

# India at Cancun

## *Strategy and Counterstrategy*

**By Pradeep S Mehta**  
**Secretary General, CUTS**

June 2003

कट्स ✕ CUTS

**CUTS Centre for International Trade, Economics & Environment**  
D-217, Bhaskar Marg, Bani Park, Jaipur 302 016, India  
Ph: 91.141.2207482, Fax: 91.141.2207486/2203998  
Email: citee@cuts.org, Web Site: www.cuts.org

# **India at Cancun**

## *Strategy and Counterstrategy*

### **I. Introduction**

India's share in world trade may be less than one percent but its power to influence trade negotiations in the WTO has increased immensely over the last few years, especially since the Doha Ministerial Conference. At Doha, the then Indian Commerce Minister put up a strong fight and succeeded in extracting better returns in comparison to the Uruguay Round and previous Ministerial conferences, held since the inception of the WTO in 1995. It is another matter that nearly all those concessions, which developing countries had extracted at Doha, have not materialised as mandated.

Now, the countdown to the next ministerial at Cancun (Mexico), the venue of the fifth WTO ministerial, has begun. Trade Ministers of 146 Member States of the WTO will assemble at Cancun in September 2003 to review the progress achieved on the Doha Development Agenda (DDA). Following the poor progress on talks over DDA, it is most likely that at Cancun, the entire Doha Work Programme would be renegotiated. Besides, the European Union (EU) and some other developed countries would press hard for launching negotiations on the four Singapore issues: Investment, Competition, Transparency in Government Procurement and Trade Facilitation. Overall the task at Cancun for the Members looks quite daunting.

For renegotiating the entire Doha agenda, and facing the prospective onslaught of the EU at Cancun, the main *demandeur* on Singapore issues, the developing countries, would require a large number of trade negotiators with proven negotiating skills. It is quite understandable that India and some other big developing countries like Brazil will be hard pressed in such a scenario. India's potential role in devising a common negotiating position for the like-minded group of countries of the South is particularly important, especially as it is becoming evident that the viewpoints of other influential countries such as Brazil and South Africa, especially on Singapore issues like competition and investment, are more in line with the viewpoints of the *demandeur* countries.

In such circumstances, the onus will be on India to provide the much-needed leadership to the South at Cancun as it did at Doha. At the same time, India also has to keep its own national interest in mind and prevent it from being compromised. This may require making some common ground even with developed countries. For example, on agriculture tariff reductions, India supports the EU's position of adopting the Uruguay Round formula. On industrial tariffs, India is happy to go along with the USA. Therefore, India will have to do a delicate balancing act between the two roles.

Against this background, in this paper, an attempt is made to delineate India's current negotiating position on the ongoing Doha round of trade negotiations, which are based on the "push and pull" forces within and among the domestic stakeholders in India on the major WTO issues. Further, by taking into account all political considerations and imperatives, the paper also identifies and defines the likely positions India might take in the build-up to the WTO Ministerial in Cancun in September 2003.

## **II. India's Existing Position on Doha Development Agenda**

India was at the forefront when the Doha Work Programme was finalised at the last WTO Ministerial Conference, held in the year 2001. India was instrumental in blocking the EU's aggressive push for the launch of negotiations on four Singapore issues. As a result the final Ministerial Declaration has succeeded in postponing the negotiations to an extent. The exact phrasing with respect to all four Singapore issues is that "negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations".

The Doha Work Programme, launched by the Doha Ministerial Declaration, can be divided into three broad parts: agenda with a clear negotiating mandate, agenda with ambiguous negotiating mandate and study programme (Panagariya, 2002). Implementation, agriculture, services, market access for non-agriculture products, trade and environment, WTO rules, TRIPs and dispute settlement can be treated as the agenda with a clear negotiating mandate. The four Singapore issues fall under agenda with ambiguous negotiating mandate, as there is no consensus on launching negotiation and also *demandeurs* and opponents are interpreting the language of DDA on these issues differently. Finally, two new Working Groups were set up, one on Trade, Debt and Finance, and the other on Trade and Transfer of Technology.

### ***II.1 Implementation***

In the run-up to the fourth ministerial conference of the WTO at Doha, India was not in favour of wide-ranging new round of negotiations and insisted that implementation issues need to be resolved first. Prior to the 3<sup>rd</sup> Ministerial Conference of the WTO, held in Seattle, USA in November/December 1999, a group of developing countries drafted a common agenda on implementation issues vis-à-vis WTO agreements, consisting of 94 points (popularly known as *tirets*). In emphasising implementation problems, India was not alone. Malaysia, Indonesia, Egypt, Tanzania, the African Group, Brazil and other Latin American countries were also keen on having the implementation issues attended to on a priority basis.

