relaxing the condition of paying adequate remuneration.

Do these flexibilities imply that any conflict between the rights of the patent holder under the TRIPS Agreement and public health concerns can be resolved amicably?

In spite of the flexibilities given in the agreement, there are concerns about the conflict that could arise while interpreting the rights of the patent holder and public health concerns. The Doha Declaration on TRIPS and Public Health, adopted at the WTO's Fourth Ministerial Conference in Doha on 14 November 2001, endeavoured to bring about clarity on this issue. This declaration was a major step towards resolving the conflict between TRIPS and Public Health. Following were the important features of the declaration:

- The TRIPS Agreement does not and should not stand in the way of member countries from taking measures to protect public health.
- The TRIPS Agreement must be implemented and interpreted in a manner that supports public health. Hence, any conflict between public health and the rights of the patent holder while interpreting the TRIPS Agreement should be settled in favour of the former.
- Each country is free to determine the grounds on which compulsory licenses can be issued. Any emergency kind of situation is not the prerequisite for issuing compulsory license. Further, on parallel imports, it states that a country's practices in parallel imports cannot be challenged in the dispute settlement system of the WTO.

However, it is important to remember that compulsory licenses come at a price. When a country issues a compulsory license it has to pay 'adequate remuneration' to the patent holder. The Agreement does not specify what 'adequate remuneration' means.

How are the public health concerns of the Least Developed Countries (LDCs) addressed in the TRIPS Agreement?

The TRIPS Agreement addresses the public health concerns of LDCs by providing longer transition periods to comply with the

Continued on page 15

TRIPS and Public Health Jargon

■ Centad Team

Patent

An exclusive right to bar competitors from manufacturing, using, marketing, selling or importing a product invention or an inventive process for a fixed period of time, say, 20 years. For a patent to be granted, the invention must be new, non-obvious and have industrial application. Patent rights are territorial and are generally granted on a national basis. The rationale for patents arises out of the need of the inventor to recoup the costs sunk in research and development (R&D). It also provides incentives for R&D in future.

Patents can be of two types – Product Patent and Process Patent. A product patent grants exclusive rights relating to a product that involve a non-obvious inventive step, whereas, a process patent grants exclusive rights to the means of manufacturing a product.

Generics

A drug that is a bio-equivalent of an original drug that is either on or off patents. It contains the same active ingredient and hence interchangeable with the originator product. United Stated Food and Drug Administration (USFDA), for example, requires a generic drug to be the same as a branded drug in dosage, safety, strength, quality, mode of working, mode of consumption and usage.

Mailbox

After the TRIPS Agreement came into force 1 January 1995, developing countries like India were allowed a 10-year interim period to establish a national patent regime compliant with the TRIPS Agreement. Since India did not historically have a product patent regime for pharmaceutical products, an interim holding cell for product patent application in this field was received. Therefore, a mailbox was set up under the first amendment of the Indian Patents Act in 1999, at the Indian Patent Office to receive these applications for pharmaceutical product patents. This mailbox was opened after India became TRIPS compliant on 1 January 2005 through the Patent Ordinance issued by the government in December 2005.

Data Exclusivity

Data exclusivity is a measure that prevents the Patent Office (regulatory agency) from using the data in a pharmaceutical innovator's patent registration file for a specific period of time, to assess an application from a generic competitor seeking approval to sell a similar, competing drug.

When a generic application for a drug is made, the Patent Office can eliminate unnecessary animal and human trials of the drug, as it would already have been done for the innovator's drug. The regulators can instead evaluate the application against the data in the innovator's registration file. If a data exclusivity clause is in place, then this evaluation can be done only after the period of data exclusivity is over. If the data exclusivity is for say, five years, then it guarantees the innovator company exclusive control of the market for about eight years as it could take up to three years more for that generic producers to register and market a generic version. Data exclusivity is not data protection as the patent holders files are anyway protected by copyright laws and are never released by the Patent Office to third parties.

Pre-grant and Post-grant Opposition

The Right of a member of public or an interested party to oppose the grant of a patent while it is being processed by the Patent Office. The third Patent Amendment Bill in India has restored pre-grant opposition, although there is no right to appeal at this stage. Pre-grant opposition is useful in weeding out frivolous patents, although the challenger might not have access to adequate information.

Post-grant Opposition grants a similar right to oppose a patent after it has been granted. At the post-grant stage, complete information on the patented product is available, making the challenge more informed. Right of appeal is available at the post-grant stage, although delay in judicial processes can result in a patent holder enjoying a wrongful monopoly. India now has both pre-grant and post-grant opposition.

Compulsory Licence

A compulsory license is a licence granted by the government to use patents and other types of intellectual property to intervene in the market in the event of a market failure – i.e. patented products not being available in right quantities or at affordable prices or in the case of a national emergency (say, a plague epidemic).

Evergreening of Patents

A strategy adopted by pharmaceutical companies to take advantages of loopholes in the definition of what can be patented (scope of patentability) to obtain separate patents for multiple attributes of a single product or by citing marginal improvements in the original product. If the scope of patentability does not specify that patents will be granted only for 'new chemical entity' then pharmaceutical firms can file patent applications for incremental improvements and thereby

extend the exclusivity guarantied by the patent for another 20 years. If a new use of a known drug is also a criteria for grant of patent (say, if aspirin, a medicine for headache can also control high blood pressure), then a patent can be secured for this new application. Evergreening extends the period of exclusivity guaranteed by patent to the drug, thereby blocking out the entry of cheaper generic alternatives into the market.

Patent Thickets

A scenario where several patents cover a single pharmaceutical product. These patents can be for the individual chemical entities that go into the product and could be held by different pharmaceutical firms. A competitor wanting to produce a generic version of the drug will have to negotiate individually with each firm and pay royalty for each entity. The cumulative royalties of all the patents (royalty stacking) will significantly add to the price of the generic drug.

Exclusive Marketing Rights

Issuance of exclusive marketing rights is a transitory arrangement in countries that did not have product patents for pharmaceutical products at the time of the TRIPS Agreement. Suppose, a firm is granted a patent and marketing approval for a pharmaceutical product in a WTO member country, say United States. Then it can be granted the sole authority to sell that product in another country, say India, for a period of five years, provided it gets marketing approval in India as well.

Parallel Imports

Import of a patented drug sold cheaper in another country, without the approval of the patent holder in the domestic country.

Continued from page 12

Fair Trade...

liberalisation has adjustment costs that could impact smaller and poorer countries more. Hence, compensation programmes need to be designed smartly to factor these costs in and prevent these countries from being disenchanted.

However, to cite these adaptation pangs and static losses to net food importing countries as reasons enough to preserve status quo and debunk trade liberalisation where it is needed most, is strange. As strange as the American comparative advantage in rice. Moreover, it cannot be ignored that many LDCs are net food importers today due to pressures from beyond their borders. Rice imports to Haiti, an LDC, increased by 150 percent between 1994 and 2003 after the International Monetary Fund forced it to cut rice tariffs from 35 percent to 3 percent. Ironically, three out of four plates of rice consumed in Haiti today come from the US, much to the impoverishment of Haitian rice farmers.

Panagariya, A., 'Agricultural Liberalisation and the Developing Countries: Debunking the Fallacies'.

Cline, W., 'Trade Policy and Global Poverty' , Centre for Global Development, 2004

Continued from page 13

Demystifying TRIPS...

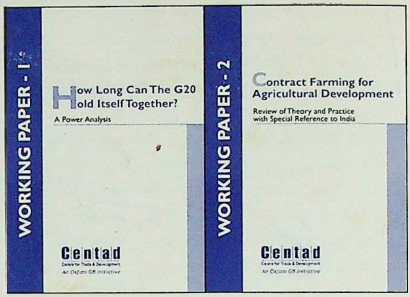
Agreement. The Agreement provides a time period of 10 years from the date of application of agreement to LDCs to apply the provisions of the Agreement. Further, LDCs do not have to comply with provisions related to patenting of pharmaceutical products till 1 January 2016.

LDCs rely on big developing countries (Brazil, India etc.) to meet their domestic demand for generic drugs. However, as these countries switch over to a product patent regime for pharmaceutical products, the imports of these cheap generics can be affected. The 30 August 2003 decision of the General Council of the WTO was addressed towards finding a solution to the problems of availability of cheap generics in these countries and other developing countries that have insufficient or no manufacturing capabilities in pharmaceutical sector. Such countries could notify the TRIPS Council of its intention to use the compulsory licensing regime as an importer. Once such a notification has been made, any country that possesses the manufacturing capability could issue a compulsory license for exports to the notified country.

Do national patent legislations of member countries of the WTO have a role in the debate surrounding TRIPS and public health?

The role of national patent legislation of different countries is very important. Countries in their national patent legislations should make use of the flexibilities given in the TRIPS Agreement and frame their laws in such a manner that gives precedence to public health concerns over the rights of individual patent holder. The Doha declaration clearly states that the TRIPS Agreement is to be implemented and interpreted in a manner that supports public health. National legislations of individual countries should not provide for 'TRIPS plus' obligations (obligations that go beyond the requirements of the TRIPS Agreement) such as granting of compulsory license contingent to an emergency or disallowing the grant of compulsory license within first three years from the date of grant of patent.

About Centad



Established by Oxfam GB, the Centre for Trade and Development is a not-for-profit organisation that seeks to strengthen the ability of governments and communities to make trade and globalisation work for development through policy research, advocacy, and promotion of informed public debates.

The last five to six decades have witnessed an unprecedented growth of global interdependence created by the explosive flow of goods, services, people, capital and ideas across borders. Reduction of barriers, advances in technology and implementation of radical ideas have catalysed this global integration of markets, and mobility of capital and information.

For developing nations to harness the opportunities that trade presents, they need to go beyond debates of whether globalisation can be reversed and whether trade is necessary. More importantly, they need the capacity to protect their interests in multilateral trade engagements, provide logical policy suggestions and build a wide network of stakeholders for dialogue and advocacy.

However, glaring gaps exist in terms of access to relevant information, policy advice based on sound research and the presence of a wide segment of stakeholders who understand trade and can engage in a meaningful dialogue. While the establishment of the World Trade Organisation (WTO) has galvanised civil society action and debates on trade, there is still a need to demystify the arguments around the current processes of trade and development.

For these gaps to be addressed, there is a need to connect and enrich high-level policy research, negotiations and advocacy with experiences of people and their organisations at the grassroots. Centad will attempt to address these gaps by:

- Developing a comprehensive knowledge centre on policy issues related to trade and development and building networks with other such centres across the world.
- Providing well-researched and cogently argued policy advice to governments on the linkages between trade and development.
- Creating a platform for CSOs to share, debate and advocate on relevant and emerging issues of trade and development.
- Building the capacities of CSOs, private sector, trade unions, media, parliamentarians to understand and articulate debates around trade and development.
- Educating the public to demystify the debates around trade and development.

Key Activities

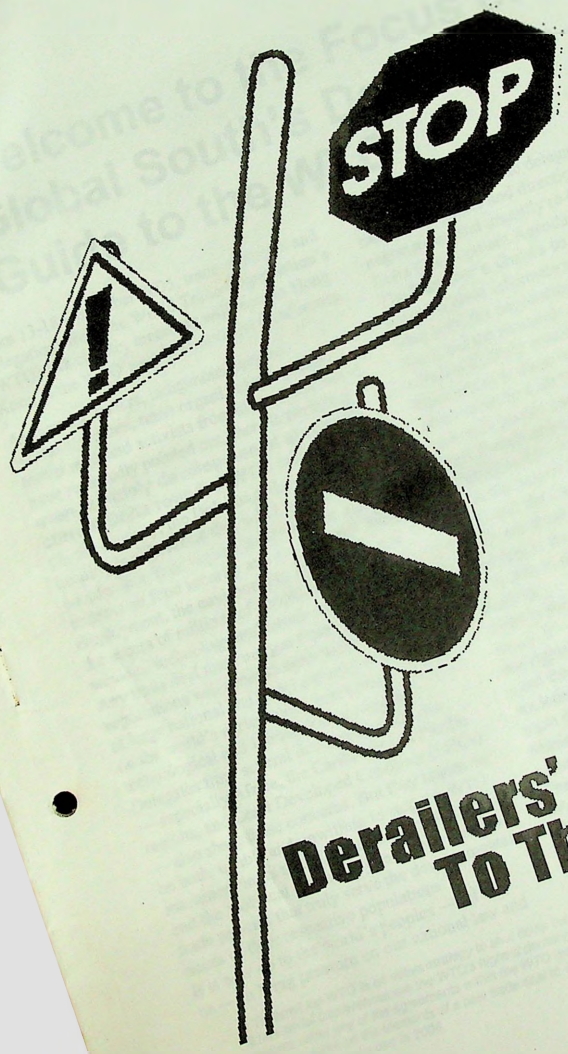
1. Undertake policy-oriented research on trade and development.
2. Publish policy papers and briefing documents.
3. Establish a contributory Trade and Development Report for South Asia.
4. Organise seminars and fora for sharing knowledge and advocating on key policy issues.
5. Engage with policy-makers to advocate and lobby for change at national as well as global levels.
6. Develop a comprehensive, interactive website.

Forthcoming working papers of Centad

Negotiations in NAMA and South Asia: July Agreement and Beyond

Negotiations in Agriculture and South Asia: July Agreement and Beyond

For copies of Centad Working Papers, email:centad@centad.org



The Derailers' Guide To The WTO

Welcome to the Focus on the Global South's Derailer's[1] Guide to the WTO

From 13-18 December 2005, trade ministers and delegations from the World Trade Organisation's (WTO) 148 country members will meet in Hong Kong at the WTO's sixth Ministerial Conference.[2]

As farmers, fishers, indigenous peoples, workers, women, mass organizations, social movements and activists from all over the world have repeatedly pointed out, there is **nothing even remotely developmental about the current Doha round of WTO negotiations**. On the contrary, the Doha negotiations are heading in a direction that will lock the world's peoples in a trade regime that will have disastrous impacts on food security and sovereignty, industry, employment, the environment, livelihoods and the access of millions of people to essential services, technology and health-care.

Any trade deal that emerges from current negotiations will serve to consolidate the control of large national and multi-national corporations on the world's agricultural, industrial, technological and infrastructural capacity.

Delegates from several developing countries — especially Africa, the Caribbean and Pacific regions, and Least Developed Countries (LDCs) — also share these concerns. But they appear to be both, unable and unwilling to stop the WTO machinery in its tracks and to demand the time and the 'political space' they require to fashion trade policies that truly serve the developmental needs of their respective populations.

It is now up to the world's peoples — all of us — to bring pressure on our national law and policy makers and trade delegates to immediately halt the substance and direction of current trade negotiations and urgently re-think the so-called Doha Development Agenda."

The **Derailer's Guide to the WTO** provides basic information about WTO agreements, what is on the negotiating table for Hong Kong and the remainder of the Doha Round which will likely continue through 2006), and the main actors in these negotiations. It also offers ideas about how all those committed to social and economic justice can stalemate, or derail, this latest liberalization offensive through the WTO parading under the guise of "development."

As in the Seattle Ministerial Conference in 1999 and the Cancun Ministerial Conference in 2003, **no deal is better than a bad deal**, and bad deal is the only possible outcome of the direction in which the current negotiations are heading.

Time is short and the issues are urgent and many. If we want to protect our commons, and our rights and capacities to shape development to meet the priorities of our communities and societies, it is imperative that we prevent a new trade deal from being reached in the Hong Kong Ministerial Conference and subsequent negotiations.

That is, we need to DERAIL THE WTO!

We hope that you will find this DERAILER'S GUIDE TO THE WTO, useful in planning your strategies, actions and mobilizations towards this goal.

1 To derail the WTO is an active strategy to shut down the WTO by preventing consensus in its negotiations.

2 Ministerial Conferences are the WTO's highest decision-making body and are empowered to take decisions on all matters under any of the agreements within the WTO regime. At the Hong Kong Ministerial Conference, delegates are slated to agree on the elements of a new trade deal to enable negotiations in the four year old "Doha Development Round" to be concluded in 2006.

CONTENTS

Printed for limited circulation only by
Rural Volunteers Centre (RVC)
Vill. Akajan –787 059
Via. Silapathar, Dist. Dhemaji,
Assam (India)
rvcassam@gmail.com
ruralvolunteerscentre@yahoo.co.in

Resource & Layout by:
Shakti
shakti_collective@yahoo.com

River Basin Friends
riverbasinfriends@yahoo.co.in

The Derailer's Guide to the WTO: Section 1

The End of an Illusion

WTO Reform, Global Civil Society and The Road To Hong Kong

SUMMARY

The **"July Framework Agreement"** is the last nail in the coffin of the illusion that the WTO can somehow be reformed, either piecemeal or comprehensively, to serve the interests of developing countries. More than ever, the Framework and its aftermath have revealed the WTO to be an iron cage that traps developing countries in a negotiations game that is systematically skewed in favor of the big trading powers of the North.

With even greater intransigence on the part of the trading powers of the North today, as highlighted by their paltry pre-Hong Kong offers in October and November 2005, it is difficult to elaborate any other strategy to protect the interests of the developing countries and global civil society than the one that was developed for Cancun-that is, derailment of the WTO Ministerial.

Essentially, derailment involves zeroing in on the key point of vulnerability of the WTO: its consensus system of decision-making. Concretely, it means working to prevent consensus from emerging in any of the key negotiating areas prior to and during the Sixth Ministerial in Hong Kong.

A strategy of derailment, to be successful, must, in the months leading up to the Sixth Ministerial, articulate lobbying and mass pressure in Geneva with national mass campaigns directed at specific governments, culminating in a coordinated program of mass actions and lobby pressure in Hong Kong and globally on D-day in the middle of December 2005 (13th-18th).

1. SEESAW STRUGGLE

The last few years have seen a seesaw struggle between the World Trade Organization and civil society. In Seattle, big power disagreements, the revolt of the developing countries, and massive civil society mobilization brought down the "bicycle of liberalization", to borrow C. Fred Bergsten's description of the WTO as bicycle which can only remain upright while it is moving forward with its free-trade agenda. (1)

The bicycle was set upright in Doha, when the absence of civil society mobilizations allowed the big trading powers to bamboozle developing countries to sign on to the so-called Doha Development Agenda to expand the ambit of the WTO. Then in Cancun, in September 2003, a better-organized South cum civil society mobilizations inside and outside the Cancun Convention Center, the tragic climax of which was the suicide of Korean farmer Lee Kyung Hae, brought the bicycle of liberalization down again.

Our victory was short-lived for the equivalent of a coup was mounted at a General Council meeting in late July 2004 in order to restart the stalled "Doha Round" of trade negotiations on terms favorable to the North. The WTO is upright again and is moving with momentum towards the 6th Ministerial in Hong Kong to be held in mid-December 2005.

Despite the apparent current stumbling blocks in pre-Hong Kong negotiations (for example over tariff reduction formulas, disciplining domestic support and the elimination of export subsidies), there are disturbing signs of convergence. For example, India and Brazil may be further co-opted into meeting the demands of the EU and US in exchange for market access (for Brazil) and concessions on the movement of persons abroad to supply services (Mode 4) (for India). That the WTO is an institution that can be reformed to serve as a vehicle for a more benign kind of globalization is one of the illusions that has been left behind by these developments. The one positive element in the 2001 Doha Declaration-the clear statement that public health concerns take precedence over "intellectual property rights"-was nullified by Big Pharma's successful effort to make well nigh impossible the export of generic life-saving drugs from developing countries with manufacturing capacity to developing countries with none by imposing onerous stipulations on both importers and exporters

So unacceptable and cumbersome were the conditions imposed by the drug companies in the decision adopted in August 2003 that no developing country facing an HIV AIDS emergency took advantage of the temporary waiver from Article 31 (f) of TRIPs provided for by the decision.

That reform is mission impossible was underlined by the Cancun ministerial in September 2003, when the EU and the US provoked the collapse of the ministerial rather than significantly reduce their high levels of support for their agricultural interests or retreat in their effort to expand the WTO's jurisdiction to investment and other economic activities beyond trade. The historic walkout from the Green Room led by African delegates was the only appropriate response to the intransigence of the North.

The so-called July Framework adopted at the WTO General Council meeting in Geneva in the late summer of 2004 is another glaring example of stonewalling by the developed countries. Practically all the key concerns of the South were subordinated to the industrial countries' agenda of defending their high levels of agricultural subsidization, bringing down non-agricultural tariffs, pushing the so-called "New Issues" agenda, and pressing developing countries make offers for the liberalization of services. In contrast to more optimistic earlier assessments of the possibilities of advancing developing country interests in the WTO via a strategy of reform, Oxfam International, for instance, bleakly characterized the July Framework as "a minimal agreement that keeps talks and the WTO afloat, but fails to bridge continuing stark disagreements between developing and developed countries, let alone guarantee a pro-development outcome." (2)

Not surprisingly, there is little talk these days about "social clauses," "environmental clauses," measures to institutionalize the priority of public health concerns over patent rights, or agricultural market access reforms as the key demands of an agenda to reform the WTO. In the months leading up to the Cancun meeting, civil society, operating under the principle that no deal is better than a bad deal, eventually coalesced around a strategy of derailing the ministerial. If anything, the prospects of a good deal are even more distant as we move towards Hong Kong. The strategy of derailing the ministerial is even more relevant today.

The July Framework's key agreements illustrate why reform of the WTO is a dead end as a strategy for developing countries and global civil society.

2. THE KEY AGREEMENTS

A) INTRANSIGENCE IN AGRICULTURE

See Section 3, Part 1 of The Derailer's Guide to the WTO for further details)

In Cancun, the firm stand adopted by the Group of 20 and Group of 33 against the demands of the United States and the European Union for more access to their markets while maintaining the high levels of subsidization of American and European agriculture prevented the initiation of negotiations for a new Agreement on Agriculture that would be detrimental to the interests of the South. Also key in frustrating the agenda of the North was the tough stand of four West African cotton producers-Benin, Burkina Faso, Chad, and Mali-who demanded elimination of US cotton subsidies that were ruining their production as well as compensation for their losses.

Yet the "Framework for Establishing Modalities in Agriculture" that emerged out of the late July meeting produced agreements that were clearly detrimental to the developing countries. Since July 2004, there have not been any developments in the offers made by the rich industrialized nations of the north which would address these concerns.

Essentially, the Agricultural Framework:

1) maintains or expands the key mechanisms of "domestic support" or subsidization of EU and US agriculture, the so-called Blue Box and Green Box;

2) creates a new restrictive category-that of "sensitive products"-to hamper market access for developing country products; while

3) makes conditional and non-time bound commitments to eliminate export subsidies; and

4) pays lip service to the developing countries' demands for the designation of "special products" and other forms of special and differential treatment.

The flurry of proposals put forward by the EU and US, in October and November 2005, have made their offers in agriculture conditional on concessions in services and industry. There is little being offered in terms of Special Products or Special Safeguard Mechanisms, and yet there are even greater demands on tariff reductions and market access in developing countries. At the same time, there is still little progress on disciplining the Blue Box, capping the Green Box or firmly eliminating export subsidies.

The balance of gains and losses is clearly on the side of the trade superpowers of the North, particularly the United States. On top of this, developed countries rejected the demand of the West

African cotton producers that the elimination of cotton subsidies and compensation for damages to their production be treated as a separate, stand-alone item of negotiations. Instead, the issue would be subsumed under the general agricultural negotiations, thus guaranteeing that its resolution would be hostage to progress in these talks. This underlined how eliciting even the slightest concession on an issue that involved such manifest injustice was next to impossible, even if that item had been a central factor contributing to the collapse of the Cancun Ministerial. (3)

(B) RATCHETING UP THE PRESSURE IN SERVICES

(See Section 3, Part 2 of The Derailer's Guide to the WTO for further details)

The Framework Agreement eliminates the room for manoeuvre of developing countries in the negotiations on the General Agreement on Trade in Services (GATS), which were previously pursued on a separate track from the Doha Round negotiations. (5) By formally including them in the Doha Round, thus effectively making them part of the "single undertaking," the Agreement increases the pressure on developing countries to open up their services. Indeed, the text calls for governments to submit initial or revised offers of services to be opened up by May 2005. To date only about 92 developing countries have submitted offers owing to technical difficulties assessing which service sectors to open up owing to great uncertainty as to how liberalization would affect these sectors. (6)

By formally tying the services negotiations to the negotiations in other areas, the Framework allows the EU and US, in particular, to hold the negotiations in agriculture hostage to the services negotiations, and vice versa, by conditioning their "concessions" in one area dependent on their gains in the other.

With 50 per cent of the GDP of developing countries now accounted for by services, access to this market is the dominant concern of the Framework. At stake is the privatization of public services (such as energy and education) and the commons (such as water) by foreign owned multinationals. Under GATS, governments are effectively prevented from exercising national control over these companies and would therefore be unable to regulate prices, ensure universal coverage of services or oversee labour standards. Such policies and practices will be locked by GATS and will not be able to be changed, even where they negatively impact upon the population or the economy.

Under current proposals, any commitments to liberalisation in Mode 4 (presence of natural persons abroad to supply a service) appear to be limited to the temporary movement of skilled professionals. There is also ambiguity and a lack of predictability with respect to the current offers. (7)

Developed countries, led by the European Union (EU), are now proposing a "benchmark" approach to speed up the negotiations. This new approach aims to identify 10 key sectors in the GATS, from which developing countries will be asked to choose 6-7 sectors in which they must make minimum commitments on. This process, known as benchmarking, would remove any flexibilities under the existing request-offer model, and enforce the reduction of tariffs on commercially sensitive industries vital for development.

This accelerated and binding process may be the death knell for public services.

(C) NON-AGRICULTURAL MARKET ACCESS AND THE SPECTER OF DE-INDUSTRIALIZATION

(See Section 3, Part 3 of The Derailer's Guide to the WTO for further details)

The give-no-quarter posture of the trade superpowers was evident as well on the issue of market access for non-agricultural commodities ("non-agricultural market access" or NAMA).

The agreement on NAMA, and subsequent proposals by the US and EU, are based on the so called "Derbez Text" floated during the Cancun ministerial (named after the Mexican Secretary for Foreign Affairs Luis Derbez, who was chairing the ministerial), which was rejected by many developing countries.

The key reasons for the rejection were a nonlinear formula for tariff reduction, sectoral negotiations, and weak special and differential treatment. The non-linear formula, notes UNCTAD, would require "deeper cuts for higher tariffs," so that it "would result in greater tariff cuts for many developing countries because they generally maintain higher bound tariff structures." (4) This would be contrary to the provision of "less than full reciprocity" for developing countries under the principle of Special and Differential Treatment. Despite this concern, the July Framework provides for continuation of work on a non-linear formula.

