

## India in the Doha Round

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### 1. Introduction

The Doha round of multilateral trade negotiations is at a critical juncture. The Fifth Ministerial Conference (MC) of the World Trade Organization (WTO) for a midterm review of the negotiations will open in Cancún, Mexico on September 10. There is no consensus draft of the ministerial declaration, and several crucial deadlines have passed without any agreement. A collapse of the Cancún MC would be severe setback to the goal of a rule-based, liberal global trading system. India has a lot to lose if the Cancún Ministerial collapses. By abandoning its defensive posture and becoming an enthusiastically active participant, it can play a major role in preventing a collapse. We should offer proposals of our own that further our interests rather than merely reacting to others. Offering little in exchange while asking a lot of others is a sure way of becoming a marginal player with negligible influence on the outcome of negotiations. Since unilaterally opening our markets to international competition is in our own interest regardless of whether our access to markets of others is enhanced, getting such enhanced access in return in negotiations is a bonus.

India's defensive posture is longstanding. At the Punta Del Este (Uruguay) MC which launched the Uruguay Round, we fancied ourselves leaders of developing countries and formed, along with Brazil, a group of ten like-minded countries (GT). The GT were not convinced of the need for a new round of negotiations to begin with, let alone the inclusion in the negotiating agenda of new issues such as services, intellectual property and investment measures. As the

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MC wore on, the GT position eroded, and all but India and a wavering Brazil abandoned their opposition. Brazil also eventually dropped out. Having reached this untenable position, we concluded a last-minute, face-saving agreement with the US that service negotiations would take place separately and acquiesced in the launching of the Uruguay Round. Similarly, in the Doha Ministerial, India held out against signing the Ministerial Declaration until the last minute before bowing to the inevitable. The face-saving device this time was a clarification of doubtful legality on Singapore issues by the Chairman of the meeting that the phrase, “decision to be taken by explicit consensus” at Cancún applied both to the start of negotiations and their modalities.

The Doha negotiations offer us an opportunity to reach for our legitimate position in global trade and finance and to compete effectively in world markets. But to avail of this opportunity, we have to articulate a consistent position that would promote our interests on various items of the negotiating agenda. Besides articulating a coherent position, we need to remove the domestic constraints on our international competitiveness and attractiveness to foreign capital, and improve our domestic investment climate. We have to bring down our fiscal deficits to manageable levels, address festering problems in our energy, transport and telecommunications infrastructures, and remove legal obstacles to exit from unprofitable activities and to smoothly functioning labour markets. We should also set a firm future date for making the rupee convertible on capital account and immediately undertake the needed reforms in our financial sector to bring it about. In short, we have to speed up, extend, deepen and complete the reform process expeditiously if we are to attain our legitimate position.

## 2. India’s Legitimate Position in the Global Economic System: A Vision

Our greatest achievement since independence is that India continues to be a thriving participatory democracy. We are the second most populous country and the largest democracy

in the world. According to the World Bank, we are 162<sup>nd</sup> in the world in terms of per capita gross national income (GNI) in 2001, and 12<sup>th</sup> in terms of absolute GNI; the corresponding ranks for China were 123<sup>rd</sup> and 6<sup>th</sup>, respectively<sup>1</sup>. In world merchandise exports, we were the world's 30<sup>th</sup> largest exporter in 2002 with a share of 0.8%; China was 5<sup>th</sup>, with a share of 5.1%.

Whatever our legitimate share of world trade is, there is no doubt our current share is not commensurate with our being the 12<sup>th</sup> largest economy in the world. More importantly, we should aspire to be viewed by the rest of the world as an economy from which it can buy a range of quality products at competitive prices, and to which it can sell its products in a stable market and policy environment with few barriers. We should also be seen as an attractive destination for investment and a source for investment finance. The rupee should become a stable "hard" currency which the rest of the world would gladly hold as part of their foreign exchange reserves. Representing a sixth of mankind, India has the potential, nay the obligation, to play a major role in the global decision making organs and become a major global economic power. A slow progress in realizing our potential and, worse still, failure to realize it, would put paid to our dreams of becoming a major world power and a permanent member of the United Nations Security Council. The world will then say of us, as it used to say of Brazil, that "India is an economy of tomorrow and always will be!"

