

THE AGENDA FOR SEATTLE

Suman Sahai

The Indian negotiating team is preparing to go to Seattle in the next few days to participate in the Third Ministerial Conference of the WTO beginning on 30 November. They should go chastened by the specter of their abysmal performance at the Second Ministerial Conference held in Singapore in 1996. The Indian team at that time failed to secure any gains in any sector of importance to the country. Instead it gave away ground and made concessions in sectors adverse to our interests. The fiasco of 1996 should serve as a warning and invigorate the team to negotiate aggressively in the country's interest.

One of the subjects due in Seattle is whether a new WTO round should be opened. Christened the "Millenium Round", the move is being proposed by the developed countries to include issues that are of interest to them like elimination or substantial reduction of tariffs on industrial products; liberalisation of capital and technology-intensive services; stronger protection of intellectual property rights; investment rules for the liberalisation of foreign investment regimes and adoption of labour and environmental standards. India should oppose the enlargement of the WTO agenda since no quid-pro-quo or trade-off is visible for our accepting new commitments and obligations being pushed by the developed countries.

India should also oppose a new round for other reasons. The first is that the WTO has become a body of continuing negotiations unlike GATT which opened new rounds. With regular ministerial meetings in the WTO every two years introducing new subjects, now there is no need for starting new rounds. So far, developed countries have brought in new items of interest to them, ignoring the interests of developing countries. In fact developing countries have not yet received their share of the Uruguay Round. Until progress is made on subjects important to us, like enhancement of market access for our exports, reduction of non-tariff barriers, movement of natural persons and Trade Related Intellectual Property Rights (TRIPS) , India should keep opposing the starting of a new WTO round.

In Seattle India should ensure that labour and environmental issues do not get incorporated in the agenda of the WTO directly or indirectly. These are non-trade issues which are already being handled at other places. The International Labour Organisation (ILO) is handling labour issues to general satisfaction and there are several forums where environment is being handled. What is more, the US, prime mover of the linkage between trade and environment and trade and labour is the sole country which refuses to ratify the Convention on Biodiversity (CBD). The CBD along with the Climate Change Treaty are the two most significant environmental treaties today.

Of the subjects on the agenda in Seattle, the two most important from the Indian view point are Agriculture and TRIPs. With respect to Agriculture, the Indian position should be aggressive about keeping social concerns like food security in the forefront. It is important that India try to achieve a consensus with other developing countries on the issue of food security being the single most important aspect of the negotiations on agriculture. Developing countries must oppose the position that Agriculture is "multifunctional" and that food security is only one among many other functions. This is the position being taken by the US, Japan and other developed countries.

In the Agriculture negotiations, specifically, India should demand that food production for domestic consumption be kept out of the purview of the Agreement on Agriculture and that conditions/ support extended to small, marginal and household farmers must also be excluded from the negotiations. Developing countries must reiterate the demand that the support and subsidy levels in developed countries should be progressively reduced. This is not happening with the result that their markets remain inaccessible for us. It would be a good move for India to be aggressive and threaten retaliation if no concessions are made to developing country interests. If the developed countries resort to increased support and subsidy and refuse to lower the rates as they have undertaken to do, developing countries should counter the move by increasing their own tariffs.

In the negotiations on TRIPs , India should resolutely oppose any move to circumscribe the definition or interpretation of the sui generis mode of protecting new plant varieties. It should insist on retaining the flexibility of the original sui generis as it was at the conclusion of the Uruguay Round under which countries were free to draft their own kind of sui generis legislation which would give Plant Breeders Rights (PBR) to the breeders of new plant varieties . India has drafted a Plant Variety Protection and Farmers Rights Act, giving rights to breeders but also to farmers. This was possible because of the flexibility in interpreting sui generis.

The US which has always aimed for a tightening of TRIPs has been pushing the agenda for Seattle. At the last TRIPs Council meeting held in October, the US attempted to circumscribe the freedom of the sui generis option and formally took the position that valid sui generis legislation for the purpose of TRIPs would have to be based on UPOV. The Union for the Protection of New Plant Varieties (UPOV) is a European/ American forum which regulates Plant Breeders Rights in the developed countries. It has no concept of Farmers Rights and is geared to an agriculture system completely different to ours, with no concerns about livelihoods or food security. It is certainly not a suitable model for developing countries.

Gene Campaign which has consistently opposed India joining UPOV had along with the Centre for Environment and Development, prepared an alternative to UPOV called the Convention of Farmers and Breeders (CoFaB). This is being discussed by developing countries as an alternative to UPOV. The UNDP Human Development Report 1999 has cited CoFaB as a “strong and coordinated international proposal” which “offers developing countries an alternative to following European legislation, by focussing legislation on needs to protect farmers’ rights to save and reuse seed and to fulfill the food and nutritional security goals of their people”. Strengthened by this backing for CoFaB, India should oppose the US move and refuse to accept UPOV as a model for its sui generis legislation. It should propose a more developing country oriented platform like CoFaB as an alternative and mobilise the support of other developing countries for rejecting UPOV as the model for sui generis protection.

With respect to the substantive provisions of TRIPs , there are some aspects which must be kept in mind during the negotiations. One, the list of exceptions to patentability in Article 27.3(b) must include the list of essential drugs listed by the WHO and also drugs and products derived from the Indian Systems of Medicine. This exception has been made in the recent Patent Amendment Act introducing Exclusive Marketing Rights (EMR) for drugs and agro-chemicals and should be retained in all further versions of TRIPs induced legislation.

In the sui generis legislation, the Farmers Rights must include the right to save exchange and sell non-branded seed. The large seed industry, prime mover of the UPOV based sui generis concept is a stiff opponent of the farmer’s right to sell seed in any form. The farmers right to sell non-branded seed essentially curtails the extent of monopoly the industry can exercise on seed production and has the potential to reduce their sales since the farmers will not be so dependent.

Finally, while amending Article 27.3(b) with respect to the knowledge of indigenous and local communities, we need to put in that for us indigenous knowledge includes oral knowledge. This is important because US law recognises only written information when admitting proof of prior art in challenges to patents. Having seen the American propensity to help themselves to things that belong to other people (the never ending list of patents on everything from Neem and Turmeric to Basmati), we should be prepared to challenge American patents on Indian products. Very often, knowledge with communities is only recorded in the tradition that communities carry and pass on orally through generations.

The Seattle Conference will define the future negotiating agenda of the WTO and therefore it is crucial that the Indian negotiators hold their ground. It needs to be remembered that whatever we negotiate now will be with us for several years and compliance will be enforced by the Dispute Settlement Body of the WTO. The WTO, propelled by the western corporate sector is ferocious about opening markets and expanding the nature and scope of the trade agenda, even including non-trade issues in it. India will have to be resolute about resisting this pressure and getting as much as it can from the conference.