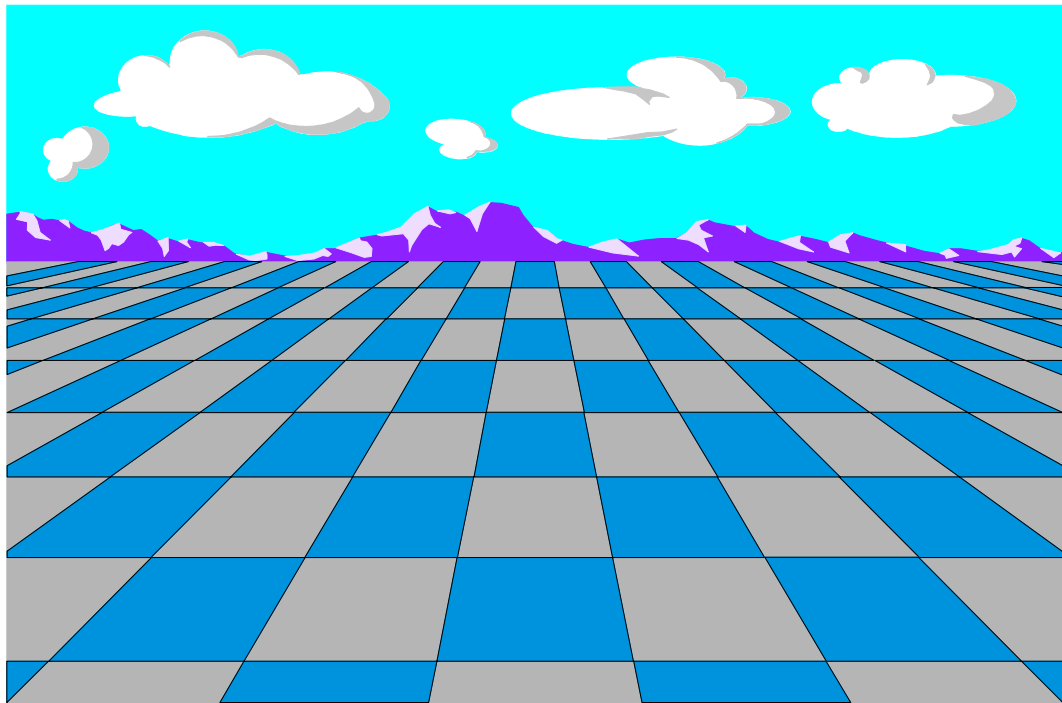


Trade Policy Making In India

- The reality below the water line



 CUTS Centre for International
Trade, Economics & Environment

 कट्स ✕ CUTS
Twenty Years of
Social Change
1984 to 2003

#0415

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कट्स ✕ CUTS

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PROLOGUE

This paper, with a self-explanatory title, is an unputdownable paper. It has provoked me to write this piece, which is a Prologue rather than the customary preface. For, having been an avid follower and an active participant in the trade policy debate and a critic, I got a sense of *déjà vu* in reading this brilliant critique. Thus, I have identified many issues in this and recalled my own experiences below. This, I hope, will give the reader a better understanding of the dire need to reform how India's trade policy is formulated and executed.

The writer, Julius Sen, has been inside the system: a member of the Indian Administrative Service, the civil service steel frame which literally calls all the shots in the governance of India. The paper has been drawn from his thesis for a PhD, which he is pursuing at the London School of Economics. In this paper, which Julius has so cogently written, he draws from his own experience as well as from experiences of his late father: Samar Sen, who was a worthy member of the Indian Foreign Service, India's diplomatic service.

One particular aspect of this paper gladdens my heart, when Julius highlights the role of non-governmental organisations over those of other actors in the arena. Speaking modestly, CUTS has been the leading NGO in India, and elsewhere, which has been working assiduously on the WTO acquis since long. We started in 1991, but in full earnest, in 1995, when we were able to obtain funding to run a programme. Several others too have recognised and wrote to us as well, though most would hesitate to publicly acknowledge the same. To buttress what he writes, let me recall two incidents.

Once the European Commission's Committee 133 (which deals with international trade issues) prepared a confidential position paper before the Doha Ministerial(2000), which reached us through our NGO contacts in Europe. We passed it on the Commerce Ministry. Our then Geneva-based ambassador came to Delhi and handed over a copy of this note to the top honchos in the Ministry with the caveat that it is very confidential and should not be even shown to any officer below the rank of a joint secretary. The response that he got took him aback: we have already received the confidential note from CUTS and it is now with every officer in the trade policy division!

On another occasion, in a Commerce Ministry's meeting, a Planning Commission economic adviser upbraided the business chambers that CUTS produces much more meaningful research than what they do, and should draw lessons from it.

In this paper Julius rues the role of business chambers in their advocacy on making a better trade policy. He is quite right, and the reasons are quite simple.

Firstly, India has been a centrally planned and controlled economy ever since its independence. Businesses have always prospered through favours of the policy makers. That attitude has not changed much.

Secondly, in India, we have three apex chambers who are always in competition with each other. Of these, two of them literally hate each other as well. Thus, they are constantly fawning and wooing the minister and the bureaucrats to get that extra mile. With the result, they are quite hesitant to criticise or even disagree with the Ministry on any matter.

To get a better position in the pecking order of the Government, they even indulge in blatant flattery. For example, the head of one chamber, after the Cancun ministerial, in a national newspaper article, wrote unashamedly heaping praises on the minister and his senior officers for having won the war at Cancun, as if they had carried the day single-handedly. In this article, he also criticised some others of the Indian team for having created some confusion at Cancun. It appeared that he was being critical of the other big chamber, while some told me that he meant us. I was a little surprised that he meant us, when we were not even on the official delegation!

Ever since the Seattle ministerial meeting, business chambers have been members of the official delegation. We have suffered discrimination on this score. Our request has been turned down again and again in spite of the fact that many developed and developing countries follow this practice. The reasons are ample, which follow.

It has been a tragedy that when we disagreed with the government, we were crucified by them with the allegation that we are doing what we do as a result of funding obtained from European donors. Particularly on two issues, i.e. investment and competition. Considering the background of these two issues, and how the non-existent southern solidarity which was evident at Singapore and Doha, and at Geneva, we thought that it is important to do research on these two issues, and develop positions which can safeguard developing country interests.

The research was done through contributions from experts all over the world and debated publicly at Geneva on two occasions with specialists worldwide as well as a few Geneva-based negotiators. The process of the research was very inclusive and first-best. By the way, none of our funders ever asked us to promote their line, and we were always conscious that we are an independent organisation pursuing the interests of developing countries. For me, India's interest was always paramount. However, this does not mean that we would have to toe the Government of India's line, which is often influenced by sectoral lobbies.

Our research report showed that while an investment accord will be too intrusive and reduce the policy space hugely, an international competition policy may actually benefit developing countries. Therefore, the report concluded that if it came to the crunch, we should be prepared to negotiate both with suitable caveats. Quoting the experience of the OECD, which had also failed to conclude an investment agreement even with their own 29 members and five observers, we also informed people that one can negotiate an investment agreement till the cows come home. And at the end of the day, there may be no agreement at all. On a multilateral competition policy, we continue to advocate for one as it will benefit the developing world more than it would the rich. However, we concede that if the WTO is not the suitable place, then some other institution, ideally a joint WTO-UNCTAD forum, should be the right place for negotiations. UNCTAD provides the necessary comfort level to the poor countries.

Secondly, I personally lobbied with Pascal Lamy, the EU trade commissioner, the ardent demandeur, to go slow on these contentious issues on no less than three occasions in the period between Doha and Cancun ministerial meetings. This included publishing a much-quoted letter to the *Financial Times* about it. But I imagine Lamy had his own thinking as well as compulsions.

These two issues caused the failure of the Cancun ministerial, as nearly all developing countries refused to put them (and their two stablemates: trade facilitation and transparency on government procurement) on the negotiating agenda. Agriculture was the other one, if not the most crucial one. The rationale adopted by the EU is that if we want them to move on agriculture, they should get something in return, i.e. the four Singapore issues.

Agriculture is a good example of the turf differences among the various ministries in India which too hampers the proper evolution of trade policy. This aspect has been highlighted in this paper. At Cancun, trade ministers from some rich developing countries were accompanied by the country's agricul-

ture minister. However, in the case of India, the agriculture minister's request to be put on the official delegation was turned down. As an alternate, a request was made for the agriculture ministry's permanent secretary to be nominated. That too was turned down by the commerce ministry, for unknown reasons. This sort of turf battle too has a vital bearing on how any policy making is done.

The existing hierarchical rigidity often affects our policy making process adversely. If a meeting is called in someone's chamber or under the chairmanship of an officer, anyone who is senior in the pecking order would refuse to participate. Thus, it distorts the process, as on many occasions the counsel of a better experienced person is not available. For example, the agriculture secretary, whose nomination was rejected, has worked in that ministry for many years, including as the nodal officer for WTO. In that capacity he has also participated in the Ministerials at Seattle and Doha.

Even exchange of information among ministries is wanting. For example, we had to furnish papers related to the trade and environment issue to the desk officer in the Ministry of Environment & Forests on several occasions. He could never get all or the important papers from the Commerce Ministry. He often consulted us when an issue was referred to him by the Commerce Ministry. And there are scores of such vignettes of the above mentioned two examples. I may not even know about most of them. But I must also admit that things have changed substantially, but much more is desirable. For example, in any specialised working group discussions at the WTO, officials of the relevant department from the capital too participate along with Commerce Ministry/WTO mission officials. But in the case of India, save and except some very critical issues, Commerce Ministry officials are averse to their participation, thus losing out on the richness of wider consultations, as well as capacity building of a larger number of civil servants.

This type of behaviour appears to be manifest across the various branches of the government. A syndrome of the left not knowing what the right is doing, and thus affecting policy coherence in the overall. There are many examples which I could fill up pages with, but here let me mention one example which is relevant to the WTO debates.

We did a research on cotton subsidies in the US for the Ministry of Textiles. They were very happy with the product. When we asked for approval from them to share it with the Commerce Ministry and the Agriculture Ministry, we were told bluntly that let them ask the Textiles Ministry for it! I do not know what happened after that. We did not pass it on because we did not wish to annoy the Textiles Ministry.

In spite of the fact that many of the issues being negotiated at the WTO step into the exclusive jurisdiction of states, state governments are nearly absent in this process. This paper has highlighted some of these disconnects. Often letters are sent out at the last moment asking for opinions on an issue, and the state governments are usually handicapped in offering their best advices for two important reasons. Firstly, they do not have the capacity, and secondly, they have not been a part of the process.

A suggestion by CUTS to the Commerce Ministry to set up a National Trade Policy Council on the lines of the Central Consumer Protection Council and many similar bodies, where every state is represented, has not been accepted, or even debated.

It is not that consultations do not take place with other ministries or interest bodies. But the inter-ministerial consultations are held at very high levels, where the minions are unable to participate effectively. Before the Seattle ministerial meeting the issue of WTO negotiations had come to dominate our newspapers' front pages. As a result there was a flurry of consultations among ministries, and that required the Trade Policy Division (TPD) in the Commerce Ministry to literally churn out huge volumes of papers and copies. They were so exhausted with this paper work that the TPD came to be known as the Typing and Photocopying Division! Granted that it was an excruciating exercise, but the same could have been avoided if a sustaining system was established well before last minute demands came to occupy their agenda. Those lessons have now paid dividends.

Surprisingly, the Department of Consumer Affairs (DCA), representing another cross-cutting policy area, was never consulted or even invited to inter-ministerial meetings. Once we convinced the DCA to hold a meeting of consumer organisations on WTO. It agreed, and notices were also issued. One doesn't know what happened, but that meeting never took place. Probably the Rules of Business was thrown at them, and warned to steer clear!

Quite bravely and as a part of its thrust on economic diplomacy, the Ministry of External Affairs set up three consultation groups on: security, energy and world trade. I attended the first meeting of the one on world trade and allied issues. No other meeting was ever held after that. Probably, the Commerce Ministry raised Cain.

Reverting to the issue of states, again facing heat from the media, the Commerce Ministry organised a meeting with the Chief Ministers from all the states on WTO after Doha ministerial, but only agriculture was on the agenda. After

all, as Julius too informs the reader, that among few other subjects, agriculture is constitutionally under the exclusive jurisdiction of states.

