

GLOBALIZATION: RHETORIC OR REALITY? A CRITICAL STUDY

Dr. Md. Rahmat Ullah

1. Introduction

The word "Globalization" is being used in multifarious ways in our modern life. It is a process by which countries can be integrated into each other's frontiers with their own interest. It may be social, cultural, economical and also political. But today the debate is going especially on the concept of economic globalization; it a long process of development of the participants where every one should exercise their equal rights and fulfill their obligations and also have the opportunity to have legal protection. Today the world is divided into different categories of economic standards- developed, developing and least developed. Under the present phenomena it seems to be most complicated in its understanding.

The fact that in the context of "laissez- faire" economy of the developed states the developing countries cannot compete them with their "most favored nation treatment" economy. There are problems for developing countries to ensure their position in the economic globalization. As time passes, the nexus of globalization at all level is being, enriched by "common heritage" notion. Economic globalization will be meaningful if "most favored nation treatment" clause is put forward along with "laissez- faire" notion of the developed states. The purpose of the paper is to investigate and specify problems of prescribing a sound and equitable economic globalization in the phase of "Laissez-faire" and "most favored nation treatment" economics of the developed and developing countries. Finally, some suggestion will be brought forth in the study toward promotion of "economic globalization" as a

"common heritage" of mankind.

2. Meaning and Definition of Globalization:

Globalization may be defines as 'the process by which a given local condition or entity succeeds in expanding its reach over the globe and by doing so, develops the capacity to designate its rival social condition or entity as local under its impact'¹ Globalization, it is said, is not a function of "a discrete set of factors but of 'chaotic' currents of change".² It process is so dramatic and bewildering in its impact that 'every thing fixed and frozen is 'swept away' and all that is solid melts into air.³ It introduces unending unpredictability and uncertainty in the society.

While globalization is a broader concept, the current trend of globalization is too narrow, limited to economic globalization and accompanying cultural globalization. In this narrow sense globalization means the 'free flow of capital and the removal of trade barriers between states as well as to the accompanying cultural transformation and exchanges.⁴ While capitalist economy has always been global and for most Western history capital has flowed freely⁵ the high rate at which the capital is pouring in today is unprecedented in the history of mankind. Most surprising is the fact that it is 'no longer the real economy driving the financial markets, but the financial markets driving the real economy.⁶ The large scale flow of commodities, capital, technology and labor, all facilitated through developments in the international finance, increasing liberalization of markets and the revolution of communication technology, leading to the integration of world market and international division of labor

1 Santos, 'Oppositional Post modernization and Globalizations', L & Society enquiry, 23 (1998), 121,135.

2 See generally, David Harvey, the condition of post Modernity: An enquiry into the Origins of Cultural Change (1998), 44

3 Josef Joff citing, the communist Manifesto, Reffered to in Barbara Stark, 'Women and Globalization: The Failure and Postmodern Possibilities of International Law, Vanderbilt Journal of Transnational Law, 33 (2000), 503 at 510,fn.23

4 Stark, n. 7,515

5 See, Paul Hirst and Graham Thompson, Globalization in Question (1996).

6 Observation of a fund manager in Hong Kong-cited in Stark, n. 7. 511

distinguishes the free flow of capital yesteryears from what has been going on in the name of globalization for a decade.

Globalization is a protean process that may result in different outcomes and rhetorical excesses under different situations. It refers to a process of integration and/or assimilation that fosters greater interdependence and close cooperation among international actors within the world community in regulating their political, economic, social and cultural affairs. It has caused the world to steadily become a smaller place, with its effects felt in nearly every national society. The onslaught of this process in the economic sphere has sought to internationalize economic forces, integrate production process and expand the world market through liberalization, thereby, laying the foundation of globalization in international trade in goods and services, investment and finance. The main function of economic globalization is to integrate national economics into the world economy through the organization and expansion of economic activities and openness across national frontiers. The constant advancement in technology and information superhighway has but added to this globalization foregoing ahead faster.

The liberalization of trade in industrial goods, as opposed to agricultural commodities, raw materials and primary products has boosted the earnings of industrialized countries and skilled workers at the expense of the commodities producing third world countries and unskilled workers. The mobility of capital has augmented profits for capital owners, but the immobility of labours has suppressed the wages and bargaining power of labours. The unfettered control of MNCs over market forces in absence of any international regulatory Mechanism and government intervention has rendered markets more monopolistic than competitive. The whole process may be seen

7 Michel Chossudovsky, "Global Impoverishment and the IMF- World Bank Economic Medicine" at <http://www.corpwatch.org/trac/feature/india/globalization/index.html>

as "a form of market colonialism ... [which] subordinates people and governments through the seemingly neutral interplay of market forces."⁷

The foregoing critical analysis is not intended to undermine the process of globalization, but to stress the point that its benefits and costs are uneven and limited. It has created new opportunities and benefits for some countries, but new risks and threat for others, thereby creating its winners, mostly in the North and losers, mostly in the South. The winners are those who are technologically advanced and industrialized, having surplus capital to export and lend, strong physical and human infrastructures flexible enough to withstand the profound changes brought about by economic globalization. The losers are the capital borrowers and technology importers, possessing rudimentary physical and human infrastructures too insufficient to cope with the momentum of economic globalization. The former has not only increased their surplus capital's rate of return by availing the expanded investment opportunities in the latter, but also strengthened their capital's bargaining power over third world labours through threats of capital flight.

