Bcom Sem3
planning and economic development

Dr Piali Biswas
Dept of commerce,jcc

the rise of the East India Company syndrome.

INDIA AND WTO[8]

As stated in Chapter 34, WTO (World Trade Organisation) was set up in January 1995 after all the member nations of GATT signed the Draft Final Act prepared by the then Director General of GATT, Arthur Dunkel. As emphasized in that chapter, although it appears that the Final Act was ultimately approved and signed with the "consensus of all," the fact of the matter is that the entire negotiation process in the Uruguay Round was ruthlessly dominated by the developed countries (particularly the USA). Most of the developing countries agreed to give their consent to the agreement to remain *integrated* with the multilateral trading system, otherwise they could have been isolated from the mainstream representing 90 per cent of world trade. The main concern of the developing countries has been to 'minimize the damage.' Therefore, as correctly pointed out by Muchkund Dubey, the claims regarding the benefits that developing countries have got out of the negotiations are just an attempt to 'rationalise the inevitable.'[9] Let us now turn to a discussion of the impact of WTO on India's trade.

Scanned with CamScanner

Benefits Proclaimed for India

1. World Bank, OECD and the GATT Secretariat have estimated that the income effects of the implementation of the Uruguay Round package will add between 213 and 274 billion U.S. dollars annually to world income. The GATT Secretariat's estimate of the overall trade impact is that the level of merchandise trade in goods will be higher by 745 billion U.S. dollars in the year 2005, than it would otherwise had been. The GATT Secretariat further projects that the largest increases will be in the areas of clothing (60 per cent), agriculture, forestry and fishery products (20 per cent) and processed food and beverages (19 per cent). According to the Government of India, since our country's existing and potential export competitiveness lies in these product groups, it is logical to believe that India will obtain large gains in these sectors. Assuming that India's market share in world exports improves from 0.5 per cent to 1 per cent, and that we are able to take advantage of the opportunities thus created, the government believes that the trade gains may conservatively be placed at 2.7 billion U.S.dollars extra exports per year. A more generous estimate will range from 3.5 to 7 billion U.S.dollars per year.[10]

However, Muchkund Dubey has argued that the above estimates suffer from several infirmities. *Firstly*, the GATT estimate of increase in world trade is itself of dubious value. *Secondly*, in the face of a trend till recently of a decline in India's share of the world exports, it is unrealistic to assume that this share will go up from 0.5 per cent to 1 per cent. *Thirdly*, increase in world trade depends not only on trade liberalization but a number of other factors like quality consciousness, proper infrastructure for export production, assured supply of export products, level of technology, etc. and India suffers from a relative disadvantage *vis-a-vis* the developed countries in most of these factors. Not only this, indulging in projection in a world full of economic and political uncertainties is a risky game, more so if the intention is "to mask reality and indulge in half truths."[11]

2. The phasing out of the MFA (Multi-Fibre Arrangement) by 2005 will benefit India as the exports of textiles and clothings will increase. While the developed countries had demanded a 15 year period, the developing countries (including India) had insisted on a 10 year period. Acceptance of the developing countries' demand in the Uruguay Round was enthusiastically received in these countries. However, the catch here is that the phasing out schedule favoured the developed countries as a major proportion of quota regime to the extent of 49 per cent was to be removed only during the tenth year, i.e. by 2005. Thus the Uruguay Round did not provide an immediate market access for the Third World textile exports. By the time the MFA was completely phased out in 10 years, the developed countries could gear themselves to effect improvement in quality, efficiency and competitiveness.

Moreover, as pointed out by Bibek Debroy, when quotas are removed, they will be eliminated not only for India, but for everyone else. There will therefore be considerable competition from China, Vietnam, Pakistan, Bangladesh, Indonesia and Malaysia. The question thus basically boils down to evaluating the competitiveness of India's garment exports. In this respect, India does not fare well *vis-a-vis* its competitors. There are a number of supply side constraints like higher costs and prices, poor quality and unrealiability of the end-product.[12]

3. The third benefit that India expects relates to the improved prospects for agricultural exports as a result of likely increase in the world prices of agricultural products due to reduction in domestic subsidies and barriers to trade. While on the one hand earnings from agricultural exports are likely to increase, on the other hand India has ensured that all major programmes for the development of agriculture will be exempted from the disciplines in the agricultural Agreement. Thus, the operation of the public distribution system will not be affected by the provisions of the Agreement; agricultural

Scanned with CamScanner

subsidies granted by developing countries need not be withdrawn till such time they remain within the prescribed limits specified in the Agreement; and protection necessary for developing the agricultural sector in the underdeveloped countries might be continued. In fact, as stated above, India hopes that the reduction of subsidies in the USA and the European Community will enable it to increase its earnings from agricultural exports.