Developing countries with already relatively low tariffs on non-agricultural products also expressed concern over the "sectoral initiative" that proposed deep tariff cuts on 100 per cent of all categories of

imported commodities falling under a designated industrial sector such as, for instance, "electrical and electronic products" or "textiles and garments." As UNCTAD has noted, "Many developing countries and LDCs have already liberalized unilaterally, including under structural adjustment programs, and their applied rates are often low. Binding those rates close to applied rates may thus limit their policy space for industrial development purposes." Indeed, deindustrialization, which began under structural adjustment programs, is feared to accelerate under NAMA. On the other hand, the US National Association of Manufacturers saw the July Framework's provisions on NAMA as "a huge accomplishment, and a big win for the WTO, the United States, and the World economy. The really big accomplishment is that all countries have accepted the principle of big tariff cuts and sectoral tariff elimination."

NAMA, together with agriculture (AoA). may be the deal breaker at the WTO in December. There is still a lack of consensus over a number of issues including the tariff reduction formula, the binding of tariffs, the status of the July Framework text and acceptability of the so-called Pakistan compromise. At the same time, there are disturbing signs of convergence as we approach Hong Kong.

3. PLACING THE DEVELOPMENT AGENDA ON THE BACKBURNER

Like the Doha Declaration of 2001, the July Framework and on-going negotiations in the lead up to Hong Kong, give short shrift to the main concerns of developing countries:

Patenting under TRIPS. There are outstanding issues related to the Trade Related Intellectual Property Rights Agreement (TRIPs) such as the revising Article 27.3 (b) to prohibit the patenting of life; the relationship between TRIPs and the Convention on Biodiversity; and the protection of traditional knowledge and folklore. However, there is simply an affirmation in the July Framework to move ahead in the negotiations with no specific goals, except for members to submit new or revised offers by May 2005. Neither are there guidelines to revise TRIPs Article 31 (f) to institutionalize the Doha Declaration's putting public health concerns over intellectual property rights.

Special and Differential Treatment. The institutionalization of Special and Differential Treatment, a key principle of development, remains as distant as ever, with the Framework simply providing for work to continue to outstanding issues. The reason for the lack of movement here is that "developed countries refuse to make Special and Differential Treatment (SDT) operational and effective until the more advanced developing countries are graduated out of SDT. This premise is fundamentally flawed, as all developing countries need special and differential treatment, given widespread poverty and the need to protect infant industries in the developing world. Denying them SDT would amount to kicking away the ladder." (8)

Implementation. Implementation has been a burning issue for most developing countries owing to the cumbersome process and, for many, high costs of making their trade policies, regulations, and laws "WTO -consistent." Yet the July Framework does not mention any implementation issue of significance to the developing countries. In contrast, the only implementation issue explicitly addressed is one that is of concern mainly to the developed countries: the extension of additional protection on geographical indications (GI) on commodities other than wines and spirits.

4. PROCESS: INTIMIDATING AND OUT-MANOEUVERING THE SOUTH

How could such an Agreement come about after Cancun, when the developing countries appeared to have come some way towards altering the balance of power?

The answer is by regaining control of the negotiating process via divide and conquer tactics, unfair negotiating tactics, and, most important, an institutional coup. As Oxfam International saw it, "The [July 2004] Council meeting was... characterized by a non-transparent, non-inclusive process, dominated by big trading powers and characterized by brinkmanship and power play." (9) The lesson: the procedures of the WTO are heavily weighted against the South.

(A) DIVIDING AND NEUTRALIZING THE G20

The G20 formation of big developing countries "broke the monopoly over trade negotiations formerly enjoyed by the US and the EU," according to Brazilian Ambassador Clodoaldo Hugueney during the Mumbai Social Forum in January 2004. The G20 was not alone, however, with the G33, which was formed mainly by smaller agricultural countries, and the G 90, which formed in opposition to the new issues, playing important roles. (10)

Initially, the US response was to pursue a unilateralist course outside the WTO via a dual strategy of sewing up bilateral and multilateral free

trade agreements, while at the same time destroying the G20. (11) By the spring of 2004, however, Washington's two-track strategy was running into trouble. The Free Trade Area of the Americas (FTAA) that it wanted failed to materialize at the ministerial summit in Miami in November 2003, and it also began to realize that bilateral agreements could complement but never substitute for a comprehensive, multilateral free trade framework to promote corporate trade interests. At the same time, the G20, despite the initial defections, held firm.

To get the WTO restarted, Washington, working closely with Brussels, shifted gears. Instead of trying to destroy or undermine the G20, they moved to make its leaders, Brazil and India, a central part of the negotiations in agriculture, which was the key obstacle to any further moves at liberalization. Thus was formed in early April the informal grouping called the Five Interested Parties (FIPS or G5), composed of the US, EU, Australia, Brazil, and India. The ostensible aim of this move was to organize the discussion with close to 100 developing countries by having India and Brazil "represent" them. The FIPS, in short, was intended as some sort of Green Room, except the representation of developing countries in it was far more limited than in the regular Green Room. It was in close consultation with this exclusive grouping that WTO Agriculture Committee Chairman Tim Groser produced the proposed agriculture text of the July Framework.

The US-EU strategy was apparently to bring Brazil and India into the core group of the negotiations, and then accede to these countries' core demands in order to detach them from the rest of the developing countries.

India. The key concern for India was to avoid the socalled "Swiss Formula" for cutting tariffs that would require deeper cuts on its highest agricultural tariffs relative to other tariffs, something on which it saw eye to eye with the European Union. According to one developing country negotiator, India's main focus for the General Council was protecting its tariffs and it was not going to push hard on the issue of eliminating agricultural subsidies so as not to endanger the EU's support for its position on tariffs. (12) Both the EU and India were comfortable with a "Uruguay Round" approach to tariff cuts that would focus on an average cut across all agricultural lines and not "discriminate" against their highest agricultural tariffs. Such a formula, they felt, would allow them to maintain tariff levels that would be high enough for their most protected commodities to survive another round of cuts. There were developing countries, however, for which even a Uruguay Round approach would be too drastic, for example Honduras, Sri Lanka and Indonesia.

Brazil. For Brazil on the other hand, removing agricultural subsidies was its concern, and here it got its way-or thought it did. The final text affirmed the phase-out of export subsidies as well as certain categories of export credits. The big winner with the phase-out of subsidies is said to be Brazil, with some estimates placing its gains as some $10 billion. According to Brazilian Foreign Minister Celso Amorim, the July decision marked the "beginning of the end" of export subsidies. Yet, as noted earlier, the Brazilian "gains" are not secure unless locked in by the modalities of the negotiations. A specific end-date for the elimination of export subsidies will only be clinched in the next phase of discussions. Moreover, even when elimination has supposedly taken place, the EU has been known to replace export subsidies with indirect export subsidies by way of direct payments to farmers under the Green Box. This is, in fact, the intention of the current Common Agricultural Policy (CAP) reform. Furthermore, the framework left untouched the Green Box, which houses up to 70 per cent of US' total subsidies. Even the most optimistic analysts cannot say for certain that overall levels of support from the two agricultural giants will be brought down. In fact, it is predicted that subsidy levels will be maintained if not increased.

It was not that India and Brazil were not sensitive to the demands of other developing countries. In fact, they were given high marks for consulting the different developing country groupings. It was simply that by becoming central actors in the elaboration of the proposed framework, they had put themselves into an impossible situation. And the more meeting their own interests began to diverge from a strategy of promoting the interests of the bulk of the developing countries, the more they trumpeted the claim that the July Agreement on agriculture was a victory for the South. It is testimony to the prestige of India and Brazil among other countries in the South that it was only belatedly, a few weeks after the July Accord, that the reality began to sink in among many developing countries that they had been out-manoeuvered.

With a framework agreement on agriculture—the most decisive negotiating area for most developing countries—in place, the trade superpowers rode the momentum to pressure developing countries into agreements on NAMA, services, trade facilitation and other areas.

(B) WILY NEGOTIATING TACTICS

In addition to veiled threats and power plays, a wily negotiating strategy on the part of the EU and the US was another reason for the developing country setback. The moves of the trade superpowers were calculated to put the developing countries on the defensive. Often, working together in a coordinated fashion, they had the negotiating advantage vis-à-vis a much larger set of countries whose many interests had to be reconciled with much effort into common negotiating positions. One example of the Washington's skillful exploitation of its negotiating advantage was its strategy on the Blue Box in the agricultural talks. To get a new, expanded Blue Box, Washington distracted the developing countries' attention by putting forward the demand that they reduce their *de minimis* domestic supports (that is, the allowable rate of subsidization of their production). Thrown on the defensive, these governments spent so much energy justifying their subsidies that they were only too relieved when the US stepped back to compromise on the issue in return for their agreeing to the expansion of the Blue Box. Similarly, just before the General Council meeting, the European Union suddenly introduced the proposal for "sensitive products" to protect some 20-40 per cent of its products from significant tariff cuts. Worried that the EU might put blocks to their demand for protecting "special products" or commodities essential to their food security, the developing country negotiators acquiesced.

(C) INSTITUTIONAL COUP

But probably the most important process or procedural victory registered by the trade superpowers was to shift the effective locus of decision-making from the ministerial to the General Council -though this was, of course, accomplished with the support of influential governments such as India and Brazil.

After the collapse of the Cancun ministerial, the developed country governments apparently realized that the ministerial, the prime decision-making mechanism of the WTO, is also its key point of vulnerability. The WTO Consensus rule-a process that has been managed by the so-called Quad, composed of the US, EU, Japan, and Canada —works best in smaller, more non-transparent settings. (13) In a larger, more open meeting, it can become a disaster. Ministerials, the trade superpowers realized, invite a debacle for several reasons:

- They attract citizens and citizens' groups, thus subjecting negotiators to popular pressure.
- They ensure the presence of the press, thus forcing the proceedings to be less non-transparent than usual.
- They highlight the contradiction between formal sessions, which are reserved for speechmaking, and informal meetings where the real decisions are made, thus exposing the organization to the charge of being non-transparent and non-democratic.
- They bring representatives of national governments, such as trade ministers and environmental ministers, many of whom are more sensitive than Geneva-based negotiators to popular pressure and are not socialized into the Geneva culture of negotiations.

The interaction of these elements produced the collapse of the third ministerial in Seattle and the fifth ministerial in Cancun, with the role of civil society mobilizations being clearly most decisive in Seattle. The absence of one vital element-civil society mobilizations- in Doha, Qatar, contributed to a manageable, successful ministerial that was a disaster for the developing countries. (14)

Learning from Doha, the trade superpowers, with the acquiescence of influential countries like India and Brazil, manoeuvered to push the General Council, which meets in Geneva, to make the major decisions that traditionally belonged to a ministerial. The Council meeting in Geneva at the height of summer consisted mainly of professional negotiators and other governmental representatives of non-ministerial rank. Indeed, there were said to be only around 40 ministerial level representatives out of 147 present. Equally important, there was but a sprinkling of civil society organizations, and those who were present were prevented from demonstrating by the Swiss police. Many of them were also banned from being present at the WTO proceedings, thus severely restricting their interaction with delegates. In a very real sense, then, the July General Council meeting was an institutional coup, one that could provide a precedent for future decision-making. UNCTAD warns that Hong Kong may be transformed into a 'stocktaking session'. (15)

5. A DERAILMENT STRATEGY FOR HONG KONG

A) NO DEAL IS BETTER THAN A BAD DEAL

The dynamics of the July Framework make it highly unlikely that the developing countries will get a ministerial decision which would serve their interests. The psychological war that was so prominent in the lead-up to the July Agreement is again in motion in the

lead up to Hong Kong. Already, developed country groups have warned that unless the poorer countries make better offers on their services, "Hong Kong will fail." (16) Likewise, at a recent meeting in Mombassa, Kenya, developing country demands for movement on Special and Differential Treatment met with the same response: the more advanced developing countries should be graduated out of SDT. (17) But on 1 November 2005, the G33 appeared to stand firm that SP and SSM must be included with the same level of specificity as the other areas of market access pillar. Also, there is as yet no sign that the EU is prepared in Hong Kong to set a specific date for the ending of export subsidies. (18) At the same time, France is questioning the EU's capacity to negotiate tariff and subsidy reductions on its behalf, and is threatening to veto EU proposals, And the US has reiterated that it is no mood to make concessions on Mode 4 of GATS.(19) The US-EU "psywar," unfortunately, is taking its toll on the South. Instead of standing up to pressure from the North, the G20, in its final declaration after its meeting in New Delhi on the third week of March 2005, stated that an agreement on modalities in the Hong Kong ministerial must be compatible with the July Framework and in line with the Doha Declaration; that negotiations on agriculture must be "intensified to stimulate progress in all other areas of negotiation" (a persistent demand of the EU and US); and that a first "approximation" of modalities must be ready for the General Council meeting in July 2005.

With little chance of getting a conclusion to the Doha Round that would be beneficial to the interests of developing countries, the only viable strategy is to prevent a ministerial agreement that would simply perpetuate the inequities of the current system. In Cancun, the developing countries and civil society ultimately came around to the position that no deal was better than a bad deal. With the July Agreement already serving as a framework for the Hong Kong Ministerial document, a strategy to derail the Ministerial is even more valid today. No deal is better than a bad deal since the only possible deal is one that would further consolidate the underdevelopment, marginalization, and immiseration of the South. In brief, here are some reasons why:

1. The Framework Agreement for Agriculture is nothing but a massive dumping enterprise aimed at developing countries that will exacerbate the massive displacement of small farmers taking place under the current Agreement on Agriculture.
2. NAMA (Non-Agricultural Market Access) is a prescription for the deindustrialization of developing countries, increased unemployment, and bankruptcy of small, medium, and even big national enterprises.
3. The July Framework creates unwarranted pressure on developing countries to open up their services to transnational corporate control.
4. Trade facilitation negotiations are mainly the opening wedge for the other, more threatening new/ Singapore issues (investment, competition policy, government procurement)
5. The July Framework and subsequent negotiations prioritise the agenda of the developed countries and disregards the primary concerns of developing countries, which are special and differential treatment and implementation issues.

(B) NO TO A "STOCK-TAKING MINISTERIAL

If derailing the ministerial is the key strategic objective, then it is important first of all to make sure that the ministerial is a decision-making ministerial and is not converted by the developed countries into a stocktaking exercise whose input would feed in to a General Council Meeting like the July 2004 meeting. This danger must not be underestimated since, as noted earlier, the big trading powers have become paranoid about the way large mobilizations can interact in unmanageable ways with the postures of the developing countries at the height of negotiations.

(C) PREVENTING CONSENSUS

Assuming that the ministerial remains a decision making ministerial, the movement must focus on the key point of vulnerability of the WTO decision-making process: the consensus rule. Concretely, it will mean preventing consensus from emerging either before or during Hong Kong in any of the key negotiating areas. The earlier gridlock can be brought to prevail in the negotiations the better it will be for the developing countries.

6. TAKING STEPS TO DERAIL HONG KONG

Derailing the ministerial will be a complex operation that will involve articulating mass campaigns at the national level and Geneva-based lobbying and mobilization leading up to coordinated lobby work and mass mobilizations in Hong Kong and elsewhere during the mid-December ministerial.

(A) LOBBYING YOUR WTO TRADE DELEGATION

Much of this work can take place by lobbying your WTO trade negotiators based in your capitals or in Geneva.

- Pressure Brazil and India not to take any more unilateral initiatives and to carefully coordinate their moves not only with other members of the G20 but also with other blocs, such as the G33 and the G90. India and Brazil should be pressured to leave FIPS (Five Interested Parties) and put pressure on all parties (e.g., G20 and EU) to dissolve FIPS. To achieve this, other developing countries should be encouraged to openly speak up against FIPS as the main negotiating forum for the agricultural interests of all developing countries. This is rather urgent since the FIP process has resumed following the mini-ministerial in Kenya in early March, with much the same dynamics. As a TIP/IATP update on events in Geneva warns, the process has dangerous implications not only for the agricultural negotiations: "Some sources in Geneva say this type of process-possibly with the addition of a few more key countries-is considered as a possible model for other areas of negotiations, such as NAMA. This approach to negotiations shows the continued tendency for WTO Members to conduct negotiations that claim to be on behalf of everyone, yet only reflect the interests of the biggest powers." (20)
- Pressure the G20 to push a strong collective stand, especially against the Agriculture Framework and NAMA.
- Pressure G33 to strongly protest and resist efforts by the EU to impose the category of sensitive products and expose the lack of real commitment of developed countries to special safeguard mechanisms and special products.
- Pressure G90 especially to stymie negotiations on trade facilitation by portraying this as really an opening wedge for other, more threatening new issues.
- Raise the process and democracy issue strongly by denouncing the General Council as usurping the functions of the Ministerial. Denounce and oppose efforts to make Hong Kong a "stock taking" session rather than a decision-making session.
- Oppose the holding of more "mini-ministerials" and other informal decision-making processes. Justified as necessary to facilitate the negotiation process, WTO mini-ministerials, where a few handpicked countries are invited to attend, are informal processes that have actually been used to undermine the formal decision-making process of the WTO based on majority rule. Not surprisingly, mini-ministerials are often used to reach decisions unfavorable to the South. (21) Already, in 2005, mini-ministerials have been held in Davos, Switzerland, in late January, and Mombassa, Kenya, in early April. A miniministerial on NAMA is slated for Tokyo on April 10 and another for Paris on May 3-4. Also to be opposed are informal group decision-making meetings such as "Senior Officials Meetings" (SOM), one of which will be hosted by Canada in Geneva on April 18-19, where about 30 countries are expected to attend.

This proliferation of informal meetings dominated by the North reveal that as Hong Kong approaches, the decision-making process is becoming more informal and non-transparent to conceal the escalation of pressure on the developing countries to make concessions.

B) NATIONAL MASS CAMPAIGNS

At this level, the priorities should be to:

- Expose the transnational corporate agenda behind the agreement on agriculture (AOA), NAMA, and GATS.
- Concentrate on building up comprehensive national mass campaigns against the July Framework. This will mean getting NGOs working on the WTO to work more closely with trade unions, farmers' groups, and other social movements.
- Create or consolidate lobby work on legislators and trade bodies, and coordinate this with national mass campaigns.
- Coordinate national level lobby work and national mass campaigns with pressure work on government negotiators in Geneva at critical junctures.
- Work closely with media in order to get them to report more critically on WTO processes.

C) HONG KONG, D-DAY, 13-18 DECEMBER 2005

Hong Kong must be seen not as the start but as the culmination of an international process that began months before.

As in Cancun, numbers will make a difference. Thus no effort must be spared to draw thousands of demonstrators from all over the world, but particularly from North and Southeast Asia and from Hong Kong itself. Mobilizing the numbers for Hong Kong must be a central part of the agenda of the national mass campaigns, especially those in Northeast and Southeast Asia. Mass demonstrations should be staged in other parts of the world, along with acts of civil disobedience, and these actions should be synchronized with the Hong Kong actions.

We must prepare not only for demonstrations and teach-ins but also for massive civil disobedience. In this regard, organizers must be prepared to appeal to Hong Kong authorities' rhetoric about respecting individual and civil rights to create maximum space for different varieties of mass action. Drawing from the successful tactics of the Our World is not for Sale (OWINFS) network in Cancun, there must be effective but flexible coordination of lobby strategy within the ministerial, civil protest within the ministerial premises, and mass protests and civil disobedience outside the ministerial meetings.

The Hong Kong People's Alliance on the WTO is the coordinating center for major activities. Broad unitary coordination with tactical flexibility should be the principle of the mass/lobby actions.

7. DON'T FORGET THE SECOND FRONT

While making the Hong Kong ministerial a major objective, we should not lose sight of the fact that the WTO is one of two fronts where the trade superpowers are pursuing their trade liberalization agenda. The other is regional and bilateral agreements such as the Free Trade of the Americas and the US-Thailand Free Trade Agreement. The trend is disturbing. There are 215 regional trade agreements in force today and the number is expected to exceed 300 by 2007. (22) Many of these are North-South RTAs where "negotiations tend to result in deeper market access and higher regulatory standards than negotiations at the multilateral level." (23) Thus even as we focus on the WTO, we must not let down our guard against developed country initiatives to corral developing countries into FTAs and RTAs. At the same time, we should not be fooled into believing that the WTO is more acceptable than FTAs and RTAs because it is a multilateral forum with "universal rules" that every country, big and small, is supposed to comply with. If recent US and EU diplomacy is any indication, FTAs and RTAs are seen as complementary, not contradictory to the WTO, in pushing the interests of the trading powers. The WTO sets an initial level of mandatory liberalization that RTAs can build on for more thoroughgoing liberalization.

8. ALTERNATIVES

Following a derailment strategy will bring up the inevitable question about what the alternative is. Components of an alternative framework could be informed by the following:

- the WTO is a relatively new organization, and world trade functioned pretty well without a centralized institution and system of rules before its establishment in 1995;
- the alternative to a centralized global institution like the WTO is not "chaos," as the big trading powers would like to paint it, but more space that would enable countries to adopt diverse national strategies that respond to the values, priorities, and rhythms of different societies (as opposed to the neo-liberal, one-shoe-fits-all model imposed by the WTO);
- the interests of developing countries can best be served by a pluralistic system of economic governance in which many institutions such as the United Nations Conference on Trade and Development (UNCTAD), International Labor Organization, multilateral environmental agreements, regional economic blocs, and a radically scaled down and disempowered WTO, check and balance one another and thus provide countries with developmental space";
- regional economic blocs formed on the principle of subordinating trade to development needs and coordinating economic activities other than trade while respecting the principle of subsidiarity (that is, that production should, as much as possible, be locally based) may be an important component of the alternative to the WTO-centered governance of neo-liberal globalization.

9. CONCLUSION

The stakes are high as we approach Hong Kong. One outcome could be that the WTO finally gets to be consolidated as the engine of liberalization of trade and other key dimensions of economic activity such as investment. Another is that it unravels a third time and becomes permanently crippled as an agent of the global neo-liberal agenda. Hong Kong could be the Stalingrad of the WTO, its high water mark, when the drive to roll it back gets the upper hand and gains an unstoppable momentum. The outcome, to a great extent, depends on us-our determination, our strategy, our tactics.

** This article first appeared in Focus on Trade #108, April 2005. http://www.focusweb.org. It is updated as at November 2005. Focus would like to thank Aileen Kwa and Alexandra Strickner for their assistance in the preparation of this paper.*

Endnotes

1. C. Fred Bergsten, Director of Institute of International Economics, Testimony before US Senate, Washington, DC, Oct. 13, 1994.
2. Oxfam International, "Arrested Development? WTO July Framework Agreement Leaves Much to be Done," August 2004, p. 1.
3. Many civil society organizations see the problem with the AOA as going beyond the US and EU's efforts to retain their subsidies. Even if the EU and US were to do away with their subsidies, they argue, the resulting global free trade framework would be detrimental to smallholder peasant agriculture, which would be forced to turn from serving the domestic market to competing as well in the international market. In this process, economies of scale, capital needs, and effective market penetration would unleash a process of concentration that would lead to the displacement of small farmers and to concentration of production under agribusiness. Under a WTO framework, small farmers would also continue to be subject to a patent regime serving not their interests but those of northern agribusiness. For these reasons, many farmers' organizations such as Via Campesina no longer see the WTO as a suitable framework within which to promote the interests of small farmers, both in the South and in the North.
4. United Nations Conference on Trade and Development (UNCTAD), "Review of Developments and Issues in the Post-Doha Work Program of Particular Concern to Developing Countries: a Post-UNCTAD XI Perspective," Note by the UNCTAD Secretariat, Aug. 31, 2004, p. 12.
5. Alexandra Strickner, IATP, Personal Communication, Porto Alegre, Jan. 29, 2005.
6. Estimated from UNCTAD, p. 13, and "Countries Warn on Services Market Access, Fear Hong Kong Failure," Inside US Trade, Dec. 10, 2004
7. UNCTAD, p. 14.
8. Oxfam International, "One Minute to Midnight: Will WTO Negotiations in July Deliver a Meaningful Agreement?," Oxfam Briefing Paper, No. 65, July 2004, p. 8
9. Oxfam International, "Arrested Development...," p. 1
10. See fuller account of this in Walden Bello and Aileen Kwa, "G 20 Leaders Succumb to Divide and Rule Tactics: the Story Behind Washington's Triumph in Geneva," Focus on the Global South website, posted Aug. 10, 2004: http://www.focuweb.org/main/html/Artcile 408.html? In fact, as Dot Keet reminds us, it was the G 90, not the G 20, that started the walkout that brought down the Fifth Ministerial. Statement at Seminar on G 20, Porto Alegre, Jan 30, 2005.
11. Walden Bello and Aileen Kwa.. A longer account of this is given in Walden Bello, Dilemmas of Domination: the Unmaking of the American Empire (New York: Metropolitan, 2005), pp. 179-192
12. The Indian government's position on subsidies had been watered down by its informal alliance with the EU on the tariff issue after the Doha Ministerial before the EU abandoned the Indians to align themselves to a common position with the US in the period leading up to Cancun.
13. Bergsten.
14. It must also be pointed out that there was one other contextual factor working to the disadvantage of the developing countries: the post-Sept. 11 atmosphere, which the US exploited by claiming that failure of the developing countries to move forward on multilateral negotiations was tantamount to abetting terrorism.
15. UNCTAD, p. 7
16. "Countries Warn on Services Market Access...," Inside US Trade, Dec. 10, 2004
17. Washington Trade Daily, March7, 2005.
18. Owing to strong reactions from developing countries, however, the EU may set a phase-out date before or during the Hong Kong Ministerial. Nonetheless, as we have pointed elsewhere, subsidization will continue via other channels, like the Blue Box or the Green Box.
19. "Countries Warn on Services Market Access:...," Inside US Trade, Dec. 10, 2004
20. Carin Smaller, "Too Much, Too Fast: What Happened to the Doha Development Agenda," Trade Information Project/Institute for Agriculture and Trade Policy Geneva Office, March 24, 2005.
21. See Fatoumata Jawara and Aileen Kwa, Behind the Scenes at the WTO (London: Zed, 2003), p. 280.
22. UNCTAD, p. 19
23. Ibid.

Ten reasons why no deal is better than a bad deal

At the 6th WTO Ministerial in Hong Kong, **no deal is better than a bad deal** since the only possible deal that can come out of ongoing negotiations is one that would further consolidate the underdevelopment, marginalisation and immiseration of the South. Here are ten reasons why:

1. Dumping: A new deal would force developing countries to open their agricultural markets further to the entry of highly subsidized products, thereby undercutting the prices of local produce, undermining local livelihoods and exacerbating distress migration.