3. Globalization and General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO):

Under a long process of multilateral trade negotiations being held since the establishment GATT in 1947, the Uruguay Round has given birth to the World Trade Organization (WTO), with aim to enhance the world trading environment by providing more detailed and clearer rules and stronger institutional structure. These rules are following some basic principles for access of trade market, which are eventually important for the achievement of globalization. These are Most favored Nation Treatment (MFN), Non-discrimination, reduction of tariffs and non-tariff barriers etc.

The WTO includes itself four broad areas of intervention under

its scope (a) Market Access- tariff and non-tariff barriers; (b) Sectors- textiles, clothing, agriculture, natural resource -based products, tropical products; (c) GATT System- anti-dumping, subsidies and countervailing measures, dispute settlement mechanism, safeguards, functioning of GATT system, Multilateral trade negotiations arrangements and agreements and (d) New issues -Trade related investment measures (TRIMs), Trade related intellectual property rights (TRIPs), services. Besides these compulsory package programmes there are four plurilateral agreements within the WTO, which are optional in nature for the participants like agreement on government procurement, agreement on trade in civil aircraft, international dairy agreement and international bovine meat agreement.

The total arrangements of the WTO are package programme, which means either accept full or be outside. At the same time this programme gives time limitations to the participants within what they must implement their obligations taken by their membership in WTO. But it did not go into the capabilities of the participants whether it is in their capabilities to implement or not. If not, then what measures should be provided? It must be kept in mind that the active participation of all parties could achieve the globalization in fact. It may be presumed that the time for implementation should be extended under certain circumstances and conditions to the participants who could not implement due to their obvious domestic reasons.

Today, after six years of its enforcement, most of the member including developing and the least developed countries are frustrated with their implementation progress and facing lots to their further implementation. The basic reasons behind these are their weak socio economic infrastructure, financial incapability, lack of trade knowledge and skillness on negotiations and diplomacy, short of technology etc. On the other hand, the WTO multilateral trading system does not

necessarily offer to these countries what they deserve but only what they are capable to negotiate and bargain for. There is no substitute for strong actions of a state to sustain its comparative advantage and competitive edge in international trade.

Economic globalization promises prosperity only to those who join the process and indeed some states have gained substantially from it. There are certain national economic factors and forces that are indispensable to derive gains from economic globalization. The overwhelming majority of the third world states lack these economic factors and forces. As a result, economic globalization has not been to the equal benefit of them all and has created obstacles for them affording unequal, yet limited, access to the world economy. Economic interdependence created by economic globalization is therefore asymmetrical. The growing trend of deepening interdependence among the major industrialized countries is not taking place in third world economies, which shows a considerable degree of dependence on the former.

Economic globalization is perhaps the neo-liberal version of the liberal free-market economy patronized by few industrialized powers, particularly the US, who emerged as dominant economic powers following the Second World War. It involves the global adoption of market liberalism as the dominant economic model. This explains why the major beneficiaries of economic globalization are the US, Europe and Japan. Through the creation of a peripheral third world market, culturally specific liberal economic theories were engineered to intellectually justify their competitive advantage necessary for the post-war economic expansion of the US and the economic recovery of Europe. The lure of profit maximization and the threat of competition in the market propelled the idea, not by an epistemological understanding of world economic conditions. The marginalized economic plight of the third world was not in the minds of post-war economic policy-makers, who

dominated the Bretton Woods Conference in 1944. Of course, it may be mentioned that during the designing of the post war economic policy most of the third world countries were still colonized and their markets were under strict control of the colonial rulers. Today when these countries are independent the demand of trade liberalization and globalization has raised and pressurized. Subsequently, some agencies like World Bank, International Monetary Fund, Asian Development Bank etc. are being used to achieve this goal of the globalization beneficiaries.