### 3. India's Current Position

Our share in world merchandise trade of 0.8% in 2002, abysmally low though it is, still represents a rise from a low of 0.41%, to which it had fallen in 1981 from a peak of 2.2% in 1948, largely due to our relentless pursuit for too long of a misguided inward-oriented development strategy of across-the-board import substitution. The piecemeal liberalization of the 1980s and the broad-based systemic reforms since 1991 undoubtedly accelerated the growth

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<sup>1</sup> In purchasing power parity terms, China is the 2<sup>nd</sup> and India the 4<sup>th</sup> largest economy of the world.

of our exports and contributed to the rise in our share. The spectacular growth of our exports of software and IT products is well known. Still, we are losing to China in major world markets. Our share in total North American (US and Canada) imports of eight labour-intensive manufactures fluctuated around 1% between 1990 and 2000, while China doubled its share from 12% in 1990 to 25% in 2000. Our share in the EU's imports of the same products fluctuated around 0.8%, while China tripled its share from 3% in 1990 to 9% in 2000. We do not attract as much foreign direct investment as an economy of our size would warrant: our share in total foreign direct investment flows to developing countries in 2001 was less than 2% compared to China's 21%. We are not chairing any important committees in the WTO. We do hold executive directorships in the World Bank and the IMF—however, given the weighted voting system of the two institutions, our small weight limits our voice in the decision making process.

Although the systemic reforms since 1991 have made a decisive break from more than four decades of inward orientation, we are not as far along as we could be towards gaining our legitimate position in the world economy. There are essentially two reasons for this. First is that many of our academics, bureaucrats, media persons and politicians are still ambivalent about the need for and the benefits to the economy from the break. Even the architects of reforms, Narasimha Rao and Manmohan Singh, are not clamouring for their extension and deepening. The stance of the Congress Party on further reforms is ambiguous. The dominant member of the ruling coalition at the center, namely the BJP, is facing stiff opposition on liberalization of foreign trade and investment from its ally, Swadeshi Jagaran Manch. Trade unions of all political parties, whose collective membership accounts for a very small proportion of the

country's workers, are united in their opposition to components of economic reforms, such as privatization<sup>2</sup>.

The argument that the rulers in our democracy cannot implement reforms in the teeth of opposition from the ruled, whereas the authoritarian regime of China can, is facile. Our political leadership is not itself of one mind on reforms and, in part because of this division, it has not presented a convincing case for reforms to the electorate. Our recent elections have not been fought over reform issues: the electorate has had no opportunity to express its views on reforms and its alleged opposition or support is not the reason for failure or success of our reforms. Chinese leadership since Deng Xiao Ping, on the other hand, has been united on the need for reforms. It vigorously pushed for accession to the WTO and purposefully used the commitments China had to undertake in their pre-accession agreements with the members of the WTO (particularly the US and the European countries) to push forward its domestic reform agenda. Anyone who visited China in the last couple of years could not but be impressed by the frequency of meetings and intensity of discussions over the opportunities opened up by the accession and what China needs to do to make the best of them.

In contrast, in our debates, the WTO is made out to be the villain which has thrust onerous obligations on us, totally ignoring the fact that WTO by itself cannot impose anything—it is merely a facilitator of the implementation of agreements, including the Uruguay Round

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<sup>2</sup> It is worth recalling what the late Professor P. C. Mahalanobis, who was no right-wing reactionary, said long ago: “. . . in certain respects, welfare measures tend to be implemented in India ahead of economic growth, for example, in labour laws which are probably the most highly protective of labour interests, in the narrowest sense, in the whole world. There is practically no link between output and remuneration; hiring and firing are highly restricted. It is extremely difficult to maintain an economic level of productivity, or improve productivity. At early stages of development in all countries there has been a real conflict between welfare measure and economic growth. Japan is an outstanding example; the concept of minimum wages was introduced only about 10 or 12 years ago when per capita income had reached the level of \$250 or \$300 per year; and minimum wages were fixed more or less at actual average levels. In India with a per capita income of only about \$70, the present form of protection of organized labour, which constitutes, including their families, about five or six per cent of the whole population, would operate as an obstacle to growth and would also increase inequalities. It is a serious problem not only in India but in other under-developed countries” (*Sankhya*, Series B, Vol. 31, Parts 3 and 4, 1969, p. 442).

Agreement, into which its members (including us) have voluntarily entered. The unmistakable sound of whining in our criticisms of the WTO is unbecoming of the 12th largest economy in the world.