The chief ministers' meeting was a reactive one, assuring the state governments that the Commerce Ministry will take due care of India's interests and allowed all state governments to let off steam. Expectedly, opposition-ruled states used the occasion to make political statements, which did not add any value to the discourse. The wonderful opportunity before such a high level meeting to speak about opportunities that India could exploit in the international trading system, and as an offensive, was not even whispered. When I raised this point in a meeting of the Commerce Ministry's national advisory committee, only silence greeted me. I am sure my popularity in the ministry hit a new low.

The paper speaks about this issue and goes on with the theory that free trade is not a well meaning word in the context of India and therefore the make up of our policy making structures is mainly reactive rather than proactive. What the paper does not do is to look at the genetical make up of India in the economic arena. Only around 15 percent of India's GDP is involved in international trade. Of this, crude oil imports constitute a major component. Our internal market is also huge with about 250mn middle class population.

Until recently, India did not allow import of consumer goods, thus there was hardly any competition in the marketplace. Consumers had to often live with outdated and shoddy goods, and as a consequence of the mindset, poor services too. At the time of independence, India's share of world trade was nearly 2 percent, having come down to 0.6 percent in 1995 when the WTO came into being. It has now gone up to 0.8 percent, but we have miles to go.

Consequent to a WTO dispute panel decision in the year 2000, India opened up the imports of consumer goods. But not a day passes with some or the other debate on small scale units being shut down due to severe competition from imports hits the media, thus WTO becomes the bugbear. Statistics otherwise show that the turnover and number of small scale units is actually going up. The Economic Survey, 2002-03 published by the Government of India notes that number of small scale units have increased from 3.442 units to 3.572mn or a 3.8% increase. Employment has gone up from 19.223mn to 19.965mn while exports have risen by 28.78% in 2000-1 as against 10.66% in the previous year.

Secondly, the other contentious issue of foreign direct investment is also relevant to understand our approach to trade policy making. As Indians (and Bangladeshis and Pakistanis), we suffer from the East India Company syn-

drome, egged on by our nationalist forces. (The British came to India in the 18th century as traders, then known as the East India Co., and stayed on as rulers). Therefore, anything foreign is dangerous and needs to be rejected. Thus, our FDI flows are also abysmal. This mindset operates all over the country and the media gleefully highlights the phobia on every occasion. Consequently, one cannot expect the bureaucracy – or the trade policy making process – to remain insulated from it. Often, policy responses are based upon such kneejerk reactions and public opinion is mis-portrayed by the media.

Granted that there are many inequities in the WTO, on which India continues to play an active role. At Doha, it was our insistence that got an exclusive declaration on implementation issues. It is, in fact, the cause also of so much resentment that in spite of an agreement to sort out the problems, there is no progress at all. But that is another story. As far as WTO is concerned, many people in India suggest that we should walk out it. Four former Prime Ministers have also suggested the same. That only sustains the status quo in addressing how we make our trade policy. Any suggested change will only lead to further brouhaha. For example, consequent to advocacy by an NGO: Gene Campaign, a parliamentary committee on Commerce headed by a Marxist: Dr Ashok Mitra had even suggested that a separate department on international trade should be set up. But that advice has been put in the cold storage, where it belongs.

Like our other civil services, an International Trade Service was set up few years ago precisely to develop exclusive negotiators, but the IAS lobby does not allow it to flower as it could and should. The terms of the ITS have been set at a lower standard than the IAS, so seniority dominates in the existent rigid heirarchal system.

The last comment: Julius has suggested that trade policy making should be hosted in either the Prime Minister's Office or the Planning Commission for better coordination and authority. It is quite tempting to do so. Many such demands have been made to get better attention to the issues. For example, road safety activists also want the PMO to be the host of such functions. We have suggested that cross-cutting subjects like competition policy be a part of such a central body. I am sure there are many similar demands. That may not be the best solution. Otherwise we will have a super PMO or Planning Commission. Quoting examples of Brazil, Canada and Australia, Julius suggests that the Foreign Ministry could also deal with the portfolio of International Trade. In my opinion, India is a unique country, and therefore this issue requires a *sui generis* approach.

A new government has been installed in Delhi, and many articles have appeared on what the agenda should be for the government. In few, the above issues have also been raised. I can do no better than to present the relevant extracts. These have been written by two leading policy economists in India:

“Finally, we need to strengthen our institutions. We need to convert the Tariff Commission to serve as a transparent agency like the US International Trade Commission or the Australian Industry Commission. *Also, the present Trade Policy department in the commerce ministry must be completely revamped with a prominent economist and an eminent lawyer included in it, and an expert to deal with the intricacies of FTAs with full data on global trade developments.* The present system of quickly arriving at decisions on FTAs with no clear nodal ministry, or the Ministry of External Affairs serving that role with no reputed economist in the ministry, must stop”. (Jayanta Roy, Confederation of Indian Industry, *Top Agenda For New Government*, Financial Express, May 13, 2004)

“The other set of issues where the Centre has to act is the issue of global trade. As the so-called free trade regime unfolds, developing countries like India will be faced more and more with non-tariff barriers. These will manifest themselves in standards, environmental regulations, and health and safety issues, among others. For its own sake, India will have to take a proactive stance, do its homework and ensure that its negotiators develop the knowledge and expertise to bargain with the developed countries. *Here, the government needs a mindset change. Transferable, generalist administrators cannot carry out such negotiations; it needs a permanent body with depth of knowledge and years of experience.* Also, the process needs to be transparent. While the bargaining itself may be behind closed doors, the issues must be discussed publicly so that the largest number of researchers and experts are engaged”. (Shubhashis, Gangopadhyay, India Development Foundation, *Agenda For The Next Government*, Financial Express, May 5th, 2004).

The last word goes to our new Food & Agriculture Minister: Sharad Pawar. Expressing his disdain for bureaucracy and its capacity to negotiate, in an interview (7 June, 2004) in the Financial Express, Pawar says: “Let me make it clear that India will not succumb to any pressure from the developed countries at the next WTO meeting. We will take a pragmatic view on various issues. We will not compromise on safeguarding the interests of the small and marginal farmers. *Henceforth, experts in agriculture, horticulture and related fields will also be deputed, along with the bureaucrats, to represent India at various WTO meetings. There has been too much of bureaucratisation which needs to be contained*”.

In conclusion, I commend this paper to anyone who is interested in India's welfare. We may not agree with everything, but certainly we wholeheartedly support the thrust and the main arguments laid out by Julius. For any further enquiries or debate, Julius Sen can be reached at J.Sen@lse.ac.uk.

Jaipur
July, 2004

Pradeep S Mehta
Secretary General

P.S.: A version of this paper has been published earlier in Consumer Policy Review, UK, in two parts. This is to acknowledge their permission to use it.

1

Introduction

India's trading partners, particularly at the multilateral level, often wonder at her attitude to trade. They wonder why she doesn't see that trade has proven to be the engine of economic growth and development in many parts of Asia, and has succeeded in societies across the world in sharply accelerating levels of growth and development.

They also wonder why there is no broad vision about Indian trade policy priorities and why India is evidently so reluctant to engage with the multilateral process. On the contrary, it appears to many of her trading partners – even some of her closest political allies – that India is clearly uncomfortable with the multilateral process, and with the implicit concepts of liberalisation and reciprocity built into the multilateral trading order.

The mystery further deepens when considering India's international record. From independence in 1947, India has invariably tried to be a good international citizen espousing the principles of the new United Nations and steering clear of Cold War alliances. She has been, in her time, a major contributor to peacekeeping operations around the world, and has been one of the leaders of the developing world, however difficult that is to define.

Indian diplomats and negotiators have also been generally active in the creation of UN agencies and in the negotiation of international treaties on everything from human rights accords to the Law of the Sea convention, and to treaties banning chemical and biological weapons. And even when she has acted in support of her own national interests and refused to sign international treaties, as with the Non-Proliferation Treaty (NPT) and the subsequent Comprehensive Test Ban Treaty (CTBT), there has been a fair amount of international understanding of her reasons for doing so.

Yet, with trade it is so different. India positively does not like to have to deal with these issues in a multilateral context and appears to do her utmost to reduce the level and number of commitments that she may have to assume.

This, in spite of the fact that India was a founding member of GATT, and has been part of the system from well before many of her South East Asian neighbours.

This situation is all the more puzzling when one considers that trade agreements have a far more profound impact on the well-being and destiny of the Indian people than any other form of international agreement. Trade agreements can either be a platform for effective growth if handled correctly, but could also lead to economic disaster if poorly structured or negotiated. The stakes are thus exceptionally high and it remains unclear why the level of engagement remains so appallingly low.

At the conclusion of the Uruguay round, commentators around the world noted that something fundamental had changed in the tectonics of the international system. They observed that the round had produced the greatest change in the functioning of the international system since the creation of the UN. Nevertheless, the Government of India appears to have taken almost no notice of these observations.

Several questions arise from this situation, of which three will be considered here. Why on earth does India find dealing with the multilateral process so problematic? Is there something wrong in the way in which trade policy is put together which may account for this? And, has India made any changes in the way it makes trade policy over the period since the Uruguay round to address these issues, and if so what are these changes and have they made any difference?

This paper looks at these issues and concludes, in broad terms, that India struggles with trade policy making essentially because domestic and international thinking on development and economic growth are seriously out of alignment, and that there are few immediate prospects of this changing for a variety of entirely domestic political reasons.

The paper also finds that there has been no deep process of policy review in either a procedural or substantive sense. That is not to say that there has been no review at all, only that these have been superficial and shallow, if one considers the extraordinary importance of the issues involved.

Whatever policy review has taken place, has thus tended to re-affirm that much of the Indian economy cannot be subject to market forces because of the divisive social, regional and political consequences that such a process would entail. In short, that the risks are too high. And, of course, to the fact that it

would be for India alone to deal with all the negative consequences, while the international community would take no responsibility at all.

The paper further finds that trade policy making, whether domestic or international, is too important and broad a subject to be handled by one ministry trying to coordinate a major series of policy initiatives from what is essentially just a small corner of the system. The process of constructive engagement with the multilateral process will only come when the Prime Minister takes the lead in this process and draws all elements of the system into a coordinated structure to prevent important parts of the system from working against one another. Further, this is unlikely to happen in the present political climate – partly because of the dynamics of coalition politics, partly because of the increasing insularity of the country's political culture, and partly because the argument for trade liberalisation in the context of India's peculiar circumstances has not yet been won.

As a consequence, India lacks a broad vision of what it wants from the multilateral system, or what it would seek from regional or bilateral agreements, should there be a choice. Hence, its negotiating strategy is permanently hamstrung by this lack of overall vision and purpose.

One could then argue that even if this were the case in general terms, why not engage at least in those sectors where global integration is recognised to offer substantial advantages? Unfortunately, after all, there is only a limited consensus on what these sectors are, and what levels of global integration would be appropriate.

Moreover, perhaps more importantly, there is little or no appetite for reciprocating with market access commitments in sectors where India would be at a competitive disadvantage. Negotiating without preparing to make reasonably symmetrical concessions and without considering trade-offs would not work for a large developing country, which is just what the Indian experience demonstrates.

This paper concludes with a section that suggests that these issues can be addressed quite easily by reinstating the centrality of the Planning Commission to the process of economic policy co-ordination; improving parliamentary oversight, placing the Cabinet Secretary at the heart of the decision making and implementation process; amending the rules of Executive Business, making one ministry responsible for domestic and international trade; and by modifying and institutionalising effective consultative procedures to deal with the peculiarities of India's federal structure, diverse regional perspectives and special requirements of the multilateral process.

Certain other features of the Indian system that stifle informed debate would also need to be addressed, and have been identified as: transparency, the need to generate accurate and usable data and information, and the need to enhance the capacity of research institutions dealing with trade policy issues. This paper observes, in conclusion, that none of these changes require profound efforts, but that they do need a strong political leadership to set them in motion.

2

Why trade policymaking is so problematic for India?

Turning to the first question, there are really two simple and interconnected reasons why India struggles with trade policymaking in a broad sense. This, in turn, feeds through to operational and procedural difficulties at every level.

The first is that the ministry that negotiates international trade agreements – the Ministry of Commerce and Industry (MoCI) – is firmly embedded in the domestic political culture, which accords little importance to the principles of free trade within the domestic context. This is a development model to which both the federal and state governments largely subscribe, and which political parties, most NGOs and major business associations all share, to some degree or the other².

Indeed, it is revealing that no single ministry deals with the issue of *domestic* free trade, which means that India's international negotiating position is often at substantial variance with the way that the domestic economy is actually run, creating obvious operational problems.