Economic globalization is the mature, if not the ultimate, life cycle of a world market free from economic frontiers. The emergence and constant progression of hightech communication and information super-highway has pushed aside geographical barriers. This has strengthened the position of multinational corporations (MNCs), which have restructured themselves, through mergers and acquisitions, to consolidate their grip on the market. The radically altered balance or power in the post-cold war era has resulted in the triumph of capitalism and the creation of a hegemonic unipolar world dominated by the sole superpower, both unequivocally patronize economic globalization. The cumulative effect of all these events has created a fertile ground for economic globalization to advance relentlessly. This international economic environment has rendered the space for unilateral and autonomous economic development exceedingly difficult for any country, let alone third world economics, which had to fall back unwittingly on the process of economic globalization.

4. The WTO Multilateral Trading Regime and its implication on the third world countries;

Today, the WTO community consists of 144 members where three-fourths members are from third world. The WTO

arrangement is portrayed for economic prosperity to all on an equal basis. To materialize its target the Most Favoured Nation (MFN) and national treatments have become the governing principles of its activities. Moreover, in the Marrakesh Ministerial Conference in 1994, in Singapore 1996, in Geneva 1998, and in Brussels the developed countries had made a number of commitments in recognition of the marginalized economic plight of LDCs, warranting special and differential provisions for them in various WTO agreements in accordance with their requirements to participate in the multilateral trading system. The WTO Action Plan also aims at improving the capacity of LDCs to respond to the challenges and opportunities offered by economic globalization through an integrated framework for trade related technical assistance and greater market access.⁸ But still today, these commitments have not been fulfilled by the developed countries. Even the developed countries are not always observing the WTO principles in relation with the third world countries. Building relationship in between the developed and developing countries always depend upon the strength (specially economic) of their developed country. As a result, the maximum WTO member countries are not able to fulfill their obligations* taken from WTO agreements and are bound to negotiate in bilateral way to have those committed facilities for their further intergation into the WTO system.⁹ On the other hand, meaning of the principle of MFN has lost almost as because the international transactions between the first and the third world countries are not built on a fair and frequent basis. As International trade as a means of economic progress of third world countries have never in the minds of the free and fair trading policy makers. The policy makers i.e. the developed partners never realize that,

8 See: Final Act of the Uruguay Round, Marrakesh, 15 April, 1994, WTO Ministerial Conference in Singapore, Geneva, III UN Conference on Least Developed Countries in Brussels July '01.

9 See: LDC Trade Minister's Meeting Zanzibar, Tanzania, 22-24 July 2001 and 4th WTO Ministerial Conference at Doha 9-14 November '01.

in an international trading community with unequal partners like the third world countries, treating unequal equally itself constitutes an act of discrimination and unfair competition. This has precisely happened and the regime has made a piece-meal effort through the Generalised System of Preferences (GSP) to address the problem.

Under the Generalized System of Preference scheme developing countries (known as preference - receiving or beneficiaries countries) receive preferential treatment from developed countries (know as preference giving or donor countries). The donor countries voluntarily grant reduced (or no duty) tariff rates on certain (eligible) products when these are imported from the GSP- recipient countries. Donor countries allow such preferential treatment without any reciprocal obligation from the recipient countries. There are several GSP schemes offered by 17 countries of Europe, America, Australia in relation to the imports from the third world countries. These GSP schemes are differing from each other, which might be considered against the MFN treatment principle.

The GSP is a discretionary and adhoc- system of tariff concessions granted to the products of third world countries by developed countries, which dictate its terms time-to-time depending on the requirement of their internal market. It is not well targeted. The newly industrialized developing countries receive its lion's share. LDCs lack the necessary infrastructure and, expertise to take its full advantage. The GSP has exacerbated the bargaining power of major trading partners, which have been creating pyramid or preferences and discriminatory selecting their beneficiaries largely on the basis

10 F Schoneveld, "The EEC and Free Trade Agreements: Stretching the Limits of GATT Exception to Non Discriminatory Trade" (1992) 26 *J World Trade*, 59; J Preusse, "Regional Integration in the Nineties: Stimulation or Threat to Multilateral Trading System" (1994) 28 *J World Trade*, 154-58; Islam, op cit, 165-66; J Chen, "Going Bananas: How the WTO can halt the Split in the Global Banana Trade Dispute"(1995) 63 *Fordham L. Rev.* 1283.

of political and strategic considerations.¹⁰ It is a permissible bargaining lever that excludes or threatens to exclude certain third world countries from preferential access to markets. The rule that GSP is voluntary for developed countries and cannot be claimed by the third world countries as matter of right is a clear indication yet of its self benefiting nature, which still continues unabated.

Although it was declared that the GSP scheme will enhance price competitiveness of developing country exporters to access in the market of the donor countries but in terms of reality it seems to be incomplete in its coverage and partial in its operation, militating heavily against the trading interests of third world countries as exporters of agricultural products and raw materials. Today it is clear that the GSP regime using as an instrument of control over the beneficiary countries i.e. on the third world countries. The GSP donor can change the terms of GSP scheme as per its choice and interest by unilateral way as its domestic consideration, not as the matter of their commitments towards the WTO community. In fact it is a discriminated measure to the third world countries products and also bar access into their market.