The second reason why we are where we are in the world trading system is domestic constraints on our competitiveness in world markets. There is a distinction between policy imposed constraints and physical constraints. Removing a policy constraint is a necessary, but not a sufficient, condition for improved economic performance. The removal of a policy constraint is only enabling in the sense that it opens up opportunities previously denied. But physical constraints, such as poor infrastructure, could preclude the opportunities being availed of in full measure. Although several policy constraints have been removed, many, such as the remaining small scale industry reservations, restrictive labour and bankruptcy laws, and public sector dominance of the financial sector have not.

On infrastructure as well, the contrast with China is instructive. When China created the Special Economic Zones (SEZ) in coastal areas, it took several interrelated actions, including allowing 100% foreign ownership and freedom for employers to hire and fire workers in the SEZs and making sure that SEZs had adequate land, water, energy, transport and telecommunications infrastructures. We were one of the first among developing countries to establish an export processing zone (EPZ) in Kandla long ago. But other than allowing imported inputs duty free, not much else was done—in other words, the inward orientation of the rest of the economy coloured our approach to the EPZ, and Kandla never took off. Fortunately, the report of the N. K. Singh Committee on Foreign Investment has identified several reasons why India is not yet an attractive destination for FDI and also shows that we have learned from the failure of Kandla and the success of China's SEZs.

Even outside of SEZs, unlike us, China has succeeded in attracting Foreign Direct Investment (FDI) to infrastructure sectors as well as for production of exportables. Our attempt to attract FDI into power generation was a dismal failure of which the idle Dabhol plant is a monument. Many of the foreign investors in China were expatriate Chinese (or from Taiwan or Hong Kong) who had experience in manufacturing exports. This is not of great significance of itself—the primary objective of any investor is maximizing his or her return, after allowing for risks, from investment. If the Chinese economy was not attractive from this perspective, neither expatriates nor others would invest: the relevant point is that investors apparently found returns investing in China attractive after allowing for risks, not that many of them happen to be Chinese expatriates. Indeed, UNCTAD’s latest World Investment Report shows that China is rapidly catching up with the US as the world’s most popular location for foreign investment<sup>3</sup>.

#### 4. The Doha Round

The Doha Round negotiations offer us an opportunity to move aggressively towards gaining our legitimate position. Unfortunately, our mindset is not geared to availing of this opportunity. An article by Mr. Bhagirath Lal Das, our former ambassador to GATT, with the title, “Protecting National Interests at Cancún,” (*The Hindu*, August 25, 2003), exemplifies this mindset. He argues that, “India has to be well prepared to guard against having to give any concessions that are against its national interest and to obtain commensurate benefits against whatever concessions it may give.” No Indian negotiator would willingly sacrifice national interest or knowingly agree to actions that would cost us more than the benefits they would generate. The real issues are insufficient attention to the fact that, first, the negotiations offer an opportunity to further our national interests and not merely defend them and, second, oversimplification of the problem of identifying our true national interests and ensuring that our

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<sup>3</sup> Frances Williams, “China Closes Foreign Investment Gap,” *Financial Times*, August 26, 2003, p.1.

negotiating positions are consistent with them. Unlike in earlier rounds of negotiations, this time various stake holders have been consulted. But aggregating expressed interests and concerns of diverse stake holders into a coherent set of national interests that would inform our proposals in negotiations is no simple matter.

The negotiations are quintessentially bargaining processes. Asking for concessions from others in exchange for what is obviously in our interest to do unilaterally is not a credible bargaining position. A clear distinction has to be made between initial positions including bargaining chips to be exchanged and our ultimate positions, on which there cannot be any compromise. The publicly available versions of our submissions to WTO's Trade Negotiating Committee are a mix of mostly reactions to others' proposals; others, such as formulae for tariff reductions, whose relation to our national interests, is not apparent; and still others, which appear to be more in the nature of expressing our solidarity with developing countries rather than promoting our interests.

The negotiations are a means for first, accelerating our integration with the world economy (i.e., globalization) and, through such integration, foster more rapid growth and poverty reduction; second, for expanding our access to world markets; third, ensuring that we have a voice in the formulation of rules governing the operation of the world trading system and decision making in the WTO and other institutions involved in the governance; and fourth and lastly, for guarding against the intrusion of non-trade related matters into the WTO. Let me briefly discuss each in turn.