4. The Uruguay Round Agreement has strengthened multilateral rules and disciplines. The most important of these relate to anti-dumping, subsidies and countervailing measures, safeguards and disputes settlement. This is likely to ensure greater security and predictability of the international trading system and thus create a more favourable environment for India in the new world economic order.

Disadvantages to India

The most important advantage of the new world economic order claimed by its supporters is that it will increase the volume of trade substantially and as a result, India's export earnings will expand considerably. However, as stated above, the estimates of quantitative gains by India are suspect and the projections may well prove wrong. In addition, Dubey argues that there are meagre prospects of increase in agricultural exports from India due to the very limited extent of agricultural liberalisation. The gains expected by the Government of India on account of tariff reductions on goods may also not materialise as the number of goods of export interest to India is very small. Not only this, "there will be erosion of the preferences enjoyed by India and India will most probably be graduated out of the generalised system of preferences (GSP)."[13]

The most serious disadvantages to India are likely to flow from the Agreements pertaining to the TRIPs, TRIMs and services, and it is to a discussion of these disadvantages that we now turn.

1. The first point to be noted in this context is that the TRIPs Agreement goes against the Patent Act of India, 1970 in almost all important areas as would be clear from the discussion below: (*i*) Under the Indian Patents Act only *process patents* were granted in food, chemicals and medicines. TRIPs Agreement provides for granting *product patents* also in all these areas; (*ii*) Under the TRIPs Agreement methods of agriculture and horticulture and bio-technological process (including living organisms like plants and animals) are patentable, there cannot be any exceptions as under the Indian Act; (*iii*) TRIPs Agreement provides that the general term of a patent shall be 20 years. The Indian Patents Act provided for a general term of 14 years for both product as well as process patents; (*iv*) In India, there are reasonable and effective provisions for the compulsory licensing of patents and also for the revocation of patents in public interest. Under TRIPs Agreement, there are no such provisions; (*v*) Under TRIPs no ceiling can be placed on royalty demanded on patents like in the Indian Patents Act; (*vi*) Importation will be treated as working of a patent in the TRIPs Agreement, contrary to the patent philosophy in India; and (*vii*) TRIPs also reverses the burden of proof. Under the Indian legal system, the patentee has to establish a prima facie case that his patent has been infringed. However, under TRIPs the patentee will just have to accuse a person or a company of patent infringement and the person or company will have to prove that he did not infringe the patent.[14]

2. The Patent Act of India, 1970 granted only process patents to drugs and medicines. This meant that an Indian company was only required to develop and patent its own process for producing a drug, it was not required to invent the drug itself. The company could then legally manufacture this drug, even

13. Muchkund Dubey, *op.cit.*, pp. 12-13. Generalised System of Preferences (GSP) was introduced in 1971 under the aegies of the United Nations Conference on Trade and Development (UNCTAD). The aim of GSP was to help the developing countries through trade rather than aid. It sought to accomplish this by providing access to the markets of the developed countries for the products emanating from developing countries. The system provided either duty free entry to the products of the developing countries in the markets of the developed countries or entry at concessional rates of duties.

14. Suman Sahai, "Indian Patents Act and TRIPs," *Economic and Political Weekly*, July 17-23,1993, pp. 1495-7.

Scanned with CamScanner

if it was protected under a product patent abroad. Finally, Indian drug companies were allowed to obtain what are called 'licences of right' which allowed them to produce, regardless of the process used, inventions (again, usually pharmaceuticals) patented abroad.

The effects of these laws have been positive for India. Indian drug prices are considered to be among the lowest in the world,[15] and this is not at the expense of quality. In addition, the indigenous pharmaceutical industry has grown rapidly after the passage of the 1970 Act. Not only this, the market share of Indian drug companies in the local drug market has grown from 30 per cent in 1970 to 61 per cent in 1993. Today, India is, in fact, an exporter of drugs to other parts of Asia, Europe, and even USA.

