

**Negotiations on Agriculture and  
Services in the WTO:  
Suggestions for Modalities/Guidelines**

BHAGIRATH LAL DAS

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**TWN**  
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# 1

## Introduction

NEGOTIATIONS have started in the World Trade Organisation (WTO) in the areas of agriculture and services, as envisaged in the Agreement on Agriculture (AoA) and the General Agreement on Trade in Services (GATS). In the initial phase, the modalities/guidelines for these negotiations will be worked out. It is a very important phase, as the modalities/guidelines will determine the course of the negotiations and also, to a great extent, their results. Therefore it is necessary that the developing countries get fully involved in this process and place their own specific proposals on the modalities/guidelines.

It is by now well understood that both these agreements of the WTO contain significant deficiencies, imbalances and inequities. The burden of obligations on the developing countries in these areas is effectively much heavier than that on the developed countries. In order that the imbalances and inequities do not get further enhanced, a lot of care will have to be taken by the system, particularly by the developing countries. The credibility of the system will depend a lot on how far the countries will be able to reduce the imbalances and inequities. In fact, that should be the priority objective; and the modalities/guidelines should be designed to attain that objective.

In both these areas, the negotiations in the Uruguay Round (UR) centred around liberalisation. There will be a natural pressure for starting the process again from where it ended in the UR. The major developed countries are likely to suggest that the modalities/guidelines of the UR should be generally followed even in the forthcoming negotiations with appropriate modifications. As it was those modalities/guidelines which

ended in imbalances and inequities, it will not be correct to follow them. It is important for the developing countries to resist this pressure. The modalities/ guidelines for the forthcoming negotiations should be totally different in order that the priority objective of reducing the imbalances and inequities be fulfilled.

Subsequent sections of this paper describe the main problems in these two areas and give some suggestions for the modalities/ guidelines for the forthcoming negotiations.

# 2

## Agriculture

### COVERAGE OF NEW NEGOTIATIONS

The new agriculture negotiations will be directed towards "the long-term objective of substantial progressive reductions in support and protection" in this sector. In this process, some of the factors which should be taken into account are: "non-trade concerns", "special and differential treatment to developing country Members", "the objective to establish a fair and market-oriented agricultural trading system," and "the other objectives and concerns mentioned in the preamble" to the AoA (Article 20 of the AoA). An important objective and concern mentioned in the preamble is: "correcting and preventing restrictions and distortions in world agricultural markets".

Some important points can be drawn from the above objectives and concerns. For example, market orientation is not the sole guiding factor as is often made out; the system of agricultural trade has also to be fair. Further, restrictions and distortions in world agricultural markets are recognised as factors which should be corrected and prevented. Evidently, the policies and measures resulting in severe restrictions and distortions in world trade in agriculture are to be targetted for action.

### MODALITIES IN THE URUGUAY ROUND AND RISKS INVOLVED

In the area of agriculture, the UR negotiations were patterned on across-the-board elimination of non-tariff barriers, and reduction of tariffs,

domestic support (subsidy) and export subsidies. The nature of the obligations to be undertaken by all countries, except for the least developed countries (LDCs), was the same across the board, though the extent of reduction by the developing countries was somewhat smaller. All countries, the LDCs included, had to eliminate non-tariff barriers and bind all tariffs. All countries, except the LDCs, had to reduce tariffs, domestic support and export subsidies. The basic approach was that all countries, excluding the LDCs, should undertake obligations in these three areas.

Pressure will again be exerted for adopting a similar approach in the new negotiations on agriculture. As mentioned earlier, this approach has resulted in severe deficiencies, imbalances and inequities in this area. It will be dangerous for the developing countries to allow this approach to be adopted again. They should instead suggest an alternative approach. Before moving on to a possible alternative, however, it will be relevant to see what the old approach has resulted in.

## **IMBALANCED AND INEQUITOUS RESULTS OF THE URUGUAY ROUND**

### **Protection and Subsidies in Developed Countries**

#### *High tariffs*

The major developed countries impose very high tariffs – sometimes even up to nearly 300-400% – on some of their important agricultural products. This amounts to practically prohibiting imports, except for the quantities covered by tariff quotas which can be imported at low tariff rates.