Nor is there anything resembling a national trade policy embodying the principles of non-discrimination and reciprocity, which could be adapted or adjusted to multilateral commitments as they develop. Similarly, at the state level, where much of the constitutional responsibility for trade policy implementation lies, there is, for the most part, no trade policy, and nor is there any structured process to consider, evaluate or implement trade policy measures in a coherent fashion on the basis of these principles.

And secondly, India's political culture is strikingly insular, in marked contrast to her foreign policy. Political attention is directed resolutely inward for the most part, and, if anything, this process has become more pronounced over the years with the rise to political power of formerly disadvantaged castes, classes and communities, and the steady fragmentation of the structure of political parties combined with the growing influence of federal units.

As a consequence, India's political appetite and interest in engaging with the outside world is very limited. The Ministry of External Affairs (MEA), which was responsible for so much of post-independence policy-making – and which has a strong internationalist reputation – watches from the sidelines and can do little to alter this state of affairs³.

In this strange situation, the MoCI can only be effective at the multilateral level, if what it says and does remains largely concealed from domestic public view, including from other ministries of the central government and state governments. On the other hand, as this is, in reality, impossible, it often means minimal real discussion, and minimal real engagement with the ideas of liberalisation and reciprocity in the process of policy formulation⁴.

Officials of the MoCI are thus caught in a cleft stick. If they consult extensively in the hope of building a pro-trade agenda, they will be running against established national policy, and the outcome is likely to be the opposite of what they need to engage with the multilateral process. But if they don't consult at all, and still try to negotiate internationally, they run the risk of not only being insufficiently prepared, but also of having to explain the results to a very hostile and suspicious press, parliament and public.

The latter process tends to describe the approach of choice during the Uruguay round, when it was left to the political leadership to manage the consequences and fall-out of a largely bureaucratically managed negotiation⁵, while the former option represents the current process – or at least the process that has evolved over the last few years. The problem is that the outcome in this situation actually prevents effective engagement with the multilateral agenda, precisely because it tends to reaffirm the national consensus on selective (but never clearly defined) liberalisation.

This begs the question of why the MoCI was given the responsibility for these negotiations rather than the Ministry of External Affairs (MEA), where expertise in constructive engagement is their stock in trade. Here, the answer lies in decisions taken in the 1950s, and the failure to look at these arrangements afresh, especially following the Uruguay round. To be fair, under the GATT system, there was little that a government was required to do in terms of domestic policy compliance, other than to amend tariff schedules and adopt certain trading norms. With the Uruguay round, the simple divide between domestic and international policy spheres (recognised in the constitution) has all but disappeared. Agreements relating to non-tariff barriers are, by definition, domestic issues for the most part and form the bulk of the multilateral agenda today.

Except for a variety of reasons that appear to have more to do with the natural inertia of the system, and the turf battles that would have arisen between the domestic and foreign civil service systems had anyone proposed a major change of this sort, it would seem to have stymied the talk of reform. At any rate, there are no indications of the Cabinet Secretary sitting down after the Uruguay round and saying something to the effect that new consultative and decision making procedures would be needed to deal with this new and complex form of policy making. There is also nothing to indicate that anyone (either at the political or bureaucratic level) said anything to the effect that 'we must never repeat the disaster of the Uruguay round. We must find a better way of dealing with this issue'. Indeed, the system seems to be in denial of the fact that the Uruguay round was indeed a disaster, which, of course, is part of the problem and feeds the curiously lax process (considering the stakes involved) that passes for trade policy making today.

These are, therefore, two powerful bureaucracies and there are strong arguments in favour of both. The one compromise that would probably *not* have worked would have been to combine the two services, as the Australians and Canadians have done⁶.

To be sure, this also begs the question of why India alone seems to find it so difficult to manage the divide between domestic and international relations when other countries similarly placed (such as Brazil, South Africa, Malaysia and other large federal systems) have managed to create reasonably effective systems that bridge this divide. Possibly, the lack of a consensus on the very idea of trade as the engine for economic growth would account for this, or maybe it is the centralised leadership of these systems that accounts for their clarity, greater cohesion and sense of purpose.

Seen from this perspective, for all one knows, it is India's foreign policy that was actually the aberration, whereas its domestic policy orientation enjoyed a far wider legitimacy. According to this line of thinking, small countries have no choice but to be integrated with the global economy, while large continental economies like India need to define their needs and policies by an entirely internally driven process. Consequently, Hong Kong, Singapore, Taiwan and South Korea can be safely explained away.

3

Is there something wrong in the way that India puts together its trade policy?

Moving to the question of whether there is something wrong in the way in which the process operates, a useful starting point would be to look at what went wrong in the Uruguay round, and at subsequent ministerials, and to identify the operational and organisational problems that appear to bedevil the system.

Few could deny that when measured against stated negotiating objectives, the Government of India has repeatedly failed to get what it wanted from trade negotiations and failed to prevent what it didn't.

We can perhaps gather a sense of just how profound this failure has been in India's case through the following:

- India failed to keep items off the Uruguay round agenda that she had not wanted to negotiate upon (services, intellectual property rights, investment, agriculture, etc.).
- India failed to get a strong agreement on issues of importance to her (textiles, standstill and rollback, unilateral retaliation, etc.).
- India was often isolated and outmanoeuvred during the negotiations, notwithstanding her leading position within the G-77 and the non-aligned group.
- India had enormous difficulty in building a domestic political consensus to actually implement the commitments it had entered into, particularly in the area of intellectual property rights.
- At the Singapore ministerial in 1996, India had to accept a deal on information technology for which she was largely unprepared and which she had systematically opposed for years.
- At Doha, India found herself isolated on the Singapore Issues and had to accept some form of wording that put them on the agenda.

- At Cancun, even though India played a minor and even passive role, she was still blamed for being negative, defensive and against the very idea of the system – penalised in short for an offence that she did not commit – largely because of her past record.
- Throughout it all, India has failed to develop alternative strategies centred around a regional or extended bilateral approach, and even now is only prepared to negotiate framework agreements for further negotiations with ASEAN, SAFTA and others.

And if one steps back from this list of failures and looks at current developments in trade – the strange phenomenon of jobless growth and the way in which outsourcing opportunities seem to be working to India’s advantage – it is clear that neither of these two developments were anticipated, though economic thinking has suggested that this would happen in increasingly integrated global operations. So, whether the issue is good or bad makes little difference – the Indian system does not really know what is going on internationally, finds it difficult to anticipate developments, does not know how to shape the international trade agenda to her advantage, and has little idea of how to respond when the unexpected happens. This is a system that is in some ways out of its depth but will not admit it.

At one level, this reflects failure in pursuing political objectives, and should not necessarily represent a failure at an operational or procedural level. Anyhow, India’s negotiating positions were – and are – almost without exception, recommended by Commerce ministry officials, approved by the Committee of Secretaries, and then backed by the concerned cabinet subcommittee, the Cabinet Committee on Economic Affairs (CCEA). The failure in this sense was clearly bureaucratic and operational, and the options presented to the political leadership were insufficiently adventurous and altogether too negative.

It is a different matter that the results of the Uruguay round agreement and the advantages of a rules-based system are now discussed in more positive terms, or that the Doha agenda may finally succeed in redressing some of the imbalances that the Uruguay round had created without having to negotiate on the Singapore issues. The reality of the political and bureaucratic mood at the time when the negotiations concluded, whether after the Uruguay or Singapore ministerials (though not after Doha or Cancun), was of a sense of failure, which was more profound than people are often willing to admit. Something was obviously wrong.

4

How bad was it?

An analysis of problems with the trade policy-making system can be broken down into four main areas covering procedures, institutions, diplomacy and political considerations. The problems, with respect to each, are considered briefly below. These are drawn largely from India's negotiating experience with the Uruguay round, updated to deal with the experience at Doha and Cancun.

Procedures

- **Policy and decision-making:** The internal decision-making procedures of the Government of India are incapable of dealing with international treaty making *and* domestic policy reform at the same time. Government procedures can accommodate either one or the other, but not both. As a result, a sort of hybrid form of decision-making was adopted (based largely on the foreign policy model) that failed to satisfy the procedural requirements of either process. The handling of negotiations could thus be criticised for failing the test of political legitimacy *and* for breaching the principles of political accountability, which the two systems were supposed to provide in one form or another.

The various committees that were set up within the bureaucracy and at cabinet level were never really ahead of the game and were of little constructive use. Moreover, these committees had the effect of excluding some powerful ministries⁷ from the consultative process that should normally have been extensively consulted. This would explain why individual ministers, more or less, repudiated explicit commitments made during the Uruguay round negotiations, until compelled by external pressure to honour them.⁸

The think tank established after the Singapore ministerial in 1996, and the more durable National Advisory Committee on International Trade (NACIT), together with its various working groups, still represent only a shallow and somewhat superficial form of consultation designed more to garner support for positions already developed by MoCI than to genuinely consider or

develop policy options. While NACIT does bring in a range of external expertise, it does not incorporate a procedure for inter-ministerial consultation, or indeed a procedure for state level inputs, as part of its deliberative processes. Thus, important elements of the system continue to work in isolation, ignorance and often at cross-purposes.

The level of expertise on international trade issues in other ministries of the Government of India (GOI) and state governments, though improving rapidly, continues to be inadequate, except at higher levels where only broad policy issues are considered (and understood), in any case.

Decisions with major domestic policy implications were thus made largely by a small group of senior officials with only minimal political consultation, or by the delegation in Geneva. While negotiating, flexibility is an essential element of any international treaty process, so too is credible political support, and this can only be built through procedures that provide for intensive consultation extending over years.

State governments were not consulted at all before or during the Uruguay round, though they were informed of progress towards the end of the negotiations of the round (in 1992). Considering that some Indian states (in fact, most of them) are bigger than most countries in the international trading system, and moreover, have exclusive Constitutional jurisdiction of some of the subjects being negotiated (agriculture, for example), this was extraordinary. To be sure, the degree of domestic consultation with state governments before Doha and Cancun was significantly better, but it was still only really at the senior political and bureaucratic level, and only covered general statements of policy concern or policy preference, which, in any case, had been largely devised by officials within the MoCI.

- **Ratification:** Ratification procedures for international treaties do not require anything more than cabinet approval under the Constitution. While this was originally meant to give the executive the maximum possible discretion with respect to agreements that, in any case, did not intrude into domestic sovereign space, it does little for principles of political accountability in terms of modern-day intrusive trade agreements.

While ratifying the Uruguay round agreements, the government also failed to enter any reservations – the only major country *not* to do so. Though technically correct because the agreement specifically forbade this, a number of countries did so, which served the purpose of flagging their concerns for future use. While this would not by itself legitimise the action, it could have

been politically expedient and provided some balm to the domestic political mood.

- **Confidentiality:** Cabinet rules of secrecy and confidentiality preclude the circulation of policy proposals to outside interests, such as trade and industry associations, NGOs and other interested parties, while they are being finalised for consideration by the political executive. Consultation, if any, has to take place either at the stage *before* the formulation of policy (i.e. when exploring preliminary options) or when policy proposals reach the stage of parliamentary consideration. Parliamentary consultation is, after all, *post facto* in these circumstances, because the foreign policy decision-making model was adopted, while other forms of effective consultation were either precluded by the rules, or were too general or informal to be of much practical or operational use.

To be sure, the degree of consultation following the Uruguay round improved significantly and the process is now virtually unrecognisable compared to the situation between 1986 and 1993. But the process is still discretionary, and when linked to the problems of information and data (in terms of accuracy and availability), continues to hamper effective preparation.

- **Parliamentary oversight:** Parliamentary systems and practices kick in only when a policy proposal comes before it. As mentioned above, this does not happen until the government concludes the process and lays copies of the treaties on the tables of both the houses of parliament. During the Uruguay round the government was forced, by parliamentary pressure, to at least disclose the contents of the Dunkel draft in late 1991, which resulted in a storm of protest and almost brought the government down. The government's response was to refer the Dunkel draft to a parliamentary committee for examination, which only published its findings two days *before* the conclusion of the negotiations in December 1993. Parliamentary scrutiny was thus *post facto*, inadequate and ineffective, which again fed a sense that issues of political legitimacy and accountability were not properly addressed.

Parliamentary frustration at this state of affairs is palpable. They know that something is wrong but do not have the experience of civil service procedures to suggest changes and are not in a position to do it themselves. At the same time, the political executive obviously does not want to expose itself to attack on yet another front by making the policy and consultative process too transparent. Yet, parliamentary concern with the basic issues – of political accountability for the negotiating process and for implications

of the substantive issues – is entirely legitimate from a political and constitutional point of view.