#### 4.1 Globalization, Growth and Poverty Reduction

A strong association among greater integration with the world economy, faster growth and greater poverty reduction in our economy is beyond dispute. Without



attributing causation to association, let me note that many policy interventions, ostensibly for alleviating poverty have been in place for a long time. Only since the 1980s have we experienced a downward trend in the ratio of poor in our population and broken away from our measly Hindu growth rate (of around 3.5% per year on the average during 1950-80) and achieved average growth rates of 5.7% and 5.9%, respectively during 1980-90 and 1990-2001. Though China grew faster at 10.3% and 10.0%, respectively, in the two periods, only 11 out of 125 countries and territories, and an even fewer 9 out of a larger 145, exceeded our growth rate.

We integrated to a greater extent with the world economy, with the share of exports and imports together in GDP rising from 17% in 1990 to 29% in 2001. The incidence of poverty, which had been fluctuating around 50% of population since 1950-51 with no downward trend, fell from 51.3% in 1977-78 to 26.1% in 1999-2000. Whenever opportunities open up, as they did with the liberalization of the 1980s and 1990s, individuals, groups and states that are initially better placed benefit from them ahead of others. Thus, an initial increase in inequalities and interstate disparities has occurred since reforms, as is to be expected. We have to ensure that these initial increases in disparities gets reversed.

Only by accelerating our growth and sustaining it at a high level for a reasonably long period of time can we hope to eradicate poverty for several reasons. First, more rapid and sustained growth is the only sure means of poverty reduction; second, further globalization of the economy is vital for growth acceleration; and third, the success of the Doha Round in significantly liberalizing the global trading system is a necessary condition for us to succeed in our own globalization efforts. Above all, the eminently

feasible target of our 8% annual growth rate in the Tenth Plan could become moot if our domestic reforms and external liberalization do not go forward rapidly.

#### 4.2 Market Access

We are one of the most protected markets in the world, according to the data in the World Trade Report of 2003 of the WTO. Although we have bound nearly 75% of all tariff lines, the simple average of our bound tariffs on all products would be nearly 50% by 2005, with a maximum of 300%. Only 2% of the tariff lines are duty free. Nearly two-thirds of our bound tariffs correspond to international peaks. China has bound all its tariff lines, with an average bound rate of 10% and a maximum of 65%, nearly 6% of tariff lines being duty free and only 16.3% being at international peaks. Turning to applied tariffs on agricultural products, our simple average tariff was 37% in 2001 with a maximum of 210%, as compared with China's 19.2% and 71%, respectively. On non-agricultural products, our simple average applied tariff is 30.5% with a maximum of 105%, as compared with China's 11.3% and 51%, respectively.

Such high tariffs restrict the access of others to our markets and our own competitiveness in world markets, both by raising the cost of imported inputs into exportable production and by making selling in domestic markets more attractive relative to exports. Clearly, it is in our interests to reduce our tariffs.

##### 4.2.1 Non-Agricultural Products

Our proposal asked for developing countries to make two-thirds of the cuts in tariffs that developed countries were to make from bound levels, with no tariff exceeding three times the national average, and for flexibility in reduction commitments as well as bindings. We proposed two alternative reductions of in

tariffs by developed countries, without specifying which of the two we preferred, nor did we offer any rationale for our formulae or the choice of the ratio between maximum and average tariffs! Our proposals did not even appear to serve our own interests. Laird, de Cordoba and Vanzetti of UNCTAD show that, among the six alternative proposals before the WTO, our proposal and one other yield the second lowest welfare gain to us relative to the base case—all others, except one, yield half as much more welfare gain! Notwithstanding the wide margins of error in such estimates, they are adequate to show that our proposal reflects more our traditional desire to minimize our liberalization than maximizing our interests.

Although the US and EU initially made far-reaching proposals for tariff cuts in industrial products, they seem to be converging to a tariff cutting formulae, with the US proposal of “zero for zero” tariffs on seven product categories apparently no longer being on the table. Our interests would have been served far better if we had focused on the tariff levels after the cuts were implemented, rather than on formulae for reduction. We could have proposed tariff levels (0%, 7.5% and 15%) to be attained by 2015 through a process under which each member of the WTO reduces all its applied tariffs as of 2005 that are above 15% linearly over five years to 15% in 2010 and so on, and also agreed to the elimination of all positive tariffs by 2015. Developing countries could be given a longer period, say until 2020 and 2025, to achieve the same tariff levels as developed countries. With terminal tariff levels and the dates known, there will be greater certainty for countries to undertake needed adjustments and investments.