The concerns of the developing countries about the problems of implementation of Uruguay Round agreements and commitments have received due attention in the Doha Ministerial Declaration. Members adopted a separate document (WT/MIN(01)/W/10) entitled "Decision on Implementation-Related Issues and Concerns" to address a number of implementation problems faced by them. Members decided to proceed as follows: where a specific negotiating mandate is provided in Ministerial Declaration, the relevant implementation issues shall be addressed under that mandate; the other outstanding implementation issues shall be addressed as a matter of priority by the relevant WTO bodies, which were to report to the Trade Negotiations Committee by the end of 2002 for appropriate action.

Again, in the run-up to the Cancun Ministerial conference, India has once again brought unaddressed implementation issues to the notice of General Council through its communication (22 April 2003). These issues relate to agreements on textiles & clothing, anti-dumping, customs valuation, sanitary and phyto-sanitary measures, rules of origin, subsidies & countervailing measures and Trade-Related Intellectual Property Rights (TRIPs). After Doha, these implementation issues were referred to various WTO bodies for further work with a request to report to the General Council by a specified date. India in its communication to the General Council asked for a review of the progress on the implementation issues referred to the WTO bodies, as the time frame given to the WTO bodies has, in many cases, expired.

## *II.2 Agriculture*

India has made one of the most comprehensive submissions on agriculture to the WTO. It has submitted its initial negotiating proposals in the areas of market access, domestic support, export competition and food security with the objective of protecting its food and livelihood security and creating increased market access opportunities with a view to promoting its agricultural exports.

Indian proposals submitted to WTO on 15.01.2001 can broadly be classified into the following two categories:

- Increasing the flexibility enjoyed by developing countries by creation of a 'Food Security Box' for providing domestic support to the agriculture sector under the special and differential provisions as also further strengthening of trade defence mechanisms with a view to ensuring the food security and to take care of livelihood concerns.
- Demanding of substantial and meaningful reductions in tariffs including elimination of peak tariff and tariff escalation, substantial reductions in domestic support and elimination of export subsidies by the developed countries so as to get meaningful market access opportunities.

India's submission was well taken into account while finalising the Doha Work Programme on agriculture. Although, there is no explicit mention of food security box, but elements of it like food security and rural development are included in the language.

At Doha it was decided that modalities for further commitments, including provisions for S&DT, shall be established no later than 31<sup>st</sup> March 2003. Pursuant to this Members made their submissions to the WTO. Several Members, which included USA, EU, and Cairns Group, submitted their proposals to the Committee of Agriculture (CoA). While USA proposed "Swiss formula" for tariff reductions, which would produce much steeper cuts on higher tariffs, the EU on the other hand insisted on "Uruguay Round approach", which is "linear", i.e. the same percentage reductions no matter what the starting tariff rate is.

While opting for the Uruguay Round formula of request-offer approach, India has decided to shift focus to reduction in production subsidies provided by rich nations rather than consuming its energies on seeking big tariff cuts. The initial demand for a 50% upfront reduction in duty imposed by rich nations on agricultural commodities has been

virtually dropped. If India insists on this demand, it has to go in for reciprocal commitments to reduce import tariffs on farm goods, which she is not in a position to do so now. Hence, the priority is to ensure reduction of 'production' subsidies offered by rich nations.

Having already moved to discussions on 'modalities' for increasing market access, India feels it may not be possible to convince rich nations to reduce customs duties further. The initial reaction from influential WTO members like the US and the European Union was to seek reciprocal commitments. Rather than looking at reciprocity in other areas like industrial tariffs or market access in services, these members emphasised that the reduction in customs tariff on farm goods has to be done uniformly.

The advantage in emphasising on major reduction in domestic support — the technical term for production subsidies provided to farmers in key markets like the Europe and the US — is that no WTO member can demand reciprocal action from India, as the level of subsidy provided in India is negligible compared to the high level of subsidisation in the US and Europe.

Another reason for emphasising on reduction in domestic support is that key WTO members have agreed to India's request on modification in the method of calculation of aggregate measurement of support. Inflation and currency exchange rates will now be factored into calculation of AMS. Developing countries were not getting a fair deal due to higher inflation and depreciation of their currencies against majors like the dollar and the euro. The new method of calculating AMS will reflect the correct picture on the subsidies provided by rich countries to their farmers.

### ***II.3 Services***

The Services negotiations started officially in early 2000 under the Council for Trade in Services (CTS). In March 2001, the Services Council fulfilled a key element in the negotiating mandate by establishing the negotiating guidelines and procedures. The Doha Declaration endorses the work already done, reaffirms the negotiating guidelines and procedures, and establishes some key elements of the timetable including, most importantly, the deadline for the conclusion of the negotiations as part of a single undertaking.