Institutional Support

One of the characteristics of developing countries in the context of trade negotiations, it is often said, is the lack of institutional support and trade policy capacity. While this may be true of many developing countries, it should not be true of India. The country is teeming with institutions and organisations that should be capable of providing the sort of research and analysis that the government badly needs to service its research and evaluation requirements.

But on closer examination of the reality on the ground, it is clear that there was a huge weakness in the area of institutional support. The Commerce Ministry has access to in-house institutional support through the Indian Institute of Foreign Trade (IIFT), but their focus and skills-base was, and remains, almost mediocre, exclusively economics-based, and moreover, focussed on economic theories relating to trade.

The IIFT also suffers from the problem of being part of the government, with all the strengths and weaknesses that that entails. It is, therefore, not expected to explore the bigger and more contentious issues, particularly if the political consequences are significant. Nor can it really set its own research agenda, given its management structure. It thus confines itself largely to sterile and abstract exercises built around statistical evaluations of obscure trade issues, which for the most part are 20 years out of date and, moreover, are widely available from a host of institutions around the world. The IIFT could not – and still cannot – provide a multidisciplinary evaluation of negotiating proposals or evaluate the sectoral impact of such proposals at short notice or in a form that is useable.

This weakness was equally apparent within trade and business associations, academic institutions and independent think tanks.

Conversely, this capacity seemed to exist in many NGOs, which would perhaps explain their prominent role in Indian debates at the time. On the contrary, the complication here was that the Commerce Ministry's natural constituency was everyone *except* NGOs, and it took them a long time to recognise that the best, most usable and informative material often came from them.

Specific weaknesses in this crucial area were additionally in:

- **Trade and industry associations:** For the most part, these were set up to lobby governments for domestic policy favours and not to analyse negotiating proposals relating to international trade. They were barely consulted during the Uruguay round, though this has now changed and efforts to sound them on trade issues have now become commonplace. They also had no means of analysing the sectoral impact of proposals (because they were not told what they were), and nor did they collect the information needed from their membership to help in this process. Whenever consulted, they tended to adopt policy positions on broad issues that looked suspiciously similar to those of the government. By and large, they have not been the *demandeurs* for policy reform (for either trade or economic policy, more generally) in the Indian system, and still perform a largely subordinate role in the policy making process.

There are other problems as well. Trade and industry associations are often at loggerheads with one another, which then justifies MoCI's disdainful or selective approach to their inputs. These rivalries extend back for decades and are in the mindsets of the association leaders. Presenting a unified front on key trade issues or concerns is thus impossible, therefore strengthening the control of the MoCI over the whole process.

Still, the problem remains. Trade agreements are meant (largely) to facilitate the functioning of the private sector. Moreover, if the private sector cannot agree amongst themselves and cannot articulate what they want effectively, it is left to the government to make assumptions on their behalf. And if the government does not have the information needed to make informed assumptions, then we are left with the system we have.

- **Trade unions:** By nature and instinct suspicious of economic arguments that talk of efficiency as a prime concern, their interventions (often unsolicited, but no less legitimate for that) tended to work against what the Commerce Ministry was trying to do, by simply setting forth the impact of proposals on employment, particularly in the short to medium term. This was, distinctly, a very emotive issue in a country with such high levels of unemployment and with no social security system in place, particularly as debates on economic reform and trade liberalisation became conflated. In the Indian context, they also tend to be too closely aligned to major political parties to be independently credible in the debate.
- **Academic institutions:** During the Uruguay round, they did not feature in the consultative process at all. Since then, they have operated only at the

margins for three reasons. Firstly, they do not have the data or inputs needed (either from the government or the private sector) to conduct meaningful analyses, and, of course, they lack the independent resources to undertake this exercise. At the same time, they often lack the sectoral expertise that the modern multilateral process needs, which is not uncommon amongst academic institutions around the world. Secondly, they are not really independent of the government – at least the important ones – as they are still heavily dependent for funding, which was not forthcoming, for research projects in trade related areas. And thirdly, they often share the consensus on development that infuses the whole system and are not so eager to talk of trade as a panacea for development.

- **Think tanks:** Like academic institutions, they were scarcely consulted at all during the Uruguay round, and nor did they have access to resources or essential or accurate information to be able to conduct independent studies. They also tended either to concentrate on higher policy concerns, or to focus on a very narrow range of issues. And, like the government, they found it difficult to range across sectors and issues, vertically or horizontally.

Simultaneously, their role has grown significantly since the Uruguay round and the quality and frequency of their participation in trade policy debates now largely matches that of NGOs.

- **NGOs:** In some ways the unsung heroes of the Indian system in trade policy debates – though, of course, there are a wide range and variety of types of NGOs – not all of which contribute that much. It was the NGO community (and, to a lesser extent, the media) that did most of the awareness raising and analytical work on policy proposals during the Uruguay round. Hamstrung by the lack of inputs, they have generally drawn from the stock of knowledge within the international NGO community, and made effective use of parallels and comparisons to create reasoned analyses, that are policy relevant to the Indian situation.

NGOs also have two other great advantages that governments and business lack. They can link economic and non-economic issues together in analytical frameworks that are credible and usable, and they know how to present their findings in ways that are easy for the media and the political community to use.

Two additional points need to be reiterated here, and for which major systemic changes are still needed both within government and in trade and industry associations. The first is that trade policy debates in the Indian

context suffer from a serious lack of usable and credible basic trade data. This is a problem across the board. When lack of information on employment, the environment, and equity issues is also factored in, it suggests that a gaping hole at the heart of the system needs to be addressed as a matter of priority.

Secondly, India could easily go abroad for much of its analytical work on trade policy options. Except, there is deep suspicion of foreign institutions and the roles they play in the broader scheme of things. There is little belief in the independence of these institutions from their national governments, particularly in the context of recent events. This mindset is unlikely to change.

Diplomacy

- ***Diplomatic co-ordination:*** There was little or no co-ordination between the negotiators and Indian missions around the world during the Uruguay round, largely because of sensitivities of control that the Commerce Ministry insisted on retaining. While the Government of India, in Delhi, was ceaselessly lobbied by foreign embassies and visiting delegations on a host of trade issues, Indian embassies around the world had virtually no brief for their host governments! This, in spite of many embassies asking for information and instructions. Similarly, the Commerce Ministry was also not particularly interested in obtaining information about the negotiating approach of other countries that embassies could well have provided. They were, thus, constantly taken by surprise by changes in policy, particularly of negotiating ‘allies’, which were often disclosed to them during actual negotiations. India’s isolation at Doha on the Singapore issues should *not* have come as a surprise (which it was) if her embassies had been asked to ascertain national positions well in advance.

The same lack of co-ordination was also apparent during the Uruguay round with the Finance Ministry, which coordinates India’s work with the IMF and the World Bank. This fragmented approach continues to work to India’s great disadvantage.

- ***Negotiating teams:*** Experience seems to bear out that small, competent negotiating teams have many advantages, as the Indian experience would appear to confirm. They were able to hold the threads of all the negotiating proposals together and knew where to focus attention, and where and how to find and make trade-offs across sectors. They were also not buffeted by conflicting pressures or drowned by conflicting opinion, as many of the larger delegations were. Simplicity and clarity seemed to help in the complex

atmosphere of a multilateral negotiation where human qualities count for a lot.

Thus, the presence of a large number of experts, economists and lawyers may actually inhibit the effective functioning of a national delegation. What they need is quick and ready *access* to such people without having them sit on their heads, and this, perhaps, needs to be reflected in the structure of the consultative process and institutional support mechanisms within India, as looking abroad for these inputs is still very sensitive politically.

- ***Negotiating autonomy:*** The virtually complete autonomy that Indian ambassadors enjoyed worked, paradoxically, to their great advantage. In the absence of workable or particularly useful negotiating mandates, ambassadors were able to evolve strategies on the spot by drawing upon their sense of the situation, their experience, and the advice of their negotiating colleagues, many of whom were in the same position.

If there is a success to be identified in the Indian situation, it is in the competence of their negotiators and their ability – in spite of an almost total lack of domestic institutional support – to conjure something out of nothing. In compromising on the TRIPs agreement, on which India would ultimately have been forced to give in, for example, the delegation brokered a trade-off over in getting the agreement on textiles through.

This all took place without any real consultation with the concerned ministries in Delhi (the ministries of Industries [for patents] and Education [for copyrights] and Textiles [for textiles] should have been involved but were not – at least where this trade-off was concerned), and was decided by the ambassador in consultation with the Prime Minister's office. In a sense, this perfectly demonstrates the importance of giving negotiators autonomy and flexibility, but does little for the problem of political legitimacy or democratic accountability.

In looking at better ways of doing things, it is necessary to bear in mind that India should not actually lose this hugely valuable asset.

- ***Non-official networking:*** There was little or no awareness in the Indian system of the importance of dealing with powerful non-official international networks. In a sense, this mirrored the institutional disdain for domestic networks of the same sort. But, in a negotiating environment of this sort, networks can be vital in influencing or shaping the course of events more broadly, and diplomatic resources should normally be deployed in support of this activity. However, this was not done and nor were domestic trade and

industry associations capable of undertaking this task as they often had little understanding of what was going on internationally, and, in any case, were not organised or structured to do so.

- **Media management:** International media management was another area where the Indian approach was particularly vulnerable. Here again there is abundant evidence that media networks can work extremely effectively in support of a national position, as the sustained campaign by pharmaceutical companies and the entertainment industry demonstrated during the Uruguay round. Except the Indian system did little to engage with this process either directly or through its diplomatic missions. It was often the NGO community, working through its international networks, that was particularly effective in this area –and not the national government.

To summarise this section: International economic diplomacy cannot work in isolation from conventional diplomacy. Yet, this is what happened in India's case during the Uruguay round and continues to happen today. Little or inadequate use was made of diplomatic networks or diplomatic contacts, and this meant that the Commerce Ministry was negotiating in a diplomatic and institutional vacuum. Taken together with the lack of proper consultative procedures and the lack of institutional support, this meant that negotiators were – and are – for the most part, flying blind.

The problem is compounded by a deeply insular mindset that is suspicious of the outside world. While recent international developments may confirm the accuracy of this perception in broad terms, engaging with the outside world is actually a two way process. India cannot hope to get its point of view across if it is unwilling to listen to what others have to say.

Political considerations

- **Constitutional philosophy and political consensus:** Political debate in India is constrained by constitutional philosophy and the broader political consensus that it created. The Constitution weakens property rights and postulates a development model that effectively runs counter to free trade principles. It is, therefore, difficult for the Prime Minister, or any minister, to publicly engage with the multilateral process without exposure to the charge of ignoring a strong domestic consensus, or – at worst – of betraying some basic constitutional principles.
- **The equity/poverty debate:** The Indian state is constitutionally committed to redressing India's profound social and political inequalities as a matter of *overriding* policy priority⁹. Yet, the question of whether a free trade

model would help or hinder this process was never really debated in the context of a discussion on development models. It was certainly debated in the period just before and after independence, and the conclusion drawn was that free trade would only exacerbate social differences and create huge problems of political disaffection. This line of thinking was reinforced through the '60s and the '70s, with real fears expressed about the survival of the Indian state, if these social problems were not addressed.

The question of whether this strategy was effective was raised on a number of occasions, given the relatively low levels of growth in the '70s and '80s, but the debate tended to a more mixed conclusion: that there were some sectors of the economy that could indeed flourish internationally, while there were others where markets opening to international competitive pressures would be disastrous. It was this dichotomy that polarised public opinion during the Uruguay round, with some seeing the negotiations as a means of breaking free of state regulation, whilst others thought it would expose India to unmanageable pressures. On balance, however, the prevailing consensus continued to hold, and, more importantly, there was little or no agreement on *which* sectors to liberalise, or to what extent.

- ***Political legitimacy and accountability:*** No one has yet satisfactorily met the political argument (either in India or elsewhere) that domestic laws made on the basis of international agreements are undemocratic and lack legitimacy. Linked to this is, of course, the issue of accountability: supposing things go wrong as a consequence of such agreements, who is accountable? Who, in the international system, will answer to the Indian people, and who, in the domestic system, will answer for something that they are not responsible for? There is no satisfactory constitutional mechanism that addresses this issue. This issue was – and is – unanswerable in terms of constitutional and international law, and accounts for much of the unwillingness to consult widely as part of the process.