## *High domestic subsidies*

The level of domestic support is very high in the major developed countries and has in fact risen over the past few years. It is frustrating to find that though the major developed countries have technically fulfilled their obligation of domestic-subsidy reduction, they have in reality increased the quantum of the subsidies. This has been done through a very clever use of the provisions of the AoA, which shows that the provisions themselves are faulty. It also perhaps shows that the major developed countries' pronouncements in the WTO about liberalisation and reduction of subsidies in agriculture are not backed by political will. The method employed by them is briefly explained below.

The AoA requires that a country should calculate, as a measure of domestic support, what has been called the Aggregate Measurement of Support (AMS) for the base period (average annual rate during the period 1986-88) and then reduce it from year to year. But two categories of subsidies are exempted from being included in the AMS, and thereby from being reduced. One set is given in Annex 2 (Annex 2 subsidies) and the other set in Article 6 (Article 6 subsidies) of the AoA. For the sake of convenience, let these two sets together be called "exempted subsidies".

The base level for the AMS was taken as the average annual rate during the period 1986-88. Reduction (20%) of the AMS was to be effected on this base over the period 1995-2000 by the developed countries. The major developed countries have reduced the AMS but increased the level of exempted subsidies by huge amounts, resulting in a very high rise in the total domestic support, i.e., including both the AMS and the exempted subsidies. In the European Communities (EC; the European Union is officially referred to in the WTO as the EC), the base level of the total subsidies was nearly US\$83 billion and it increased to US\$95 billion in 1996. In the US, the corresponding level went up from US\$50 billion to US\$58 billion. There is another measure of total domestic support, which

is called the Producer Subsidy Equivalent (PSE). In the EC, it increased from US\$100 billion in the base period to US\$130 billion in 1998. In the US, the corresponding increase has been from US\$41 billion to US\$47 billion. For the developed countries as a whole, the corresponding increase has been from US\$247 billion to US\$274 billion. Thus, very huge amounts of domestic subsidies continue to be provided in the developed countries and the level has been increasing over the years. (The above figures are based on calculations made at the South Centre, Geneva.)

### *Export subsidies*

In respect of export subsidies, the commitment of the developed countries is to reduce the budgetary outlay thereon by 36% and the total quantity of exports covered by the subsidies by 21%. In this case, the base level is the average annual level for 1986-90 and reduction is to be done over the period 1995-2000. Some countries, which had increased their level of export subsidies during 1991-92, were allowed to start with that higher level in 1995 and reduce at a fast rate so as to achieve the target of reduction of 36/21 on the base level of 1986-90.

With this reduction commitment, even in the year 2000, the amount of export subsidies will continue to be as high as 64% of the base level.

## **Situation of Developing Countries**

### *Tariffs and subsidies*

Most of the developing countries did not have non-tariff barriers of the type which would have been converted to equivalent tariffs. (Their import-control measures had been mostly taken under the balance-of-payments provisions and were not required to be tariffied.) Thus, unlike the major developed countries that had been distorting the market with the imposition of non-tariff barriers, most of the developing countries did

not have the benefit of introducing high tariffs through the process of tariffication.

Most of the developing countries also did not have in place high levels of domestic subsidies and export subsidies. Hence they have now been denied the flexibility of using these instruments beyond the *de minimis* limits in the case of domestic support. Except for a very small number of developing countries, e.g., Brazil, Cuba, Colombia, Venezuela, Korea, Thailand and India, which use some exempted subsidies, though at comparatively small levels, others have either no such subsidies or negligible levels of such subsidies compared to the total exempted subsidies of the developed countries.

### *Special Safeguard (SSG)*

There is the possibility of the emergence of a serious problem for the developing countries. With the removal of non-tariff barriers, the developing countries are exposed to the risk of import surges which will harm their domestic production capacity. A normal safety recourse would have been through the safeguard mechanism of GATT 1994, but injury (to the domestic sector) may be technically difficult to demonstrate in relation to such dispersed production as characterises agriculture. Hence this course of action may not be a practical one. With this problem in view, the mechanism of special safeguard (SSG) has been evolved in this area, but it can be used only by the countries which converted their non-tariff barriers to equivalent tariffs (i.e., took to tariffication). As mentioned earlier, most of the developing countries did not have such barriers and thus did not resort to tariffication; as such, they are not allowed to use SSG at present. This situation appears patently unfair.