#### 4.2.2 Agricultural Products

Our latest proposals pay excessive attention to the process of reduction (on a product specific basis), with features of special and differential treatment thrown in. It is not clear whether the latest proposals supercede our earlier ones, covering food security, market access, domestic support and export competition, seeking to exempt or limit commitments by us and other developing countries. The food security box would exempt developing countries from any form of reduction commitments with respect to all measures taken for poverty alleviation, rural development, rural employment and diversification of agriculture and from any obligation to provide any minimum market access. We sought flexibility for developing countries in the manner of providing subsidies to farm inputs and to relate tariff bindings to developmental needs and to trade distortions in developed countries in the areas of market access, domestic support and export competition. Our proposals on domestic support and export competition contained similar provisions for exempting developing countries from obligations that developed countries are to undertake. We sought Special Safeguard provisions allowing us to impose quantitative restrictions under specified circumstances.

These proposals, that in effect do not call for any serious reduction commitments on our part while demanding a lot from developed countries, are obviously nonstarters in give and take negotiations. Although some developed countries had earlier negotiated Special Safeguard provisions, there is really no need for them since General Safeguard provisions under Article XIX of GATT

and anti-dumping measures would serve just as well. There is no reason to spend our precious negotiating on this issue.

Although the agreement on agriculture in the Uruguay Round brought agricultural trade under many of the disciplines that apply to non-agricultural trade, it did not lead to any significant trade liberalization. It left in place, at reduced levels, production and export subsidies and exempted some of them (the so-called “Green Box” subsidies) from any reduction requirements whatsoever. In addition, the so-called “dirty tariffication” process, by which various non-tariff measures were converted into tariff equivalents and bound, led to bound tariffs that were much higher than actually applied tariffs. Since the tariff reduction commitments started from the base of bound levels, there was virtually no reduction in actually applied tariffs by the end of the period of the implementation period. In sum, there was no liberalization of agricultural trade and several distortionary interventions were allowed to remain.

Viewed from the perspective of the Doha ministerial declaration that raised hopes of a substantial liberalization of world agricultural trade, the latest US-EU proposal is extremely disappointing. It is formulaic and does not eliminate export subsidies on all products, but only on “products of particular interest to developing countries”—the subsidies on other products would be merely reduced. It offers Special and Differential Treatment to developing countries in terms of their having to commit to lower tariff reductions over a longer period and recognizes “import sensitive” products. The nebulous concepts more, less and minimally “trade-distorting domestic support” remain and so do the corresponding Amber, Blue and Green boxes, in modified form.

India would do well to join the Cairns group of agricultural exports and put forward fresh proposals that (i) firmly reject the use of trade policy instruments for addressing non-trade objectives in agriculture (e.g., environment, rural development), (ii) recognize that domestic support that is unrelated to levels of production (the so-called “decoupling”) can still affect production by allowing some individuals to continue farming who would otherwise have quit, (iii) restrict any aid to poor countries to lump-sum income transfers rather than in the form of commodities (e.g., food aid), and (iv) seek to abandon the effort to put interventions in various boxes and then limit them. Instead, the targets for elimination should be any direct or indirect form of intervention that could affect the equilibrium prices in the world market for agricultural commodities.

The fact that distortionary interventions, by the EU and the US in particular, might continue after the Doha Round is concluded, does not automatically imply that India should restrict its external trade in agriculture—only that it should vigorously use the instruments available under WTO rules to offset WTO-illegal foreign interventions and to challenge others in the Dispute Settlement System when appropriate. In any case offering to lower our barriers in exchange for the abolition of subsidies by others would in fact be protecting our farmer’s interests.

Former ambassador Das defines the main imperatives in agriculture from our national perspective as: “production of adequate food for domestic consumption and sustenance of its rural agricultural economy.” While these two sound eminently sensible *prima facie*, they in fact are not. Self-sufficiency, whether it is in the consumption of food or of nylon stockings is not a sensible objective—self-reliance, in the sense of having resources to acquire food for consumption from domestic and world markets, is. Pursuit of self-reliance does not preclude

self-sufficiency if domestic production is internationally competitive, nor does it obviate the need for ensuring that the incentives to acquire and maintain buffer stocks (not necessarily in the public sector!) to smooth price fluctuations and reduce transaction costs in meeting unanticipated domestic supply or demand shocks through foreign trade. There are poor households, including small and marginal farmers who are not buyers of food, as well as poor rural and urban workers who are vulnerable to adverse food price movements. But policies for creating an appropriate safety-net for them should not be confused with trade policies.