The situation described above raises the question of whether new constitutional and legal procedures, along with institutional and organisational arrangements are required; or whether systems, structures and procedures within the existing organisational framework of the Indian state would be adequate to meet the requirements of system reform.

This is a constitutional/procedural problem that has implications that go far beyond the limited subject of trade negotiations, and perhaps go to the heart of the constitutional process more generally. While this exercise would have been impossible in the prelude to the Uruguay round, some thought should have been given to finding ways to at least ensure a structured and orderly

consultation with federal units and other constitutional bodies connected and concerned with the issues that were being negotiated. But this was not done, and is still not being considered, and the emphasis remains on informal consultative processes, with the government retaining control of the process.

Paradoxically, from the negotiators' point of view, the situation was, and is, (apparently) ideal. They had (during the Uruguay round particularly) virtually no instructions and were left almost entirely to devise their own tactics and strategies. This was as close to *nirvana* as a bureaucrat could get, and this may explain why the Commerce Ministry was – and remains – so reluctant to suggest any real changes to the system.

5

Was India alone?

Though by no means the first international agreement with domestic policy ramifications, the results of the Uruguay round represented perhaps the most profound breach in the principle since the creation of the UN system. Not only did the terms of the Single Undertaking require deep levels of domestic policy reform, they also provided for inspection and enforcement procedures, through the Trade Policy Review Mechanism and the Disputes Settlement Undertaking. To sign up to the agreements and to remain in perpetual default – often the policy option of choice when dealing with awkward international agreements in the past (as with human rights treaties) – was simply not practical under the terms of the Uruguay round agreement.

Constitutionally – in India at least, and also in many other countries – this was anomalous, if not outright, contrary to what constitutional principles were all about. If one factors in the federal dimension, then not only was the central government using treaty law to make domestic law, they were also doing it in respect of certain subjects (such as agriculture, in India's case) over which they had limited constitutional jurisdiction in the first place.

Nevertheless, it was not as if every country had the same set of problems, otherwise the Uruguay round would have fallen flat on its face at the outset. Many developed countries (though certainly not all) shared similar problems in a procedural sense, but compensated for this difficulty through a political consensus, brokered internally and well before the Uruguay round began, that was broadly compatible with the principles being negotiated in the Uruguay round. These policies were often forged through extensive debate, domestically and within a framework created by the OECD.

Many developing countries (of course, not all) had a much larger distance to travel in terms of shifting the internal political consensus away from the import substitution model to a trade dependent model, which was nothing short of complete policy reversal in some cases. On the contrary, they also had to build and sustain a strong consensus in support of this process. Moreover, this little

charade had to be acted out when it was clear to everyone that the policies had already been pre-determined (because of the provisions of the Single Undertaking), and that all internal debate and discussion was really just a sham.

For many developing countries, much of this also took place against the backdrop of the heavy-handed approach taken by international financial institutions – though Structural Adjustment Programmes – formulated in their present rigid form in the aftermath of the debt crisis. Feelings on these issues were thus running extremely high, despite the fact that the capacity of each of these countries to defy the tide of events differed substantially.

It was perhaps because India did not plumb the depths of the debt crisis (even if it felt the pain briefly in mid-1991), and still retained a strong internal consensus on its basic development strategy, that it felt that it still retained a degree of policy autonomy in these matters. Given that she was not under the hammer to the same extent as other countries only exacerbated the sense of anger at having to comply with externally brokered policy reforms.

In this manner, India was by no means alone in wrestling with the complexities of domestic policy making versus international treaty making processes, but was somewhat uniquely placed in that its position was substantially more complex because of its deeply held political consensus on economic development strategy, and its federal structure, which then needs to be seen against a backdrop of weak and vulnerable coalition governments unwilling and unable to shift the domestic consensus on development nearly far enough to allow for constructive engagement with the multilateral process.

Adopting the lessons absorbed by other countries was ergo very difficult. In a general sense, this could only have been possible with strong political leadership with a strong sense of the broad direction in which to take the country, but neither condition was present. Learning from others also went against the grain, given India's deeply insular political culture.

6

What changes has the government of India made to trade policy making in the light of events?

What the MoCI does?

Rather paradoxically, the ministry charged with negotiating multilateral trade agreements based on principles of reciprocity and non-discrimination can do little to enforce these principles in the domestic context, and indeed is not charged with doing so.

The Ministry of Commerce and Industry (MoCI) is not responsible for policy-making with regard to domestic trade, except for the organisation and marketing of domestic commodities for internal sale and for exports. Additionally, in view of their export significance, the MoCI oversees plantation crops, such as tea, coffee, spices etc. Domestic policies with an impact on the way in which domestic trade is conducted tend to be subdivided amongst several ministries (such as Finance, Food and Agriculture, Textiles, Surface Transport etc.), and more importantly, devolve upon state governments for the most part.

Although the Constitution provides for the right to work and live anywhere in India, and for the protection of property rights, it moderates these guarantees by permitting restrictions for a variety of social, cultural and political reasons that can be exercised at different levels¹⁰. The right to free trade is, in practice, circumscribed by state and local authorities drawing on these constitutional provisions to achieve other policy objectives, many of which have greater constitutional status, political legitimacy and support than the tenets of free trade.

These conflicting provisions, together with the division of responsibilities between ministries and between the central and state governments, effectively means that free trade is not the starting point for much of what the Government of India does, but something that can be considered only when there are no obvious objections to it, for which of course the Constitution provides unlimited opportunities.

It should also be borne in mind that in the domestic political pecking order, the MoCI is not one of the most important ministries, though it is undoubtedly one of the most prestigious. More powerful ministers often head ministries like Home Affairs, Defence, Agriculture and Rural Development, Human Resource Development, and the various infrastructure ministries (Telecommunications, Power, Railways, Steel, Surface Transport, etc.) , albeit this fluctuates from government to government.

The minister in charge of Commerce and Industry thus has to tread very carefully, and that too with the full support of the Prime Minister, if he is not to be torn apart by his political colleagues for being too presumptuous by not consulting them, or too ambitious by trying to bypass them. A Commerce minister who enters a cabinet meeting and tells a powerful colleague that major changes will be needed to the policies of *their* ministries, is not likely to survive long, however persuasive the arguments, unless he has the strong and explicit backing of the Prime Minister.

This political dynamic is reflected within the civil service as well, and has bred a peculiarly insular culture in the MoCI that is renowned for not sharing information with other ministries, and for not consulting widely or properly, precisely because they do not want to be thwarted by their colleagues who work for ministries that are actually more important in political terms. Their strategy has generally been to present the cabinet – or its sub committees – with a series of *fait accomplis* which have the political backing of the Prime Minister, which has often been obtained informally in advance. Though possibly an entirely legitimate tactic, it again does little for principles of legitimacy or accountability.

Other ministries – and state governments – then tend to settle scores at the stage of implementation, where they have to take responsibility for following through on commitments made by MoCI at the multilateral level. To an extent, this is the same problem that the Finance Ministry faces in trying to drive the process of economic reform, which perhaps explains both, why the reform process is so halting and why implementation remains such a problem.

The real job of the MoCI is to represent India's international interests (that is, really, until the Uruguay round), typically through seeking exemptions from reciprocal multilateral commitments, building commodity agreements, and Trade-not-Aid approaches to market access issues, and developing largely risk-free trading relations with a select group of countries and for a select group of commodities and products. These policies were never thought to depend on liberal or free trade models, and were, in a sense, largely consistent with domestic development models¹¹.

In short, this is not a ministry that has been set up to release trade from government control or to create a domestic rules-based system. It is a ministry that has been set up to manage export markets in a limited area, and has almost accidentally stumbled upon its new (but remarkably prestigious and glorious) responsibilities in the multilateral system. Obviously, this does not sit well with the rest of the civil service or with the culture of the political system more generally, and has created a degree of resentment at the MoCI's new found but overweening importance.

Over and above, some changes have been made to the system, which have brought about improvements in certain areas. Still, as the section below brings out, these remain largely superficial and do not address the central problems that hamper full engagement with the multilateral process. Broadly stated, these changes are, firstly, in the areas of consultation procedures as they apply to the internal decision-making process, both official and non-official, and, secondly, to organisational changes that have provided significant improvements in the attention given to multilateral issues, together with the levels of knowledge of key personnel through the whole bureaucratic system.

Although these have had a significant impact, this paper argues that they still fall short of what is really required to galvanise the system as a whole.

Consultation procedures

Since the Uruguay round, the government has significantly broadened and extended procedures of consultation at almost every level. Granted, these remain informal and selective, it would be unthinkable for the government today to jettison this whole process simply because it has the power to do so. The practice now is to broaden, rather than circumscribe this process, and the quality of intervention is also improving, as organisations and institutions structure their operations to provide this service.

Nevertheless, the problem remains of the outcome of this process. In the absence of a consensus on the nature and direction of policy reform and liberalisation, the process tends only to reaffirm India's belief in the need to preserve as much policy autonomy as possible, and in as many sectors as possible.

Structured consultation is now of three distinct types. The first is with ministries of the Central government, including a large number of powerful autonomous agencies. This is an ongoing process and essentially operates around the fact that a large number of ministries have to implement multilateral commitments, and thus need to be constantly consulted on a range of issues. It operates

largely at a functional level, though political processes tend to kick in where issues prove to be sensitive or complex, from a political management perspective.

The process, though, still lacks real depth. Consultations still involve only senior policy levels and do not reflect a deep vertical integration of the policy process. This is reflected in the lack of coordination between the inter-ministerial process and the NACIT process, which seem to operate autonomously, with the Commerce ministry selecting advice and inputs at its discretion¹². Likewise, the consultation process with state governments also operates largely independently of the two processes described above.

Apparently, there is an argument that the process needs to be structured in this way lest it become completely unwieldy. On the contrary, the problem with the present process is that it is far from transparent, and the Commerce ministry still holds its cards close to its chest. This would be broadly acceptable if the impact of trade agreements was limited, but they affect every trade and industry interest, every citizen and every walk of life and the very least one could expect from the process is transparency.

Interestingly, trade and industry, which should be driving the process both through their direct dealings with the MoCI and with other ministries, are not fully structured into the consultative procedures of these ministries, though this is changing rapidly as everyone learns how to play the game. They tend to focus on the MoCI in providing inputs, and this tends to reinforce the impression that Indian trade and industry is still rather reactive – that it is still trying to cope with change rather than driving it – as their interventions generally come late in the decision making cycle. Trade and industry, to press their perspective, often because no one is really sure as to what considerations finally go into the negotiating strategy, do not always target other ministries effectively.

In many ways this quiet process – however inadequate – is the key building block in the formulation of a trade policy agenda for India. It identifies problem areas and generates ideas on how to solve them (whether at a national or multinational level). It is also the key input that provides ideas and information on what issues India should press as a *demandeur* in the system. This process is now so well established, and with so many structured meetings and procedures, that for all intents and purposes, it is now standard operating procedure.

At a policy level, this process is supplemented by meetings that are intended to address more substantive issues, culminating in the Committee of Secretaries, chaired by the Cabinet Secretary, which endeavours to take an overview of the whole process.

Many have argued for a more formalised system of consultation of the type followed by South Africa or the United States. But this raises the question of whether a series of formal, structured consultations, though desirable, would deadlock the policy process. It would inevitably need to include at least half the departments of the Government of India (of which there are more than 80 in all), all state governments (of which there are 28, and which would similarly have to consult their departments dealing with these issues), a host of independent constitutional agencies, and a large number of autonomous government institutions. This, before even coming to trade and industry, the academic or the NGO community, labour unions, or other civil society groups¹³. A structured process of this sort would probably be too cumbersome and rigid to be of any real use, some would claim, thus exposing the process to criticism on the grounds that it is ineffective, slow, and unable to keep pace with the rapid pace of developments in Geneva. A trade-off between expediency and legitimacy in the Indian context would therefore appear to be inevitable.

The second is with state governments, culminating normally in a session of the National Development Council (all State Chief Ministers and select Cabinet Ministers), which generally endorses the broad outlines of a trade policy strategy, though normally in the context of larger development goals. This is specifically intended to ensure that powerful regional political interests are kept on side, and are a good indication of the overall political mood of the country. This process is supplemented from time to time with more detailed consultations with key state governments on a variety and range of issues that are of interest and concern to them.

The third type of consultation draws in most of the major trade associations, NGOs and other civil society groups, and tends to look both at the overall strategy being adopted, together with detailed proposals being considered. Again, this is an informal and unstructured process and the degree and extent of consultation depends on a host of factors.