With the strength infused by the huge subsidies to agricultural production in the developed countries, the developing countries may be flooded with imports from developed countries. It is necessary for them at least

to have the possibility of using SSG to safeguard their domestic production.

## DESIRABLE CORRECTIONS

The high tariffs of the developed countries on some important traded products and their high domestic subsidies as well as export subsidies are the major causes of protection and distortion in the world trade in agriculture. According to the objectives of the agriculture negotiations mentioned above, these must be corrected.

Besides, all these have a particularly adverse impact on the production and trade of the developing countries. The farmers of the developing countries are economically very weak compared to the farmers of the developed countries; and then they are faced with this unfair and imbalanced situation in trade and production because of the high import barriers in the developed countries and the colossal subsidies to their farmers.

Any further negotiations for liberalisation in agriculture should start with bringing about correctives to the current situation mentioned above. The major developed countries must eliminate or at least substantially reduce their domestic subsidies and totally eliminate their export subsidies. They have already enjoyed the huge concession and benefit of retaining these to a substantial extent for the first five years of the workings of the AoA. This was an almost totally one-sided concession and benefit, as a very large number of the developing countries got practically nothing in return. It is time that they undertake the commitment of giving up these concessions and benefits. These are distorting the world trade and production in agriculture in a big way; and the objective of the AoA is to end such distortion.

## **SOME IMPORTANT FEATURES IN DEVELOPING COUNTRIES**

There is another severe problem in the AoA which has repeatedly been pointed out by the developing countries. The Agreement is based purely on considerations of commerce; hence two special matters which are of grave concern to the developing countries have not been attended to. These are: production of food in the developing countries for domestic consumption, and protection of small and household farmers. These two factors were repeatedly emphasised by the developing countries during the preparation for the 1999 WTO Ministerial Conference in Seattle. It is important that there be an agreement that the policies and measures of the developing countries in respect of these two factors are not constrained by the AoA.

## **NET FOOD-IMPORTING DEVELOPING COUNTRIES**

Yet another serious concern is the cost of agricultural liberalisation to net food-importing developing countries. The Agreement pays only lip service to this issue. There is a recognition of the problem but no effective solution. There is an urgent need for having an effective mechanism to assist the net food-importing developing countries.

The issues mentioned above should be accorded absolute priority in the forthcoming agriculture negotiations. In order to restore some balance in the Agreement, the initial guidelines or modalities for the negotiations should contain only the issues mentioned above. Only after these problems have been successfully tackled in the initial phases of the negotiations should any further guidelines or modalities for liberalisation be worked out.

## SUGGESTIONS FOR INITIAL GUIDELINES/MODALITIES

The initial guidelines or modalities should consist of the following issues:

- The tariff peaks in agriculture in the developed countries should be reduced substantially. The extent of reduction and the period over which the target of reduction is to be fulfilled should be finalised.
- The domestic subsidies in agriculture in the developed countries should be eliminated/substantially reduced over a short course of time. Similarly, these countries' export subsidies in agriculture should be eliminated over a short course of time. The period within which it is to be done should be finalised.
- There should be a decision that food production in the developing countries for domestic consumption as well as the protection of small farmers and household farmers will be excluded from the disciplines of the AoA on market access and domestic support. Negotiations should take place to determine the method of implementing the decision.
- There should be a decision that the special safeguard (SSG) mechanism can be utilised by the developing countries whether or not they have taken to tariffication.
- There should be an agreement on effectively and directly assisting the net food-importing developing countries. The mechanism and method therefor should be finalised.

After these initial modalities/guidelines are fully acted upon, further modalities/guidelines should be prepared.

# 3

## Services

### SCOPE OF NEW NEGOTIATIONS

The negotiations in the area of services will be undertaken "with a view to achieving a progressively higher level of liberalisation". The negotiations will be about obligations "as a means of providing effective market access". Further, the process must promote "the interests of all participants on a mutually advantageous basis" and must secure "an overall balance of rights and obligations" (Article XIX of GATS).