The sustenance of our rural economy again should not be equated with keeping the current large share (around 60%) of our labour force and rural households continuing to earn their living directly or indirectly from agriculture. That so large a proportion of our labour force is still employed in agriculture, even though the share of agriculture in GDP has fallen to less than 25% currently from over 55% in 1950, is a telling indicator of the failure of our development strategy in enabling workers to move from agriculture to more productive employment elsewhere in the economy. The small average size of 1.5 acres of landholding to which Mr. Jaitley refers (*Economic Times*, August 29, 2003) is also a symptom of this failure, since holdings would have been consolidated and their size gone up had fewer people been engaged in farming. We should focus on increasing agricultural productivity and, at the same time, generate productive employment opportunities in rural areas outside of agriculture. We should recognize that greater integration of our markets for agricultural outputs and inputs with world markets would provide greater incentives for productivity raising investment and innovation in agriculture. In sum, issues of food security, creation of a safety net for the poor, addressing risks and returns in farming of small and marginal farmers, and rural development are objectives that fall largely in the domain of domestic policy. Using trade policy would be far

more costly and less effective in achieving them. Our negotiating partners can easily see through the tenuous connection between the objectives and trade policy.

Mr. Jaitley is rightly concerned that, “if we open up our farmer to competition with highly-subsidized economies, perhaps we could even be pushing him to a situation, which could create acute social distress, let alone the economic consequences of the same” (*Economic Times*, August 29, 2003). First of all, as I argued earlier, subsidies elsewhere do not call for us to hurt ourselves through our own protection if such protection by us has no effect on others’ subsidies but simply hurt our economy. Second, the adjustment problem in exposing our farmers to world prices is real and could be serious if the opening is sudden. By announcing the opening in advance and phasing it in over a reasonable time, it can be largely contained. Given the opportunity our diverse agriculture can be very competitive internationally and there is no need to fear competition.

#### 4.3 Rules and Other Issues

##### 4.3.1 Anti-Dumping

India has been and continues to be a victim of Anti-Dumping Measures (ADMs) by developed countries. Ironically, according to the annual report of WTO for 2003, India now has the dubious distinction of having initiated the largest number of 76 actions (the US is next with 58 initiations) in the year 2001-02 (July-June) and the third largest in having 150 (as opposed to 264 by the US and 219 by the EU) measures in force as of June 30, 2002. The only circumstance in which dumping can reduce national and world welfare is when such dumping is “predatory,” an act intended by the exporter to drive his or her competitors out of the market permanently. It is extremely unlikely that dumping with a predatory



intent would succeed in the contemporary world economy—it would be virtually impossible to keep new entrants out even if the dumper succeeds in driving out other incumbents.

There is no doubt that ADMs are largely being used with protectionist intent. The rules of WTO are not adequate to deter a member from imposing protectionist ADMs and making it withdraw them, if it imposes, by challenging them and succeeding in the Dispute Settlement process. Even if they are eventually withdrawn, they do a lot of damage in the interim. Adequate, and less distortive, safeguard measures are already available under article XIX of GATT for dealing with import surges. There is no reason why ADMs should continue to be in the arsenal of WTO-legal trade policy instruments.

We have used ADMs particularly against some imports from China. This use simply reflects our not being able to compete with Chinese products in our domestic market, and not that China is engaged in predatory dumping. Our market is too small relative to the world market so that the gains to China would be very small even if it were to become our sole supplier by driving out other suppliers including our domestic producers from our market. Instead of addressing the issue of international competitiveness, using ADMs is a confession of failure. The fact that many of our ADMs have been sustained by the WTO's Dispute Settlement Body, while many of those against us were not, is more a testament to our legal competence in the choice and design of our ADMs than their economic soundness.

A large number of developing countries have called for reform of the existing rules covering ADM. The US has insisted only on “clarifying and improving” existing rules of ADM and safeguard actions without questioning the appropriateness of ADM as a trade remedy. Although it is unrealistic to expect that a proposal to take ADMs out of the permissible set of trade policy instruments will be accepted, India can capture high moral ground by making such a proposal and itself using safeguard actions rather than ADMs.