2. Domination: A new deal is about domination of the world's markets by the trading superpowers and their transnational corporations, at the expense of peoples' rights and livelihoods.

3. Denial: Developing countries have repeatedly called for mechanisms to protect their food security and the livelihoods of their rural populations under the Agreement on Agricutlure. The US and EU have consistently denied them of these options.

4. De-Industrialization: A new deal would lead to de-industrialization, and the killing off of fledgling local and domestic industries in developing countries, which will result in job losses, unemployment and greater poverty.

5. Destruction: A new deal would force developing countries to liberalise sensitive sectors such as fisheries and forestry on which millions of rural livelihoods depend. The Non-Agricultural Market Access agreement (NAMA) would push for more exports of fisheries and forestry products, destroying small scale fisheries and communities.

6. Deprivation: A new deal would open up the services sector to liberalisation, including critical public services such as water, power, health and education, limiting access to these services to only those who can afford it and depriving everybody By letting the Trade Related Intellectual Property (TRIPs) Agreement remain as it is, millions of people the world will be deprived access to essential and saving drugs.

7. Disempowered: The General Agreement on Trade in Services (GATS) would 'lock-in' countries liberalization of services and limit the options for developing countries to regulate these service sectors in accordance with their development priorities. The new proposed "benchmarking" approach in GATS would force countries to open up sectors that they not want to liberalize and undermine public interest everywhere.

8. Diminished: By further entrenching the power the rich trading nations of the North, a new deal would aggravate the imbalance in world trade instead of address it. This will diminish any hopes for least developed and developing countries to have true development.

9. Danger: A new deal would lead to more not less WTO-plus bilateral and regional free trade agreements, as it would set the ground for deeper and faster liberalization. Intellectual Property Rules (IPRs) under the WTO and WTO-plus trade agreements will deepen threats to bio-diversity, traditional knowledge and rights of indigenous peoples all over the world.

10. Development: And finally, no deal is better a bad deal because there is nothing developmental about this round and there is absolutely nothing for developing countries and majority of the world's peoples to gain from this deal.

Intransigence in Agriculture

Agreement On Agriculture (AoA)

What is the AoA?

The Agreement on Agriculture (AoA) is one of the most controversial agreements under the **World Trade Organization**[1] (WTO) regime. The objective of the AoA, which came into effect in 1995, is to reduce barriers to trade (such as **tariffs**, quotas and subsidies) thereby making domestic and global agricultural sectors more market-oriented. The rationale is that the removal of such trade-distorting measures will increase the volume in trade from which all countries, including developing countries, will benefit. ***Focus on the Global South*** however questions the validity of this neo-liberal argument, citing countless reports detailing the negative effects of WTO-enforced **liberalization** on developing countries and their mostly rural populations.
The AoA is anchored on three main provisions or 'pillars' - Market Access, Domestic Support and Export Competition. Negotiations at the WTO are currently taking place in all three of the pillars, and cover such topics as tariffs, **export subsidies** and the permitted levels of support provided to farmers.

The three pillars of the AoA are: [2]

Market access is the extent to which a country regulates the importation of foreign products. The market access provisions of the AoA aim to progressively lower protectionist barriers to trade. The agreement calls for the conversion of all **non-tariff barriers** (such as quotas) to tariffs, in a process known as **tariffication,** and the reduction of all tariffs:

- by 36% on average, and a minimum of 15 % per tariff line for *developed* countries; and,
- by 24 % on average, and a minimum of 10 % per tariff line for *developing* countries.

Members are also directed to make concessions liberalization through other mechanisms such as tariff rate quotas (TRQs) and minimum access volumes MAVs).[3]

The importance of this pillar lies in the ability of a country to protect its domestic agricultural production including essential crops such as rice and corn), its local farmers and the livelihoods of its rural populations.

That is why many developing countries are opposed to cuts to their existing tariffs, which in the absence of expensive subsidies, have been their only means to support their farmers. They are demanding mechanisms to be established to protect them from surges of commodity imports or a sudden fall in the world price of commodities. At the same time, many developing countries are also demanding greater access to developed country markets, through the reduction of developed countries' import tariffs, so that developing countries are able sell their agricultural production overseas.

Domestic Support refers to monetary support given governments to their agricultural producers either for production, or in more general forms, such as infrastructure and research. The AoA classifies these supports into three boxes:

- the Amber Box for production and trade distorting subsidies;
- the Blue Box for direct payments under production limiting programmes; and,
- the Green Box for minimally or non-trade distorting support.

Support is also classified as either those with ceiling levels and those without ceiling levels (caps). A *minimis* clause in the agreement allows countries to maintain a certain level of trade and production distorting support (measured as Aggregate Measure of Support or AMS).

1 All words in bold are defined in the Glossary included at the end of this Guide.
2 Bello, Walden and Kwa, Aileen, 'Guide to the Agreement on Agriculture: Technicalities and Trade Tricks Explained', Focus on the Global South, 1998.
3 TRQs and MAVs are based on a percentage of volume of consumption for the base year of 1986-88. MAV is a commitment to allow importation at a lower tariff rate called "in-quota tariff".

For developed countries this level can be up to 5 % of the value of production for both individual products (product specific) and 5 % of the value of total agricultural production (non-product specific). For developing countries, support of up to 10 % is allowed in both categories.

Domestic support is one of the most controversial issues being negotiated at the WTO. That is because much of the support that the EU and the US provide to their farmers is hidden or wrongly classified in the boxes. The result is that support, which should be illegal or at least disciplined under WTO rules, continues to distort trade. Developing country farmers feel the effects of this the most, as trade distorting domestic support depresses world market prices and results in dumping of cheap products in developing country markets. By shifting their support for farmers into an (expanded) blue and (uncapped) green boxes, the EU and US will continue to **dump** their products on the developing world (see below for further details).

Export Competition refers to support or subsidies that allow countries to directly support their exporters. The consequence is that the rich developed countries of the north are able to export goods on the world market at prices lower than those in their domestic markets, and often at prices which are significantly lower than their cost of production (also known as dumping). As Oxfam points out, the EU exports sugar and beef at 44 and 47 per cent respectively of their internal cost of production. Similarly U.S. wheat is sold abroad at an average price of 35% of what it cost to produce it and cotton is sold abroad at an average price of 47% of what it cost to produce.[4]

The AoA aims to set disciplines in export subsidies, including among others:

- direct subsidies, including payments in kind, contingent on export performance;
- sale by governments or their agencies of noncommercial stocks at prices below domestic market prices; and,
- internal transport subsidies for exports.

However, the reality is that developed countries continue to dump goods on developing countries. The latest negotiations under the July Framework do not explicitly set a time frame for the elimination of export subsidies.

The Indian dairy sector under threat from dumping

In India, the dairy sector has been hit hard by subsidised exports from the EU. In 1999-2000 India imported over 130,000 tonnes of EU skim milk powder. This was the result of EUR 5 million export subsidies that were provided to EU producers. EU subsidies to butter exports are also extortionately high. Consequently, butter oil import into India has grown at an average rate of 7.7% annually. This has had a dampening effect on prices of ghee in the domestic market. Ironically, India is the biggest producer of milk in the world. What is more worrying for India is there are now signs of declining productivity growth for many agricultural products in India, which will have severe implications for the majority of the population.

Devinder Sharma, WTO and Agriculture: The Great Trade Robbery, 2003[5]

Government of India statistics illustrate the consequences of subsidised commodities:[6]

- sugar imports increased from 29000 tonnes in 1996- 97 to 932,300 tonnes in 2004-05;
- edible oil imports increased from 1.061 million tonnes in 1995-96 to 5.290 tonnes in 2003-04; and,
- cotton imports increased from 29200 tonnes in 1996-97 to 387000 tonnes in 2001-2002.

The impact of WTO induced trade liberalisation coupled with the removal of quantitative reduction QR) (under WTO obligations) and the reduction of import tariffs, has resulted in the prices of several commodities falling sharply.

For example in Kerala, since the removal of QRs on 714 items in April 2000, most of the agricultural commodities of Kerala have been showing a steady decline in the market prices. The unprecedented fall in prices of all cash crops have devastated the farmers of Kerala.[7]

According to Department of Agriculture, Government of Kerala, during 2000 the farmers of Kerala have suffered an annual loss of Rs. 6645 crores[8]

---

4 Oxfam International, A Round for Free, How rich countries are getting a free round on agricultural subsidies at the WTO, June 2005, page 3, accessed at www.maketradefair.com

5 As quoted in the Practical Guide to the WTO for Human Rights Advocates, 3D and FORUM-ASIA, 2004, page 62.

6 Statistics from the Director General of Commercial Intelligence & Statistics, Ministry of Commerce, India.

7 The coconut price collapsed from Rs. 6 per piece in 1999 to Rs. 2 in Jan 2001. Similarly the price of coffee is down from Rs. 68/kg to Rs. 26/kg.

8 One crore is10 million.

due to the price fall of major plantation crops alone, such as coconut and rubber, making the Kerala economy fragile and vulnerable.

'The large scale of farmers suicide in India in recent years is one of the severe impacts of WTO. In last 10 years and especially since India joined WTO in 1995, more than 25000 farmers in different parts of the country have committed suicides and it is still continuing. One of the key reasons of the farmers' suicide is the surge of cheap subsidised imports of agricultural commodities.' - Senior farmer leader, Mr. Mahender Singh Tikait of Bhartiya Kissan Union (BKU), India.

From Doha to Cancun

WTO Ministerials take place every two years and bring together the trade ministers from all the WTO member countries to make final decisions on trade negotiations. The period from the Doha (4th) to the Cancun (5th) Ministerial saw developing country priorities and demands sidelined in the interests of the larger northern trading powers.

At the WTO 4th Ministerial Meeting in Doha, Qatar in November 2001, a new comprehensive round of trade negotiations was launched. In agriculture, the Doha Development Agenda (DDA) mandates 'substantial improvements in market access; reductions of, with a view to phasing out, all forms of export subsidies; and substantial reductions in trade-distorting domestic support.' The DDA also mandated the establishment of new **modalities** for further commitments.

What was labelled by some as a development agenda, in fact turned out to be nothing more than a continuation of the WTO's liberalisation agenda. The draft documents on new modalities were circulated from February to March 2003 by the WTO's Agriculture Committee, which was headed at that time by Stuart Harbinson. The 'Harbinson document' as the text came to be known was a highly bracketed[9] document that pushed for further market concessions – with tariff cuts ranging from a low of 25 % to a high of 60 % reductions – and the retention of domestic subsidies in the North in the form of blue and amber box supports.

The 13 September 2003 draft text on agriculture was heavily criticized during the 5th WTO Ministerial Meeting in Cancun.

Focus on the Global South called for the rejection of the draft text for it "[the text] does not redress the existing imbalances in the agriculture agreement. There is no attempt to reduce domestic supports and export subsidies, as called for by the majority of developing countries and also no attempt has been made to address concerns of small farmers. In fact, it will increase these imbalances since it very clearly allows developed countries to continue their subsidies and dumping, even as developing countries are asked to take on drastic tariff cuts!"[10] The Ministerial Meeting in Cancun collapsed with no agreements on key areas of negotiations including agriculture, non-agricultural market access (NAMA – see the relevant section of this Guide for further details) and the **new issues**.

Revival through the July framework

The Doha round negotiations however were quickly revived with the forging of an agreement on a framework for the negotiations at the General Council Meeting in Geneva in the last week of July 2004. The negotiations that produced Annex A of the so-called 'July Framework' for agriculture were held only among a small group of five countries (Five Interested Parties or FIPS) which included the US, EU, Australia and two of the most influential members of the Group of 20 (G20) - Brazil and India.

The second draft of the framework was written by Tim Grosser the chairperson of the Committee on Agriculture based on the FIPS discussions. The second draft was then discussed by a group of around 20 countries in a green room process.[11] The outcome was a draft endorsed by the 20 countries. This draft was then presented to the other WTO members. With endorsement already secured from the major players, there was intense pressure for all members to agree to the July Framework's terms.

What's wrong with the new proposal?

The framework for the agriculture negotiations will remain focused on the three pillars – market access, domestic support, and export competition despite the many issues and problems that have arisen since Doha, and the collapse of the WTO Ministerial Meeting in Cancun in September 2003. These much broader concerns include dumping, declining commodity prices, food security, livelihoods, and rural development. WTO orthodoxy is that all of these (pillars) must be cut – despite a decade of evidence that the model

9 In WTO negotiations, the number of brackets in a document indicates the level of disagreement between negotiators.
10 Focus On The Global South: Call On Governments to Reject Agriculture Text, September 2003 Press Release.
11 A green room process refers to informal discussions among a select number of WTO members. Such processes have been criticised because they are exclusionary (particularly towards developing countries) and unaccountable.
12 Murphy, S. A "Truly Historic" Trade Agreement: Analysis of the Institute of Agriculture and Trade Policy. August 2004.

of agricultural 'liberalization' supported by these "pillars" has been disastrous for farmers and rural development everywhere.[12]

Despite the **Special and Differential Treatment** (S&D) rhetoric in the Doha Declaration, the AoA remains one of the most iniquitous agreements in the WTO, in effect providing special and differential treatment to developed countries rather than developing countries. The promised benefits from agricultural liberalization and subsidy reduction in the OECD countries under AoA have not been fulfilled.[13] A number of issues put forward by developing countries on inter-linkage mechanisms (to allow flexibilities for adjustments on tariff levels as a means of protection against subsidized imports), cotton, and special products (to protect food security, livelihood security and rural development) among others have been included in the framework. The inclusion of these sections is an attempt on the part of the WTO Agriculture Committee to reflect the demands made by developing countries in negotiations prior to Cancun. Like many other demands from developing countries however, the sections which would potentially favour developing countries remain vague and without any detail on clear commitments or ways to move forward. On **market access** the objective of the negotiations is to realize substantial improvements in market access based on the following principles: [1] tariff reductions will be made from bound rates, [2] each member (other than LDCs) will make a contribution, and [3] progressivity in tariff reductions will be achieved through deeper cuts in higher tariffs with flexibilities for sensitive products. Substantial improvements in market access (meaning tariff reductions) will apply to all products.[14]

The framework mandates the use of a single tiered formula approach for market access, but in different bands. Tariff reductions would have to be applied on the bound rates (something to benefit the rich nations). Many of the issues about the number of bands, percentage cuts for each bands, and tariff caps remain under negotiation.

Like many other provisions in the framework, the one on **sensitive products** will hurt developing country interests twice over. First, the text recognizes and gives a go-ahead signal for developed countries to protect "sensitive products", meaning rich nations would also be given the flexibility to protect some products that are deemed sensitive while calling for tariff quota expansion and tariff reduction on all other products including products of interest to developing countries

In the area of **Special Products** for developing countries, there are no details given, which the SP group have been calling for – such as self-selection on the basis of stated criteria and no tariff reduction. This discussion has evolved over 7 years - from the development box (positive list) to the negative list approach, to strategic products and now Special Products. The original recommendations have been diluted each step of the way. Developing countries have shown great flexibility in their proposals regarding Special Products, but to date have not received anything in return.[15]

On **domestic support**, the section at first glance appears positive in favor of realizing substantial reductions in the huge trade distorting domestic support provided by developed countries to their agriculture[16]. But what this tiered formula actually does is:

- expand the definition and scope of blue box subsidies; and
- redefine the overall base of all trade distorting domestic support - to include the Final Bound Total AMS, the permitted de minimis level, and the level agreed for Blue Box payments—upon which reductions will be based.

Furthermore, the text actually forces developing countries to reduce their *de minimis* levels of support which now stands at 10 percent of total agricultural output.

The expansion of the Blue Box category legitimizes the box-shifting tactics of the United States US). The US has been demanding an amendment to the blue box provision to allow it to continue its counter-cyclical payments to its farmers under the notorious US Farm Bill of 2002. This redefinition will allow the US to shift some $9-10 billion from the Amber Box to the Blue Box. Since the US has currently no subsidies in the Blue Box, the agreement thus gave the nod for the US now provide support under the Blue Box to levels up to 5 % of agricultural production value of period to

---

13 Fatoumata J. and Kwa A. (2003) Behind the Scenes at the WTO: The real world of international trade negotiations, London: Zed Books. Pp 26-27.

14 Raghavan C. Agriculture Annex contrary to some understanding. South North Development Monitor (SUNS #5627) August 2004.

15 Kwa. Aileen. WTO Vehicle: A Catastrophe for Development. 30 July 2004

16 Estimated at around $320 billion.

be established. The EU makes significant use of the blue box subsidies[17], above the proposed 5% limit, but has already planned to transfer a large part of these to the Green Box, and therefore should be able to meet the target without effectively reducing the level of support it provides to its farmers.[18]

Far from moving towards substantial reduction of subsidies, the framework actually provides a cushion to the US and EU to raise farm subsidies from the existing level.

On **export subsidies,** the section does not prescribe clear end dates for elimination of these subsidies. The framework prescribes only that commitments and disciplines will be implemented according to a schedule and modalities to be agreed. It goes on to state further that commitments will be implemented by annual instalments with equivalent and parallel commitments by Members.

Negotiations update

In agriculture, which clearly remains the key area of negotiations and on which progress on negotiations in the other areas are hinged, the debate is over the level of ambition of proposed tariff reduction formulas and clear schedules for the elimination of domestic support and export subsidies.

October 2005 witnessed a series of proposals submitted by the US, EU, G20, G33, ACP countries before and after the General Council in Geneva to speed up the AoA negotiations. However the US and EU have made their offers conditional on the progress in liberalisation of manufacturing and services sectors. In exchange for its trivial offers in agriculture, they have placed extremely heavy demands on developing countries to open up their markets under industrial tariff and services.

This would be contrary to the Doha round, and of significant concern to developing countries who maintain that these negotiations should remain separate.

On the tariff reduction formula, the US is pushing for a more ambitious formula that would "harmonize' tariff rates among countries. This harmonizing formula or the simple Swiss formula would deal deeper cuts to products with higher tariffs. This could be disastrous for developing countries with hightariffs, as the formula would require more drastic reductions to their level of protection. The EU on the other hand wants a less ambitious "Uruguay Round" type formula where tariff rates are categorized into bands and percentage cuts are prescribed per band. A proposal from the G20 however is now being touted as the compromise formula and the starting point for continued negotiations. The G20 proposal incorporates the "banded" approach of a Uruguaytype formula with the 'harmonizing' effect of a simple Swiss formula by subjecting products in the higher bands, meaning those with higher initial tariffs, to higher cuts than those in the lower bands. Tariff caps would also be imposed to address the issue of tariff peaks, so that no tariffs would be higher than 150 per cent for developing countries and 100 per cent for developed countries. The G20 compromise formula however would undermine the interest of many developing countries that still maintain relatively high tariffs and countries that maintain a uniform tariff structure for most if not all of its products. The banded approach would force these countries to drastically and uniformly reduce all their tariffs. With the removal of QRs and protection of special safeguard mechanisms not available to every developing country, a further reduction and binding of tariff at the lower rate would be detrimental to the agricultural based economies of the developing countries like India.

On the areas of **Special Products** and the **Special Safeguards Mechanism**, which are of interest to developing countries, the G33 (see the GGuide) is calling for greater flexibilities for developing countries in the name of rural development, livelihoods and food security. There are however unrelenting efforts on the part of developed countries to limit the scope and effectiveness of any SP/SSM provisions. On 1st November 2005, the G33 warned the Chair of the WTO General Council Ambassador Amina Mohamed of Kenya, the WTO Director-General Pascal Lamy and the Chair of the agriculture negotiations Ambassador Crawford Falconer of New Zealand that for the G33, "it would be difficult to agree on any text where the issues of SP and SSM are not given the same level of specificity as others in the market access pillar."

The negotiations on the elimination of domestic support have barely moved at all, with the US remaining firm on maintaining its huge subsidies to its farmers contained in the US Farm Bill of 2002. While there remains no clear timetable for the elimination of export subsidies, the EU has hinted of a possible date for the phase-out of its export subsidies. The EU's announcement of this possible date might

17 The EU has Blue Box subsidies amounting to Euro 14.31 billion.
18 Khor, M. Preliminary comments on the WTO's Geneva July Decision. Third World Network.

just cause movements in the other pillars of the agreement.

In short, while the negotiations for a new agreement on agriculture appear to be stalled at the moment, the possibilities for movement and therefore another lopsided agreement in favor of developed countries before or during Hong Kong remain firmly on the table.

In view of the plethora of proposals on Agriculture, it is extremely important for the developing countries to evaluate them with great care. They should not let this exercise turn into a mutual forgiveness between US and EU for extraction of concessions from them in industrial tariff and services. The developing countries must do their best to protect the food sovereignty of their people and interest of their farmers in the forthcoming negotiations at the 6th Ministerial in Hong Kong in December 2005. As aptly put by a leading farmer leader of the Via Campasina from India, Chukki Nanjundaswami who demand the removal of agriculture from the purview of the WTO because 'agriculture is too important to leave at the mercy of rich nations'.[19]

DERAILING the AOA

Focus on the Global South's strategy is to derail the WTO by actively preventing consensus in WTO negotiations. The aim of the Derailer's section is to highlight where there is that lack of consensus and to suggest ideas and strategies for promoting disaccord among WTO country members.

How do we prevent consensus in agriculture?

To prevent consensus we should continue to exert pressure on the most vulnerable points or the cracks in the negotiations. In agriculture the critical issues to exploit are the formula for tariff reduction, the modalities and timeframes for the elimination of domestic support and export subsidies. including the controversial blue box expansion, and sensitive issues like cotton.

PRESSURE POINTS

1. The US-EU disagreement on subsidies and tariff reduction

The EU and US have unveiled their WTO "offers" with much fanfare. It looked as if huge concessions to the developing world had been made. In reality, the same game of box shifting and creative accounting, as was the result of the Uruguay Round, has once again been reproduced, only this time, with a much higher price demanded of developing countries.[20]

The US proposal has prompted a response from the EU that has caused quite a stir among Members of the European Union. France has threatened a veto on further concessions on tariff and subsidy reductions which would have an impact on their farming sector. Peter Mandelson, the EU Trade Commissioner has been put in the hot seat with France questioning whether the "final offer" that he made on behalf of the EU to reduce farm tariffs by 60 % and eliminate farm subsidies is too much and whether he has the authority to make such an offer.

We should:

- highlight the reality that these proposed cuts are "paper cuts" amounting to no substantial reduction of EU or US subsidies. It may in fact result in expansion of support.
- expose the expansion of the blue box and the box shifting strategy of the US as part of their squid tactics to skirt around commitments to reduce subsidies.
- draw attention to the fact that there are still no
- restrictions on the use of the Green Box despite recent rulings in the WTO (like the cotton case) that certain subsidies under the green box are in fact trade distorting.
- highlight that these "paper cuts" touted as "bold moves" on the part of the US and EU in order to "save the round" would in fact perpetuate dumping.

---

19 Said at a massive protest by farmers in Mumbai (India) on 2nd October 2005 (Remove agriculture from WTO's purview', Hindustan Times, 3rd October 2005).

20 Kwa, Aileen. 'Analysis of US and EU Packages: No concessions, but high price demanded of developing countries', Focus on the Global South, 16 October 2005.

21 Kwa, Aileen, 'Analysis of US and EU Packages: No concessions, but high price demanded of developing countries', Focus on the Global South, 16 October 2005.

2. Developing countries who would pay dearly for further tariff reductions

Whilst effectively nothing is being offered by those that most distort agricultural trade, the US and EU are attempting to use this occasion to extract yet more market access openings from the developing world. A minority of developing countries will stand to benefit (the corporate farmers in a small number of countries) from new market access openings, but the majority of the developing world will not.[21]

We should:

- draw attention to the possible effects of further tariff reduction on the lives of the most vulnerable sectors in these countries.
- plug in the numbers to show what the proposed formula would mean to local farmers and come up with case studies showing the impact of further tariff concessions.
- highlight the plight of small farmers in those countries whose livelihoods have already been devastated under a liberalized regime - such as in the Philippines, Thailand, and Indonesia which have already relatively low agricultural tariffs.

The debate over the level of ambition of a new tariff formula misses the whole demand of farmers through out the developing world for greater support and protection. What farmers in these countries need is a respite from tariff reduction. Arguing over a new formula is tantamount to asking whether we want a slow or a quick and sudden death for farmers.[22]

3. Maximum Demands on Special Products

The engagement with the G33 on the issue of Special Products (SP) should be based on a maximum demand for protection of agriculture in developing countries on the basis of food security, rural development and livelihood concerns. The flexibilities under the SP/SSM provision should include exemption for further tariff cuts, the right to impose additional duties against subsidized imports and the right to re-instate quantitative restrictions on certain products.

We should:

- continue to put pressure on governments within the G33 to ward off attempts by the developed countries to reduce the scope and effectiveness of SP/SSM. Key countries here include Indonesia and the Philippines.
- keep up the pressure on their negotiators to oppose a new deal that would undermine food security, rural development and livelihoods.

---

22 *Purugganan, J., 'Philippines Cannot Afford A New Deal', paper presented before the Philippine Congress, Focus on the Global South, 31 August 2005.*

Ratcheting up the Pressure in Services

General Agreement on Trade in Services (GATS)

What is the GATS?

The World Trade Organisation (WTO) describes the General Agreement on Trade in Services (GATS) as *'perhaps the most important single development in the multilateral trading system since the GATT[1] itself came into effect in 1948'*. The GATS is one of 18 agreements that fall within its ambit.

The focus of the GATS is on the **liberalisation** and deregulation of the services sector. The scope of what is defined as services is deep; over 160 services sectors fall under its jurisdiction. Almost no service sector is excluded. It includes basic services such as water, education and health. It also covers infrastructure services such as energy, transport and telecommunications. Critical sectors such as finance fall within its ambit. The world's largest industry – travel and tourism – is also included under GATS. These sectors represent the era of deep liberalisation and the next frontier for corporate-led globalisation. The subject matter of GATS is incredibly broad as there is yet no consensus on its coverage. According to David Hartridge, Former Director of Services Division of the WTO, *'the push to include services within its framework is the result of pressure and lobbying efforts by the US financial services sector'*. The aim of the GATS is to promote unrestricted trade in all types of services and to remove all forms of governmental intervention that may be viewed as "trade restrictive."

The GATS identifies four modes (or types) of supply of a service:

Mode 1: Cross Border Supply (where the service is supplied remotely from one country to another).Example: Citibank customers in the US get service help from a call center based in the Philippines.

Mode 2: Consumption Abroad (movement of individuals to a country to consume a service). Example: Tourists traveling overseas or patients taking advantage of cheap health-care abroad.