The guidelines and procedures for negotiations on trade in services refer to the "request-offer approach" as the main method of negotiation. Within the timeframe of the overall negotiating deadline of 1 January 2005, paragraph 15 of the Doha Ministerial Declaration establishes that "participants shall submit initial requests for specific commitments by 30 June 2002 and initial offers by 31st March 2003.

#### ***II.3.1 India's Recent Offer on Services Negotiations***

Pursuant to the Doha mandate, participants in the services negotiations have been exchanging bilateral initial requests since 30 June 2002. India very recently finalised its

broad strategy on the services negotiations at the World Trade Organisation (WTO), an area crucial for this country especially in regard to movement of professionals. While seeking greater opening up of developed countries in this area, it is prepared to offer in turn liberalisation in the financial, health, computer-related, architecture, tourism, book-keeping and professional sectors.

However, India is not willing to negotiate opening up of four services – distribution (retail and wholesale trade), legal, posts & courier, and audio-visuals like films. India may consider opening a few other services like energy, education, environment, recreation, culture and sports, but only after undertaking more studies on these sectors.

India has already made its offer to 62 countries, of which 25 have responded including the U.S. and the European Union. India is greatly interested in what are known as the Mode 1 and Mode 4 negotiations in the GATS. The first relates to business process outsourcing (BPO), which has already raised a controversy with several States in the U.S. banning shifting of such jobs from their domestic market to countries such as India. In this area, India is seeking complete liberalisation. The second is what is known as "movement of natural persons" where India has been seeking a rise in the bound rate for granting visas for independent professionals.

### ***II.3.2 India's Submission on Movement of Natural Persons***

In November 2000, India had made a detailed submission (S/CSS/W/12) to the CTS on liberalisation of movement of professionals under GATS. The objective of this submission was to assess the nature of liberalisation that has taken place in Mode 4 under the existing GATS framework and the extent to which the objectives of Article IV of GATS have been operationalised through liberalisation in this mode, of significant export interest to developing countries.

India, in its submission, has highlighted considerable asymmetry in commitments between different modes of supply with minimum level of commitments having been taken by developed countries in mode 4, which is of primary interest to the developing countries. Further, existing commitments are largely linked to commercial presence (Mode 3), which is of very limited use to developing countries who are interested primarily in movement of independent professionals and other persons. India by its recent announcement made it clear that it is not in favour of linking movement of natural persons with commercial presence.

India has also pointed out specific problems with the commitments. They are related to nature of commitments, administrative and procedural problems. As regards nature of commitments, in mode 4 they are primarily horizontal and these horizontal commitments are subject to many kinds of limitations. Furthermore, important sectors (where professional movement is important) have been left out by many countries in their scheduling exercise. Even when such sectors have been scheduled, partial commitments with critical limitations exist.

The administrative and procedural problems effectively rule out market access for developing country professionals. One important restriction to the movement of natural

persons originates in immigration and labour market policies of individual countries. Temporary movement of labour is not separated from permanent movement of labour and therefore comes under the purview of immigration legislation and labour conditions. Major entry barriers also exist in the form of Economic Needs Tests (ENT), Local Market Tests and Management Needs Tests to ascertain the need for entry as well as the number to be allowed to enter.

Besides, administrative and procedural problems, the ability of professionals to supply services in developed county markets is also adversely affected by the lack of recognition of professional qualifications and licensing requirements. Article VII of GATS provides for Mutual Recognition Agreements (MRAs) and also provides opportunity to Members to participate in negotiations to such Agreements. However, the provisions of Article VII remain largely unused. Developing countries have normally been kept outside the ambit of such MRAs, they being limited to developed countries.

The developing countries' professionals are also being subjected to payment of social security contributions in the host country even though they are not eligible to get the benefits from such contributions since their period of stay under GATS is invariably lower than the minimum period required for such benefits to flow to them.

The direct or indirect effect of all these limitations is to raise costs of entry and operation for service providers, reduce the scope for technology and skill transfer, and force substitution of domestic with foreign service personnel.