The process of consultation with NGOs is now often the most productive part of the process, largely because of their knowledge of the issues and the extensive analytical work many of them have done on the sectoral impact of proposals, which often far outstrips the quality of work done by trade and industry associations. Again, this is a reflection of the continuing problem with accurate and useable information and data coming through the system, and the reliance of the NGO community on the work done elsewhere in the world on the same subjects.

This creates a peculiar relationship in the structure of Indian trade policy making, which is somewhat unique. Most of the big ideas and the detailed

analytical work often emanates from within the NGO community, which is then taken over by business and the government. Trade and industry does not, therefore, drive the trade agenda, but NGOs do (though, of course, indirectly). Trade officials will, of course, dispute this depiction because they still ‘control’ the process, and because the cause and effect of this process is not always evident or apparent.

Nevertheless, a look at prevailing debates in India’s domestic environment shows the government actually responding most closely to the concerns raised by NGOs. This is true of TRIPs; it is true of investment; it is true of implementation issues; it is true of employment; it is true of environmental concerns; it is true of regional consequences; and it is true of agriculture. In very few of these debates is the business community active, or articulate, in setting out its ideas or concerns in advance of NGOs.

This is not to say that the government does not have the final say in the selection of policy options, but that they are inhibited in several different ways and are left with really no one else to turn to but the NGO community. They are constrained in their ability to initiate a debate about any market-based ideas (by the consensus on development). They are limited by the sheer size of the system from conducting a structured consultation that matches domestic policy making procedures. They are inhibited by the lack of information from official and non-official sources to rely on the business community or on government statistics. They are thus obliged to rely on the only really knowledgeable community within India – the NGO community, sometimes with the support of the media.

Consultation procedures of this sort are considered essential for reasons of legitimacy and credibility, though the reality is of a selective process that is basically designed to build support amongst key elements of the political, business and NGO community for the government’s negotiating positions. That is not to say that the consultation process is not genuine – indeed, much of it is – but that it is nothing as serious or structured or political as the domestic law-making procedure. In a critical sense, it does not carry the same imprint of legitimacy that a formal process could perhaps provide, which is really fully revealed by the continued isolation (if that is the right word) of parliamentary institutions and parliamentarians from the process.

The issue of consultation with parliament and its committees is highly complex, but very important. At present, the process is inadequate to satisfy parliamentary concerns that domestic policy is being too easily surrendered to the multilateral process. As yet, the constitutional mechanisms for international

treaty negotiations do not require prior parliamentary consultation. Some consultative procedures have been devised to rectify this to an extent, but these actually operate as an exercise to inform parliament of what is going on in very broad terms, rather than to consult them, and, of course, to reassure parliamentarians that vital national interests will not be bargained away.

Over and above, this arrangement is deeply unsatisfactory and mechanisms are needed to provide a more active consultative process. How this can be achieved when consultation procedures within the traditional trade policy community are so informal, is a challenge in itself. In the section below on '*Some suggested reforms*', a few ideas are mentioned that I think are worth exploring in detail. It should, anyhow, be recognised that this is a hugely complicated operation.

Indian trade policy-making, as a result, continues to be organised as something of a constitutional and organisational sleight-of-hand that leaves everyone dissatisfied and the country ill-served in the final analysis. Though improving, as described briefly in the section immediately below, much still remains to be done.

Institutional and organisational changes

The other major area, where the government has tried to improve its trade policy-making, is in making some internal organisational reforms and in building institutional consultation research and procedures into the system far more effectively.

The number of people (mainly bureaucrats, it has to be said) dealing with multilateral issues, within the MoCI, in other ministries, and in state governments, has grown substantially. There is now a fair amount of expertise available on trade policy issues across the structure of government, though not yet vertically through the structures and not across all state governments, which is a major problem in itself. The quality of the internal dialogue within the bureaucracy has improved substantially, and this alone has raised the standard of political awareness and the utility of policy inputs from different ministries. On the other hand, it is still a fairly closed system and is certainly nowhere near the levels of sophistication of developed countries, or indeed of being driven by business interests.

Coordination with the Ministry of External Affairs and the Ministry of Finance has also improved a great deal, and there is a greater mutual understanding of positions than at any time in the past. So, across the range of government, there is a greater policy coherence and understanding of issues.

Simultaneously, a host of think tanks and policy NGOs are now contributing more systematically to the consideration of issues from a variety of perspectives, some of which are non-economic. This process has also helped feed the public debate, yielding greater public and political awareness and greater engagement with the process by civil society groups.

The mission in Geneva is also more strongly supported in what it wants, and when it wants it.

Who matters in trade policy making?

How, then, is trade policy really put together, and who really matters in the process? Well, given the circumstances in which the domestic civil service operates, it is first, and foremost, an internal and secretive process that builds largely on the assumption that everything possible must be done to protect domestic policy autonomy.

As I said earlier, this is not a ministry that is trying to create an alternative economic model for development. Positions within the MoCI are built largely on guidance by India's mission to the WTO; on ideas and debates generated by the larger trade policy community; inputs from key ministries, which largely share the same perspective, and from the guidance provided by a Committee of Secretaries, chaired by the Cabinet Secretary, that attempts to identify some of the main issues that need to be pressed in negotiations.

It would be wrong to characterise all these ministerial inputs as defensive, as there are many ministries that would like to see greater integration of their subject areas with the global economy, but these positions have to be *actively* justified. Rather like a negative list approach. Only if it can be shown (which it never can, because the statistical base is so weak) that a measure will *positively* suit India, then only will the government take a position (a presumption of leadership that facts do not always bear out). As this is impossible to do – partly because of a lack of usable economic modelling – it then has to survive being measured against every possible adverse situation (labour, regional, social, and environmental impact, etc.).

Ministries dealing with these subjects (and which *own* the impact assessment process) have then to come out in support of a proposal, which, of course, they never will and can never do – at least not all together – again, because of a lack of usable data. Risk avoidance is, thus, the order of the day in policy-making, in these circumstances.

Interministerial consultation is largely confined to a Committee of Secretaries so that the process doesn't come off the rails altogether. Moreover, this means

that nothing substantive is ever ventured because of the fear of having to deal with the public reaction – and ministerial fury – of ministries that weren't consulted or which have a strongly adverse point of view. Hence, my description of the process as being something of a sleight-of-hand.

As mentioned above, the key negotiating inputs really come from the mission in Geneva, which is perhaps right and proper in some ways. Only because the system is reactive to what is happening at the multilateral level, and scared of what could happen domestically should they lift their heads above the parapet, there is little that is bold that flows from this process. For countries with developed trade policy strategies, the key inputs originate from an informed and structured domestic debate, which then feeds into the Geneva process, and which then echoes back and forth, until a consensus is found that everyone can live with. India operates in reverse in this respect by trying to find a domestic consensus to a *fait accompli*.

7

Some suggested reforms

There would, thus, seem to be four broad areas in which the principal lessons of the past few years have yet to be learned or applied. The first pertains to the level at which the vast range of issues relating to the role of trade (both international and domestic) in economic development needs to be considered, along with questions of procedures, and who or what controls the policy *and* implementation process. The second would relate to the need to integrate diplomatic networks with trade policy requirements, and to connect these more fully to key international networks. The third would address the inappropriate way in which trade and industry associations are organised, and the consequent need to restructure these organisations to reflect the importance of the multilateral process. And the fourth would relate to the capacity of independent institutions to provide detailed evaluations across the policy spectrum.

The first two of these items are essentially organisational, and relate to the internal functioning of the government, but would entail considerable systemic re-engineering. They would, after all, require political vision and leadership, which is something of a contradiction in terms, when describing the outlook of the present or recent governments. The third item is really for trade and industry associations to address, but is a process that could be helped along by the government providing appropriate consultative structures that call for just the sort of inputs that only reorganisation can deliver. And the fourth, which is, in some ways, the most vital, is perhaps the most complex to manage, primarily because many of the institutions that conduct effective research and evaluation work are autonomous or privately run. The key input here would be useable and credible data, and clarity in the long-term intentions of the government, which would create the appropriate environment for independent research to look at the implications of what the government is saying, in more detail.

On the first item relating to the level at which trade and development issues need to be considered, it seems that a fundamental shift is required in the way in which the government now needs to simultaneously consider these closely linked issues. While it is recognised that trade policy is part of the broader

economic policymaking process that occurs principally within government, there has been nothing but uncertainty since 1995 as to whether trade priorities are to shape national development strategies, or the other way around. Clarity about development objectives and the role of trade in meeting those objectives is of paramount importance.

The first and most important review of policy making that would include trade, would thus need to look at economic policy-making issues more generally. This would possibly mean reinstating the centrality of the Planning Commission to the process, though accompanied with reforms that address the requirements of a modern and diversified economic structure in a more genuinely federal structure. It is only really the authority of the Prime Minister in the Indian system that could make this happen.

The Planning Commission is, in some senses, the perfect forum to act as a clearinghouse for trade and economic policy debates, because the National Development Council (the management board of the Commission and the body that approves the Plans) consists of all the state chief ministers and most central government cabinet ministers. From a political and organisational point of view, the Planning Commission is ideally placed to co-ordinate domestic and international trade policy.

Reviving the centrality of the Planning Commission would, nevertheless, irritate the ministries of Finance and Commerce in particular, because this would imply taking some of their decision-shaping powers out of their hands. It would also irritate the IMF and World Bank because they have systematically sought to denigrate and downgrade the Planning Commission, as part of their strategy, to reassert the primacy of the Finance ministry through their focus on tight fiscal control and strategies for macro-economic discipline.

The capacity of the Planning Commission to deliver effective support to this process would probably also need to be dramatically enhanced, as it is not currently structured internally to perform this function. This would, on the other hand, be less problematic than creating an entirely new institution that would then have to assert itself against powerful ministries *and* the Planning Commission.

A further possible approach would be for the Planning Commission to operate a domestic Trade Policy Review Mechanism to keep trade issues under systematic and constant review, and to keep parliament and state governments abreast of domestic policy issues in this vital area. Apparently, this could operate as a two way process and function as an early warning system as well.

As part of this process – though perhaps running in parallel – could be measures to upgrade and enhance parliamentary oversight of the trade policy-making and implementation process. As I said earlier, this is a complex issue, but it is something that needs to be considered in detail.

Perhaps parliament, through the Speaker's office or perhaps through an agreement with the government and with the cooperation of all parties, could create a committee on trade policy that would be unique in terms of its powers and responsibilities, therefore, matching the rather unique situation that the government faces in managing a policy issue that crosses the divide between domestic and international policy-making. It could look at creating systems and procedures to ensure transparency in the decision-making process, extensive and meaningful consultation, and that structures of political accountability are fully respected and enforced. Maybe it could exercise this oversight authority in the context of some suggested reforms to the Rules of Executive Business outlined below, which would, in effect, create a separate category for decision making procedures in the central government, specifically for trade policy – both domestic and international.

Linked to this, though not much lower on the scale of priorities, would be to clarify the position of the Commerce ministry in trade policy-making in both the domestic and international context. There has to be a workable alignment between internal and international trade priorities that could operate to India's advantage, and between trade and other policies. There further needs to be some coherent process that makes one ministry answerable for the application of principles of reciprocity and non-discrimination in the management of the domestic economy. Without the internal and external systems being in alignment, the process of policy implementation will be continuously bedevilled by problems relating to implementation and compliance. The creation of a domestic Trade Policy Review Mechanism (TPRM) could provide the inputs needed to drive this process. This issue is, though, an extraordinary, complex and sensitive issue, given India's federal structure and would need to be carefully viewed through.

In this context, and in the context of the need for radical improvements in the consultative process overall, it is really for the Cabinet Secretary to drive the process, insofar as government procedures are concerned. This should, of course, have been set in motion in early 1994, immediately after the Uruguay round concluded, but has been neglected, possibly because of the fragility of political alignments at the central level and their incapability of taking big decisions.

The Cabinet Secretary controls the Rules of Executive Business that set out how the government is supposed to function, which is structured largely around the constitutional order and principles of political accountability. Since neither the conventional domestic nor foreign policy processes would properly apply to problems of trade policy-making, a special category of decision-making is needed to achieve this. Clearly, a constitutional amendment would be difficult – if not impossible – to push through, so perhaps the use of modified consultative procedures could achieve this and could be employed to good effect.