Mode 3: Commercial Presence (where a foreign company sets up a subsidiary or branch within another country in order to deliver the service locally). Example: Foreign Direct Investment in banks, hospitals and power plants.

Mode 4: Presence of Natural Persons (where individuals travel to another country to supply a service there on a temporary basis).Example: Software programmers, nurses or doctors working in another country. This is different from immigration because GATS explicitly deals only with temporary movement. GATS has been promoted as a "bottom-up" treaty rather than a "top-down" treaty since in theory it allows governments to select which sectors they will open up and when. This is called the request-offer model, whereby WTO Member governments can submit requests on which service sectors they want another country to open up and in the offers, a government can list which service sectors they choose to liberalize. This model of negotiations is currently under threat, with proposals from developed countries requiring all countries, including developing countries, to open a minimum number of services sectors and to a minimum extent (see below for further details).

What does GATS mean for developing countries?

Once a country agrees to liberalize a service sector under the GATS, it has certain obligations from which they cannot deviate:

1) National treatment. Once a country has fully committed a sector to liberalisation under the GATS, it is prohibited from discriminating against foreign

1 *All words in* **bold** *are defined in the Glossary included at the end of this Guide.*

companies and corporations that provide services in that sector, even if such services are currently provided domestically by public or private means. National treatment is an extremely important commitment in the GATS and addresses qualitative restrictions that a government may place on service provision in a committed sector. Concretely, this means that governments cannot set performance requirements specifically for foreign companies. This includes, for example, domestic environmental or labour laws, quality standards, obligations to hire and train local staff, or requirements to build local/domestic capacity in their particular areas of operation. Nor are they required to source raw materials, goods or support services domestically.

2) Market Access. Market access rules cover all quantitative limits on services, whether they apply to foreign or domestic firms. They also provide opportunities for foreign firms to challenge domestic regulation if these regulations are perceived as restricting the entry of firms into domestic markets. Once a government has committed a sector to full liberalisation, it must provide foreign corporations access to domestic markets through "least trade restrictive" business and investment policies.

3) Most Favoured Nation (MFN) Status. Host governments must provide equal market access to all trading partners in a service sector that has been opened up — i.e., they must provide Most Favoured Nation (MFN) status to all WTO members. This means that the national treatment must be applied horizontally," or across the board to service providers of all WTO member countries. Host governments cannot choose which foreign entities get national treatment and which do not. Governments then, lose their rights to develop preferential trading arrangements for social or political reasons, or to enter into special service agreements with regional partners.

What's wrong with the GATS?

The GATS has proven to be one of the most controversial of the WTO agreements and going through it shows the many dangers that it poses to people of both the developing and developed world if fully implemented.

1) What was once public becomes private: The GATS threatens public services including health, education and water. The agreement opens up these sectors to transnational corporations and accelerates the process of privatizing essential public services, thereby limiting access to services to only those who can afford them. There are many examples of how privatization has resulted in excluding the poor from essential services. For example in Cochabamba, Bolivia, the World Bank encouraged privatization of water which resulted in water prices reaching $20 per month, compared to the minimum average wage of $100 per month.[2] Public services and the so-called 'commons' including water, education, health care, social welfare and energy, should not be subject to multilateral liberalisation or privatization.

2) Loss of national control: Because of the national treatment clause, governments are prevented from exercising national regulation especially on foreign direct investment. In some cases, governments would have to rewrite their constitutions in order to adhere to this. For example, the Philippines has a 60-40 regulation, which requires at least 60 percent of a foreign company to be owned by a Filipino and a maximum of 40 percent to be owned by a foreigner. This will no longer be allowed under the national treatment clause of the GATS.

3) Investment Rules: The WTO calls the GATS the world's first multilateral agreement on investment, since it includes the right to set up Commercial Presence (Mode 3 in GATS language) in another country. The National Treatment clause prohibits WTO members from treating foreign investors less favourably than domestic service suppliers. The clause on market access ensures effective market entry provisions. Once countries make binding commitments under these two clauses, GATS rules can reduce the ability of countries to use policies that ensure equity ceilings, obligations on technology transfer, universal services provision (legislation that obliges private providers in basic services such as health, education, water to supply services to marginalised sections of the community) and employment of local labour. The GATS framework maximises investor rights at the cost of development.

4) Locking bad policies into place: A government cannot reverse a commitment made under the GATS even if it proves detrimental to its national economy. Developing countries are already grappling with the adverse impacts of privatisation.

---

2 *As a result of massive protests and public outcry, water was eventually restored to public ownership. Vandana Shiva,* Water Wars: Privatization, Pollution and Profit, *New Delhi, India, Research Press, 2002.*

Take the example of Telecommunications in India. India reoriented its Telecom policy in 1994 and argued that liberalisation and private participation would provide the additional resources for connecting all its villages by 1997. More than 10 years after this there are nearly 70,000 villages without telephones. The rural – urban divide is growing with a dismal teledensity of less than 2 phones per 100 in rural areas. The private players have provided only about 14,000 Village Public Telephones and met only about 10 per cent of their license commitments. The benefits of liberalisation have been concentrated in big cities and larger towns – which is only 20 percent of the country. If the Indian government wants to provide rural telephony it must strengthen the public provider and improve regulations that force private providers to adhere to social obligations.

Binding commitments under national treatment and market access will not allow the Indian government to use such policy mechanisms.

From Doha to now

The Doha Ministerial was responsible for fast-tracking the GATS negotiations. The Doha Declaration set dates for when the request phase of negotiations would commence and when the offers phase would start. To date, 92 of 148 member countries have already submitted offers in the GATS, while all developed countries have made offers.

Developed countries are fast overhauling this request-offer framework, which offers some degree of flexibility to developing countries. Developed countries, led by the European Union (EU), are now proposing a "benchmark" approach to speed up the negotiations.

This new approach aims to identify 10 key sectors in the GATS, from which developing countries will be asked to choose 6-7 sectors in which they must make minimum commitments on. The EU is also demanding that countries bind sectors already liberalized through autonomous national policy or under structural adjustment policies of the International Monetary Fund (IMF). This means that these levels of liberalisation outside of the GATS will automatically come under GATS rules in the future.

These new proposals, also called "complementary approaches" have been met with tremendous opposition from developing countries because they:

- Remove the flexibilities originally available under the request-offer framework;
- Require all developing countries, including Least Developed Countries (LDCs), even if their economies are not ready, to commit a significant number of commercially-important sectors to liberalization and to deepen these commitments by removing restrictions on market access and national treatment; and,
- Are one-sided as they largely focus on Mode 3 (commercial presence) where corporations ave an interest, asking for a minimum of 51% foreign ownership.
- The new proposals sideline developing countries' demands on operationalising the mandated assessment of the GATS before they are asked to further open up.

Like all WTO agreements, GATS is being negotiated with little public oversight. The conclusion of these negotiations in favour of multinational corporate interests will mean the death knell for public services. The entire GATS package is serious setback to public participation and democratic oversight in the formulation of national policies, laws and regulations.

DERAILING GATS

Focus on the Global South's strategy is to derail the WTO by actively preventing consensus in WTO negotiations. The aim of the Derailer's section is to highlight where there is that lack of consensus and to suggest ideas and strategies for promoting disaccord among WTO country members.
In the run-up to Hong Kong we should:

- Call for an immediate halt to market access talks under the GATS;
- Unequivocally oppose all proposals for
- "benchmarking" or "complementary approaches" to services liberalisation;
- Reject the Mode 4 approach of some countries
- such as India that are focused on the movement of only skilled labour; and
- Demand a comprehensive assessment of the impact of past liberalisation and privatisation of services.

NAMA and the Spectre of De-industrialisation

Non-Agricultural Market Access (NAMA)

What is NAMA?

NAMA refers to non-agricultural market access. As its name suggests, it is a proposal for an agreement under the **World Trade Organisation**[1] (WTO) regime that covers non-agricultural products, or all products outside the Agreement on Agriculture (AoA).

The objective of the negotiations is greater market access in non-agricultural products. That is, non-agricultural products should be freely traded without (or with very limited) tariffs, quotas or other importing/exporting restrictions.

Unlike the AoA which has three pillars —market access, domestic support and export subsidies, NAMA's sole objective is market access.

In WTO language, market access revolves around the issue of **tariffs** - the reduction and elimination of **tariffs**, **tariff peaks**, and the prevention of **tariff escalation** as well **as bound tariff rates**.

NAMA is an agreement for binding and reduction of tariffs not just on industrial products but on products like fish and fishery products, shoes, toys, jewellery and almost anything outside the ambit of the AoA. The significance of this agreement lies in the scope of products and sectors that fall within its terms. Many of these are of vital importance to the development of developing countries and the livelihoods of their populations. Denied the ability to protect their emerging industrial sectors, there are grave concerns that developing countries will be lead down a path of deindustrialisation.

This is because any existing domestic industries will be unable to compete with industrial products likely to flood their markets as a result of liberalisation. NAMA would further reduce the development options for developing countries as it would undermine their already limited capacity to develop their industrial base.

NAMA and the July Framework

At the Cancun WTO Ministerial in 2003, a draft text called the 'Derbez Text'[2] with provisions for tariff binding and tariff reduction for NAMA was rejected by member countries.

Despite the rejection of the Derbez Text at Cancun, negotiations were resurrected through the **July Framework**[3] in July 2004. The July Framework defines the parameters for establishing **modalities** in market access for non-agricultural products. It has been criticized for resurecting the major elements of the Derbez Text.

What are the elements of NAMA under the July Framework?

1. **Coverage.** The July Framework provides for 100 % coverage with no a priori exclusion. This comprehensive coverage means that there is no possibility of exemptions similar to the provisions in the Agreement on Agriculture (AoA). As a result of NAMA, it is expected that developing countries will be unable to protect domestic industries crucial to their own development.
2. **Tariff Reduction Formula**. Based on the July Framework, tariff reduction shall commence from bound rates after full implementation of current concessions. The formula for tariff reduction is likely to be the non-linear Swiss style approach so that developing countries which have higher tariffs will be required to make proportionately greater cuts.
3. **Tariff Binding Formula.** For unbound tariffs, the basis for tariff reduction shall be (2) times the MFN applied rate in the base year defined as 2001. This would require all countries to bind their remaining unbound tariff lines according to the agreed-upon formula.

---

1 All words in bold are defined in the Glossary included at the end of this Guide.
2 The text was named after the Chair of the Cancun Conference, Mexican Foreign Minister Luis Ernesto Derbez.
3 Annex B of the July Framework sets out the details for NAMA.

Why is NAMA problematic for developing countries?

1. **The Derbez text was already rejected.** The July Framework resurrects the Derbez Text, which was already rejected by majority of the WTO-member countries in Cancun. Once again, the position of developing countries has been sidelined by the interests of the richer industrialised nations.
2. **An obligation to cut tariffs across the board.** It locks-in countries to tariff structures that would be difficult to change in the future. Some say the obligations would be irreversible. For developing countries this would mean closing the doors on the use of tariff policy and the protection of key industries as an integral part of a development strategy.
3. **De-industrialistaion.** Policy space for protection, which allowed developed countries to achieve industrialization at the turn of the 19th and 20th centuries, is now being closed to developing countries. This could be disastrous for developing countries, who in the absence of a growing industrial sector, will be forced to continue to rely solely upon their agricultural sectors. It is feared that the deindustrialisation process which began under structural adjustment programs will accelerate under NAMA.
4. **Drastic tariff cuts.** They would bring industrial tariffs to the lowest levels since the 19th and early 20th century. Also the harmonization of tariffs between industrial and developing countries is anchored on the principle of full reciprocity – that is that tariff reductions should be undertaken by developed and developing countries alike. This is contrary to the principle of Special and Differential Treatment.
5. **NAMA requires the binding of previously unbound tariff lines.** On tariff bindings, compared to agriculture where almost all products were bound under the AoA with few exemptions, not all non-agricultural products were bound under the GATT-Uruguay Round. A considerable percentage of products and tariff lines remain unbound. The July Framework would force countries to bind these products.

For countries like the Philippines, whose average applied non-agricultural tariffs amount to a mere 4.3 %, tariff binding in fact is a critical issue. The Philippines for example would be forced to now bind more than 39 % of its products previously outside the ambit of the WTO. This would include 95% of tariff lines for fisheries that are still unbound.

Binding of remaining tariff lines now would be tantamount to closing the door to any prospects for industrialization in the future.

6. **The inclusion of fisheries.** The fisheries sector is considered an economically important yet sensitive sector in many developing countries. It is a sector that provides livelihoods to millions of small fishers. Across the globe however, small fishers remain one of the poorest sectors.

In the Philippines for example, tariff rates on fisheries are already quite low owing to previous unilateral liberalization of the sector. Following the proposed formula in NAMA would force the country to bind fish and fishery products at rates no higher than 20 %. A level of tariff protection that many in the sector argue is not enough to address the many threats facing the sector.

Furthermore, the main issue for fishers is not market access but protection of their livelihoods that are constantly under threat from tremendous pressures on the resource base and the lack of government support.

Market access would further aggravate the bias of government in favor of export-oriented sub-sectors like aquaculture over the interest of small fishers.

Where do country groupings stand on NAMA?

Developed countries like the US, EU and Korea are pushing for NAMA.

Other developing countries like Kenya, Nigeria, Egypt, and Indonesia oppose NAMA.

Argentina, Brazil and India (ABI) have proposed less ambitious formula for tariff reduction.

Least Developed Countries (LDCs), although exempt from making any commitments, have opposed NAMA on the grounds of erosion of preferences.

In general, it appears though that developed countries are united in NAMA while developing countries are still divided on the issue. The devil, however is in the detail (see below).

What is the current status of negotiations?

Apart from agriculture, NAMA could be the possible deal maker or deal breaker of the Hong Kong Ministerial.

At this stage, there remains major disagreements within member countries on NAMA, particularly on the formula for tariff reduction and binding:

1) **Divergence of views on the July Framework.** Developing countries site paragraph 1 of Annex B of the July Framework which states that the content of the agreement is still subject to negotiations and that no agreement on the formulas prescribed in Annex B has yet been reached. Hence, they refrain from using the exact language in Annex B so as not to establish a language norm which will be used in future negotiations.

Developed countries on the other hand are liberal in using the language and proceeding as if NAMA is already a done deal. The reference to paragraph 1 is where the proposal of Argentina, Brazil and India (known as ABI proposal) is coming from.

2) **Conversion of complex tariffs into their ad valorem equivalents (AVES).** The majority of the member countries already use the ad valorem tariff system with the exception of countries in the European Union which maintains complex tariffs. There is a need to convert these complex tariffs into their ad valorem equivalents in order for the tariff reduction formula to apply.

3) **Differing positions on the tariff reduction formula.** There are countries like US and EU that are aggressively pushing NAMA who want a **Swiss Formula** for tariff reduction (also see glossary for further details on tariff reduction formulas). This is an ambitious formula that would effect bigger cuts to higher tariffs. Countries like Argentina, Brazil, and India (ABI) on the other hand have proposed a less ambitious 'Swiss-type' formula applied line by line to countries' bound rates which considers average tariff rates as part of the formula in the name of greater flexibilities for developing countries. The ABI proposal is for different rates of tariff reduction for developed and developing countries in accordance to the principle of "less than full reciprocity" and **special and differential treatment**.

The US and EU criticize the tariff reduction formula proposed by ABI as not being ambitious enough and in fact 'a step backward' from the NAMA mandate. The US also argued that getting rid of high tariffs and **tariff peaks** is expected to be done by all members and not just developed countries.

While the negotiations appear to have been marked major disagreements there are also disturbing signs, however, of a convergence occurring:

Despite much initial grumbling after the July Framework deal, the developing countries have accepted the "Derbez text", which they rejected in Cancun, as the basis of negotiations, as proposed by the Framework;

There is now consensus on a non-linear Swiss or Swiss-like formula for tariff reduction, which would apply to all products and subject higher tariffs to greater proportional cuts than lower tariffs, thus disadvantaging many developing countries, which maintain relatively higher tariffs on many key industrial goods than developed countries.

A Uruguay Round formula, which would stipulate an average tariff cut across industry but leave it up to national authorities to determine the rate for particular products, is not even in discussion, although it is favoured by most developing countries.4

The so-called Pakistani compromise

The latest formula to emerge is the so-called Pakistani compromise" which would factor into the formula the average bound tariff rate, then run a coefficient of six for developed countries and 30 for developing countries. This would, according to the Pakistani proponents, significantly bring down product tariffs for everybody (a developed country concern), harmonize tariffs within each grouping (a WTO objective), and still preserve at least some of the difference in average tariff levels between the developed and developing country groupings (a developing country concern).

It is likely that the Pakistani proposal - which nobody rejected outright although some developing countries were appalled - or a version of it will become the basis of the NAMA talks when they resume.

It was more than just spin when US Deputy Trade Representative Peter Allgeier issued the following upbeat statement on July 28: 'The path ahead on NAMA is much clearer, given the work that has been done in the past several weeks..,.Several constructive ideas are on the table. There have been signals of flexibility from all sides about finding the right formula and the use of coefficients to realize real market access opportunities.'5

DERAILING NAMA

Focus on the Global South's strategy is to derail the WTO by actively preventing consensus in WTO negotiations. The aim of the Derailer's section is to highlight where there is that lack of consensus and to suggest ideas and strategies for promoting disaccord

4 Bello, Walden. Are the WTO Talks in Trouble? Don't Bet On It. Focus on the Global South. August 2005
5 Ibid

among WTO country members.
The NAMA negotiations are now racing to meet the objective to come up with "full modalities" by Hong Kong. Full modalities means that final figures are
plugged into the formula already. "This is number crunching time; no numbers by Hong Kong would make it highly unlikely for us to conclude the Round as desired," according to Ambassador Stefan Johanesson, the Chair of the NAMA Committee.[6]
The priorities according to the NAMA chair are defining formula flexibilities and the getting consensus
over the issue of unbound tariffs based on a number of proposals on the table which include the mark-up approach of Canada, the ABI proposal and the proposal from Pakistan.

We should:

Expose the consequences of developing countries absorbing tariff cuts to their industries, as is required under current proposals. As country negotiators are now grappling with the numbers, campaigners should also be 'plugging- in' the numbers based on the proposals on the table. This should strengthen our argument against further liberalization especially of important and sensitive industries and sectors.[7]

Exert pressure on countries with a substantial percentage of unbound tariffs to refuse binding of their unbound tariff lines on the basis that binding would further restrict policy space in using tariffs as a tool for industrialization and development.

Dramatize the plight of small fishers and how NAMA would aggravate their already impoverished conditions. We should continue to work with fishers groups around the world to amplify their voice in opposition to liberalization of the fisheries sector and their demand for WTO to get out of fisheries.

Sensitize industry groups, thereby broadening the base of opposition to NAMA to include industries and sectors that would have to face the entry of cheaper imports, as well as trade unions.

---

6 Statement made by Ambassador Stefan Johanneson at the Lobby Meeting with civil society in Geneva on 17 October 2005.

7 The latest and thus far most ambitious proposal from the EU to have a coefficient of 15 for developing countries and 5 for developed countries would be a good basis to make the projections on future tariff cuts.

With a little help from its friends...

How the WTO completes its stranglehold on global and national policy making

The World Bank (the Bank), International Monetary Fund (the Fund) and the World Trade Organisation (WTO) are three faces of a powerful international system that is increasingly dominating national and global policy making, at the cost of the well-being and livelihoods of the majority of the world's peoples. Their operating ideology is **neo-liberal**[1] and their driving interests are corporate.

The Bank and Fund have played significant roles in weakening policy autonomy and dismantling domestic self-sufficiency in the developing countries that borrow from them. Their infamous structural adjustment programmes – now called Poverty Reduction and Strategy Papers (PRSPs) *— have created and entrenched policy induced poverty across the developing world. Privatisation, liberalisation and deregulation are the distinguishing features of all Bank-Fund programmes and are necessary conditions to all Bank-Fund financing. Most major bilateral donors and the United Nations (UN) agencies have aligned their aid programmes to Bank-Fund policy frameworks. The more a developing country liberalises its economy along the lines prescribed by the Bank and the Fund, the more bilateral and multilateral aid it is likely to receive.*

The Bank and Fund believe that international trade can play a crucial role in poverty reduction by providing jobs and driving economic growth for developing countries and that rapid economic growth can be best achieved if countries enter export markets through trade and strengthen their links with the global economy.

Despite proclamations by the Bank that high **tariffs** and Non-Tariff Barriers in wealthy countries undermine the potential for economic growth and poverty reduction in developing countries, the Bank and Fund are unable to force the rich countries of the OECD to reduce their own subsidies and dismantle their trade barriers.

On the other hand, developing countries under Bank-Fund loan regimes are exhorted to undertake drastic policy reforms in all their sectors, from banking, finance, public expenditure and trade to agriculture, services, investment, infrastructure and even the judiciary. The main purpose of these reforms is to open up developing country markets to access by foreign private investors and corporations and to remove all barriers to international trade and investment in developing countries. Over the past 15 years, Bank-Fund imposed trade conditionalities have included the removal of non-tariff barriers and quantitative restrictions,
and tariffs and customs administration reforms.

According to the Bank and Fund, the Doha Round "offers an unprecedented chance to free up trade and contribute to poverty reduction on a global scale"[2] which can only be achieved through an ambitious outcome"[3] in the Doha negotiations. The Bank and Fund believe that market access in agriculture through large cuts in **bound tariff** rates and bound levels of domestic supports and subsidies is the key to success in the current negotiations. While they accept that developed countries must take the lead in this, they call upon middle-income countries—especially those in the G-20—to remove tariffs and other barriers in their agriculture markets, reduce tariffs in manufacturing, and open up their services markets for liberalization. Instead of pushing for "policy space," all developing countries must use the opportunity of the Doha negotiations to lower trade and investment barriers. The Bank and Fund broadly describe their trade related work in developing countries as "aid for trade." World Bank "aid for trade" activities include technical assistance, capacity building, institutional reform, investment in trade related infrastructure, and assistance to "offset adjustment costs", i.e., to make the

1 *All words in* **bold** *are defined in the Glossary included at the end of this Guide.*
2 Aid for Trade: Competitiveness and Adjustment. *Development Committee, the International Monetary Fund and the World Bank, April 12, 2005.*
3 *Ibid.*

transition from tariffs to other sources of revenue. Much of Bank lending for trade has gone towards trade facilitation in more than 50 countries. Basically, the Bank works with its debtor governments to shape national institutions, laws and regulations, infrastructure,
services, financial systems and other sectors of the economy to facilitate trade liberalization. The Bank also conducts training programs through the World Bank Institute to prepare the policy ground for trade liberalization, often in partnership with leading think tanks, universities and other teaching institutions in developing countries.

The IMF on its part claims that, "The work of the IMF and the WTO is complementary" and that, "The two institutions work together to ensure a strong system of international trade and payments that is open to all countries."[4] The partnership works on many levels, to ensure greater coherence in global economic policymaking. A cooperation agreement between the two organizations, covering various aspects of their relationship, was signed shortly after the creation of the WTO. The IMF has observer status at the WTO, and IMF and WTO staff participate actively in each others' meetings, committees and working groups. Trade policy issues feature prominently
in Fund surveillance activities and the WTO is required to consult the IMF on issues concerning monetary reserves, balance of payments, and foreign exchange arrangements. In April 2004, the IMF established the Trade Integration Mechanism (TIM), a special facility to lend to WTO member countries whose balance of payments positions suffer as a result of multilateral trade liberalization. The IMF anticipates that its cooperation with the WTO will intensify in WTO agreements on financial services, trade facilitation,
and agriculture (in particular, the cotton sector).

A highlight of Bank-Fund-WTO collaboration is the Integrated Framework (IF) for Trade-Related Technical Assistance to Least-Developed Countries (LDCs). The IF is a multi-donor program that aims to strengthen the capacity of LDCs to formulate WTO compliant trade policies, negotiate trade agreements, and tackle production issues in a manner favourable to liberalization in their domestic economies. In particular,
the IF ensures that poorer member countries incorporate
"appropriate trade reforms" into their national development policies through PRSPs, which form the basis for loans by the Bank and the Fund.

The IF is financed through a trust fund to which the Bank has already allocated US$ 1.5 million, and which has total pledges from donors for US $30.1 million. The IF has initially been implemented on a pilot basis in Cambodia, Madagascar and Mauritania, and was the driving force behind Cambodia's rapid accession to the WTO. The IF was then extended to Burundi, Djibouti, Ethiopia, Guinea, Lesotho, Malawi, Mali, Nepal, Senegal, Yemen, and Eritrea. At the end of
March 2005, 28 LDCs were at different stages of the IF process. During the September 2005 World Bank IMF Annual Meetings, the Bank-Fund Development Committee endorsed a proposal for an enhanced IF that could be expanded to all countries that receive concessional loans from the Bank's International Development Association (IDA).

High-ranking staff of the IMF, World Bank and the WTO maintain close contact with each other and with major bilateral donors to ensure that developing countries do not stray away from the liberalization and privatization paths. The Bank and the Fund produce several research and analytical documents every year, that promote trade and investment liberalization and private sector development. Much of the "technical assistance and "capacity building" they provide to developing countries actively support the WTO framework and disciplines.

As the two of the most powerful pillars of the current global economic and financial architecture (the third being the WTO), the IMF and the World Bank are well positioned to ensure that their liberalisation dogma is embedded deep into the domestic policies of developing countries, even larger and more influential ones such as India and Brazil. Fighting the WTO regime therefore demands that we also fight the World Bank and the IMF and the neo-liberal corporate agenda they force on the people.

4 http://www.imf.org/external/np/exr/facts/imfwto.htm

The Colombo Declaration:
10 Years is Enough - No Deal at the WTO Hong Kong Ministerial Meeting!

Declaration of the Organizations, Movements and Individuals Gathered for the Asian Strategy Meeting on the World Trade Organization, Colombo, Sri Lanka, June 6-7, 2005

From December 13 to 18, 2005, the World Trade Organization's Sixth Ministerial Meeting will take place in Hong Kong . This event will have massive consequences.

Either the WTO finally gets consolidated as the prime mechanism of global trade liberalization, or it unravels a third time, possibly crippling permanently its usefulness as an institution for the promotion of the interests of Northern transnational corporations (TNCs).

Dismal Decade

That the WTO is suffering a deep crisis of legitimacy and credibility as it marks its 10 th year of existence comes as no surprise to us in Asia . When it was founded in 1995, it was sold to developing and least developed countries as an institution that would bring about growth, reduce global poverty, and decrease income inequality by expanding free trade. A decade later, the evidence is undeniable that the WTO has brought about exactly the opposite effects.