Given the unsatisfactory nature and extent of liberalisation in Mode 4, India in its submission has put forward alternative approaches and strategies need to be adopted in this Round for bringing about effective market access under mode 4, thereby contributing significantly to the operationalisation of Article IV: 1(c) of GATS. Some broad recommended strategies are as per following:

- Horizontal Commitments to specifically include category of Individual Professionals in addition to the various categories that currently exist. Consequently, delinking of commitments with mode 3 is to be achieved.
- Specific Sectoral/sub-sectoral commitments needs to be taken in addition to the horizontal commitments for Professional and Business Services where movement of professionals is important
- Disaggregated categories of Service providers in Sectoral Schedules to be clearly specified relevant to the market needs and potential for each sector/sub-sector. In order to achieve this objective, one approach that is suggested is the superimposition of International Standard Classification of Occupation (ISCO-88) of ILO on the WTO Services Sectoral Classification List- MTN/GNS/W/120. The ISCO has established an internationally adopted classification of 9 major occupational groups.
- Need for establishment of Multilateral Norms to reduce scope for discriminatory practices in use of ENT. Clear criteria to be laid down for applying such tests, establishing norms for administrative and procedural formalities, specifying how results of such tests would restrict entry to foreign service providers.

- Multilateral guidelines/norms are necessary to tackle administrative procedures relating to visas, work permits as it negates even the limited market access available.
- Temporary service providers should be separated from permanent labour flows, so that the normal immigration procedures would not hinder the commitments made for temporary movement. This could be achieved either by introducing a special GATS Visa for categories of personnel covered by horizontal and sectoral commitments undertaken by a Member in mode 4 under GATS or through a special sub-set of Administrative Rules and Procedures within the overall immigration policy framework.
- For introducing norms to address social security issues, bilateral totalisation agreements need to be entered into by Members for overcoming this problem. Developing country professionals should be exempted from such contributions so that their comparative advantage is not affected.
- To strengthen GATS norms and disciplines on recognition of qualifications. For this one needs to implement existing notification requirement under Article VII of GATS providing for MRAs between Members.
- Establishment of multilateral norms to facilitate MRAs among member countries

#### *II.4 Singapore Issues*

At Doha, EU had insisted on the inclusion on negotiations for multilateral agreements on investment, competition policy, trade facilitation and transparency in government procurement. Since these issues have been made a part of the WTO study programme under the Singapore Ministerial Declaration in 1996, they are jointly referred to as the Singapore issues.

India is one of the most vocal opponents of creating multilateral agreements on the four Singapore issues. At Doha India persisted in its demand to exclude the four issues from the negotiating mandate until the very end of the Ministerial Conference. According to the deliberately vague compromise language in the Declaration, Members “agree that negotiations will take place after the fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations.”

Developed countries interpret this phrasing to mean that Fifth Ministerial in 2003 is to decide only on the modalities while the agreement to kick off the negotiations soon after that Ministerial is already in place. Under this interpretation, the negotiations will be a part of the single undertaking with the January 1, 2005 deadline. Many developing countries take the view that the decision on modalities by explicit consensus gives them a veto against the launch of the negotiations themselves.

At Doha, India took the position that according to the Singapore Declaration, negotiations on these issues could not be launched without explicit consensus. Therefore, it insisted on clarification of the language in the Doha Declaration from the Conference Chair, Yussef Hussain Kamal, in his concluding remarks. India got the "explicit" language in the Doha

declaration as the price for its agreeing to the launch of the Doha Round of trade talks. Many pundits feel that such side statements have no legal binding on the members.

#### ***II.4.1 Investment***

Though, India is opposed to having multilateral agreements on all Singapore issues, but the degree of opposition varies across four subjects. India holds a tougher stance on investment in comparison to other three Singapore issues. At a recent seminar on investment organised by NGOs, India's permanent representative to the WTO, Ambassador K. M. Chandrasekhar, made a presentation in which he reiterated India's view that it does not want a multilateral investment agreement in the WTO. Moreover, he said, the best way forward would be to drop further discussion of this issue after Cancun.

India is not convinced that a WTO investment agreement would be positive for investment flows or beneficial for developing countries, or that the latest proposals from the agreements' advocates offered the required policy flexibility. Commitments in such an agreement could prove disastrous for developing countries. There are many areas of serious contention in the present discussions and there was no likelihood of consensus. The WTO is the wrong forum to discuss investment issues and it should drop further discussion on investment at the Cancun ministerial

India through its several communications to the Working Group on trade and investment has put forward following arguments against the investment agreement in the WTO:

- Investment is not trade and therefore does not belong in the WTO
- Agreement would only add to existing imbalances in the WTO against developing countries
- Difficulties with questions of right to establishment and national treatment
- Application of the non-discrimination principle as existent in goods and services to investment is neither feasible nor desirable due to the complex nature of capital flows and investment and the risk of limitation of flexibility and policy space to developing countries.
- The host country preserves the right to make or modify its rules and regulations on foreign investment. Need for some policy flexibility for developing countries including the ability to screen and channel the investment according to domestic interest and priorities.
- Argues for discussion on a binding "Code of Conduct" on investors, which should also be enforced by domestic laws at home countries.