The overall objective should be to ensure that the MoCI speaks for the system as a whole, as broadly understood, with the confidence and assurance that a deep and comprehensive consultative procedure alone can bring. To achieve this, the Rules of Executive Business need perhaps be modified to provide specifically for the following:

- A separate category of decision-making procedures only for international and domestic trade policy-making.
- As this would bridge the two big constitutional divisions of foreign versus domestic decision-making processes, and federal versus state jurisdictions, it would need to be structured to provide a formal process of consultation across the central government *and* with state governments.
- Rules of cabinet confidentiality may need to be relaxed, within defined limits, for this specific area of decision making alone, so that the process can operate with the maximum possible transparency, particularly where consultation with trade and industry interests, NGOs and others are involved.
- A specific process would need to be set out, detailing the structured consultative procedures to be followed by MoCI in undertaking a ‘national examination’ of proposals that emanate from Geneva. The present system is totally inadequate and allows MoCI to complete this process without any real or meaningful internal consultation.

Modifications in this operating and procedural area could result in total deadlock of the consultative process, if handled badly or designed poorly. The processes used in other countries would probably not be of much use in designing such a system, though they could be instructive in other ways. A sort of *sui generis* mechanism would need to be created that is unique to the Indian system.

Parliamentary oversight, which could exercise its scrutiny with specific reference to the rules set out by the Cabinet Secretary, would also become infinitely more effective. And, together with a domestic TPRM, and greater accountability for trade policy-making generally, it should result in an altogether more informed, accountable and legitimate process.

The second major reform would relate to the integration of diplomatic and trade networks. Although there is recognition that this would be useful, bureaucratic politics will work systematically to prevent it ever happening.

Integrating the networks would also ensure that a balanced perspective on the trade-off between multilateral priorities and other foreign policy objectives would be borne in mind while considering the larger picture. Cohesion and consistency in foreign policy priorities would surely be easier to press than the present system.

Dealings with international business and media interests would be similarly more coherent and systematic, with benefits flowing back through the operation of their influence in the domestic markets of others.

A further advantage would be in the crucial area of personnel continuity. Present rules for managing the domestic civil service actually prevent experienced personnel from developing sectoral expertise of any great depth. While there is a logical justification for this (best understood in terms of the generalist vs specialist argument), it can be disastrous in the long term when dealing with something as esoteric and complex as the multilateral process.

Personnel continuity could logically be better assured by integrating parts of the Commerce ministry with the External Affairs ministry. Expertise within the External Affairs ministry would be easier to develop and retain over the long-term (though they also have problems of job rotation), and this would ensure that the crucial skills of international diplomacy could work in support of trade policy strategies.

Of all the issues facing the system, this is likely to be the most resistant to change. The domestic civil service, in political terms, is vastly more powerful and influential than the Foreign Service and can (and will) sabotage any measures to encroach on their turf. This is especially true of the Commerce ministry, which is, in itself, composed largely of civil servants with influence. Simply stated, they will not let go, even if the country continues to suffer.

On the third issue, that relating to the internal organisation of trade and business associations, it would perhaps be a little unfair to say that they haven't reorganised to deal with international trade issues. It is really that in the absence of a structured and orderly process of consultation, they are obliged to react and adapt to what the government wants from them.

The status of trade and business associations in the Indian policy-making process has never been defined, which is a polite way of saying that the government will decide whether to consult them or not. As a result, they have no right to be heard, nor have they any status to claim that right. This is the same for all other civil society groups, with the single exception of trade unions who have a right to be heard. There are also structured consultation procedures relating to labour issues, which perhaps explain why labour market reform is so problematic in the Indian context.

Trade and business associations cannot register as lobbyists, though, of course, they can operate officially and openly as legal entities. The same is true of their functioning at the state government level. Structurally, therefore, their access and influence depends on their relations with ministers, MPs and senior civil servants, which, of course, means that they also (sometimes) have to operate in the shadows. This situation often arouses deep suspicions, particularly in the Indian context, relating ironically to the excessive influence of these bodies.

As mentioned earlier, these associations were established to lobby the government with respect to various policy issues of concern and interest to their membership, and not to assist the government in preparing for multilateral trade negotiations. Organisationally, therefore, they are not particularly cohesive where issues of market access and competition are concerned, since the purpose of their lobbying has little to do with market liberalisation and everything to do with market management. Their membership, again for the most part – though this is changing rapidly – has little knowledge or interest in the outside world and has not developed common positions that transcend the narrow sectors in which they operate.

For this situation to change, the government probably needs to create a prearranged consultative framework that provides every association (that operates at the national level) with the right to be heard on issues that would or could affect them. Something like the Administrative Procedures Act in the US would perhaps be appropriate, together, of course, with much higher standards of transparency.

A policy of this sort could mandate consultation at both the policy-formulation stage and at the stage of parliamentary consideration. To do this, on the contrary, would involve a powerful political initiative, which would be hard to justify in the Indian background where the general belief is that businessmen have too much access to power, in any case. As with India's experience with consultation, the outcome could well be the opposite of what was hoped, and

the system is quite capable of concluding that the influence of business on the policy process needs to be curtailed, not expanded.

If a similar arrangement were to operate at the state level, the impact on the organisation of trade and industry associations would be significant, if not transformational. There would be less emphasis on high level contacts, designed to parley their position and influence to advantage, than on genuine research and evaluation of policy issues and policy options. The whole operational culture would (hopefully) become more professional, and the orientation of these bodies would, in effect, match the expectations of their membership in terms of genuinely informing the policy-making process in respect of internal trade policies, and perhaps helping to shape trade policies in respect of the multilateral process.

Moreover, for all one knows, the key contribution would be in assessing the impact of negotiating proposals on specific economic sectors. Currently, no one really has any idea how proposals would play out in terms of employment, economic growth, the environment, regional development, etc. NGOs are perhaps, at present, the best organised to make these assessments, but they often lack data and statistics that only the business community has access to. This essentially means that when negotiators support or oppose a proposal in Geneva, they are basing their position entirely on a political assessment of what they think the impact is likely to be, and not on an informed view of what it is probably going to be. This is a recipe for confusion and disaster.

The fourth major point is, certainly, closely linked to the third. The need to develop the capacity for independent institutions to dispassionately assess trade related issues also depends on the willingness and openness of the government to admit that it needs these inputs and can't generate them internally. It also requires something of a well thought-out consultative process that would call for these inputs, circulate them nationally and internationally, and then build upon reactions to them.

Needless to say, an open-ended approach would be ideal, given the vast number of issues that the multilateral process has thrown up, but this would probably require policies that encourage corporate sponsorship of studies and other analytical works, which could be easily be encouraged. From the government's point of view, resources are limited and they would need to concentrate on generating material in select areas of interest and priority to them, and that too against tight deadlines. There would also need to be a mechanism that provides for these institutions to evaluate and analyse, rather rapidly, the negotiating proposals of other countries.

No single 'system', as such, would appear to be appropriate, as it really wouldn't matter whether an academic institution, a trade union, a business association or an NGO did the study, as long as the contents were credible and usable. A far more open approach to this area of functioning would, for all one knows, probably pay the greatest dividends over time. By encouraging funding from all sources, a large body of experts and a wide range of interests would be drawn into the policy-making procedure, both from within India and abroad. The policy and academic community evidently exerts a significant influence on the policy course in a number of countries, and increasingly at the international level, and for Indian institutions to be even slightly influential in that method, could be hugely important.

Of these suggestions, the first two relating to raising the level of political engagement and reforming the trade policy system would seem to be the most important, simply because of what would flow from them. While it may not exactly galvanise the arrangement, it would raise the level of engagement through the entire structure of the government and in the private sector, and thus strongly influence the quest for better schemes and procedures to deal with the challenge of engaging in the multilateral process.

8

Conclusion

This paper has attempted to describe some features of the Indian trade policy-making process that would perhaps explain why India finds it so difficult to engage with the multilateral process, and to describe how the system actually tends to function in practice. These descriptions are, without doubt, an oversimplification of a very complex process, yet I think are nevertheless largely reflective of what actually happens.

From the foregoing it would appear that although some changes have taken place in the crucial area of consultation, and that important measures have been taken to open trade policy debates to a wider audience, this has not really led to a system that is fully engaged with the multilateral process, because of a lack of consensus on the role of trade in development.

There is no doubt that there is a better appreciation of the issues within government, within the private sector and elsewhere, still, this is not enough to substantively enhance the effectiveness of the negotiators, given the high stakes involved and given the way in which multilateral negotiations take place.

There are a number of levels and institutions, both within government and outside, that still need to absorb the lessons of the Uruguay round and the multilateral process more generally, and it is not really enough for the Commerce ministry to set in place procedures that improve some levels of consultation, and to leave it at that.

The situation calls for direction and clarity on a number of interconnected issues, some of which have been set out in this paper, and which would require the intervention of the political leadership as a minimum.

Systems now need to be developed that can address how governments generally reconcile their domestic economic policies with their multilateral commitments. Whether this needs constitutional review or can be managed through new consultative systems that are managed politically, or through an

amendment to rules of procedure – as suggested by this paper – is something that needs to be worked out. Government level decisions are needed, together with similar decisions in the corporate sector, within NGOs and amongst academic and research institutions. Structures for improved co-ordination and consultation between and amongst these institutions are similarly needed, both at the national and state levels, as are better procedures to brief and consult parliament and state assemblies.

The point this paper makes is thus limited. The multilateral process may not be India's preferred or chosen approach to dealing with the external world, but it is the only real alternative around (with regional and bilateral variants), and India needs to learn how to deal with it to advantage because it is so important. While it may be valid for India to suggest that the system carries huge risks, it surely cannot be India's position that there are no positive possibilities at all. Whether elements of a highly complex process entail risks or advantages to the membership of the WTO is surely for each member to assess for itself, yet India's system is not yet capable of making this sort of informed assessment and has yet to acquire the capacity to do so or to translate such assessments into a coherent strategy. Until this issue is systematically addressed, there is little chance of any real change taking place in how policy is put together.

Endnotes

- 1 This paper is based largely on my PhD thesis: India's Negotiating Strategy During the Uruguay Round (forthcoming), and on a chapter in a forthcoming publication by Dr Rob Evans (ed) entitled: Lessons Not Learned: India's Trade Policy-making from Uruguay to Doha (forthcoming)
- 2 In a sense, this is changing with an increasing number of sectors becoming internationally competitive. But, there is no coherent view on what direction to move in and in what sectors. The consensus on denying market access to foreign firms still remains quite strong.
- 3 It is a different matter that they may currently lack the expertise needed
- 4 I doubt whether any process has been set in motion to identify domestic sectors where greater market access can be offered. Trade associations would be appalled at the thought.
- 5 Which they did very effectively, considering the depth of hostile feeling, but that is another story.
- 6 Almost impossible anyway, because the MoCI is made up at its senior management levels = as are all ministries of the Government of India = of officers on deputation from state governments.
- 7 Such as agriculture during the Uruguay round
- 8 India's agonising search for a parliamentary majority to amend legislation pertaining to patents is a case in point.
- 9 Through the Directive Principles of State Policy in the Constitution.
- 10 The right to buy land and operate certain types of business is restricted by many states on social and cultural grounds. These restrictions are constitutionally mandated and are somewhat equivalent to Non-Tariff Barriers as they are legitimate policy measures.
- 11 Which were, of course, fully supported by the World Bank through much of the '60s and '70s
- 12 For which there is ample operational justification, but little on grounds of political legitimacy.
- 13 A problem referred to as 'giantism' in Lewis' book on India's Political Economy

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As both tariffs and other traditional trade barriers are being progressively lowered, there are growing concerns about the fact that new technical non-tariff barriers are taking their place, such as sanitary and phytosanitary measures (SPS) and technical regulations and standards.

The poor countries have been denied market access on quite a number of occasions when they failed to comply with a developed country’s SPS or TBT requirements, or both. The seriousness of this denial of market access is often not realised unless their impact on exports, income and employment is quantified.

In this paper, the author focuses on the findings of a 1998 case study into the European Commission’s ban of fishery products from Bangladesh into the EU, imposed in July 1997.

This research report intends to increase awareness in the North about the ground-level situation in poor and developing countries. At the same time, it makes some useful suggestions on how the concerns of LDCs can be addressed best within the multilateral framework. The suggestions are equally applicable to the developing countries.

(Rs. 100/US\$10) ISBN 81-87222-69-7

8. TRIPs and Public Health: Ways Forward for South Asia

Trade Related Aspects of Intellectual Property Rights—or TRIPs—has always been one of the most contentious issues in the WTO. Several studies have been conducted on the political economy of TRIPs *vis-à-vis* WTO, the outcomes of which are crucial to the policymakers of the developing economies more than those in the rich countries. Increasing realisation of the poor countries’ suffering at the hands of the patent holders is yet another cause of worry in the developing and poor countries.