The Agreement on Agriculture (AOA) has proved to be nothing but a gigantic dumping mechanism for cheap subsidized grain and foodstuffs from the United States and the European Union on the agricultural markets of developing and least developed countries', destroying the livelihoods of hundreds of millions of farmers and agricultural workers and provoking the suicide of many of them and their dependents.

The Trade Related Intellectual Property Rights (TRIPs) Agreement has functioned to rob our communities of their collective right to resources, seeds, indigenous knowledge and even life itself, and to thwart development by allowing transnational corporations to monopolize technological innovations throughout the whole range of industries. It has seriously undermined people's food sovereignty. By putting corporate profits above public health concerns, TRIPs has facilitated a public health crisis in the form of HIV-AIDS that has drastically setback many parts of Asia as well as Africa .

The General Agreement on Trade in Services (GATS), with its central principle of "national treatment" providing foreign investors equal rights as national actors, is proving to be an extraordinarily powerful tool for TNC entry into and control of the service sector. This situation is particularly acute for developing and least developed countries which accounts for more than 50% of their gross domestic product. Especially threatened are water, electricity, telecommunications, health, educational and other essential services that necessitate public generation and delivery systems in order to assure all citizens equitable access to them. GATS will lead to the shrinking of the public sector, threatening national sovereignty and provoking serious social unrest.

Although it claims to provide potential benefits to LDCs, the GATS Mode 4 (the movement of natural persons) carries a big risk of allowing big business control of the movement of people, resulting in the trampling of the rights of migrant workers.

WTO-mandated liberalization and WTOsanctioned dumping have resulted in job losses and welfare erosion across the board, but the brunt of their negative impacts have fallen on women, who make up more than half of the work force in agriculture,

The 'G-Guide' groupings in the WTO Agriculture Negotiations

G 20 **Argentina, Bolivia, Brazil, Chile, China, Cuba, Egypt, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Philippines, South Africa, Tanzania, Thailand, Venezuela and Zimbabwe.**

The G20 currently comprises 19 developing country members of the WTO. Led by Brazil and India, the G20 has become one of the most important groupings in the WTO negotiation since the Cancun ministerial in 2003. The group has recently proposed a compromise formula for tariff reduction (middle ground between the Swiss and Uruguay round approach), which has been widely accepted as a basis for further negotiation. While arguing for the limited use of "sensitive products" (a mechanism which would mainly benefit developed countries), the group is more supportive to the "special products" (SPs) and "special safeguard mechanism" (SSM) favoured by the G33. The group has an offensive interest in reviewing domestic supports, especially on the use of the Blue Box where the group is the main driver of the review process to ensure that payments under this provision are less trade distorting than AMS* measures, and on the Green Box where it wants to see new disciplines to avoid box shifting. On export competition, the group has proposed a five-year deadline for eliminating all subsidies. (*Aggregate Measurement of Support: support measures that need to be reduced under the AoA, known as the Amber Box.)

G 33 Antigua and Barbuda, Barbados, Belize, Benin, Botswana, China, Congo, Cote d'Ivoire, Cuba, Dominican Republic, Grenada, Guyana, Haiti, Honduras, India, Indonesia, Jamaica, Kenya, Republic of Korea, Madagascar, Mauritius, Mongolia, Mozambique, Nicaragua, Nigeria, Pakistan, Panama, Peru, Philippines, Saint Kits and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sri Lanka, Suriname, Tanzania, Trinidad and Tobago, Turkey, Uganda, Venezuela, Zambia and Zimbabwe.

The G33, or known as "friends of special products" is understood to comprise of 42 countries. On the tariff reduction formula, the group is opposing the harmonization of tariffs across countries, and insisting on taking into account the different tariff structures of developing countries. The G33 is the main proponent of SPs and SSM (see G20 above). On SPs, it insists on self-selection on the basis of the indicators developed. On SSM, it proposes that this mechanism should be open to all developing countries for all agricultural products. Moreover, the SSM should be automatically triggered by either import surges or prices falls. The group is also very vocal on rejecting the developed countries' proposal of cutting de minimis provision allowed for developing countries.

Cairns Group

Argentina, Australia, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay

The group comprises of traditionally agricultur exporting countries. The Cairns Group has an obvious offensive interest in market access. It seeks harmonisation of import tariff across WTO members, and, like the US, views the G20 proposals as "lacking ambition". The Cairns Group would like to limit as far as possible the sensitive products, but the group is divided on the SPs & SSM, which is also the case regarding the issue of trade distorting domestic support, where some members are significant users of the Amber Box. Concerning the Blue Box, Green Box, and export competition, it shares a similar offensive position as the G20. That means the group is seeking restrictions in subsidies predominantly used by developed countries.

G10

Bulgaria, Chinese Taipei, Republic of Korea, Iceland, Israel, Japan, Liechtenstein, Mauritius, Norway and Switzerland

This is the group of ten countries with the most defensive interest in the agriculture negotiation. It opposes the G20 formula, particularly the tariff capping element. It argues for a free determination of products to be designated as sensitive. The G10 also has strong defensive position regarding domestic support. Like the EU, it is not interested in expanding criteria, but wants to maintain the status quo of the Blue Box. Also, it opposes the proposal to review and clarify criteria for the Green Box. As for export competition, the G10 wants a long time frame for the elimination of export subsidies. Moreover, very much like the EU, it links this particular issue to outcomes in other areas of negotiation such as NAMA and Services.

African Union/Group, ACP, least-developed countries (also known as the G90)

Angola, Antigua and Barbuda, Bangladesh, Barbados, Belize, Benin, Botswana, Burkina Faso, Burundi, Cambodia. Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Cuba, Democratic Republic of the Congo, Djibouti, Dominica, Dominican Republic, Egypt, Fiji, Gabon, The Gambia, Ghana, Grenada, Guinea (Conakry), Guinea Bissau, Guyana, Haiti, Jamaica, Kenya, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mauritius, Morocco, Mozambique, Myanmar, Namibia, Nepal, Niger, Nigeria, Papua New Guinea, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Senegal, Sierra Leone, Solomon Islands, South Africa, Suriname, Swaziland, Tanzania, Togo, Trinidad and Tobago, Tunisia, Uganda, Zambia, Zimbabwe

support farm incomes which were set by the US Department of Agriculture (USDA). The total payment to a farmer was equal to the payment rate, multiplied by a farm's eligible payment acreage and the programme yield established for the particular farm. Deficiency payment programmes in the US were eliminated in the 1996 Farm Act and have since been replaced by another subsidy programme, the production flexibility contract payment.

Derailment of the WTO. Derailment involves zeroing in on the key point of vulnerability of the WTO: its consensus system of decision-making. Concretely, it means working to prevent consensus from emerging in any of the key negotiating areas prior to and during the Sixth Ministerial in Hong Kong.

Dispute Settlement Body (DSB). The General Council of the WTO, composed of representatives of all member countries, convenes as the Dispute Settlement Body to administer rules and procedures agreed to in various agreements. The DSB has authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations, and authorize suspension of concessions or other obligations under the various agreements.

Due Restraint Provision. The UR Agreement on Agriculture provision that sets a 9-year period during which domestic support policies and export subsidy arrangements are exempt from GATT challenges.

Dumping. Occurs when goods are exported at a price less than their normal value, generally meaning they are exported for less than they are sold in the domestic market or third-country markets, or at less than production cost.

Export Subsidies. Special incentives, such as cash payments, extended by governments to encourage increased foreign sales; often used when a nation's domestic price for a good is artificially raised above world market prices.

Formula-based Tariff Reductions. A method of negotiating tariff reductions using an agreed upon formula applied to tariff rates (with limited exceptions being granted for very sensitive items) by all contracting parties. GATT (General Agreement on Tariffs and Trade). An agreement originally negotiated in Geneva, Switzerland in 1947 among 23 countries, including the US, to increase international trade by reducing tariffs and other trade barriers.
The agreement provides a code of conduct for international commerce and a framework for periodic multilateral negotiations on trade liberalization and expansion.
THE FORMULA AS A HARMONIZING FORMULA: when a formula is referred to as having a "harmonizing" effect it is designed principally to make steeper cuts on higher tariffs, so as to bring all the final tariffs closer to the same level. A COEFFICIENT: the number that determines the final tariff rate for each product. For example, if the coefficient is set at 25, then the formula will be designed to bring the final tariffs close to or at 25 percent. SWISS FORMULA: this is a harmonizing formula that uses a single mathematical formula to produce a narrow range of final tariffs. A "simple" Swiss formula will select an arbitrary coefficient for all countries irrelevant of their starting point so that everyone's tariffs are set at the same level. For example, countries would select a single coefficient and all WTO members will have to bring their tariffs close to that level.GIRARD FORMULA: this is a harmonizing formula that uses a single mathematical formula to produce a narrow range of final tariffs. It differs from the simple Swiss formula in that each country has its own coefficient calculated on the basis of the country's national tariff average. It is often referred to as a "Swiss-type" formula.URUGUAY ROUND FORMULA: this is the formula that was used in the Uruguay Round for agriculture tariff reductions. Tariffs are cut by a percentage average over a number of years. For example, developed countries agreed to cut tariffs by an average of 36% over six years with a minimum of 15% on each product. The combination of average and minimum reductions allows countries the flexibility to vary their actual tariff reductions on individual products so that some cuts will be greater than others.CANADIAN "INCOME TAX" FORMULA: this is a new formula that was proposed in June 2005 in the Committee on Agriculture. It is a harmonizing formula. Instead of applying a single cut to the entire tariff, different percentages are applied to different portions of the tariff, in a similar way to which European income tax is calculated.ABI FORMULA: the Argentina, Brazil and India (ABI) proposal for formula in NAMA. The formula is essentially a Girard formula.

GATT. Launched in 1947, the General Agreement on Tariff and Trade, was established to provide and administer the rules for a multi-lateral trading system.

Green Box. A colloquial term that describes domestic support policies that are not subject to reduction

commitments under the Agreement on Agriculture. These policies are said to affect trade minimally, and include support such as research, extension, food security stocks, disaster payments, and structural adjustment programmes.

July Framework. A framework agreement mainly on agriculture reached at the General Council of July 31, 2004 in Geneva, Switzerland. It provides the operative framework for further negotiations on agriculture, nonagricultural market access and other issues.

Liberalisation. A process of removing the barriers to trade in order to achieve the free trade of goods, services, intellectual property and investment across international borders. A market-oriented trading system is one which has liberalised its trading system.

Market Access. The extent to which a country permits imports. A variety of tariff and nontariff trade barriers can be used to limit the entry of foreign products, thereby reducing market access.

Modalities. Methodology to be followed during the Negotiations

Most-favored-nation (MFN) Status. An agreement between countries to extend the same trading privileges to each other that they extend to any other country. The MFN rule is a founding principle of the WTO. Under a most-favored-nation agreement, for example, a country will extend to another country the lowest tariff rates it applies to any third country. A country is under no obligation to extend MFN treatment to another country, unless they are both members of the WTO, or unless MFN is specified in an agreement between them. The WTO allows some exceptions to the rule, for instance to allow developed countries to extend more favourable trading terms to least developed countries.

Neo-liberalism. Neo-liberalism is an economic ideology centered around the values of globalization – free market, free trade and the unrestricted flow of capital. This rejects government intervention in the economy.

New Issues. See Singapore issues.

Non-tariff Barriers. Regulations used by governments to restrict imports from, and exports to, other countries, including embargoes, import quotas, and technical barriers to trade. These include health and environmental standards.

OECD (Organization for Economic Cooperation and Development). An organization founded in 1961 to promote economic growth, employment, a rising standard of living, and financial stability; to assist the economic expansion of member and nonmember developing countries; and to expand world trade. The member countries are Australia, Austria, Belgium, Canada, the Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, South Korea, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the US.

Peace Clause. See Due Restraint Provision.

Privatisation. This is the transfer of ownership from the public sector to the private sector. Privatisation has been pushed by international financial institutions as an economic tool to make the exploitation of resources be as efficient as possible. This has been the central issue of many struggles across the globe as in many cases, it has limited access to essential services to only those who can afford it.

Producer Subsidy Equivalent (PSE). A broadly defined aggregate measure of support to agriculture that combines into one total value aggregate, all the transfers which arise from the different instruments of agricultural support, both trade and supposedly nontrade distorting. In the US, these include direct payments to producers financed by budgetary outlays, such as deficiency payments, budgetary outlays for certain other programmes assumed toprovide benefits to agriculture (such as research and inspection and environmental programmes) and the estimated value of revenue transfers from consumers to producers as a result of policies that distort market prices. The PSE seeks to reflect the full range of economic distortions arising from agricultural policies.

Production Control. Any government program or policy intended to limit production. In agriculture these have included acreage allotments, acreage reduction, set-asides, and diverted acreage.

Production Flexibility Contract Payments (PFCP). Direct payments to US farmers for contract crops through 2002 under the US 1996 Farm Act. Payments for each crop are allocated each fiscal year based on fixed percentage shares specified in the act. The percentages were based on the Congressional Budget Office's March 1995 forecast of what deficiency payments would have been for 1996 to 2002

under the 1990 farm legislation. PFCPs were initially higher than deficiency payments paid to farmers. However, they have been set on a descending scale, heading for zero payments by 2002.

Sanitary and Phytosanitary (SPS) Measures. Technical barriers designed for the protection of human health or the control of animal and plant pests and diseases. Special Safeguard provisions. Provisions within the UR Agreement on Agriculture designed to protect the products that were subject to tariffication (as a result of implementation of the Agreement) from surges in imports or large price declines.

Singapore Issues. The Singapore or New Issues are investment, competition policy, government procurement and trade facilitation. They are called the Singapore Issues because of the working groups established on each issue at the WTO's first Ministerial in Singapore in 1996. Developing countries are largely opposed to the inclusion of the Singapore issues in current negotiations.

Sensitive products. This would allow developed countries to designate certain sensitive products which they could continue to protect. Developing countries argue that this will prevent them from having access to developed country markets.

Special and Differential Treatment. SDT or S&D is less arduous treatment conferred on developing countries in the implementation of WTO rules. For example, developing countries may have lower tariff reduction requirements or longer phase in periods. Under SDT, 'less than full reciprocity' is expected of developing countries in that they need not offer reciprocal treatment to developed countries. It also includes the proposed Special Products and the Special Safeguard Mechanism (SSSM). Developing country demands for SDT have largely fallen on deaf ears in recent WTO negotiations.

Special products. The concept of Special Products SP), would allow developing countries to have the guaranteed flexibility to designate an "appropriate number" of products for less market access reduction. The operational criteria would be based on food security, livelihood security and rural development.

Special Safeguard Mechanism. a proposal to allow developing countries to increase their protection in times of import surges or fluctuations in world market prices,

Special Treatment Clause. A clause in the UR Agreement on Agriculture that gives countries the option of foregoing tariffication on some commodities and instead requires minimum imports above the minimum access commitments of 3-5 percent of consumption. This clause was added to temporarily placate Japan and South Korea by providing protection for their rice sectors. In the case of Japan, for instance, the minimum import requirements for rice are at 4 percent of consumption in 1995, rising to 8 percent in 2000.

Tariff. A tax imposed on imported products by a government which consumers have to pay. A tariff may be either a fixed charge per unit of product imported specific tariff) or a fixed percentage of value (ad valorem tariff). Tariffs are generally imposed when governments do not want imported products to compete with locally made ones. Tariffs are also sometimes used to tax exports, in order to generate revenue, or to keep certain products available on the domestic market.

Tariff Escalation. When import duties are higher on semi-processed products than on raw materials, and higher still on finished products. This escalation serves to keep the global market open for raw materials but ensures that the countries producing higher-end processed products are insulated from competition. Effectively, this entrenches developing countries inthe position whereby they remain exporters of cheap raw products since their processed products, if any, are barred from entering the global market.

Tariff Peaks. High tariffs (far above the average tariffs of a country) used to shelter some 'sensitive' industries or products, such as textiles, leather goods, and food products.

Tariff-rate Quota. Quantitative limit (quota) on imported goods, above which a higher tariff rate is applied. A lower tariff rate applies to any imports below the quota amount.

Tariffication. The process of converting nontariff trade barriers to bound tariffs. This is done under the UR agreement in order to improve the transparency of existing agricultural trade barriers and facilitate their proposed reduction.

Trade Liberalization. A term which describes the complete or partial elimination of government policies or subsidies that restrict trade. The removal of tradedistorting policies may be done by one country unilaterally) or by many (multilaterally).

UR (Uruguay Round) Agreement. The Uruguay Round of multilateral trade negotiations, conducted under the auspices of the GATT, is a trade agreement designed to open world markets. The Agreement on Agriculture is one of the 29 individual legal texts included in the Final Act under an umbrella agreement establishing the WTO. The negotiation began at Punta del Este, Uruguay in September 1986 and concluded in Marrakesh, Morocco in April 1994

World Trade Organization (WTO). Established January 1, 1995 as a result of the Uruguay Round, the WTO replaces GATT as the legal and institutional foundation of the multilateral trading system of member countries. It provides the principal contractual obligations determining how governments frame and implement domestic trade legislation and regulations. And it is the platform on which trade relations among countries evolve through collective debate, negotiation, and adjudication. *AO*

Sources:

Bello, Kwa, Guide to the Agreement on Agriculture: Technicalities and Trade Tricks Explained, Focus on the Global South, 1998

Smaller, Carin, Formula One Racing: Who's Going to Win the Grand Prix?, TIP/IATP, June 2005

Goode, Walter, Dictionary of Trade Policy Terms, *World Trade Organization, 2004*

Dommen, C. and Kamoltrakul, K., The Practical Guide to the WTO for Human Rights Advocates, *3D and Forum Asia, 2004.*

Wikipedia, the free encyclopedia

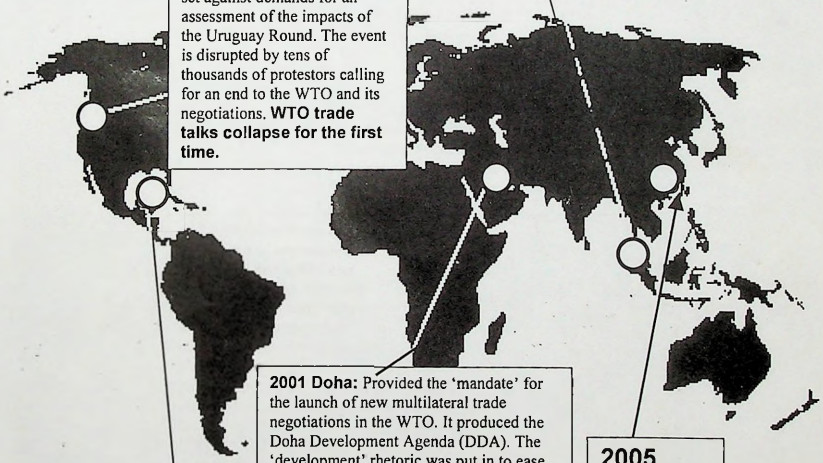
Other organizations to check out:

there are a whole lot more,
these are just to start you off in the right direction)
Christian Aid: www.christianaid.org.uk
GATSwatch: www.gatswatch.org
Global Exchange: www.globalexchange.org
Hemispheric Social Alliance: http://www.asc-hsa.org
Institute for Agriculture and Trade Policy (IATP): www.iatp.org/global
Institute for Global Justice (IGJ): www.globaljust.org
Our World is Not for Sale: www.ourworldisnotforsale.org
Oxfam: http://www.oxfam.org.uk
Polaris Institute: www.polarisinstitute.org
Seattle to Brussels Network (S2B): www.s2bnetwork.org
Thai-US FTA Watch: www.ftawatch.org/eng/
Third World Network: www.twnside.org.sg
Via Campesina: http://www.viacampesina.org

The Road to Hong Kong

1996 Singapore: the first WTO Ministerial. It was here that the proposal was made to include investment, competition policy, Government procurement and trade facilitation in the negotiating agenda.

1999 Seattle: Proposals for a new round of negotiations are set against demands for an assessment of the impacts of the Uruguay Round. The event is disrupted by tens of thousands of protestors calling for an end to the WTO and its negotiations. **WTO trade talks collapse for the first time.**



2001 Doha: Provided the 'mandate' for the launch of new multilateral trade negotiations in the WTO. It produced the Doha Development Agenda (DDA). The 'development' rhetoric was put in to ease the concerns raised by developing countries' implementation issues

2003 Cancun: Supposed to be a 'stock taking' exercise to assess how far the DDA negotiations have gone, yet there were concrete proposals to begin negotiations on the Singapore issues. Developing country groupings like the G20, G33 and G90 emerged challenging the US-EU agenda. Korean farmer Lee Kyung Hae takes his own life under the slogan 'WTO kills farmers'. **WTO trade talks collapse for the second time.**

2005 Hong Kong: 'Strike three and you are out' for the WTO?

medico
309 friend
circle bulletin

February - March 2005

Constitution Violated:

Patents (Amendment) Ordinance, 2004 and Patents (Amendment) Rules, 2005[1]

-Advocate Narendra B. Zaveri[2]

Re: Validity of Ordinance

1. *Promulgation of Ordinance Unconstitutional?*
The Constitution of India by Art. 123 empowers the President to promulgate an Ordinance:

(i) when Parliament is not in session;

(ii) the President (i.e. as per Art. 74, the Council of Ministers) is satisfied;

(iii) that situation has arisen requiring immediate action.

1.1 *Whether the Cabinet had approved the Ordinance?*

On Friday, the 24th December 2004, after coming out of the Cabinet meeting, the Commerce Minister in a televised briefing informed the waiting media people:

"Cabinet discussed the Patents Amendment Bill. Various options have been discussed to meet our obligations under the TRIPS agreement but no decision was taken." and further, "We will now finalise the route and what should be done to meet our obligations."

PTI on Sunday 26th December reported from Delhi:
"The Cabinet, which had discussed the amendments at its last meeting on Friday without taking a decision, is likely to take up the issue again next Wednesday and consider the need for an Ordinance."

1.2 *Was the President misinformed?*

In absence of Cabinet advice, is the Ordinance validly promulgated?

The President could not have (Art. 74 of the Constitution) and would not have signed or promulgated the Ordinance on 26th December 2004, if he knew or was informed that the Cabinet, had not taken final decision at its meeting on 24th December 2004, either on the Patents Amendments or the Ordinance. He must have been misinformed about Cabinet indecision.

1.3 *Did the circumstances justify immediate action by issuing Ordinance?*

The only circumstance relied upon by the Government to justify recourse to Ordinance powers is the obligation under TRIPS to introduce product patents for drugs, medicines, foods and agro-chemicals effective from January 1, 2005. In this context, the following facts and issues require consideration:

- The TRIPS requirements were known long since.
- The Bill for proposed amendments adopted for the Ordinance was already prepared and introduced in the Parliament in December 2003 was readily available.
- Apparently the UPA Government has decided to adopt the same Bill text, and had also prepared and kept ready the draft of the Rules with 70 Clauses, 121 pages and 27 revised forms ready. The notification for amending Rules was also issued on 28th December 2004.
- Why was the Bill not introduced in Parliament earlier?
- Why did the Government avoid introducing the Bill in Parliament and discuss the various proposals,

[1] *The Patents Act 1970, the subsequent amendments including the Ordinance 2004 and Rules 2005 are accessible at <http://www.patentoffice.nic.in/ipr/patent/patents.htm>*

[2] *Email: <narendraz@vsnl.net>, Ph: 022 22663201/3301 (office)*

objections etc openly in the House, or by referring to a committee instead of private discussion?

- Why did the Government wait till the Parliament sessions were over?
- Why did the Government wait till last week of December 2004, i.e., with only few days left for TRIPS compliance? Was this done to justify Ordinance route?
- Was the Government deliberately trying to avoid discussions and possible adverse vote in Parliament?
- Whether in the facts of the case, was the Parliament deprived of its jurisdiction, functions and duties to make laws? And is now being faced with a situation where their allies parties have to vote for the Bill to save the Government?

1.4 *Only one amendment (out of 77) required for TRIPS compliance -*

Removing bar of sec. 5 for product patents for drugs, etc., effective from 1.1.2005 was the only amendment required for TRIPS compliance. This could have been achieved by amending (as in sec. 4 of Ordinance), sec. 5 of the Patents Act 1970 ("Inventions where only methods or processes of manufacture patentable"). This could have been passed during winter session without problem.

Why did the Government insist on the remaining 76 sections not required for TRIPS compliance being included in the text?

Was TRIPS compliance only a pretext to bypass the Parliament and to avoid discussion and possible rejection of such amendments in view of left parties opposition to some of the changes?

1.5 *Ordinance - a Trojan horse?*

Was inclusion in the Ordinance of the other 76 sections involving drastic changes not required for TRIPS compliance, and for which there was no urgency, bonafide exercise of Art. 123 powers?

Does Art. 123 power permit the Government to undo what the Parliament done only recently after detailed study, deliberations and unanimous Report of JPC?

2. *Can the Government exercise Art. 123 powers to issue Ordinance?*

- in violation of Constitutional provisions:
- depriving Parliament of its legislative jurisdiction, powers and functions?
- guaranteeing fundamental rights?
- in respect of subject matter covered by the State List of Schedule VII of the Constitution?
- in a manner which obstructs/disables the States in discharging their Constitutional powers, functions and duties as per Directive Principles of State Policy?
- in breach of obligations under Human rights Conventions?
- to totally change and reverse the basic character and policy of the law from a model welfare legislation serving public interests and convert it into a law designed to promote and protect private interests (80% foreigners) giving it primacy over public interest?
- to undo what Parliament has done only recently in 2003 after detailed study and deliberations on unanimous recommendations of JPC? (few specific instances of such amendments are provided in Annex. 1.)
- to appropriate to itself the powers to amend specific and substantive provisions of the Act by transferring such provisions to the Rules/Rule making powers?
- by amending the existing sec. 159 provisions ("Power of Central Government to make Rules" in the original Patents Act 1970), to expand the scope of its own Rule making powers already provided in the Act by the Parliament for the purpose, particularly to include also the power to decide, frame and enforce such amended Rules with immediate effect?

The Government has also amended section 159 (3) of the Patents Act 1970 ("The power to make rules under this section shall be subject to condition of the rules being made after previous publication") to assume powers to issue final notification for amending Patent Rules without prior publication. This will empower the Government to make final Rules and enforce them without prior publication as draft Rules.

In fact in exercise of these assumed powers the Government has already issued the final notification on December 28, 2004. This will deprive the interested parties to make any suggestion or changes in framing of the Rules.