#### ***II.4.2 Competition Policy***

This is another "Singapore issue", with a Working Group set up in 1996 to study the subject. At Doha, the Ministerial Declaration does not launch negotiations immediately. It says "negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations".

Once again the main *demandeur* is EU. In the run up to the Doha Ministerial, the EU tactically circulated its proposal (“opt-in, opt-out”) for openness to a plurilateral arrangement in the case of both investment and competition policy. The move was purportedly intended to enable WTO members who were not ready to join an agreement on competition policy to remain out of such an agreement and join it at their own pace.

The major opposition to competition policy framework in WTO came from several developing countries including India. India has expressed its reservations against an agreement on competition policy through its various communications and interventions in the Working Group. The major problem areas of India are the following:

- Competition policy covers, besides trade policy, investment, industrial and other macro policies, and WTO may not, therefore, be the forum for competition policy as such. Competition policy has a cross cutting nature and there is the risk that the flexibility negotiated in other WTO agreements might be rendered redundant by competition policy provisions related to non-discrimination.
- The major objective of the proponents is to have non-discrimination among entities based on nationality. Non-discrimination would be justified among equals. WTO members are at different stages of development. Equal treatment of unequals would amount to discrimination against the less equal member(s).
- Competition policy framework, as specified by the proponents, is based on static efficiency considerations. It is a historical fact that a number of present day developed countries and newly industrialised countries made competition policy subservient to industrial policy to reap dynamic efficiency gains for their respective economies. A multilateral competition policy framework would effectively prevent developing countries from reaping such dynamic efficiency gains.
- Countries are at different stages of development: a multilateral competition policy framework assumes convergence of economic and even political interests, because a signatory country will have to co-operate in containing the actions of its firms which create negative effects abroad but bring benefits to itself.
- Many developing countries have little experience or expertise in regard to competition policy. This means that competition law principles drawn from countries with much more experience, apart from possibly being intrinsically inappropriate for developing countries will impose much greater compliance costs.
- Developing countries do not yet have the kind of well-developed safety nets that exist in industrial countries to provide for those displaced by import competition. In this situation, a discriminatory competition policy can be a concomitant to a non-discriminatory trade policy.
- Both transparency and procedural fairness are no doubt desirable qualities that any administrative or judicial process must ensure. However, in the context of competition policy, if they are interpreted to mean that the rules should be precisely formulated so as to admit only one interpretation, then international experience shows that this is not possible. There is very little

agreement amongst theorists on many competition issues, and legally the same competition principle has been interpreted in different ways in different jurisdictions, and also differently at different times within the same jurisdiction.

- In the context of international trade, the issues of transparency and procedural fairness confront us with another problem. If regulators are to be bound by transparent procedures, what about the firms they are supposed to regulate? Vital evidence may not be forthcoming if the firms have foreign bases, and are protected by their governments in the name of commercial confidentiality.

### ***II.4.3 Trade Facilitation***

The subject of trade facilitation has an interesting history. The ideas and proposals on trade facilitation that are now being pushed by the Quad countries (US, EU, Japan and Canada) owe their origins to the customs valuation negotiations of the Tokyo Round and its customs code accord, and the subsequent agreement on the same issue in the Uruguay Round. Most of the proposals now surfacing are no more than the proposals that the major trading entities had sought to include in the Tokyo Round code on customs valuation and the Uruguay Round agreement on customs valuation.

The WTO Council for Trade in Goods (CTG) held its first substantive discussions on trade-facilitation mandate arising out of the Doha Ministerial Declaration in May 2003. The CTG looked into the “transparency provisions” in Article X of the GATT and five papers on this from the EU, Japan, Korea, Canada and the US. In their proposals, the EC, Japan, Korea and Canada spoke of the importance of “transparency and predictability” in world trade and called for amendments to Article X of GATT. Their major argument for this is grounded on the basis that this article was drafted in 1947 and needs “updating”.

Like other Singapore issues, on Trade Facilitation too India is against any binding rules in the WTO. While recognising the necessity of trade facilitation, India’s representatives, however, through their interventions in the CTG meeting and at various fora expressed their opposition to a multilateral agreement on trade facilitation. The arguments against are following:

- It was being dealt with multilaterally at the World Customs Organisation.
- The EC, Japan, Korea and Canada in their proposals called for an amendment to Article X of GATT. But their proposals failed to show what were the deficiencies in Article X (which relates to trade regulations of general application) that were sought to be remedied.
- The patterns of trade of developing countries were very different from those of the major developed countries, which largely constituted intra-firm trade of TNCs, and thus rules and concepts of the industrialised world evolved in this could not be applied to all.
- The argument about updating the 1947 GATT provision ignores the various major reviews and revisions of GATT 1947 that have taken place over time - in 1955, in the Tokyo Round and in the Uruguay Round - all of which were incorporated and put in place as GATT 1994 and the annexed agreements of the

WTO. None of the majors have been able to provide cogent arguments as to what has happened between 1994 and now to warrant review and redrafting or changes.