In the area of services, much more than in the area of goods, following the path of mutual advantage and achieving a balance of rights and obligations is extremely difficult. The vast differential in supply capacity between the developing countries and the developed countries in this area makes the achievement of reciprocal benefits nearly impossible with the pattern of negotiations adopted in the UR.

### PATTERN OF NEGOTIATIONS IN THE URUGUAY ROUND

In the Uruguay Round, general obligations were worked out covering all services sectors. Then there were bilateral/plurilateral negotiations for commitments on liberalisation in specific sectors, which were entered in the respective schedules of the countries and were thus multilateralised. After GATS came into force, intense and speedy negotiations followed in the financial services and telecommunication sectors, and agreements on liberalisation in these sectors were reached.

The sectoral negotiations were held on the basis of what is popularly called the positive-list method, i.e., a country preparing a "positive" list of service sectors in which it undertakes obligations to liberalise. All other sectors are thus free from liberalisation obligations in respect of this country. A negative-list approach, on the other hand, would have subjected a country to liberalisation obligations in all sectors except those it put in its "negative" list of exclusion.

## **RESULTING IMBALANCES AND INEQUITIES**

### **General Implications of Imbalance**

In the course of the negotiations for sectoral commitments, various countries undertook obligations to liberalise the imports in a particular sector by easing the market entry conditions and the provision of national treatment, i.e., treatment no less favourable than that accorded to the similar domestic service or service provider. The implication of this exercise should be viewed in the context of the vast differential between the supply capacity of the developed countries and that of the developing countries. Most of the developing countries hardly have any supply capacity in the services sector for export to the developed countries. Hence the opportunities have really opened up mainly for the developed countries through the liberalisation of services imports in the developing countries. There is no effective commensurate benefit to the developing countries by the liberalisation commitments of the developed countries in the services sector.

The result has been that the developing countries have given concessions without effectively getting any in return. The outcome has naturally been severely imbalanced. The advantages have not been mutual and thus there is no overall balance in rights and obligations.



## **Further Aggravation of Imbalance and Inequity**

The imbalance and inequity have been aggravated by special and accelerated negotiations in the financial sector and the telecommunication sector. These were areas of special interest to the developed countries and were taken up with priority for special attention. These are also precisely the areas in which the developing countries have practically no supply capacity for export to the developed countries. Even if, for example, a major developed country allows entry to the banks of the developing countries, there will hardly be any benefit to the latter, as their banks will not have much business there in competition with the local banks. On the other hand, even if a much smaller number of branches of the developed-country banks is allowed to be opened in a developing country, business can be brisk, as there will be practically no competition from the local banks. The concessions, in this case, in terms of permission to open a specified number of bank branches, become very much one-sided.

Similar is the case with the insurance sector in the area of financial services. Likewise, liberalisation in the telecommunication sector will give much more opportunity to the firms of the developed countries compared to those of the developing countries, because the latter do not have the comparative strength in this area.

Bringing the agenda of liberalisation of services into the WTO has itself caused imbalance, and pushing for developing countries to assume obligations on liberalisation in financial services and telecommunication services has brought in further imbalance and inequity.

## **Imbalance in the Treatment of Capital and Labour**

Then there is an imbalance in the respective treatment of capital and labour in GATS. The Agreement contains disciplines for unrestricted movement of capital related to the supply of services, but the same

treatment has not been given to the movement of labour. Articles XI and XVI of GATS have included the movement of capital in the obligations. These articles say that: (i) restrictions must not be applied on transfers and payments for current transactions relating to specific sectoral commitments, (ii) there must not be any restrictions on capital transactions that are inconsistent with the specific sectoral commitments, and (iii) a country is obliged to allow a cross-border movement of capital if it is an essential part of the movement of a service covered by specific sectoral commitments. These obligations on the movement of capital are very clear, specific and detailed. There is nothing like it in respect of the movement of labour.

## **POSSIBLE BENEFITS OF SERVICES IMPORTS TO DEVELOPING COUNTRIES**

Sometimes it is argued that the developing countries benefit by importing services as it improves their production of goods and services. Even if so, a developing country can nevertheless undertake liberalisation on its own without making a binding commitment in the WTO. As a result of the GATS commitment, the developing countries have lost the flexibility of modifying their policy in the light of future experience, even if it is assumed that they benefit by importing services.