In past the DIPP (Dept of Industrial Policy and Promotion, Ministry of Commerce and Industry) has abused the Rule making power to make Rules contrary to the specific provisions of the Act and in favor of applicants/grantees of patent/EMR, and against public interest by making vast changes not justified by the Act provisions. (Few specific instances of abuse of Rule making powers are set out in Annex. 2.)

3.1 This provision will give to the DIPP very wide and uncontrolled powers. This will directly deprive Parliament of its powers to legislate and the people of

the benefits of assurance and protection of direct and immediate parliamentary control over legislation, affecting their lives and rights. It is necessary therefore to consider the questions :

- who in the Government will exercise these powers?
- whether there will be any external influences as international treaties and conventions and foreign parties are involved ?
- what will be the guiding considerations?
- whether post-facto checks under the amended (per the Ordinance) section 159 (of the Patents Act 1970) would be effective?

3.2 Actual experience shows that Ministers and senior Secretaries, who are assigned this work, have limited knowledge of the subject, are subject to frequent changes, their terms and time available to them are too short for them to understand the requirements, problems and implications of the complicated Patent law and constitutional issues and take independent decisions. In actual practice, most often Joint Secretaries in the Department decide and act on basis of the study made and notes prepared at Director's level. They have little knowledge, experience or training, in the subject to take effective decisions.

3.3 Such vital matters affecting the lives and fundamental rights of people; economic, technological and industrial development of the nation; and long term international commitments have to be decided after detailed studies, open public discussions, and deliberations in and out of the Parliament by collective decisions of representatives of the people. Such matters cannot be left to be decided in total secrecy by a few individuals - however respected and careful they may be. The Constitution scheme also mandates this approach.

3.4 The Patent Law amendments have been drafted and pushed through by resorting to emergency powers under Art. 123 and sec. 159 , and on each occasion, there has been systematic erosion of national and public interests, and bias in favor of applicants/ patentees (80% being foreigners). The present Ordinance deliberately, systematically and effectively dilutes all obligations on part of applicants/patentees; removes all safeguards available for other citizens and public interest ; and takes away and limits the rights of the citizens and States even in case of emergencies and urgencies. **The character of the Patents Act 1970 has totally changed the law of the people, by the people, and for the people in favour of a law for the MNCs and by the MNCs. Even the Constitution has not been spared.** There is thus clear and undisputable evidence of foreign influences regulating or guiding exercise such powers to the detriment of the people and the nation.

4. *Article 13(2) of the Constitution states:*

"The State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void."

Art. 12 defines 'States' to include the Parliament. As such Parliament cannot make any law which takes away or abridges any of the fundamental rights guaranteed in Chapter 3 of the Constitution.

The Patents (Amendment) Ordinance 2004 takes away or abridges the fundamental rights set out in Part III (of the Constitution) as under:

(i) *Violation of Art. 19(1)(a)*

By sec. 10, 20 & 33 (of the Patents Ordinance), the right of citizens to know and seek information being part of fundamental right to freedom of speech and expression, guaranteed by Art 19(1)(a) is taken away, abridged or rendered ineffective. Publication in Gazette and right of inspection before grant, have been provided in existing act and in patent laws of most countries to enable interested parties to know and obtain information about patent claims, and provide sufficient time and opportunity before grant of patent, to inform the Patent Office about their objections and also to oppose grant.

(ii) *Violation of Art. 19(1)(g) & 21*

Grant of a patent entitles the patentee to exclude or prevent all other citizens from making, using, selling, offering to sell or importing the product protected by the patent. It thus takes away, or abridges fundamental rights of other citizens to practice their profession, or to carry on their trade or business and also the right to life guaranteed by Articles 19 (1)(g) and 21.

Reasonable Restriction Exception

The public interest safeguards protecting rights of other citizens through sec. 5 (of the original Patents Act 1970 dealing with scheme of process patent, i.e., permitting production by other processes); pre-grant scrutiny (sec. 6 to 23 of the 1970 Act); pre-grant opposition (sec. 25 of the 1970 Act); compulsory license/Government use provisions of Chapter 16 –17 of Patents Act. 1970) operated to bring the existing Patents Act provisions within scope of 'reasonable restrictions' exception to fundamental rights.

However, by deleting or diluting these public interest safeguards, as briefly referred in Annex. I, the Ordinance provisions deprive such patent grant, of the safety of protection as reasonable restrictions, and bring it in direct violation of fundamental rights.

Ordinance against Spirit of Doha Declaration

Doha Declaration on TRIPS is an official and binding

interpretation of TRIPS Agreement. It clearly asserts primacy of public health over commercial interests, and recognizes rights of members nations to take all measures necessary to provide healthcare to their people treating TRIPS as flexible. It also places a moratorium on raising of WTO disputes under TRIPS till next Ministerial Conference, to facilitate members adopting such measures without anxiety. Doha Declaration thus removes scope of confusion, doubts or disputes.

The Ordinance even goes far beyond the requirements of TRIPS - seriously compromising public interest and third party rights conferred by TRIPS itself. The most glaring example of such approach is of the provisions for compulsory licences. The JPC has taken considerable care in formulating the policies and principles (set out in proposed sec. 83) to be followed for considering application for grant of compulsory licences. Unfortunately however, the good intentions get defeated by the elaborate conditions and time consuming procedures prescribed for such grant in proposed sec. 84, 87, 92 & 117A.

The Ordinance makes no exception from procedural requirements of sec. 87, even for cases of 'national emergency' or 'extreme urgency'. Even after issue of gazette notification and declaration by the government of such situations, proposed sec. 92 & 87 require the same procedure to be followed before Controller of Patents, with right of appeal to Appellate Board as per sec. 117A, involving delay of not less than 2 years when every day's delay adds to the death toll in thousands.

Neither TRIPS Agreement, nor Paris Convention, contemplates a right to oppose holding of elaborate inquiries or appeals for grant of compulsory licences or government use in public interest. However, the now amended sec. 87 prescribes such procedures permitting even strangers to oppose the grant of compulsory licences, which virtually nullify this vital public interest safeguard.

Unless clear, effective, efficient and enforceable safeguards are provided in law, it may turn out to be 'now-or-never' situation for the millions of poor victims of AIDS/HIV and other pandemics – many of them innocent children and women, and also for the generic industry, which could be greatly marginalized.

There is no room for any complacency and ambiguity or hesitancy. The time is to act, and act decisively and with determination. No reliance can be placed on promises of FDI or R&D by foreign pharma companies in India, particularly in view of the systematic closure and disposal, even of their existing production facilities, fixed assets, sale of brands, and withdrawal of capital and investments from India during last 7 years.

Having regard to the pressing need to control the health crisis; the constitutional obligations to protect fundamental right to life for all citizens, and right to trade for generic industry, and also in furtherance of Directive Principles of State Policy, it is imperative that Parliament and Government review, not only the Ordinance, but even the Patents Act 1970, to provide more effective safeguards for national and public interest in respect of patents for healthcare inventions.

Crucial Issues

- Only a microscopic minority in India can afford to pay the resulting draconian drug prices.
- Can a welfare State make or enforce a law, which benefits less than 1% of its population, ignoring the sufferings, and compromising interests, of the remaining 99%?
- What good is research for modern drugs, if its benefits are denied to the vast millions of the poorest, leaving them to suffer their pains in silence - if at all they survive - for 20 long years?
- Indeed the Ordinance will kill in the long-run, more people than the unfortunate tsunami that hit our country on December 26, 2004.

Annexure 1

Some Objectionable Features of the Ordinance

By sec.4, the Ordinance removes the bar against grant of product patents for '*substances intended for use or capable of being used as food or medicines*', but though permissible under TRIPS and as reaffirmed in Doha Declaration, the Ordinance fails to provide the following counterbalancing measures absolutely necessary to protect and promote public interest in view of the total monopoly to be allowed under product patents:

- The words 'product', 'novelty' and 'inventive step' have not been defined leaving it open for the claimants to claim, and for Patent Office to grant patents even for common place items like dosai, pulav, varieties of ice-creams, chocolates, etc., or for wrongful claims for product patents of matter already in public domain, or traditional knowledge; or for "me-too" drugs with little innovation. Such claims without contributing any technological advance or benefit only deprive people of their lawful rights to matter already in public domain and add to the disputes, litigations and miseries for them.
- By sec. 6 to 22 of the Ordinance, the provisions in the 1970 Act relating to pre-grant search, examination,

scrutiny and publication are being diluted or rendered ineffective. This will encourage claims for subject matter already in public domain, or is part of traditional knowledge, and promote wrongful, frivolous, fraudulent, excessive, repetitive claims; and there by deprive other citizens of their lawful rights to make use etc such knowledge and products.

- By sec. 23 of the Ordinance, the existing provisions of section 25 of Patents Act 1970 providing for right of other interested citizens to oppose granting of patents on the grounds specified therein, is taken away.
- The bias in favor of the applicants and against public interest is most glaring in case of procedures prescribed for oppositions to grant of patent (sec. 25 of the Patents Act 1970 and Rules 55 to 58 of the Principal Rules as amended by the Ordinance), and the procedure prescribed in sec. 87 to 92 A (as amended in the Ordinance) for opposing grant of Compulsory License (CL). Whereas, in case of opposition to patents (sec. 25 of Patents Act 1970), public interest requires proper procedure and thorough enquiry to eliminate wrongful claims, in case of CL public interest requires expeditious grant of CL. But the procedures prescribed in the Ordinance 2004 and Rules 2005 in both cases favor even wrongful claims made by applicants and abuses practised by patentees and are designed to facilitate and expedite grant of patents even for obviously frivolous and fraudulent claims, and to delay and defeat applications for CL even in gross cases of exploitative prices, non-use, public emergency situations and exports for benefit of suffering people. There is a clear bias in favor of applicants/claimants and against public interest.
- More effective and practicable compulsory license provisions necessary to ensure sufficient availability of drugs and medicines required for treatment of millions of poor at affordable prices should have been made. However, the elaborate and time consuming procedures prescribed for grant of CL – even in case national emergency, urgency u/s. 92(1), 92(3), & 92A (as amended under the Ordinance) makes these provisions totally ineffective. (sec. 92 (3) specifically required such procedure to be avoided for drugs required for pandemics, and now Rule 96, 97 etc., apply the same procedure as for other CL).
- By failing to make provisions for honest/prior use exception to grant of patent/EMR - though permissible under TRIPS Agreement (Art. 30 & 31) - the Ordinance fails to protect fundamental rights of citizen. It thus takes away, or abridges fundamental rights of other citizens to practice their profession, or to carry on their trade or business and also the right to life guaranteed by Articles 19 (1)(g) and 21. Such specific provision was necessary particularly in view of the scope of patents being extended to cover product patent for foods, drugs and medicines and also to all fields of technology, and providing a longer term of 20 years with stronger protection.

Annexure 2

Specific Instances of Abuse of Rule Making Powers

The Ordinance amends many of the existing specific substantive/procedural provisions of the Act by substituting the words: 'as may be prescribed' in several sections to transfer the powers from the Act to the Rules which would be subject to changes from time to time. No guidelines have been provided to control exercise of such powers by the Government. In past the DIPP has exercised such powers beyond the scope of the Act provisions, and almost in all cases to benefit the applicants/patentees and against public interest. Two such specific examples of such misuse are :

(i) Drastically amending the Patent Rules of 1972 by about 66 clauses and totally substituting the fees schedules and 28 prescribed forms in place of about 62 forms, Patent Amendment Rules 1999, consequent upon the Patent Act 1999 containing only 9 sections, when for identical amendments of 1994 Ordinance, the draft Rules framed and notified by the Government on 31.12.94 contained only 4 amending clauses and 6 new forms. All the new forms were designed to enable applicants to suppress adverse information and avoid giving declarations.

(ii) Rule 33 O of 1999 Rules limiting the scope of 'public interest' provided in sec. 24 D for Government use of EMR and reproducing the same as Rule 53 of the 2003 Rules, ignoring Bombay High Court guidelines.

(iii) The Patent Controller, ignoring the specific provisions of sec. 11 A (3) requiring publication in the Gazette, of all applications after 18 months, avoiding such publication by issuing a note on 31.05.2003 that all applications filed before 31.10.2001 shall be deemed to have been published. This will make even the pre-grant representation by opposition provisions meaningless.

(iv) The Rules have been drastically amended in less than 20 months. Once again the 2005 amending Rules totally change the fee schedules and the forms and introduce 70 clauses to amend the Patent Rules 2003.

Ordinance and After: Issues in Focus

-B.K.Keayla

Government of India is honoring its binding commitment to change the Patents Act 1970 to conform to the TRIPS provisions. In this process the Act has been amended twice in 1999 and 2002 and now the Patents (Amendment) Ordinance 2004 has been promulgated in December 2004. In-depth examination of these legislations reveals that safeguard measures to protect the public health are being compromised and the flexibilities and freedom available are being ignored. The amended patent regime will help the powerful multinational corporations to monopolies our market. The result be that the country will face high cost economy, inflation, de-growth in certain sectors of industry and unemployment. Serious phenomena. A number of studies have also pointed out the implications of TRIPS Agreements and made certain useful suggestions.

Safeguard measures available within the TRIPS framework and the Doha Declaration on TRIPS Agreement and Public Health should have been stipulated in the amending process. Some of important patent components ignored in this regard which should now be incorporated in the Third Patents (Amendment) Bill are as follows:

i) Appropriate definition of patent terminologies to contain volume of patent claims restricting them to the genuine patentable subject matter need to be stipulated now. The definition of invention should be restricted to basic novel invention. Pharmaceuticals patentability should be restricted only to new chemical and medical molecules/entities. This will help exclusion of frivolous claims. Otherwise the volume of claims may rise to the same level as in USA and China, which are faced with flood or patent applications over 3 lakhs annually due to weak and unrestricted definitions. For India such proposition would be totally unmanageable and there would be chaos, as the market would have massive volume of protected products.

ii) Life forms including microorganisms should be specifically excluded form patentability as WTO has yet to complete its mandated review. This has implication of widening the scope of patentability. Considering the criticality of spread of HIV/ AIDS phenomena in the world including India, it is important to consider exclusion of all relevant present and future drugs for this disease from scope of patentability or declare health emergency to facilitate authorization of domestic enterprises to produce these drugs for domestic and export demands. The expansion of patenting of technical application to software industry or a combination with hardware also should not have been provided through the Ordinance.

iii) Pre-grant opposition of patents as available presently in the Patents Act 1970 should not be amended. There is no TRIPS requirement to provide for any change in this provision. The proposed amendment of stipulating pre-grant representation and post-grant opposition has serious implications. The post-grant opposition will be directed against the Controller and he would vehemently oppose opposition, as he would himself dispose of recommendations of Opposition Board.

iv) Role of domestic enterprises to ensure competitive environment to protect public interest about the availability and affordability of medicines is important. In this direction Article 31(b) of TRIPS permits grant of compulsory licence if the effort of obtaining licence from patent holder on reasonable commercial terms and conditions do not fructify within a reasonable period of time. This is an important TRIPS provision and should find prominent provision in our amended patent regime.

v) There are over 9000 applications in the Mail Box received during the transitional period of 10 years from 01/01/1995. Article 70 para (3) of TRIPS Agreement specifically provides that no protection shall be provided to Mail Box products if they have fallen in public domain. Non-inclusion of these provisions in the amendments has serious implications. There are a number of Mail Box products which are being produced by the domestic enterprises and their turnover is over Rs.3000 crores. Alternatively specific provision should be provided for grant of automatic compulsory licences to these manufacturers to enable them to continue their production on payment of royalty otherwise there would be serious shortages and the availability of the relevant products from the patent holders at prices which will be 10-15 times higher than the prices of Indian manufacturers. This will also give rise to a large number of court cases.

vii) Many small countries and LDCs are dependent upon imports of pharmaceutical products from India. The Para of Doha Declaration procedure prescribed for imports by these countries in totally unworkable. The main reason being that there has to be pharmaceutical companies producing the patented drugs under compulsory licences for meeting the domestic demands in India and supply to needy small and LDCs. Only in this way the exports from India would be viable. Almost 45 percent turnover of Indian companies is presently being exported and it is important that the law must strengthen the role of Indian companies in their export efforts to small and poor countries. The entire world is seriously concerned about the weaknesses in the changes already made and those under consideration for supplies to poor and dependent countries. Formal representations have been made by the mass organization from all over the world to the highest authorities in India to safeguard the interest of the people in these countries.

To sum up there is a need for a serious and precision approach in framing the final amending Bill replacing the Ordinance. There should be no haste in pushing the enactment of the Bill. Reference to Joint or Standing Parliamentary Committee is very important and in public interest.

(Reproduced with thanks from: Keayla, B.K. *Patents (Amendment) Ordinance 2004: A Critique.* National Working Group on Patent Laws, February 2005. Email: <wgkeayla@del6.vsnl.net.in>).

Patents Ordinance: Ensuring Corporate Control, Neglecting Public Health Concerns

-Mira Shiva[1]

The Patent Ordinance was announced on December 26, 2004 ironically the day Tsunami hit several countries in South and South East Asia – a double disaster in every sense.

On Feb 1, 2005, National Working Group on Patent Laws and the Research Foundation on Science, Technology and Ecology (RFSTE) with Transform India organized a colloquium on Social and Economic Implications of Patent Ordinance.

The emergency meeting was to highlight the serious implications for public health, agriculture, food security, food sovereignty as well as for software and IT.

Richard Stallman, founder of Freedom Software movement emphasized that there is a significant difference between copyright, trademark and patents. The calculated projection of their being similar was to confuse the public. Copyrights and trade marks are fairly acceptable to majority. Using intellectual property in the same breath was basically to ensure its unquestioned acceptance as a concept specially with the clever use of the word 'property' and rights.

The fact that intellectual property rights was a substitute term for patents and patent laws – terms which should be used was known to few.

Corporate control on knowledge on basic ideas would not be acceptable to many as there had been built on what existed, and it was bound to block growth and development in software by non-patent holders of these ideas and increase inequities.

Since several ideas are used in a single programme, with patenting of these ideas, their use by others would be treated as 'violations' and infringements of patent rights. Richard refuses to use the word 'intellectual property rights' and actively discourages using it.

Mr. BK Keayla, Convenor of the National Working Group on Patent Laws since its beginning in 1988, highlighted that four People's Commission Reports on patents had been prepared and submitted before each patent amendment 1999, 2002, 2003 and 2004.

The nation was misled by statements by the Commerce Minister that R&D, exports, etc., will increase and that access and prices of medicines will not be affected.

The letter of concern by WHO to the Health Minister about India's failure to use the existing TRIPS flexibilities was noted. This would effect not just the poor in the country but also in other poorer countries already in deep debt which depend on India for cheaper generic equivalents.

Mr. William Haddad of Generic Manufacturers Association, USA, former adviser to John F. Kennedy, and former Senator, said that generic manufacturers in US depend on bulk drugs and raw material from India for making cheaper generic equivalents available to the poor in US. He emphasized that TRIPS was not in the interest of public health and the Patent Ordinance 2004 was extremely unfortunate.

Dr. Vandana Shiva, Director, RFSTE, focused on the implications of Patent Ordinance on agriculture with patenting of "traits" in seeds. The changes being

[1] *Email: <mshiva@nda.vsnl.net.in>*

brought in the Seed Act would be disastrous for agriculture and food sovereignty.

Representatives from mass movements, trade unions and some Left parties shared their views as well and assured participants that they would express their concerns as it was a question of national sovereignty.

Key Concerns

The main concerns about the Patents Ordinance 2004 are as follows:

- Procedural violation of Constitution bypassing the Parliament.
- Exclusion of many flexibilities which TRIPS allows.
- Inclusion of several sections which were beyond TRIPS requirements and are therefore TRIPS Plus.
- Patentability *criteria* needed to be stricter allowing patenting only for inventions based on novelty and restricted only to new chemical entitities and *not* new use of old drugs, dosage forms, drug delivery system, etc.
- Earlier existing clauses have been removed which could have taken care of frivolous claims.
- There continues to be the most problematic concern about representation, implications on domestic including public health once the 7000 patent applications in the mailbox are granted patents.The Post-Grant Opposition would only imply questioning the patent granter.
- Rules Making: Many sections indicate "as per rules" which will be made by Commerce Ministry bureaucracy.

The failure to incorporate public concerns in presentations made to Joint Parliamentary Committee was pointed by those who had made presentations.

When concerns were raised during the 1st and 2nd Amendments, during the NDA regime, one of the key persons involved with public health aspects of patents was told by a senior government servant that "the Amendments had been seen and approved by the Americans, so why were needless objections being made !"

This form of policy making is unacceptable to the citizens of a sovereign country – which belongs not just to those involved in trade and those belonging to large corporations, but to those involved in public health work and the people who give their blood, sweat and tears to survive and to keep humanity alive.

The bottomline is that even today large majority cannot afford to buy medicines and medical care.

With grant of patent for 20 years and EVERGREENING of patents, extended monopolies will be ensured affecting ACCESS TO medicines as well as PRICES. Only 300 new drugs were patented in last 5 years world over. Now with no pre-grant opposition per the December 2004 Ordinance, it can be well imagined what the granting of the 7000 patent applications in the mailbox mean to domestic industry which is already manufacturing those drugs.

Protection of those drugs which are *"already in public domain"* (that is manufactured domestically by Indian industry as of 1.1.2005) is permitted under TRIPS Art 70.3 but shockingly *has not been ensured* in the Ordinance. This means that existing domestic production becomes a *violation and infringement* of the patents held by the patent holder. Stoppage of Rs 3000 crores worth of medicines could take place, spiraling drug prices, increasing indebtedness, decreasing drug availability, emergence of drug resistance, etc., worsening the already high morbidity and mortality suffering pain and death amongst the most vulnerable.

No one involved in or concerned abut public health can accept this without raising strong objections.

The Joint Action Committee against Patent Ordinance has decided to launch nationwide protests on the February 26, 2005 joined in by mass movements health and public health community health organisations, farmers' movements, social action groups, academicians, intellectuals and activists.

On February 13, 2005, Basant Panchami, RFSTE and farmers' movements will be involved in activities highlighting impact of Patent Ordinance, Seed Act, etc., on Agriculture and Food Security.

Basant Panchami is celebrated in the North at a time when yellow mustard fields are in full bloom and customarily yellow clothes are worn.

Our seeds in our Hands
Our health in our Hands
Our knowledge in our Hands

for PUBLIC GOOD and not Corporate profits in the name of Patents through UNJUST INEQUITY, PERPETUATING trade regimes at global and national levels.

Attention Readers

Please renew your subscription to the *mfc bulletin.*

If you know a life subscriber who is not getting the bulletin, please let us know.

-Editor

Tsunami: Some Health Considerations

-C.Sathyamala[1]

Disposal of the Dead and the Tsunami

The most visible area of intervention of the state was in the disposal of the dead.

Post tsunami, there was some delay before the bodies were cleared and thus we see photographs of a main road littered with the bodies of the dead and people walking around it with little concern (see for instance *India Today, Outlook, etc.*). The dead were brought to government hospitals and health centres. Those who were identified by relatives were handed over to them but the rest, the unidentified or unclaimed ones, were buried in mass graves or mass cremated. Photographs bear mute testimony to the way we handled our dead. Bodies were "tossed into huge pits", thrown in pell-mell, men, women and children, piled up in hideous heaps, many with their clothing awry or with no coverings at all. The question arises, what was the tearing hurry to dispose the dead in such a crass manner? We need to ask this question on three counts:

1. the extent of public health risk that bodies in natural disaster pose,
2. the rights of the survivors to have had a reasonable chance to identify their dead, and
3. the concept of ritual pollution in the caste-based Hindu tradition.

The Pan American Health organization's (PAHO) guidelines[2] on management of the dead following natural disaster, states that the basic principle is, "Bodies of victims of natural disasters who died as a result of trauma do not pose a risk of epidemics." [See also: Claude de Ville de Goyet, " Epidemics caused by dead bodies: a disaster myth that does not want to die" at <http://publications.paho.org/english/editorial_dead_bodies.pdf>

Oliver Morgan[3] in his scholarly work of a review of the existing literature on the subject (which forms the basis of the PAHO guidelines) concludes that in natural disasters, victims who usually die of trauma are unlikely to have more acute or "epidemic-causing" infections than the general population. Hence in such situations, the risk that dead bodies pose to the general public is extremely small. Though the human body is host to many organisms only few are pathogenic. With death, these too die within a short period due to lack of suitable environment. Organisms involved in putrefaction are not pathogenic.

However, persons (rescue workers, volunteers, and military personnel) who deal with the disposal may be at some risk as they handle dead bodies in large numbers. They may be exposed to chronic infectious hazards, particularly blood-borne infections (which is more likely if trauma due to disaster produced severe bleeding injuries) and tuberculosis, if adequate precautions are not taken. Preventive measures would include following simple rules of basic hygiene such as hand washing, use of protective gloves, masks and observing universal precautions for blood and body fluids.

The greatest risk that exists is in transmission of gastrointestinal illnesses caused when bodies, dead animals or bones contaminate drinking water sources although, as Morgan (2004) notes, communities will rarely use water supply in such instances. According to him, the risk of epidemic in the aftermath of natural disasters is from the survivors themselves due to unsanitary conditions and overcrowding prevailing in the temporary camps.

In Tamil Nadu, with notable exceptions, members of a particular community (Dalits, belonging to the ex-untouchable castes) were brought in specifically to remove the bodies[4]. They were given a pair of gloves, a mask and plenty of alcohol to deaden senses. If anyone was at risk of contaminating any infections from the dead, it was these men who were probably not given clear enough instructions on self-protection and if they were, were in no position to follow them, being in an inebriated state.

The other populist measure that was tried out was the use of chemicals and disinfectants. The S ecretary for Rural Development, Ms Shanta Sheela Nair was reported to have contacted the Gujarat State Disaster Management Authority (GSDMA) to help dispose of bodies still lying uncleared a week after the tsunami disaster (Sreenivas, 2005). The GSDMA Joint CEO, V. Thirupugazh, was reported to have sent to Tamil Nadu, more than 10 tonnes of chemicals to hasten decomposition and disinfectants to be sprayed on mass graves. A team had also flown in with spraying machines to spray chemicals and disinfectants all over the district to counter the threat of epidemics. These "heroic" efforts are considered to be of little use even

---

[1] *Email: <sathyamala@yahoo.com>. The complete article is posted at <www.mfcindia.org>*

[2] *Morgan O. "Infectious disease risks from dead bodies following natural disasters". Rev Panam Salud Publica. 2004; 15(5): 307–12. Available at <http://publications.paho.org/english/dead_bodies.pdf>*

[3] *Morgan O.. op.cit.*

[4] *Reports have it that they were brought from other places like Madurai, etc (personal communication, Mr Subbu of TMKTS).*

if the risk of infections was to be real and their value is merely "cosmetic" (Ville de Goyet, 2004).