- The papers from the EC, Japan, Korea and Canada have called for widening the scope of information to be published in relation to trade regulations. The EC and Korea wanted each WTO member to have an inquiry point in national customs administrations to respond to queries from trading entities and exporters. All the four wanted establishment of a prior consultation mechanism with affected parties before finalization of customs regulations, and instituting the right of appeal against customs decisions. It is not very clear why these issues, which really deal with specific measures and regulations, not “laws, regulations, judicial decisions and administrative rulings of general application” (Article X.1 of GATT 1994), and at best could fall under the administration of customs in the Agreement on Implementation of Article VII, are sought to be tackled under “trade facilitation.”
- India said its customs situation is different from that of developed countries. With over 200 major and minor ports, India faced problems of smuggling and heightened security needs. While high tariffs in developing countries could account for smuggling - and developing countries are often advised to reduce tariffs to deal with the problem - the fact remained that for many developing countries tariffs were also an issue of raising revenues. And unlike in the EC and other industrialised countries, where imports and exports are mostly intra-firm trade, in developing countries like India the situation was quite different, and the concepts, rules and formulae of the industrialised world had no application.
- This effort to “bridge the trade facilitation gap” between developed and developing countries was not fair or desirable, nor in the best interests of developing countries or a development-oriented trading system promised at Doha. Such an approach would ignore the reality of resource constraints and crowd out the welfare and development priorities of developing countries.

India is taking all necessary measures, according to its priorities and resources, to improve and enhance infrastructure to facilitate trade, but it cannot agree to negotiate binding rules, including the application of the dispute settlement process at the WTO. In presenting India’s views at the Global Forum on Trade Facilitation, organised recently by the Economic Commission for Europe (ECE), India’s representative outlined the “valid and legitimate” reasons for developing countries to follow a “staged path to establish an autonomous, sustainable trade management infrastructure” for better management of foreign trade and their own security concerns, and simplify procedures for their own exporters and foreign operators trading with other countries, raise revenue realization and compliance, and the efficiency and cost effectiveness of their international trade transactions, with backward and forward linkages.

#### ***II.4.4 Transparency in Government Procurement***

The subject of government procurement was introduced by the major developed countries primarily to gain access of supply to the market in foreign government purchases,

particularly in developing countries. Governments currently have flexibility and options in these purchases regarding the source of supply.

In the Doha Work Programme, there is a specific commitment in paragraph 26 that the negotiations must be “limited to the transparency aspects and therefore will not restrict the scope for countries to give preferences to domestic supplies and suppliers”.

Government procurement forms a sizeable market in many developing countries. They can use it as a lever to get some advantage in a foreign country. More importantly, they can use it to encourage domestic production. Hence, it is important for them that these rights are retained by the government. But the major developed countries have been viewing it as an obstacle to the expansion of their market opportunities in the developing countries.

There is a WTO plurilateral agreement on government procurement of which the main signatories are developed countries, with just a few of the developing countries as members. The rest are out of it, because they would like to retain their flexibility and options for the purposes mentioned above.

India is opposed to any attempt to start negotiations on an agreement, which could cover the area of market access in government procurement. The major developed countries then lowered their target and proposed working out elements for an agreement on “transparency in government procurement”. But even then there is a fear that developing countries won’t get exemption from the core principle of non-discrimination and hence in effect the agreement will become a tool for greater market access.

India has also opposed this, as it will put extra obligations on developing countries. India has also no intention at present to join the “plurilateral” agreement on government procurement. This has been made clear by India more than once in the course of its response to queries posed by several members of the WTO during the India Trade Policy Review sessions held in Geneva.

### ***II.5 Trade-Related Intellectual Property Rights (TRIPs)***

The provisions of the Work Programme relating to TRIPs are contained in paragraph 17,18 and 19 of the Declaration and also in the Ministerial Declaration on TRIPs Agreement and Public Health. The Work Programme envisages: (i) negotiations on establishment of a multilateral system of notification and registration of geographical indications for wines and spirits, (ii) examination of the relationship between the TRIPs Agreement and the Convention on Biological Diversity, (iii) examination of protection of traditional knowledge and folklore, and (iv) finding an expeditious solution in the TRIPs Council to the problems faced by countries with insufficient manufacturing capacity in the pharmaceutical sector in effectively invoking the provision in the TRIPs Agreement on compulsory licensing.