### 3.3.2 Preferential Trade Agreements (PTAs)

The most glaring exception, under certain conditions spelled out in Article XXIV, to the general Most Favoured Nation (MFN) treatment enshrined in Article I of GATT relates to customs unions (CUs) and free trade areas (FTAs) or, more generally, PTAs. A Working Party Mechanism was instituted to vet any proposed CUs and FTAs for their conforming to conditions laid out in Article XXIV. This mechanism has conspicuously failed—for example, the one set up to vet the proposal to form the European Economic Community (the predecessor of the EU) did not submit a report card and EEC was never vetted again! For a long time (until the mid-term review of the Uruguay Round Negotiations in 1988), there were few CUs or FTAs notified to GATT. Since then, the trend towards proposing and entering into PTAs has accelerated. By the end of 2002, 250 PTAs, 130 of them since its establishment in 1995, have been notified to the WTO. Most of the PTAs, past and present, were motivated primarily by geopolitical considerations. The European Coal and Steel Community, which led to the EEC and eventually to the EU, was created soon after the Second World War

with the explicit goal of preventing future European wars by forging an economic tie between the two major antagonists, Germany and France, thereby ensuring that the stakes each have on mutual cooperation would prevent them from resorting to armed conflict. Although contemporary PTAs are not aimed at preventing armed conflict, they are still driven by political considerations. This being the case, it is unlikely that the drive towards PTAs will slow down even if a very liberal multilateral trading system emerges after Doha.

We have also pursued the PTA route, notably through SAPTA and SAFTA, as well as free trade agreements with Nepal and Sri Lanka. The political benefits to us from these are hard to quantify, and the economic benefit to us as the largest economy of the region is at best modest, particularly in comparison to the benefits to us from having liberal access to world markets rather than only to the regional markets. This is not to deny that our partners, being much smaller economies, have more to gain from their PTAs with us. But even for them the alternative of liberal access to world markets would yield larger benefits.

Since the politics of the situation dictate that more PTAs would be concluded in the future and, realistically, we do not have any serious prospect of being invited to be a member of one which has much larger economies than ours as members, it would be prudent of us to ensure that the loss to us as a non-member from trade diversion by the preferential access others have as members in PTAs is minimized. We could capitalize on the failure of the GATT/WTO Working Party mechanism for examining PTAs for their consistency with the provisions of Article XXIV and propose that the article be repealed and replaced

by a sunset clause that allows any PTA to be negotiated, but with a provision that trade preferences allowed for its members will be extended to all members of the WTO on a MFN basis at the end of a reasonably short period, say no more than 10 years, from the date of coming into force of the PTA.

#### 4.3.2 TRIPS

TRIPS figured both in the main Doha ministerial declaration and a separate one concerning TRIPS and public health. The main demand of the DCs related to the public health provision of TRIPS. The declaration on public health appeared to go a long way in addressing the concerns of developing countries. First, it recognized the gravity of the public health problems resulting from HIV/AIDS, tuberculosis, malaria and other epidemics in poor countries. Second, it stressed the need for wider national and international actions to address these problems and for TRIPS to be part of these actions. Third, while recognizing that Intellectual Property (IP) protection was important for the development of new medicines, the ministers agreed that TRIPS Agreement<sup>4</sup> “does not and should not prevent members from taking measures to protect public health. Accordingly, the ministers, while reiterating their commitment to the TRIPS Agreement, affirmed that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and, in particular, to promote access to medicines for all. The ministers explicitly recognized certain flexibilities in the interpretations of TRIPS commitments, in particular the right of each member “to grant compulsory licenses and the freedom to determine the

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<sup>4</sup> See “Declaration on the TRIPS Agreement and Public Health,” WTO (2001), WT/MIN/01/DEC/W/2, paragraphs 4 and 5.

grounds upon which such licenses are granted . . . to determine what constitutes a national emergency or other circumstances of extreme urgency, it being understood that public health crises, including those relating to HIV/AIDS, tuberculosis, malaria and other epidemics, can represent a national emergency or other circumstances of extreme urgency.”

Interestingly, while recognizing that WTO members with insufficient or no manufacturing capacities in the pharmaceutical sector could face difficulties in making effective use of compulsory licensing, the ministers left it to the Council on TRIPS to find an expeditious solution to this problem. The least developed country members were given until January 2016 to implement or apply Section 5 (on Patents) and Section 7 (on Undisclosed Information) of TRIPS agreement without prejudice to their seeking other extensions.