This research document tries to reach the answer to one specific question: what genuine choices do policymakers in South Asian developing nations now have, more so after the linkage between the trade regime and pharmaceuticals? Starting with a brief overview of the key

features of the corporate model of pharmaceuticals, the paper provides some insight into the challenges faced by the governments in South Asian countries. The aim is to anchor the present discussion of public health and the impact of TRIPs in the socio-cultural environment of this region.
(Rs.100/US\$25) ISBN 81-87222-83-2

9. Putting our Fears on the Table: Analyses of the Proposals on Investment and Competition Agreements at the WTO

“Let them put their fears on the table and that should guide the negotiations.” The UNCTAD Secretary General, Rubens Ricupero, made this comment just after the Doha ministerial meeting of the WTO held in November 2001.

He was referring to India’s stand at Doha on the ‘Singapore issues’ and arguing that it was pointless in just opposing the ‘new’ issues at the WTO without putting forward constructive arguments.

“Putting our Fears on the Table” is the title of a recently published report of the CUTS Centre for International Trade, Economics & Environment. It provides analyses of the proposals on investment and competition agreements at the WTO, especially in the areas taken up and/or proposed at Doha for possible future negotiations.

This volume is a product of comprehensive research and dialogue of leading international experts, practitioners and other stakeholders. It will really help developing countries to comprehend and deal with the issues in the WTO context. (Rs.300 for India/US\$25 for OECD Countries/US\$15 for other) ISBN 81-87222-84-0

10. Bridging the Differences: Analyses of Five Issues of the WTO Agenda

This book is a product of the project, EU-India Network on Trade and Development (EINTAD), launched about a year back at Brussels. CUTS and University of Sussex are the lead partners in this project, implemented with financial support from the European Commission (EC). The CUTS-Sussex University study has been jointly edited by Prof. L. Alan Winters of the University of Sussex and Pradeep S. Mehta, Secretary-General of CUTS, India.

The five issues discussed in the book are Investment, Competition Policy, Anti-dumping, Textiles & Clothing, and Movement of Natural Persons. Each of these papers has been co-authored by eminent researchers from Europe and India. (Rs.350/US\$50) ISBN 81-87222-92-1

11. Competitiveness of Service Sectors in South Asia: Role and Implications of GATS

This research report attempts to emphasise on the relevance of GATS for developing economies, particularly in South Asia. It also examines the potential gains from trade liberalisation in services, with a specific focus on hospital services, and raises legitimate concerns about increases in exports affecting adversely the domestic availability of such services. It highlights how the ongoing GATS negotiations can be used to generate a stronger liberalising momentum in the health sector.

(Rs.100/US\$25) ISBN 81-8257-000-X

DISCUSSION PAPERS

1. Existing Inequities in Trade – A Challenge to GATT

A much appreciated paper written by Pradeep S Mehta and presented at the GATT Symposium on Trade, Environment & Sustainable Development, Geneva, 10-11 June, 1994 which highlights the inconsistencies in the contentious debates around trade and environment.

(10pp #9406 Rs 30/US\$5)

2. Ratchetting Market Access

Bipul Chatterjee and Raghav Narsalay analyse the impact of the GATT Agreements on developing countries. The analyses takes stock of what has happened at the WTO until now, and flags issues for comments.

(#9810, Rs.100/US\$25)

3. Domestically Prohibited Goods, Trade in Toxic Waste and Technology Transfer: Issues and Developments

This study by CUTS Centre for International Trade, Economics & Environment attempts to highlight concerns about the industrialised countries exporting domestically prohibited goods (DPGs) and technologies to the developing countries that are not capable of disposing off these substances safely, and protecting their people from health and environmental hazards. *(ISBN 81-87222-40-9)*

MONOGRAPHS

1. Social Clause as an Element of the WTO Process

The central question is whether poor labour standards result in comparative advantage for a country or not. The document analyses the political economy of the debate on trade and labour standards.

(14pp #9804 Rs.15/US\$5)

2. Is Trade Liberalisation Sustainable Over Time?

Economic policy is not an easy area for either the laity or social activist to comprehend. To understand the process of reforms, Dr. Kalyan Raipuria, Adviser, Ministry of Commerce, Government of India, wrote a reader-friendly guide by using question-answer format. (29pp #9805 Rs.15/US\$5)

3. Impact of the Economic Reforms in India on the Poor

The question is whether benefits of the reforms are reaching the poor or not. This study aims to draw attention to this factor by taking into account the inter-state investment pattern, employment and income generation, the social and human development indicators, the state of specific poverty alleviation programmes as well as the impact on the poor in selected occupations where they are concentrated. (15pp #9806 Rs.15/US\$5)

4. Globalisation and India – Myths and Realities

This monograph is an attempt to examine the myths and realities so as to address some common fallacies about globalisation and raise peoples' awareness on the potential benefits globalisation has to offer. (40pp, #0105, Rs.30/US\$5)

5. ABC of the WTO

This monograph is about the World Trade Organisation (WTO) which has become the tool for globalisation. This monograph is an attempt to inform the layperson about the WTO in a simple question-answer format. It is the first in our series of monographs covering WTO-related issues and their implications for India. Its aim is to create an informed society through better public knowledge, and thus enhance transparency and accountability in the system of economic governance. (36pp, #0213, Rs.30/US\$5)

6. ABC of FDI

FDI — a term heard by many but understood by few. In the present times of liberalisation and integration of world economy, the phenomenon of Foreign Direct Investment or FDI is fast becoming a favourite jargon, though without much knowledge about it. That is why CUTS decided to come out with a handy, yet easy-to-afford monograph, dwelling upon the “hows” and “whys” of FDI. This monograph is third in the series of “Globalisation and India – Myths and Realities”, launched by CUTS in September 2001. “How is FDI defined?” “What does it constitute?” “Does it increase jobs, exports and economic growth?” Or, “Does it drive out domestic investment or enhance it?” are only some of the topics addressed to in a layman’s language in this monograph. (48pp, #0306, Rs.30/US\$5)

7. ABC of TRIPs

This booklet intends to explain in a simple language, the Trade-Related Intellectual Property Rights Agreement (TRIPs), which came along with the WTO in 1995. TRIPs deals with patents, copyrights, trademarks, GIs, etc. and continues to be one of the most controversial issues in the international trading system. The agreement makes the protection of IPRs a fundamental part of the WTO. This monograph gives a brief history of the agreement and addresses important issues such as life patenting, traditional knowledge and transfer of technology among others.

(38pp Rs. 50/\$10, #0407) ISBN 81-8257-026-3

8. WTO Agreement on Agriculture: Frequently Asked Questions

As a befitting reply to the overwhelming response to our earlier three monographs, we decided to come out with a monograph on *WTO Agreement on Agriculture* in a simple question and answer format. This is the fourth one in our series of monographs on *Globalisation and India – Myths and Realities*, started in September 2001.

This monograph of CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE) is meant to inform people on the basics of the WTO Agreement on Agriculture and its likely impact on India. (48pp, #0314, Rs.50/US\$10)

9. Globalisation, Economic Liberalisation and the Indian Informal Sector – A Roadmap for Advocacy

India had embarked upon the path of economic liberalisation in the early nineties in a major way. The process of economic liberalisation and the pursuit of market-driven economic policies are having a significant impact on the economic landscape of the country. The striking characteristic of this process has been a constant shift in the role of the state in economic activities. The role of the state is undergoing a paradigm shift from being a producer to a regulator and facilitator. A constant removal of restrictions on economic activities and fostering private participation is becoming the order of the day.

Keeping these issues in mind, CUTS, with the support of Oxfam GB in India, had undertaken a project on globalisation and the Indian informal sector. The selected sectors were non-timber forest products, handloom and handicraft. The rationale was based on the premise that globalisation and economic liberalisation can result in potential gains, even for the poor, but there is the need for safety measures as well. This is mainly because unhindered globalisation can lead to lopsided growth, where some sectors may prosper, leaving the vulnerable ones lagging behind. (48pp, #0401) ISBN 81-8257-017-4

GUIDES

1. Unpacking the GATT

This book provides an easy guide to the main aspects of the Uruguay Round agreements in a way that is understandable for non-trade experts, and also contains enough detail to make it a working document for academics and activists. (*US\$5, Rs.60*)

2. Consumer Agenda and the WTO—An Indian Viewpoint

Analyses of strategic and WTO-related issues under two broad heads: international agenda and domestic agenda. (*#9907*)

NEWSLETTER

Economiquity

A quarterly newsletter of the CUTS Centre for International Trade, Economics & Environment for private circulation among interested persons/networks. Contributions are welcome: *Rs.50/\$15 p.a.*

BRIEFING PAPERS

Our Briefing Papers inform the layperson and raise issues for further debate. These have been written by several persons, with comments from others. Re-publication, circulation etc. are encouraged for wider education. Contributions towards postage (*Rs.5/\$5*) are welcome.

1995

1. GATT, Patent Laws and Implications for India
2. Social Clause in the GATT - A Boon or Bane for India
3. Trade & Environment: the Inequitable Connection
4. Anti-dumping Measures under GATT and Indian Law
5. No Patents on Life Forms!

1996

1. The Freezing Effect - Lack of Coherence in the New World Trade Order
2. WTO: Beyond Singapore - The Need for Equity and Coherence

1997

1. The Uruguay Round, and Going Beyond Singapore
2. Non-tariff Barriers or Disguised Protectionism
3. Anti-dumping Under the GATT - The Need for Vigilance by Exporters
4. Subsidies & Countervailing Measures
5. Textiles & Clothing - Who Gains, Who Loses and Why?

6. Trade in Agriculture—Quest for Equality
7. Trade in Services—Cul de Sac or the Road Ahead!
8. TRIPs and Pharmaceuticals: Implications for India
9. Movement of Natural Persons Under GATS: Problems and Prospects

1998

1. TRIPs, Biotechnology and Global Competition
2. Tariff Escalation—A Tax on Sustainability
3. Trade Liberalisation, Market Access and Non-tariff Barriers
4. Trade, Labour, Global Competition and the Social Clause
5. Trade Liberalisation and Food Security

1999

1. The Linkages: Will it Escalate?
2. Dispute Settlement at WTO—From Politics to Legality?
3. TRIPs and Biodiversity
4. Overdue Reforms in European Agriculture—Implications for Southern Consumers
5. The Non-trade Concerns in the WTO Agreement on Agriculture
6. Negotiating History of the Uruguay Round
7. Professional Services under the GATS—Implication for the Accountancy Sector in India

2000

1. Implementation of the WTO Agreements: Coping with the Problems
2. Trade and Environment: Seattle and Beyond
3. Seattle and the Smaller Countries

2001

1. Human Rights and International Trade: Right Cause with Wrong Intentions
2. Framework for Fair Trade and Poverty Eradication
3. Implementation of the Uruguay Round Agreements: Need for a Frontloaded Agenda
4. Proactive Agenda for Trade and Poverty Reduction
5. *WTO Transparency and Accountability: The Need for Reforms*

2002

1. *Amicus Curiae* Brief: Should the WTO Remain Friendless?
2. Market Access: The Major Roadblocks
3. Foreign Direct Investment in India and South Africa: A Comparison of Performance and Policy
4. Regulating Corporate Behaviour

5. Negotiating the TRIPs Agreement: India's Experience and Some Domestic Policy Issues
6. Regulatory Reforms in the Converging Communications Sector
7. Market Access Implications of SPS and TBT: A Bangladesh Perspective
8. Multilateral Environmental Agreements, Trade and Development: Issues and Policy Options Concerning Compliance and Enforcement
9. Multilateral or Bilateral Investment Negotiations: Where can Developing Countries make Themselves Heard?

2003

1. How Mining Companies Influence the Environment
2. Labour Standards: Voluntary Self-regulation vs. Mandatory Legislative Schemes
3. Child Labour in South Asia: Are Trade Sanctions the Answer?
4. Competition Policy in South Asian Countries
5. India Must Stop Being Purely Defensive in WTO
6. IPRs, Access to Seed and Related Issues
7. TRIPs and Public Health: Ways Forward for South Asia

2004

1. Farm Agenda at the WTO: The 'Key' to Moving the Doha Round.
2. "TRIPs-Plus": Enhancing Right Holders' Protection, Eroding TRIPs' Flexibilities

For more details, visit our website at www.cuts-international.org.

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