The initiative for the Declaration on TRIPs and Public Health was led by Brazil, India and South Africa and enjoyed wide support among developing countries. They took the position that the TRIPs Agreement should be interpreted and implemented in a manner

which is supportive of WTO Members' right to protect public health and ensure access to medicines for all. Two lesser demands related to TRIPs that India also put on the table in the Doha statement were the extension of geographical indications to products other than wines and spirits and restrictions on the misappropriations of the biological and genetic resources and traditional knowledge of the developing countries.

At present there is an impasse over the TRIPs and Public Health Declaration mainly because of a disagreement between the US and other WTO Members on how to effectively extend the compulsory-licensing provision of the TRIPs Agreement to countries that lack manufacturing capacity in medicines.

India has made very clear that TRIPs and Public Health is an extremely important issue for developing countries. If that is not resolved before Cancun, then nothing will happen at Cancun. According to India, the progress on breaking the deadlock over TRIPs and Public Health will depend entirely on whether the US will be able to convince its pharmaceutical industry to accept the agreement.

### **III. Stakeholders' Views on Current Negotiations**

India is one of the few members of the WTO, which has well defined negotiating position on most of the WTO issues. It is also true about India that its position is based on a broad national consensus. That is why India seldom takes any proactive stand in negotiations. This is also the reason behind its very rigid stand on some of the contentious issues such as investment, competition, trade facilitation and government procurement. Many feel that this type of attitude does not bear much fruit when trade negotiations are based on mutual give and take. But, for Indian government it is more a compulsion rather than a choice.

In India, the major stakeholders are industry chambers; farmers, whose voices are mainly aired by the State governments; and civil society groups, which are a few in number. Overall, in India the degree of awareness on WTO issues is still very low. One reason could be that the India economy is still a closed one. Exports contribute only 10 percent to the national income of India. So far, only business chambers have shown some amount of activism in their part and they have really tried to influence government policies on WTO.

As regards State governments their main concern is agriculture. They also have to face the heat out of the misinformation campaign being run by anti-WTO, anti-globalisation lobby. At the Central level, it seems that there is a broad consensus on most of the WTO issues among different ministries. The major ministries which are involved in policy making on WTO issues are Ministry of Agriculture, Ministry of External Affairs, Ministry of Information and Broadcasting, Ministry of Environment and Forests, Ministry of Finance and of course Ministry of Commerce and Industry, which has the prime responsibility.

Agriculture sector in India is not well organised. Moreover, India is not a major farm exporter. Its main concern is food security. State governments and sometime industry chambers do try to influence national policy making on WTO. But, here again, the State

governments' role is limited, as most of them do not have any permanent departments to work on WTO issues. As regards farmers' organisations, which are a few in number, they are more apprehensive about the impact of WTO issues rather than proactive. There may be one or two farmers' organisations which have pro-WTO stand and they really look towards it as an opportunity. Shetkari Sangathan, based in Maharashtra is one such organisation.

As regards, civil society groups, unlike in developed countries, in India there are only a few groups who are working on all WTO issues. Most of them are dealing with single issue such as TRIPs, anti-dumping, services etc.

Indian government has to take care of this internal dynamics while framing any policy or proposing anything to the WTO. By taking into considerations of the above situations India has identified agriculture and services (movement of natural persons) as major areas of their interests. That is why India has very comprehensive submission on these two issues.

If India has opposed application of "Swiss formula" for tariff reduction in agriculture, there are enough internal supports for it. Confederation of Indian Industry (CII), a leading industry chamber of India and also the Ministry of Agriculture have supported India's stand. In fact during the Tokyo Mini-ministerial India was represented by both Commerce Minister and Agriculture Minister and both of them articulated India's stand together on WTO agriculture negotiations. India is opposed to "Swiss formula" as it will cause greater tariff reduction because India's average tariff rate on farm products is still high in comparison to developed countries.

As regards services, again India's current stand is based on its comparative advantage and enough domestic support. Almost all industry chambers are supportive of India asking for greater market access under mode 4 of service supply. In the year 2000 India made a very detailed submission to the WTO on mode 4. At Cancun, definitely India will use it as a major bargaining chip.

As already mentioned the degree of awareness on WTO issues in India is relatively low. There are still many stakeholders, which either does not have any views or lack any written document stating their positions. However, as explained in the beginning, the overall negotiating position of India is based on broad national consensus.