Discussions in Tokyo and, following them, in the Council for TRIPS during 18-20 February 2003 failed to narrow the differences on the use of compulsory licensing by a country to authorize itself or third parties to produce patented drugs (without authorization by the patent-holder) when they have insufficient production capacity. The Council failed to adopt the draft prepared by its chair, Perez Motta, on December 16, 2002, suggesting a compromise solution. The chairman, did not make a planned statement at the Geneva meeting on his “understandings” from consultations of members, that the system of compulsory licensing to be established “as being essentially designed to address national emergencies or other circumstances of extreme urgency” (*Bridges*, 7(6), February 19, 2002). The US rejected the December 16, draft on the ground that

it did not limit the diseases for which the provision on compulsory licensing are to be invoked to HIV/AIDS, malaria, tuberculosis, and similar infectious diseases.

Only last week, the US climbed down from its opposition and agreed to a deal worked out by us, Brazil, Kenya and South Africa. Under the deal, which has since been approved by the TRIPS Council, countries such as us with acknowledged capability to produce generic drugs of good quality at low cost would be able to export them to other poor countries with no such capacity to deal with health emergencies, while agreeing not to exploit the arrangement to increase exports of generic drugs to nations that are not poor and do not have a medical emergency.

This agreement, though undoubtedly of benefit to us and other poor developing countries, leaves unaddressed some larger and fundamental issues relating to intellectual property protection in general and its trade relatedness in particular. First of all, unlike commodity or service trade in which both the exporter and importer benefit, TRIPS in effect would result in transfer to patent holders in a handful of rich countries from drug purchasers from a large number of poor countries. The potential benefit, if any, accruing to innovators in poor countries from stronger IP protection is largely uncertain and largely in the distant future.

The most unsatisfactory aspect of TRIPS is that it was thrust, largely by the US, on the developing members in the Uruguay Round in return for the phasing out of the Multifibre Arrangement and agricultural trade liberalization. Apart from the fact that the latter was illusory and the former was back loaded

with most of the benefits to developing countries coming after 2005, no convincing case was made for mandating a uniform patent life regardless of whether it was for a process of product innovation, and whether the product was a lifesaving drug or a new nail clipper! Most egregiously, the overwhelming empirical evidence that the link between the monopoly rights granted through patents and incentive to innovate was weak at best and varied between industries, was completely ignored. Even where there was an apparent link, such as in pharmaceuticals, grant of patents has not been shown to be the most cost-effective policy of promoting innovation. In short, the developing countries got a very raw deal when they accepted TRIPS. Taking TRIPS out of the WTO is politically impossible to. However, India once again can claim moral high ground by pointing out the lack of a strong economic argument for patent protection and its enforcement through TRIPS.

#### 3.3.4 Singapore Issues

Mr. Jaitley's remarks to the *Financial Times* make clear that we believe that an explicit consensus at Cancún is required not just for agreeing to negotiate on Singapore issues. Nonetheless, there is some softening in our stance. He said that, "the common thread [of opposition to including rules governing investment in the WTO talks] cuts across all opinion and the government of India would simply be giving voice to that." He was concerned about the compromise with national sovereignty that international disciplines on investment would entail. Still Mr. Jaitley left the door open for negotiation by pointing out that India has just

passed a strong competition law and has made public procurement more transparent.

Mr Jaitley's comments are indeed appropriate. He could have gone further by suggesting removal of Singapore issues from the "single undertaking" requirement, so that there could be plurilateral agreements among a coalition of the willing on these issues. We could also propose that a straitjacket of harmonization of rules be avoided and mutual recognition of each other's competition and investment rules be accepted were there to be a multilateral agreement. Emphasizing that multilateral negotiations are not useful instruments for identifying problems relating to trade facilitations and suggestion solutions, we could propose country specific investigations for estimating the costs of improvements and a mechanism for financing such costs.

#### 4.3.5 GATS

Finally, an agreement to liberalize the movement of natural persons is of vital interest to us. Any agreement concluding the Doha round, to be acceptable to us, has to also include significant liberalization of movement of natural persons.

The Doha Round is a great opportunity to aggressively pursue a substantial liberalization of world trade that is vital to our goal of accelerating growth and eradicating mass poverty in a not too distant future. Any aggressive pursuit of our interests in the negotiations will necessarily involve give and take and giving up our traditional and purely defensive posture. Our insistence on nonreciprocity and special and differential treatment for developing countries through derogation from rules and levels of commitments is counterproductive and costly. The only sensible way to recognize the disparities in levels of development is through longer phase in



period for the same rules or commitments, rather than different and laxer rules and lower commitments. Asking for the latter is condemning us to a perpetual state of inferiority in the global system. We should seek to ensure that labour standards and other matters extraneous to trade continue to remain out of the WTO.