In the tsunami disaster, in most cases, death was due to drowning with sand filled seawater and the bodies that were initially removed appeared fresh with no signs of putrefaction. Hence the question of quick disposal because of unpleasant sight or smell due to the setting in of putrefaction did not arise in the early stages and therefore there was really no need for a hasty disposal.

The total lack of respect, insensitivity and utter disregard to the sentiments of the survivors in the manner of the disposal of the dead was yet another injury heaped on the survivors. But the issue is not merely that pertaining to decency we accord our dead.

The PAHO guidelines do not recommend mass cremations[3] or mass burials of unidentified bodies in collective graves are also not recommended, again because of the near impossibility of ever identifying the victim. There is a compelling health reason for this guideline (Ville de Goyet, 2004). It has been shown that identification of the body and the following normal process of grieving have a direct bearing on the mental health of the survivors. By not performing death rites, important socio-cultural-religious needs of the survivors have been dismissed as unimportant.

Denying the right to identify the deceased or suppressing the means to track the body for proper grieving adds to the mental health risks facing the affected population (Ville de Goyet, 2004). The inability to grieve fully in the absence of a certainty allows no closure to the loss and will add to the mental suffering and mental illness of the surviving members for a long time to come.

The survivors should have been given every opportunity to identify their dead. Provisions should have been made to preserve the unidentified and unclaimed bodies for a few days to allow survivors adequate time to identify their family members. By mass cremations and mass burials, we have denied the survivors the right to claim their dead. Could it have had anything to do with their position in the socio-economic hierarchy? One cannot help comparing this with the manner in which the Thai government handled the bodies of foreign tourists who died in the tsunami disaster. The Thai government vowed that not a single body would be disposed off till all efforts were made to identify it. There are also reports that in Nagai, the volunteers from the Muslim community handled the dead in a more humane way. In Vellankanni, the bodies were videotaped for future identification.

Media and the Tragedy

The media played an important role in publicizing the unfolding of the tragedy. However, often the reporting was high pitched verging on the hysterical. The same images were played again and again. Only in the early phase of the disaster that one TV channel (Sun TV's 24-hour news channel) advised the parents not to let children view the images as they might disturb young minds. But soon channels were vying with each other to show gorier images and heart-rending stories. The news was also selective with the camera refusing to move downwards from Nagai. It was only much later that information from Kanyakumari district, which is also seriously affected, was brought in.

Media also indulged in passing on incorrect information. For instance, one of the national dailies had a headline on page 3 "Health Bomb ticks on" (Agencies & Sharma S., 2004). Three days later, the same newspaper announced in a front-page headline, "Viral storm Brewing in Nicobar" (Sen, 2005). The first paragraph reads, "Dead bodies float all around the waters in the Nicobar islands waiting to be cleared. But death, in the form of the V Cholera virus (*sic*) floats just beneath in the estuarine environment of the Nancowrie islands." The reporter goes on to describe the "viral" characteristics of the bacteria Vibrio cholerae, "...The scariest thing about the virus is the fact that it lives freely in estuarine areas ... the conclusion is chilling: the virus could be in any stream or pond in the Noncowries – are all of them... The virus has remained dormant for the last two years, but if it were to choose a time to strike no time is better than now... With ships - and people – moving between islands, the virus will have no shortage of carriers". The reporter had apparently based his news on a published report of the ICMR unit in Andaman & Nicobar Islands on a cholera outbreak in 2002 in which "dozens" of people had died. The next day, the Health authorities issued a denial, which was carried in another national daily, "Centre denies reports of 'viral storm' in Nicobar" (Correspondent, 2005) without really taking the newspaper that had reported the news item to task.

Physical and Mental Health Effects

Physical injuries do not appear to have been of major consequence of the disaster in Tamil Nadu. This is unlike what we hear about the situation in Indonesia. But the consequence to mental health is of enormous proportions. Psychic injury has been caused by the traumatic event itself, loss of family members, special problems due to loss of children,[4] injury to people's self-esteem and self-respect (doling out of relief in a

[3] *Even if indeed there is a possibility of infection, mass cremations are unpractical way of disposal because large quantities of fuel is required to achieve a high enough temperatures of 650° C for up to 3 hours to make all remains non-infectious.*

de-humanising manner) and the anxiety about loss of livelihood.

The families that have been impacted adversely can be classified into the following categories:

- households with no surviving members
- those who have lost some members
- those who have been displaced by the evacuation efforts; and
- those whose livelihood have been affected

These categories are not mutually exclusive and the worst affected are those who have lost members, have been displaced and have lost livelihoods. But the largest proportions of the families that have been affected belong to the last two categories. It is estimated as of January 10, 2005, more than 1,50.000 families have been adversely impacted by the tsunami.

The mental health consequences of the disaster, both pattern and the morbidity rate, may be different in each of these groups both because of the varying levels of stress they would have experienced as well as the varying abilities of coping. Coping capabilities would be linked to former individual and community capacities and support structures. The ability to regroup and re-form, which will be determined by the previous cohesion of families and communities, will be an important variable in the ability to cope. For instance, the stress due to anxiety caused in searching for family members will obviously have a different consequence in those families who found all the members alive from those who have definite knowledge that their family members are dead to those whose family members are missing. There would be age, class, caste and gender related differentials. Families that have lost children will be different from families that lost adult earning members. The existence of extended family and community ties such as that present in the close knit fishing communities may have a different impact as compared to the individualistic existence present in the urban, peri-urban slum communities.

Three weeks have passed as of the day of writing this report. Stage 1 of the mourning process, which typically lasts up to 2 weeks following the loss, would have passed (personal communication, Parappully). This stage is characterized by shock, numbness, disbelief and denial.

As the affected people begin to register the reality of their loss, there will be irrational guilt (survivors guilt), self-blame, and self-recrimination. We expect the pattern of psychiatric morbidity to range from insomnia, panic attacks, anxiety neuroses, depression, and suicidal ideation. In the context of Tamil Nadu where the rate of suicide is very high, this is an area of grave concern. A disaster such as this will also aggravate mental health problems in people with pre-existing disease.

The issue of Post-Traumatic Stress Disorder (PTSD) is a complex one and again likely to affect different sub-groups varyingly. It is possible that PTSD will become more prevalent in "land-dwellers" as compared to the fishermen whose life is the sea. Fishing is considered to be the riskiest occupation in the world (John, 2004). In the state of Kerala, the accident death toll of fishermen over the last decade was one fisherman every four days. Fishermen, particularly those who use the catamarans have learnt, as part of their daily living, to deal with the sea in all its fury. Therefore, the likelihood that this group will manifest PTSD is low. However, the state and the media are portraying the fishermen as being terrified of entering the sea again. This is one of the strategy by which we believe the state is trying to maintain a state of instability and "fear psychosis" going to prevent normalization of these communities.

The long-term consequences of untreated or incompletely treated trauma could be other manifestations such as hypertension, Coronary Artery Disease, ulcerative diseases of the GI tract, and illnesses such as asthma. There is a likelihood of increase in substance abuse specifically alcohol (prevalence of chronic alcoholism is high in Tamil Nadu among the working class population), addiction to tranquilizers (in the second week of the disaster there were reports that affected people were being prescribed anti-depressants and "stress management"[7] tablets). There may be an increase in reckless behaviour (this could be a particular problem with the fishermen), and escalation of violent impulses (increase in domestic violence?).

It appears then that an epidemic of mental health problems is likely in the affected population unless adequate steps are taken now to ensure that the effects of trauma are minimized. The second part of this paper will deal with this and other important issues pertaining to long-term rehabilitation.

Acknowledgements

The information presented in this paper is based on the first-hand account of Mr Subbu of the Tamil Nadu Manila Kattida Tholilazhar Sangam (Tamilnadu State Construction Workers' Union) who visited some of the severely affected areas in Tamil Nadu (districts of

[6] *Tamil Nadu has a high tubectomy rate with people, even those from the working class, adopting the two child family norm: this would affect women and men differentially with men opting for second marriages leading to increase in desertion, and abandonment of women.*

[7] *The newspaper that published this information did not specifiy what they were.*

Cuddalore and Nagai) in the week immediately following the tsunami disaster and from the presentations made at the Citizens' Forum meeting on January 1, 2005 in Chennai, by representatives of mass movements, NGOs and others who had made a field-level assessment of the devastation in the coastal area of Tamil Nadu. I was in Tamil Nadu at that time although not in any of the coastal towns. I attended the Jan 1 meeting in Chennai. I would also like to acknowledge Dr Jose Parappully, clinical psychologist, for generously sharing his knowledge and material regarding psychological consequences of disasters.

References

Agencies & Sharma S (2004). "Health bomb ticks on", *Hindustan Times* (Delhi edition) Dec 30, 2004, p 3.

Correspondent (2005). "Centre denies reports of 'viral storm' in Nicobar", *The Hindu*, Jan 3, 2005.

Indian Express (online) (2005). <http://www.expressindia.com/fullstory.php?newsid=40650>

India Today (2005). " Apocalypse Now: 85,000 dead and counting", Jan. 10, 2005, pp. 24-33.

Kurien JT (2004). "Tsunamis and a secure future", Indian Ocean Tsunami Devastate Fisherfolk, Dec 26, 2004:58:50 UTS. <http://www.ukabc.org/tsunamis.htm#e>

Morgan O (2004). "Infectious disease risks from dead bodies following natural disasters". *Rev Panam Salud Publica,* 15(5): 307-12.

Pan American Health Organization (2004). "Management of Cadavers following Natural Disasters". Guidelines prepared by the technical decisions of the PAHO.

Sen A (2005). "Viral storm brewing in Nicobar", *Hindustan Times*, Jan 2, 2005, pp.1 &11.

Sreenivas J (2005). "In TN, Gujarat shows the way", *The Indian Express* (Nagpur edition) Jan 2, 2005, p.3.

Ville de Goyet, Claude de (2004). "Epidemics caused by dead bodies: a disaster myth that does not want to die", *Rev Panam Salud Publica/Pan Am J Public health* 15(5): 297-299.

Table 1 : Numbers of Dead and Missing in Tsunami-Affected Countries

Country	Number
Indonesia	1,13,306
Sri Lanka	30,513
India	9,571
Thailand	5,246
Maldives	82
Malaysia	68
Myanmar	53
Bangladesh	2
East Africa	187

Source: Data as of Jan 10, 2005, reported at<www.rediff.com/news/tsunami.htm>, Jan 11, 2005

Table 2 : Deaths in Tamil Nadu

Place	Deaths
Nagapattinam town	2400
Others parts of Nagapattinam dist.	1000
Velankani	1500
Kanyakumari	800
Cuddalore	>500
Pondicherry	500
Chennai	200
Kalpakkam	100
No. Injured	500

Source: Data as of Jan 10, 2005, reported at<www.rediff.com/news/tsunami.htm>, Jan 11, 2005

Why the IMS Act Needs to Stay

-Radha Holla Bhar [1]

Issue

January 15, 2005. The Ministry of Food Processing Industries, Government of India, proposes to REPEAL the IMS Act and some other Acts. The reason: a new proposed Bill "Food Safety and Standards Bill 2005". Under Section 108. Schedule 1 of the Bill, it is proposed to repeal certain Acts including the IMS Act. Government of India has asked for comments and suggestions. Do we need to repeal this highly relevant legislation concerning lives of millions of young children?

In 1992, India became the 8th country to take a definite stand for children's rights. The Indian Parliament unanimously enacted the *Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992* (IMS Act). The IMS Act controls marketing practices of baby food manufacturers.

The statement of objectives presented in Parliament during the enactment of the IMS Act clearly stated: Inappropriate feeding practices lead to infant malnutrition, morbidity and mortality in our children. Promotion of infant milk substitutes and related products like feeding bottles and teats do constitute a health hazard. Promotion of infant milk substitutes and related products has been more extensive and pervasive than the dissemination of information concerning the advantages of mother's milk and breastfeeding and contributes to decline in breastfeeding. In the absence of strong interventions designed to protect, promote and support breastfeeding, this decline can assume dangerous proportions subjecting millions of infants to greater risks of infections, malnutrition and death...

Thus the Act had a clear intent: the saving of millions of children's lives and improving their nutritional status by preventing the baby food industry from enticing mothers and the health system to give babies artificial foods.

In 2003, following increasing information on the benefits of exclusive breastfeeding for the first six months, the Act was amended to include weaning foods.

The IMS Act is one of the laws being repealed under the new THE FOOD SAFETY AND STANDARDS BILL, 2005.

Differences

There are considerable differences between the potential impact of the IMS Act and the new Food Safety Bill. Firstly, the former was the brainchild of the Department of Women and Child Development: infant health and social concerns were at the heart of the IMS Act. The Ministry of Food Processing Industry, in contrast, is developing the Food Safety Bill: industrial health underlies the objectives.

Secondly, the objective of IMS Act is to protect, promote and support breastfeeding; it prohibits any kind of promotion of infant milk substitutes, infant foods and feeding bottles; it ensures proper education of pregnant and lactating mothers about breastfeeding by providing accurate information; it ensures proper use of substitutes, and defines the role of health workers and their associations and health care institutions in promoting breastfeeding as well as prohibiting promotion of baby foods. The IMS Act also prohibits donations and gifts, prohibits direct promotion of baby foods and feeding bottles to pregnant women. Thus the IMS Act encompasses social and health concerns of the community at large.

The object of this new bill is to harmonize laws related to food and lay down 'science based standards for articles of food and regulate their manufacture, import, export, storage, distribution and sale, to ensure availability of safe and wholesome food for human consumption (including other matters relating thereto)..." In an advertisement placed in the leading newspapers of Delhi, the ministry of food processing industries states that the law also seeks to "meet the dynamic requirements of international trade and Indian Food Trade & Industry." The Food Safety and Standards Bill, therefore, has as its basis enhancement of trade in foods that meet safety standards.

Are Infant Foods Necessary at All?

However, the issue with infant foods is not safety standards, rather it is the question of whether such foods are necessary at all or not. Medical evidence

[1] *Email: <basbhar@vsnl.com>*

from across the world states categorically that infant milks are not adequate substitutes for breastmilk, which is the best food for infants. There is also overwhelming evidence that infants who are not breastfed suffer from malnutrition, and that this early malnutrition can cause irreversible setbacks to optimal physical, emotional, mental and intellectual growth of infants. Further evidence exists that in countries like India, where clean drinking water and fuel are at a premium and where incomes are low, artificial infant milks and foods are a leading cause of malnutrition, disease and death of infants. Thus, medically and scientifically speaking, infant milks and foods, even if they are of the highest standards, are actually harmful to infant health because they tend to deprive the baby of the best food – breastmilk. This was the basis of the IMS Act, and this aspect is wholly missing in the new Food Safety Bill.

On the whole, there are very few situations when an infant needs artificial milks and foods to survive. Such foods are therefore, in a way, equivalent to special drugs needed in rare cases when patients suffer from rare illnesses. To that extent, like other occasionally essential drugs, they are not just necessary *in very limited quantities*, but also need to meet safety standards. However, given their food-like nature, they have far greater potential for misuse and abuse than pharmaceuticals, and thus justify the need for special laws, such as the IMS Act, which not merely prohibits the unregulated production and marketing (including advertising) of these foods, but also demands that there be cautions on the containers regarding their use.

The battle to mainstream the regulation of the infant milks and foods industry is today more than half a century old. It saw the first coming together of the medical profession, consumer activists, health activists, social activists, legal activists, NGOs, governments, UNICEF, WHO and other international bodies in a bid to save the lives of millions of children from the unregulated actions of industry. The process saw international codes being developed, international standards being set, both for food safety as well as for action by governments and industry. India was the eighth country to adopt the code into law, and became a beacon for all countries that sought to improve the health of their children. Repealing the IMS Act, and bringing the regulation of the infant food industry under the trade-oriented Food Safety Bill is tantamount to laying the lives of the India's millions of infants at the feet of corporate profits.

Please write your letter supporting the above stand (sample letter in box).

Draft Letter

Mr. A.N.P Sinha
Joint Secretary
Ministry of Food Processing Industries
Government of India
Panchsheel Bhavan, August Kranti Marg
New Delhi
Fax 91-11-26497641
Email <sumsingh@email.com>

Sub: Repeal of Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (IMS Act) proposed by the new draft "Food Safety and Standards Bill 2005"

Dear Sir,

We are extremely concerned to note that the Section 108 Schedule 1 of the "Food Safety and Standards Bill 2005" proposes to repeal the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (IMS Act).

We appreciate the role of MOFPI for proposing a new integrated *"Food Safety and Standards Bill 2005"*. However, having carefully gone through the Bill and its objectives, and the one proposed to be repealed among others, we feel that the two Bills are totally different with different objectives. The Food Bill ensures quality and deals with adulteration issues and the IMS ACT aims at reducing child malnutrition and reduce infant and young child mortality. No logic is seen in repealing this highly socially relevant Bill.

Therefore, we urge you NOT to REPEAL the Infant Milk Substitutes, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 (IMS Act) while adopting the new "Food Safety and Standards Bill 2005".

Yours, etc.

A Gender and Rights Approach to Breastfeeding Promotion[1]

-Lakshmi Menon and Radha Holla[2]

Introduction

The decade of the 1990s up to the 21st century saw more of the breastfeeding promotion carried out from a rights perspective, particularly after 1995-96, when the human rights discourse became popular within many social movements. Several international declarations and UN instruments supporting the rights of children to food and health were adopted, providing a rationale for the breastfeeding movement. The international declarations included the *Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding of 1990*, and declarations from the World Summit for Children in 1990 and the International Conference on Nutrition in 1992. The UN instruments included the *International Code of Marketing of Breastmilk Substitutes* and subsequent World Health Assembly (WHA) Resolutions, the *Convention on the Rights of the Child (CRC), 1989*, and the *Global Strategy on Infant and Young Child Feeding* adopted by WHA in 2002. A CRC provision is of particular significance: "that State Parties recognise the right of the child to the enjoyment of the highest attainable standard of health". This was interpreted as implying that children have a right to mother's milk as the only fully adequate form of child nutrition in the first six months. Much of the focus of breastfeeding promotion was thus on the child - on children's right to be breastfed.

Real Situation of the World's Women

However, we must keep in mind that it is women who are actually at the center of breastfeeding. It is a truism to say that the situation of the woman determines her ability to breastfeed successfully. Women have, through millennia, breastfed successfully. Even today, in most parts of the world, women continue to breastfeed their babies. And yet, breastfeeding continues to be a challenge. In most cases, it is neither adequate nor exclusive in the first six months of life. To address these challenges, we need to look at the reality of women's lives, to identify what makes breastfeeding a difficult choice, and to create a world where women can successfully breastfeed their babies adequately for as long as is needed.

Because women constitute the core of biological reproduction, over centuries and millennia, claims have been made on their lives by society, by the community and by the family. As a result of this process of disempowerment, women have multiple burdens, including financial contributions through their work, resource management, household responsibilities, as well as the care of children and the elderly. In many societies, few women are able to exercise their social and economic rights including rights over basic necessities such as food and health care.

Breastfeeding and Women's Issues

1. Breastfeeding and Maternal Nutrition

WHO/UNICEF recommend that a baby be exclusively breastfed for the first six months of its life. After this, appropriate and adequate complementary foods need to be given in addition to breastmilk, which should continue to be given till the child is at least two years old (WHO/UNICEF, 2002).

A breastfeeding woman produces 700 ml of milk per day during the first six months and progressively less till the baby is fully weaned off the breast. While breastfeeding, she needs an additional 500 kcal per day for the first six months; after that, this requirement is reduced to 400kcal per day (Manual of Clinical Nutrition Management, Picciano 2003).

Studies have shown even the most undernourished woman can breastfeed her baby adequately. How do women who get barely enough calories to maintain their bodily system get the extra calories required to produce breastmilk? They use up essential body fat and tissue, to the further detriment of their already compromised health, to make milk for their babies.

Data from 32 studies examining protein energy malnutrition (PEM) among women in developing countries shows that women generally consumed only about two-thirds of the WHO recommended daily allowance for energy, and that their average weight-for-height was well below the average for small-frame women in the US (Anthology on Women). Women in many cultures around the world, particularly in South Asia, eat last and least in a family. They suffer from malnutrition and anaemia in the best of times. When they become pregnant or breastfeed, the demand on their already weakened bodies is even more, especially as they rarely get extra nutrition during this period.

---

[1] *This is an edited version of the discussion paper prepared for WABA's Gender Strategy Meeting held on 2-3 December 2004 in Penang, Malaysia.*
The original paper is available from: <waba@streamyx.com>

[2] *Emails: <LM-im@eth.net> and <radhahb@yahoo.com>*

Women's Health Status

Maternal deaths per 100,000 live births

Sub-Saharan Africa - 1,098
Arab States - 509
South Asia - 427
Latin America and the Caribbean -188
East Asia and the Pacific - 144
Central and Eastern Europe and CIS - 55

Countries with high maternal deaths per 100,000 live births

Ethiopia - 1,800
Sudan - 1,500
Nepal – 830
Lao PDR - 650
Bangladesh - 600.
Source: UNDP Human Development Report 2003

Pregnant women with anemia in 1975-91

88% in India

64% in Indonesia and Ghana, and over 50% in Bangladesh, Nepal, Lao, Thailand, Malawi, Nigeria, Tanzania, and Trinidad and Tobago

Source: UNDP Human Development Report 2000

Births attended by health personnel during 1995-2001

East Asia and Pacific - 80%
Latin America and the Caribbean - 82%
Central and Eastern Europe & CIS - 96%
South Asia -36
Sub-Saharan Africa - 38
Yemen - 22%
Bangladesh -12%
Nepal -11%
Ethiopia - 6%.

Source: UNDP Human Development Report 2003

No of Women with HIV/AIDS Between 15 to 49 years in 2001

Sub-Saharan Africa - 15 million
South Asia - 1.5 million
Latin America & the Caribbean - 640,000
East Asia and Pacific - 600,000
Central and Eastern Europe & CIS - 270,000
Arab states - 260,000

Source: UNDP Human Development Report 2003

2. Breastfeeding and Work

The problem that women face at their work place with regard to breastfeeding is often extremely complex and not given to easy solutions. Across the world, the situations of women at work vary. In some countries, there are laws that provide maternity benefits; and women have adequate transportation to carry the baby to work or to a nearby crèche. Though given the facilities to breastfeed successfully, many of these women have often chosen artificial feeding because they are both ignorant about the benefits of breastfeeding and have the capacity to provide safe, affordable artificial feeding. In many cases, these women have been the main targets of breastfeeding promotions and campaigns.

For the majority of the world's women, particularly women who work in low-paid, itinerant jobs like domestic work or vending on the streets, no affordable or convenient crèche facilities are available, and they have no option but to continue working in distressing circumstances because their income is crucial to their families.

According to a UN report, "In 1990, labour force participation rates were high for women in their 20s, rose through their 30s and 40s, and declined only after age 50. Increasingly women remain in the labour force during their child bearing and child rearing years." (World's Women, 2000). The report pointed out that while women's participation in work increased highly, their working conditions did not improve much. It is crucial to remember that the majority of the world's women work in the unorganised sector, as agricultural labour, as contract or seasonal workers, as domestic workers, as itinerant vendors on streets. For example, the report pointed out that women's participation in non-agricultural labour force in the informal sector during 1991-97 was 97% in Benin and Chad, 96% in Mali, 91% in India, 88% in Indonesia, 83% in Guinea, 82% in Kenya, 74% in Bolivia, 69% in El Salvador, and 67% in Brazil.

Besides, women have also to spend much more time in household chores than men. A particular mention must be made of women's burden of work. A UNDP study (2004) reported that in urban areas women work as much as 10 hours a day and in rural areas about 12 hours a day. The time they spent on non-market activities ranged from 60% to 69% while for men it ranged between only 21% and 31%. Women spent much of this time on household chores, which is mostly unappreciated and undervalued.

For women who work in the organised sector, often the problem is getting paid maternity leave. While over 120 countries have laws providing for some maternity leave (hardly any country gives paid leave for six months), going on long leave means that the job may be taken over by someone else. And now, under the dictates of globalisation, workers' protections are generally being dismantled to allow investors to hire cheap contract labour; in such situations, even the existence of strong maternity protection laws does not help the woman to successfully breastfeed, if the survival of her entire family is at stake. In the unorganised or informal sector, the situation is even worse. No government has yet found ways to translate existing maternity benefits in such ways as to make them accessible and meaningful to women working in this sector.

The problem of combining breastfeeding with working is further deepened by the fact that in an increasing

number of cases, the woman is the single earner in the family. In the organised sector particularly, women are the first to lose their jobs in case of retrenchment. Thus women are often forced into a situation where they have to choose between breastfeeding the baby and earning to keep the family alive.

3. Violence against Women

Women, across all ages, caste, race, and economic status, are victims of violence.
Besides the obvious violence, such as harassment, beatings and rape, women are also victims of hidden violence perpetuated by society – which has resulted in their low social and economic status, especially in terms of education, health and nutrition and income

In spite of the fact that women are often important income earners, they are not only given no help in house work, they are often also reprimanded for not doing it properly.
In many cultures, society places women at the bottom. Thus girl children are viewed as a burden and social conditioning as well as social pressure cause women to neglect themselves and their girl children. For example, in many parts of North India, girl babies are breastfed for shorter periods than boys, so that women can get pregnant again quickly in the hope that the next child would be a boy. Women have no say in any major decisions, including how many children to have and when, as well as what to feed them. Maternal and child health workers, often including those promoting breastfeeding, ignore this, and target women with their messages. Such targetting worsens the situation by causing the women to feel guilty and more helpless.

Yet another kind of violence against women occurs when companies producing breastmilk substitutes, aided by the health professionals and workers, try to convince mothers that their own milk is valueless or inferior to artificial milk.
Violence against women in any form, both overt and hidden, causes stress. Stress affects breastmilk production and secretion as the brain affects the hormones controlling these functions. The letdown reflex that prompts breastmilk flow is a very sensitive reflex and can be easily inhibited by psychological factors, and turned off by anxiety, tension and stress (Esterik and Menon, 1996).

Women's Rights to Health

While children's right to "highest attainable standard of health" is the focus of advocacy by the breastfeeding movement, it must be remembered that women too have the right to good nutrition and health care on which depends the child's nutrition and health.
Women's rights to health are specifically enshrined in various international instruments, starting with the Universal Declaration on Human Rights of 1948. More recent UN instruments adopted specifically on women's rights to good health were at the 1979 Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW), the Fourth World Conference on Women, Beijing, 1995, and the International Conference on Population and Development (ICPD), Cairo, Egypt, 1994
The Convention on the Rights of the Child, 1989 also pointed out the need, "to ensure appropriate pre-natal healthcare for mothers". In addition, the International Labour Organization revised the Maternity Protection Convention (C103) of 1952 and adopted the Maternity Protection Convention 183 in 2000.