#### **IV. India at Cancun: The Likely Positions**

It is really very difficult to state the likely negotiating positions, especially as a renegotiation of the entire Doha Work Programme at Cancun looks imminent. Besides, negotiating positions are difficult to state precisely beforehand, as they evolve continuously until an agreement is reached. For example, prior to the Doha Ministerial, India had publicly stated that it would not support a new round. But, in the end, India supported a round that included some new issues as well. Here, it is worth mentioning that India joined the talks leading up to the Doha Ministerial Conference with a rather extreme position, adopting a very tough stand on the new round and new issues.

Before outlining any likely positions, which India may adopt in the run up to the Cancun Ministerial, it is necessary to look into the likely situations that may emerge at as well as prior to Cancun. Regarding the Cancun Ministerial, there is much doubt and apprehension, because so far the progress on the Doha round has been rather poor. Every possible deadline has been missed. The divide between the North and the South over contentious trade issues such as TRIPs and Public Health, Agriculture, S&DT etc., has further widened.

At Cancun, the WTO and its Members will have an extremely daunting task. On the one hand, developing countries will definitely raise the issue of non-fulfilment of the promises made at Doha. On the other hand, developed countries, especially the EU, will decidedly push for the launch of negotiations on the four Singapore issues. This situation has put developing countries on a defensive wicket. There is hardly anything new that they can ask for.

At Cancun, once again, agriculture will be at the top of the agenda. As per the Doha mandate, the WTO Members had to establish modalities for negotiations on agriculture by 31<sup>st</sup> March 2003. The deadline could not be met owing to sharp differences between the EU (mainly France) and the Cairns Group and the US over the tariff-reduction formula and subsidy cut. At present, agriculture negotiations are mainly a fight between the EU and Japan on one side and the Cairns Group along with the US on the other. Most of the developing countries (except members of the Cairns Group) are mere spectators.

India does not belong to either side. However, India's position is closer to the EU than to the Cairns Group. It has supported the Uruguay-Round formula for agricultural tariff reductions, which the EU has also proposed. For India, in agriculture, the main concern is food security of millions of poor people. At this point, India can easily make some common ground with the EU and extract concessions from EU in other areas such as mobility of labour.

Singapore issues, though not in the built-in agenda, will definitely generate enough heat at Cancun. The EU is doing all the necessary homework to give a big push to launch negotiations on four Singapore issues. At present, India is the most vocal opponent of the inclusion of these issues. That India will soften its position on these issues either at or before Cancun seems highly unlikely.

However, there is some scope for trade-offs on the Singapore issues as well. For example, many people are of the view that India should bargain for linking the movement of natural persons with FDI in services sector. On competition, the situation has changed slightly. India has now enacted a new competition law. So, there is a distinct possibility that India might soften its stand on competition, unless there is something substantial to gain in other areas as a *quid pro quo*.

Services are a part of the built-in agenda. India has a great interest in the liberalisation of trade in services. She has a comparative advantage in services trade, at least in those sectors that are labour intensive. On this account, India has taken a very proactive stance in the ongoing WTO negotiations for the liberalisation of services trade. The government has decided to open up several key segments of the rapidly-growing services sector to

overseas competition and gain reciprocal market access for Indian service providers in major markets like the US and Europe.

It goes without saying that by adopting such an aggressive stance India is implying that it is prepared for a healthy *quid pro quo*. Indian negotiators have figured that liberalisation of the regime governing the movement of skilled personnel is the best bet given India's vast human-resource base. The call for opening up some of the key service sectors for Indian professionals is premised on the future global demographic patterns which will necessitate more and more young, educated Indians moving abroad on temporary work visas. However, a lot of groundwork has to be done at the negotiating table to make this process as smooth as possible. In fact this needs to be institutionalised at the WTO level to thwart political opposition to immigrant workers in economies like the US and the EU.

The other demand India has made is to delink the movement of professionals from the requirement of "commercial presence" which entails setting up of branch offices to deliver services. India is mainly asking for a further opening up of services under the Mode 4 category. In return, India is willing to give developed countries greater access under Mode 3, which is related to foreign investment in the service sector. Thus, if the US and the EU give India greater access under Mode 4, India may be willing to further relax Mode 3 – foreign investment limits in sectors such as insurance, telecom and so on.

At Doha, India played a pivotal role and again at Cancun its position will matter a lot, especially for the countries of the South. India must keep in mind that, at the WTO, there is a price for everything. Also, one cannot see each issue in isolation. If one is gaining on one front, most likely, one will have to concede elsewhere. This is what has happened at Doha. Developing countries gained on TRIPs and Public Health, S&DT and implementation issues in exchange of agreeing to include environment and a much softer language on Singapore issues.