## **POSSIBLE CORRECTIVES**

In this background, regardless of whether the new negotiations start on the basis of request-offer or on the basis of a formula approach, the imbalance is bound to be further aggravated if all countries, developed and developing alike, are to be covered by the obligations. In such a case, the old scene will be repeated, and the developing countries will be put into a more disadvantaged position. As mentioned earlier, the basis of the negotiations has to be "mutually advantageous" and the results must

have "an overall balance of rights and obligations". All this will be totally negated if the past process of developed and developing countries alike undertaking obligations for liberalisation is followed again.

It is only rational to expect that the new negotiations must start with significantly reducing the imbalance and inequity. This in turn calls for a totally new type of approach. Article XIX of GATS provides some guidance to achieve this objective. It says that in the course of the negotiations for sectoral liberalisation, the developing countries may undertake commitments for liberalising fewer sectors and fewer transactions. Developing countries have already liberalised a number of sectors and they have not got effective market access in developed countries. In this background, one effective way of reducing the current imbalance is to have an initial modality/guideline which will not require them to undertake further commitments on liberalisation and will require only the developed countries to liberalise their service imports in the sectors of export interest to the developing countries. Developing countries may select the sectors of interest to them and the type of restrictions in the developed countries which they would propose to be removed or relaxed. This process is fully supported by Article IV of GATS, which says that increasing participation of the developing countries in the world trade in services must be facilitated through, *inter alia*, the "liberalisation of market access in sectors and modes of supply of export interest to (the developing countries)".

One obvious example of a sector/mode of export interest to the developing countries is the movement of labour. There should be relaxation in the developed countries of conditions on the entry of service providers from the developing countries. The developing countries may select some other sectors for liberalisation in the developed countries.

Sincere and faithful implementation of these provisions by the developed countries would have resulted in less imbalance of benefits, but it was not forthcoming. In fact the major developed countries have some-

times done exactly the opposite. They have insisted that the developing countries give high levels of concessions, particularly in the financial services sector. The special provisions in the interest of the developing countries should at least be followed now with full sincerity in the new negotiations.

Simultaneously, the developed countries should agree to take measures for encouraging the import of services from the developing countries into their own countries. Various types of measures can be thought of. For example, they may provide incentives to their importers for importing a service from the developing countries. They may also reserve a specified portion of the services imports for government use for developing-country services.

## **POSSIBLE GUIDELINES**

The following may be appropriate initial modalities/guidelines for the new negotiations in services:

- The developing countries should not be expected to undertake further obligations for liberalisation in services.
- The developing countries should select the services sectors and transactions which are of export interest to them. Negotiations should aim at liberalisation by the developed countries in those sectors/transactions.
- The developed countries should take concrete steps to encourage the import of services from the developing countries. Some examples of such steps are: providing incentives to their domestic firms for importing services from the developing countries, and reserving a portion of their import of services for government use for imports

from the developing countries. Negotiations should aim at identifying more such measures and to work out the modalities of their operation in the developed countries.

- Negotiations should be undertaken and completed within a specified time frame for liberalising the movement of labour from the developing countries to the developed countries.

After these initial modalities/guidelines are fully acted upon, further modalities/guidelines should be prepared.

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## About the Author of this Paper

Bhagirath Lal Das served in the Indian Administrative Service, from where he retired as a Secretary to the Government of India. He has had a long association with international trade issues, participating directly in a large number of bilateral and multilateral trade negotiations. He was India's Ambassador and Permanent Representative to GATT and Deputy Permanent Representative to UNCTAD in Geneva. During that period he also functioned as Chairman of the GATT Council and of the GATT Contracting Parties. Later he spent five years with UNCTAD as its Director of International Trade Programmes. In that capacity, along with his other responsibilities, he organised and coordinated UNCTAD's technical assistance programme for developing countries to facilitate their participation in the Uruguay Round of Multilateral Trade Negotiations which culminated in the setting up of the World Trade Organisation. His earlier books include *An Introduction to the WTO Agreements*, *The WTO Agreements: Deficiencies, Imbalances and Required Changes* and *The World Trade Organisation: A Guide to the Framework for International Trade*. He is currently consultant and advisor to several intergovernmental and non-governmental organisations.

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