Rationale for Gender Perspective

In view of these stark realities of women's lives, it is important that the breastfeeding movement develops a broader gender perspective instead of focusing narrowly and exclusively on breastfeeding and childcare. A gender perspective provides the basis for understanding the dynamics of why women do what they do. Though it may seem that they "choose" to do what they do, in reality, they are in a situation where they can exercise very little choice. Society-engendered gender roles and demands are the driving force behind women's apparent "free" choice.

Without this broader gender-based understanding that sees women and their lives in totality and in their real situations, healthcare and childcare approaches will be fragmented and have a very narrow focus, seeing women as mere child-bearers and nurturers, and will not bring about social transformation and social equity. If breastfeeding is to be a woman's reproductive health right[1], then meeting her other rights that ensure her survival with dignity and health should be the first step. As a corollary, it is equally important to recognise that others in the family, particularly men, have duties and responsibilities to create the circumstances where a woman can adequately breastfeed.

Recognising men's duties and responsibilities becomes especially important in the context of the unequal relationships between men and women. Men should share equal responsibility not only in housework and childcare, but also in fertility control, in safe sex (particularly with rising rate of HIV/AIDS) and to treat women with the respect due to an equal partner. This means violence against women in all its forms must be recognised and addressed. It must be acknowledged that patriarchy is at the root of violence and discrimination against women – within the home, at the workplace, and by society (including corporate pushing of breastmilk substitutes). The solution to improving breastfeeding practices is thus to address the problems caused by patriarchy, by weaving gender justice into all aspects of breastfeeding promotion programmes.

---

[1] *The gender workshop at the WABA Global Forum II, Arusha (September 2002) came up with a suggestion that breastfeeding be recognised as a women's reproductive health right in order to find common ground with women's groups. This suggestion needs to be taken further.*

The broad framework for analysing the political, economic, social, cultural and gendered contexts at national and international levels must be based on:

- Level of women's nutritional status
- Level of women's health status
- Level of women's status in law
- Women's access to economic independence
- Women's access to independent political partici pation
- Women's power to take decisions
- Involvement of men in shared responsibilities and roles
- Focus on the right health and development mes sages
- Level of women's social status (irrespective of relationship to men).

Gender Strategies for Promoting Breastfeeding

Recognising that such a gender perspective on social issues would help refine action strategies to bring about desired results for social change and equity, the World Alliance for Breastfeeding Action (WABA) which is a global network of individuals, organisations and networks in 120 countries, is tuning its programmes towards this end. In line with this view, WABA established a Gender Working Group in 2004 to promote gender awareness among breastfeeding advocates calling for gender sensitivity in all breastfeeding promotion activities.

Further, in December 2004, WABA organised a gender-training workshop for 32 participants from 15 countries. Following this, it conducted a Gender Strategy Planning Meeting for members of the Task Forces and Working Groups on Mother Support, Men's Involvement/Father Support, and Women and Work, HIV/AIDS, Health Care Practices/ Birthing Practices.

The meeting recognised the importance of protecting, promoting and supporting breastfeeding keeping in view both children's and women's health needs and a gender- and rights-based approach to breastfeeding promotion. The meeting also reaffirmed the Arusha statement (see box) as guiding principles for a gender-sensitive breastfeeding promotion.

References

"Nutrition and Agriculture", in Jacqueline Sims (ed). *An Anthology on Women, Health and Environment: Nutrition and Agriculture.* WHO Geneva, 1994. See also: <www.who.int/docstore/peh/archives/women/womnut.htm>

Manual of Clinical Nutrition Management, Morrison Management Specialists Inc., 2003. at <http://www.utmb.edu/food/Manual2003/>

Picciano, Mary Frances, "Pregnancy and Lactation: Physiological Adjustments, Nutritional Requirements and the Role of Dietary Supplements", *The American Society for Nutritional Sciences J. Nutr.* 133: 1997S-2002S, June 2003.

Human Development Report 2000. New York: UNDP, 2000.

Human Development Report 2003. New York: UNDP, 2003.

Human Development Report 2004. New York: UNDP, 2004.

United Nations. *The World's Women 2000: trends and statistics*. New York UN, 2000.

Van Esterik and Menon, Lakshmi. *Being Mother Friendly: a practical guide for working women and breastfeeding*. Penang, WABA, 1996

WHO/UNICEF, 2002. *Global Strategy on Infant and Young Child Feeding*, 2002.

TOWARDS A COMMON ADVOCACY AGENDA

Statement made at the Second WABA Global Forum in Arusha, Tanzania, 23-27 September 2002, by the workshop on *Outreach to Women's Groups*

Breastfeeding is a basic human right and it is agreed that the protection of women's right to breastfeed is a shared position of the women's movement and breastfeeding movement. Women can fully exercise this right only where there exists an appropriate social and political environment whereby women's contribution to productive and reproductive work, including nurturing, is recognised.

Breastfeeding is a human right.

Breastfeeding support means changes in all social environments and policies.

- Gender equity is basic to breast feeding movement
- Right to life and survival
- Right to choose free of commercial, medical and political pressure
- Right to food, irrespective of race, class, caste, religion, region, age.

DEMANDS

Need for social transformation at all levels to bring about gender equality.

Women's groups and breastfeeding groups have decided to put on their advocacy agenda the following demands:

- To recognise the common concern of the adverse effect of globalisation and privatisation on healthcare services and the increasing feminisation of poverty.
- Women's right to accessible, affordable, comprehensible, high quality and gender-sensitive women's health services.
- Women's right to breastfeeding based on informed choices, free of commercial, medical and political pressure.
- Social recognition and value of women's work at home as care givers and nurturers.
- Implementation of maternity protection for women at paid work in the formal and informal sectors.
- Women's right to food, adequate nutrition, rest, safe water and shelter.

Book Review

"On the Take": déjà vu in America

Anant Bhan[1]

On the Take: How America's Complicity with Big Business Can Endanger Your Health, Jerome P. Kassirer, Oxford University Press, October 2004, ISBN 0-19-517684-7 0195176847, hardback, 272 pages, Price: $28.00

Jerome P. Kassirer is respected worldwide as clinician, teacher, academic and researcher. He was the editor-in-chief of the *New England Journal of Medicine* (NEJM), one of the leading international medical journals. The publishers, the Massachusetts Medical Society, ousted him from the journal in 1999. The disagreements arose from the increasing use of the NEJM for promotion of commercial products and Kassirer's concerns that the fierce independence of the journal was being compromised by its increasing commercialization. Being no stranger to controversy, he deals with the extent and range of physicians' collaborations with the pharmaceutical industry in America, and its consequences. The book is based on the author's vast experience and interactions with physicians in the course of his varied roles.

Thin Line

In the introduction, the author speaks about the lure of money as a powerful motivator, and how, many physicians have become prey to the buzz of a marketplace that values profitable bottomlines, and promises enormous personal wealth. The author raises the importance of asking the question whether the commercialization of medicine and financial relations with drug companies has led to over-ordering of tests, and promotion of particular products and/or medications. The pharma industry-medical profession nexus does not stop merely at doctors acquiring trinkets bearing drug company logos and displaying drug company names in their chambers. It runs much deeper. The highly profitable pharnma/medical device/ biotechnology industrial complex offers largesse and allurements to doctors in the form of sponsoring their research, trips, meals, expenses of continuing education, etc. Realizing that profit margins hinge on marketing and physician prescriptions, drug companies have infused money into physicians' pockets. Young physicians, often in debt when they begin their practices because of large student loans (a parallel in India would be large capitation fees in private medical colleges), are easy prey for pharma giants. Acceptance of lunches, dinners, and gifts from industry explains how once idealistic medical students and interns gradually become acculturated into accepting, and later even demanding, donations from industry.

The author mentions that he is not opposed to the pharma industry, or to capitalism per se, that has been fuelling America's phenomenal economic growth as a superpower. Yet the same industry has also given rise to a dilemma: where does the line exist between advancing the cause of science and the betterment of patient care on the one hand, and the pecuniary interests of the physicians collaborating with industry to produce scientific advances on the other? Kassirer mentions that this debate has been sidetracked and only occasional articles appear mentioning it. Even serious issues like deaths of research subjects have short shelf lives. Pseudo-scientific studies continue to be performed and articles published. Many physicians have become marketing agents of companies. This could lead to burdening of the patients by requiring excessive and unnecessary visits to the doctor, being exposed to inappropriate and dangerous diagnostic tests, given wrong medications, forced to incur unnecessary expenditure on prescription drugs, and being refused valuable tests or treatments, even as they are exposed to potentially harmful effects in clinical research experiments. Patients need to know about conflicts of interest. Medicine is a social institution and depends on the public's trust for its viability. Patients must be able to trust that their doctors recommend treatments that benefit them, and that their doctors involve them in research projects for the right reasons.

Ignoring Conflicts of Interest

The first chapter deals with free gifts/meals/education, and special deals. Most physicians are hard working and dedicated, and sincerely believe that a few free meals would not cloud their professional judgments. However some of them go to the extreme of not only

[1] *Centre for Study in Ethics and Rights, Mumbai, and University of Toronto Joint Centre for Bioethics, Canada; email: <anantbhan@gmail.com>*

taking sponsored meals, gifts, and trips, but also join drug company advisory boards and speaker's bureaus, and give industry-sponsored clinical talks and write industry sponsored brochures. The author speaks about the dazzling stalls at medical conventions where "beautiful" people entice doctors with freebies. Doctors often cluster around stalls making it easy for their colleagues to spot where the freebies lie and often there is jostling for trinkets like pens, notebooks and T-shirts. The doctor ends up becoming a walking advertisement.

Often gifts cannot be collected without parting information about the doctor's practice and answering a questionnaire about a drug or two, and not without hearing a sales pitch trying to ingrain a drug's superiority over its competitors. Doctors often receive in the mail (or through drug representatives) incentives to attend pharma-sponsored events. These might include concert tickets, paid-for dinners in fancy restaurants, gift certificates, etc. Kassirer quotes from his personal experience as well as that of others. Many professional organizations are deeply involved with the industry and receive payments to cover scientific meetings, professional education, and on-going operating expenses. There is often active solicitation of funding from industry for this purpose with the promise of being the conference main sponsor, banquet sponsor, etc. Many physicians are on the board of drug and biotech companies or serve on scientific committees that deal with various aspects of drug development. Some physicians even become engaged in the business aspects (including marketing) of companies. In recent years in America, some of the extraordinary subsidies that physicians take have been revealed and the complex conflicts of interest that these generate have been exposed. In 2001, the pharma industry spent two billion dollars in the US for meetings and events for physicians, a figure that represents a doubling over the previous five years. The American Medical Association (AMA) released guidelines that allow physicians to take gifts if they entail a benefit to patients and only if they are not of "substantial value" and meals if they are "modest" ones. So pens, notebooks and office items would be acceptable but not tickets to concerts, sport events or dinners with spouses. In mid-2002, even the Pharmaceutical Manufacturers Association (PhRMA) issued its own guidelines that are similar to those of the AMA. Implied in the PhRMA guidelines, is the intention to cut back on money spent on physicians, but given the importance of the idea of marketing to industry, this looks a difficult act to follow.

Pharma drug representatives make friends with interns and residents when they are young, underappreciated, overworked and often debt-ridden. In this mindset, they are often susceptible to a narrow set of desires: more sleep, more encouragement, a few hours of relaxation, a little kindness, and free, accessible food. Instances of pseudo-consultations for drug companies by physicians are mentioned – the only consultations offered at the meetings organized in fancy resorts is which wine to order, and activities such as golf, skiing and white-water rafting.

Many clinician researchers are working with companies to develop new drugs and devices, and in this process often become part owners of patents and small companies. Some receive stock, or stock options, worth a lot of money. With the AMA mandating Continuing Medical Education Programs for physicians to get re-registered to make sure that they keep to date with medical trends, industry has stepped in. Meetings are held in exotic locales and physicians sign and get credit for attending, but do not actually attend any academic presentations/discussions and rather spend time playing golf, sightseeing, etc. When there is an academic input, it is by physicians on the company's pay roll who promote the company's products. Many medical journals now require authors of papers to disclose all their financial associations, and the journals often publish these associations. Kassirer gives examples where the conflicts of interest section is so long that it cannot be published in the print version of the journal and has to be made available on the journal website.

Modus Operandi

Having established that financial conflicts of interest are rife in medicine, the author examines the industry's modus operandi of recruiting physicians to be members of company-sponsored speakers' panels. These lists are circulated to hospitals and physician groups across countries, which select speakers for their various educational programs. The sponsoring companies pay for the speakers' expenses and provide a substantial honorarium. Companies recruit physicians to discuss off label uses of medicine, thus bypassing official channels and thereby using a potent marketing force involving physicians. Pfizer was fined US $ 430 million in May 2004 for this tactic for its drug Neurontin. doctors having been paid to speak about many uses not approved by the Food and Drugs Administration

(FDA). Other instances of doctors being used for marketing to colleagues have been described. The abominable practice of ghostwriting, essentially "advertising that calls itself education" has been described. Doctors have also sold free samples and risky dietary medications, as well as helped drug companies avoid lawsuits.

Devoting a whole chapter to Conflict of Interest and the bias it can lead to, Kassirer quotes examples from articles, practice and also institutional conduct. Often detecting the bias is difficult. The reactions from many physicians have been one of protest when attention is brought to their surreptitious and the-not-so-surreptitious wooing by big pharma. They believe that the occasional gifts and lunches cannot influence them.

However it is well known that we feel inclined to reciprocate even if a small gift is received. Psychologists believe that reciprocation is one of the most powerful instruments of influence in our society. The subtle influence of culture with acceptance of gifts, dinners, consulting arrangements, appointments to speaker's panels, and other perks of industry among peers is also a driving force. The issue of complicity of journal editors given the dependence on pharma for advertisements in journals is raised. The free continuing medical education sessions are often partial, and so are books written on clinical practice guidelines and public pamphlets that promote off label use of drugs.

The involvement of professional organizations of cardiologists, pulmonologists, psychiatrists, pediatricians, etc., as well as the AMA, with pharma companies is documented extensively.

Engaging his readers who are members of the public, Kassirer asks them whether they can trust their doctor. Talking about the fee for service model and the self-referrals that are commonplace in America, he speaks about the implications for healthcare. Physicians often profit from the machines, gadgets, and implants used in the treatment of their patients. The author makes a plea for incentives to be based on quality of care and also for a disclosure of financial incentives in direct patient care. He then raises questions about the medical research system and the conflicts in it. Quoting many famous examples, he demonstrates how researchers have intimate ties with for profit companies that are often bankrolling the research, including often stakes and share holdings. With the shift of research from Ivy League medical schools to the community, clinical trials now involve general practitioners too who might be paid several thousand dollars per patient enrolled. The oversight of clinical research needs to be revised to reflect some of the concerns. Using the penultimate chapter to trace the origins of the problem, Kassirer speaks about the influence of commerce on the practice of medicine, the rise of the academic physician, the runaway cost of care, changing financial incentives, inflated income expectations, and changes in patent law.

Transparency and Disclosure

The final chapter is the author's blueprint for change. He speaks about the need for adherence to the highest professional creeds and principles. He delves through the positive and negative implications of transparency through disclosure. Finally he opines that disclosure, even with the flaws, is better than no disclosure at all. He makes a case for professional organizations to have better policies, and for comparative conflict of interest guidelines that exist for lawyers, federal government employees, etc. Regulatory agencies need to overhaul their policies to be more effective. Kassirer argues for lesser ties with industry and for a higher standard for norms and values on which medicine is based. He appeals to the public to get involved in heralding the change. He ends by giving some positive examples and rounds up with a proposed roadmap. Kassirer ends his book stressing that the medical professions is under siege by big business and not enough was being done to rescue it.

On the Take is a landmark book. The issues raised in the book have been well known to physicians and people involved with research and the healthcare industry. However using his extensive experience to vividly illustrate the extent of pharma's influence on the practice of medicine in the US, Kassirer does manage to reflect the urgency of paying attention to the issue. The context might be American, but the book will appeal to an international audience as the same issue plague healthcare in other countries too. It might be an opportune time for an Indian researcher or author to take up cudgels to unmask the situation in our country too. I have a feeling a similar, if not worse, unholy nexus of business and healthcare will be uncovered.

Conflict of Interest: The author of the review serves on the editorial committee of *mfc bulletin* and shares the distaste of Kassirer about the falling standards of the medical profession.

About Bayer's Nazi-Past

IG Farben was the only German company in the Third Reich that ran its own concentration camp. At least 30.000 slave workers died in this camp; a lot more were deported to the gas chambers. It was no coincidence that IG Farben built their giant new plant in Auschwitz, since the workforce they used (altogether about 300.000 people) was practically for free. The Zyklon B gas, which killed millions of Jews, Gypsies and other people was produced by IG Farben's subsidiary company Degesch.

In Germany a growing number of people do not understand that IG Farben's successors Bayer, BASF and Hoechst still refuse to apologize for their misdeeds. It is hard to accept that after the war the companies were allowed to keep IG Farben's entire property, whereas the surviving slave workers received nothing. Until today Bayer, BASF and Hoechst did not pay any wages to their former workers.

In 1995 the coalition "Never again!" was created by the German Auschwitz Committee, critical shareholders and several organizations of former slave workers. In a joint appeal the coalition demands that there has to be an appropriate compensation by the companies for slave-workers and their descendants. Also the maintenance of the memorial at Auschwitz, which reminds the public of IG Farben's victims, should be paid by the corporations. "Never again!" states that without verification of the past we always have to be present so that these crimes might never happen again. More than 1,500 individuals and about 100 German groups have signed this platform. The activities were organized by the Coalition against Bayer-Dangers, a group that has monitored Bayer for 25 years.

Life as a Human Guinea Pig

For years an Auschwitz survivor has tried to win compensation from the pharmaceutical giant that carried out medical experiments on her. Now living in Dundee, she tells her story in a BBCdocumentary.

Zoe Polanska Palmer never imagined she would survive Dr Mengele's experiments in Auschwitz. Nor did her German doctors. Like thousands of other children, she was destined to be gassed once her usefulness to Nazi science had ceased.

During her two years at the camp, 13-year-old Zoe was forced to take tablets and pills as part of a series of pharmacological experiments, believed to be part of early birth control tests. But Zoe refused to die. Saved by a Russian doctor who evacuated her to Dachau, she recovered and eventually settled in Scotland. Now in her early 70s, she has been fighting for compensation and an apology from the German drug manufacturer, Bayer.

"I still find it difficult to take aspirin," she says. "I remember one of the SS doctors holding my jaw open and forcing pills down my throat. I'm still very wary of men wearing white coats."

Eyewitness testimonies held in the Auschwitz camp archive claim the doctor who force-fed her pills worked for the pharmaceutical company Bayer when it was part of the IG Farben conglomerate.

His name was Dr Victor Capesius. It's a name that Zoe can never forget.

He helped Dr Mengele to conduct genetic experiments, usually on children, and also selected thousands of prisoners at the huge death camp, choosing those who might be useful and sending the rest to an immediate death with a flick of his finger.

Dr Capesius was tried in Frankfurt for war crimes in 1963 and served time in prison.

Another longtime Bayer employee, Helmut Vetter, also worked as a SS doctor at Auschwitz. He was involved in the testing of experimental vaccines and medicines on inmates and after the war he was executed for administering fatal injections.

Denial of Culpability

"The concentration camps were used as a huge laboratory for human experimentation," says Wolfgang Eckhart, the Professor of Historical Medicine at Heidelberg University. "We have to look upon the camps as outposts of pharmacological research. The Nazis wanted to sterilise the population of the east, especially Russian people, but enable them to continue to be useful as workers."

Pain has yet to Heal

Bayer says the company which exists today has nothing to do with its wartime counterpart.

A spokesperson told the BBC: "Between 1925 and 1952, no company named Bayer existed, neither as a subsidiary of IG Farben nor as any other legal entity.

"Bayer has worked in good faith with the German government to establish a fund to help those who have suffered. The company's contribution to this fund amounted to more than £40m."

Damaged beyond Repair

Although it is nearly 60 years since the end of World War II, for survivors like Zoe the consequences of the war are as alive today as they were in January 1945 when the Russian Army liberated Auschwitz.
After the war, Zoe married and settled in Scotland. There she underwent several painful operations to repair the damage done to her body. But she has never been able to have children.

Now suffering from cancer, she is a remarkably cheerful woman whose home in a quiet suburb is punctuated with laughter from her jokes and tears from her memories.

When I first travelled to meet her in July 2002, she was angry that she had been ignored for so long by the authorities managing the compensation fund set up by German industry and the German government.

She had campaigned for 28 years but received nothng.

"They want us all to die so they won't have to pay out so much money," Zoe says.

Within weeks of the authorities being contacted by the BBC, Zoe received a cheque for a little over £2,000 from the German compensation fund.

"I want to make sure people remember what happened to people like me when I was a child at Auschwitz," she says. "I was just one of thousands of children treated in this way. But I was one of the very few lucky ones who managed to survive." (By Mark Handscomb, BBC Radio 4 reporter for It's My Story)

Bayer "Aryanized" Jewish Cemetery

Documents show that in 1942, IG Farben's branch office in Uerdingen, Germany, got hold of the town's Jewish cemetery. The forced sale price was way below the actual market value: 100,000 square meter property for 3,000 Reichsmark. After the war the property was passed on to IG Farben's successor Bayer AG.

The Nazis dissolved the Jewish Community of Uerdingen in 1942. Today all traces of the Jewish cemetery in Uerdingen have been completely obliterated. The city archive indicates that the cemetery was located approximately where the main gate to the Bayer factory currently stands.

The Coalition Against Bayer-Dangers demands that the company publicly apologize for the defilement of the Uerdingen cemetery and affix a memorial plaque to the main gate of the company's Uerdingen works. Hans Frankenthal, former slave worker in IG Farben's plant in Auschwitz and board member of the Jewish Community: "I was terrified when I learned from this offence against Jewish belief. According to our faith, taking possession of the cemetery without exhuming the bodies is tantamount to defiling the graves."

Bayer today is living off the fruits of Nazi legalism. On paper everything was legally correct: Julius Israel Kohn from the "Association of Jews in the German Reich" and Bernhard Hoffmann, the representative of IG Farben, signed the sales agreement in a notary's office, and the copy of this seemingly standard real estate transaction has a stamp from the Krefeld tax office.

At the same time the former culprits are publicly honored in Uerdingen. Fritz ter Meer served on the IG Farben board of directors from 1926 to 1945 and was the head officer directing the operations of the IG Farben factory at Auschwitz. The Nuremberg War Crimes Tribunal sentenced him to seven years in prison. He was released after serving only four years. Not long after, in 1956, Ter Meer was elevated to the chairman of the supervisory board at Bayer, a position he held for seven years. His grave in Krefeld has a meter-high wreath on it - donated by Bayer in recognition of his services.

Coalition Against Bayer-Dangers (Germany)
<www.CBGnetwork.org>
<CBGnetwork@aol.com>

Fax: (+49) 211-333 940 Tel: (+49) 211-333 911

Please send an e-mail for receiving the English newsletter Keycode BAYER free of charge. German/Italian/French/Spanish newsletters also available.

Deadline Extended

10th International Women's Health Meeting (IWHM)

September 21-25, 2005, Ashok Hotel, New Delhi

Deadline for call for abstracts has been extended to March 15, 2005.

For more details, see the website <www.10iwhmindia.org>

or write to: <convenorsecretariat@10iwhmindia.org>

Economical Tools Available for Health Work

For the village health workers

- Thermometers
- Teaching stethoscopes
- Breath counter
- Pictorial formulary
- Growth monitoring booklets

For communities

- A paper strip test for detecting contaminated drinking water and disinfection system
- Mosquito repellent oil
- Safe delivery kit
- Amylase rich flour
- ORS packets

For rural laboratories and mobile clinics

- Anemia detection kits
- Electrophoresis kit for sickle cell anemia
- Tests for urinary tract infection
- Concentration test for detection of TB bacteria
- Low cost carbon dioxide incubator for cultivation of TB bacteria
- Cleaning system for glassware
- Vaginal infection diagnostic kit

For the clinic and pharmacy

- Portable Stadiometer
- Tablet breaking device
- Paracetamol in gel form

Come and learn more about these tools and kits at a workshop, on March 25-26, 2005 at Jeevan Darshan, Fatehgunj, Baroda. . For details contact: Jan Swasthya Sahyog,, I-4, Parijat Colony, Nehru Nagar, Bilaspur- 495 001, Chhattisgarh. Email:<jss_ganiyari@rediffmail.com>Phone and fax: 07752-270966. or LOCOST at 0265-283009, email: <locost@satyam.net.in>

Subscription Rates

	Rs. Indv.	Inst.	U.S$ Asia	Rest of world
Annual	100	200	10	15
Life	1000	2000	100	200

The Medico Friend Circle bulletin is the official publication of the MFC. Both the organisation and the Bulletin *are funded solely through membership/ subscription fees and individual donations.* ***Cheques/ money orders/DDs payable at Pune, to be sent in favour of Medico Friend Circle,*** *addressed to Manisha Gupte, 11 Archana Apartments, 163 Solapur Road, Hadapsar, Pune - 411028. (Please add Rs. 15/ - for outstation cheques). email: masum@vsnl.com*

MFC Convener

N. B. Sarojini, G-19, 2nd Floor, Marg No. 24, Saket, New Delhi 110017
E-mail: saromfc@vsnl.net, Ph: +91 11 26562401, 55637632. MFC website: http://www.mfcindia.org

Contents

Editorial Committee: Anant Bhan, Neha Madhiwalla, Dhruv Mankad, Amita Pitre, C. Sathyamala, Veena Shatrugna, Chinu Srinivasan. **Editorial Office:** c/o. LOCOST, 1st Floor, Premananda Sahitya Bhavan, Dandia Bazar, Vadodara 390 001 email: chinumfc@icenet.net. Ph: 0265 234 0223/233 3438. **Edited & Published by:** S.Srinivasan for Medico Friend Circle. 11 Archana Apartments, 163 Solapur Road, Hadapsar, Pune 411 028.

MEDICO FRIEND CIRCLE BULLETIN
PRINTED MATTER - PERIODICAL

Registration Number: R.N. 27565/76
If Undelivered, Return to Editor, c/o, LOCOST,
1st Floor, Premananda Sahitya Bhavan
Dandia Bazar, Vadodara 390 001