All this will change in the new order. The granting of product patents will effectively place the reins of the Indian pharmaceutical industry in the hands of MNCs who will exploit this advantage to the full by hiking the prices of drugs and medicines considerably. Once product patents are introduced, generics cannot come to the market until after the expiry of the patent. Thus the introduction of product patents in India is certainly going to affect sections of the poor who will not have the generic option open. In addition, as more and more potential medicines of MNCs are prescribed by the doctors, many Indian drug companies will be forced to shut down. Drug company profits will start flowing overseas more quickly and skilled labour may face unemployment as production moves overseas.

3. The extension of intellectual property rights to agriculture (via the patenting of plant varieties) has serious consequences for India. In India, plant breeding and seed production are largely in the public domain. Plant breeding is undertaken by agricultural universities and units of ICAR (Indian Council of Agricultural Research), whereas seed multiplication is in the hands of the National and State Seed Corporations. This is due to the reason that India being a poor country where agriculture is the livelihood of the majority of the population, the government must bear the responsibility of ensuring the supply of adequate quantities of seeds at reasonable prices to the farmers. The aim is not to maximise profit as would be the case in the private sector, but to sustain the livelihood of the majority of the population on the one hand, and to achieve self sufficiency in foodgrains on the other hand. Patenting of plant varieties will transfer all the gains to the multinational companies. Almost all new varieties will belong to MNCs simply by virtue of their massive financial resources. As noted by Suman Sahai, "Research is unfortunately as much a matter of talent as of money. More money means more resources to invest in breeding and it means greater speed in putting varieties on the market."[16] In terms of financial resources, there is absolutely no comparison between MNCs and Indian companies. In fact, the research budgets alone of some of these MNCs are more than the budget of the Indian Union. If Indian research institutions are unable to compete financially and are denied access to patented genetic material (as TRIPs Agreement is designed to ensure), the Indian scientists will find it extremely difficult to breed new varieties. This will gradually become the sole privilege of the large foreign companies. As a result, the control over our genetic resources will pass into the hands of MNCs who will not find it difficult to control the seed production in this country. Since control of seed production implies control over food supply, the entire Indian food security system will be jeopardised and thrown out of gear.

As stated in Chapter 34, patenting under TRIPs has been extended not only to plant varieties but to the large area of micro organisms as well. Micro organisms refer to very small forms of life. In this category are included such living creatures as bacteria, virus, fungus, algae (the green scum that grows near water), small plants and animals, and even genes. There are vital economic sectors that are linked to micro organisms, the most important being agriculture, pharmaceuticals and industrial biotechnology. *Patents in*

Scanned with CamScanner

all the three fields (agriculture, pharmaceuticals and industrial biotechnology) linked to micro organisms are either already with the multinational companies or are likely to be acquired at a much faster rate *vis-a-vis* the developing countries. Thus multinational companies belonging to the developed countries are likely to dominate the 'global' economy that will emerge in the coming years.

5. As far as TRIMs are concerned, the Agreement in their respect is also highly weighted in favour of the developed countries. As stated in Chapter 34, the TRIMs Agreement is concerned mainly with provisions for elimination of trade related investment measures which are designed to protect the interests of foreign investors in the developing countries. No rules have been framed for controlling the restrictive business practices of these foreign investors in the developing countries.

6. The Agreement on services in the Uruguay Round is also likely to benefit the developed countries much more than the developing countries. This is due to the reason that services like banking, insurance, telecommunications and shipping are in a much more developed state in the former as compared with the latter. As far as India is concerned, the services sector is not as underdeveloped as in many other developing countries. Yet, in terms of the new Agreement, it will be required to denationalise insurance and banking. Thus the banking sector may not be able to play a positive social role as it has been playing since 1969 when 14 major banks were nationalised (the positive social role is in the form of more advances to priority sectors and opening up of branches in backward regions). Foreign firms will now be free to expand their network in the Indian services sector. They will also be free to remit resources to their parent country in the form of profits, interest, royalties etc. All this will involve a foreign exchange burden on India. As far as Indian firms are concerned, they will find it difficult to compete with the firms supplying services in the developed countries. Thus it will not be an easy task for them to penetrate the services sector in developed countries.

Scanned with CamScanner