The WTO Agreement on Agriculture has for the first time addressed the issue of agricultural trade liberalization in a more than perfunctory manner. It has the potential of providing advantages to third world countries through greater market access and reduced domestic support and export subsidy commitments. They are granted an extended, ten yaers, period for implementation of the Agreement. These preferential treatments however reflect the asymmetry of bargaining powers between developed and third world countries. Whether or not the modalities of various concessions and exemptions worked in the Agreement are beneficial to third world countries was

11 J Atkinson, "GATT: What do the poor get?" Background paper no 5 of the Community Aid Abroad, Australia, September, 1994; D Clark, "Are the poor Developing Countries the targets of US Protectionist Actions?" (October 1998) *Eco Dev & Cultural change* 193.

neither raised nor addressed. Third world countries will be obliged to perform their obligations under the Agreement from 1st January 2005 regardless of their economic condition, improved or worsened. Most Food importing LDCs will have to pay more for their food imports.¹¹ On the other hand, the developed countries are very much reluctant to fulfill their obligations taken from the WTO Agreement on Agriculture especially, in relation to reduction of subsidies in agriculture. It is to be mentioned that in the 4th Ministerial Conference at Doha it has been declared that modalities for further commitments, including provisions for special and differential treatment shall be established no later than 31 March 2003¹² when only 2 years shall remain to implement the obligation on the agreement.

The WTO Agreement on TRIPs places the burden of implementation on third world countries but the benefits remain with developed countries. It provides mandatory protection to TRIPs at a level equivalent to western standards. Its provisions on the transfer of technology from developed to third world countries are only voluntary guidelines. The latter cannot gain their access to the former's technology as a matter of right. The GSP is inapplicable in TRIPs. Third world countries have received only an extended time frame for compliance, upon the expiry of which they must perform their TRIPs Obligations with no special or favourable treatment. As a matter of fact, the third world countries shall not be benefited rather than taking over burden from this agreement. Nevertheless, it a matter of hope that in the 4th Ministerial declaration a special consideration has given to the public health related TRIPs and also expressed an intention to obtain another declaration on this regard.

Trade liberalization in services received priority in the Uruguay round and an agreement was concluded on opening up the

12 See: Ministerial Declaration at Doha (4th WTO Ministerial Conference held at Doha November 9-14'01).

service sector of third world economies. General Agreement on Trade in Services (GATS) permits differential and presumably favourable, treatment and minimum commitments for LDCs in implementing GATS obligations (art-IV). But GATS deals only with skilled, semi skilled and professional services, rather than labour services in general. The cross border movement of natural persons (semi skilled and ordinary labour) from LDCs to developed countries is subject to many conditions and resections. Although the labour sector is an integral part of the production and services but this sector was totally ignored by the WTO Agreement on Services and considers that this sector is to be maintained by the ILO codes. Moreover, the third world countries are not in that position to exercise the special and differential facilities, as they are limited with their socio-economic infrastructure. In the Ministerial Declaration at Doha it was decided that within¹³ 2002 the participants shall submit initial requests for specific commitments and initial offer shall be given by 2003.

5. Bangladesh and GATT/WTO: Cooperation and Reality

Though the General Agreement on tariffs and trade was reached and put into force since 1947 but Bangladesh joined this agreement after its independence in December 1972. For acceding to this agreement Bangladesh did not face any difficulty nor had to fulfill any condition thanks to its membership in the Commonwealth of Nations as Great Britain recommended Bangladesh to this treaty. Nevertheless, the matter of accession to any international organization like GATT was very liberal on accession for the newly independent countries. After the establishment of the WTO Bangladesh has become its member automatically as per agreement establishing the WTO.¹⁴ During the existence of the GATT Bangladesh did

13 See: Service sector of the Ministerial Declaration at Doha (4th WTO Ministerial Conference held at Doha November 9-14/01).

14 See article XI (1) of the Agreement establishing the World Trade Organization.

not face any difficulty as the GATT clauses did not make any pressure which seemed to be more harder for the under developing countries like Bangladesh. As we know that WTO package programme requires its full implementation within a specific period of time. It has not considered the potentiality and different level of development of its members. It would be our great interest to see how Bangladesh implements the WTO programme and integrate herself into globalization, if not then what measures would be taken against Bangladesh by WTO.

Bangladesh is an agricultural country where most of the population is engaged directly or indirectly with this sector to earn their livelihood. Bangladesh is a country with about 113 mln. Population, scant natural resources, poor climatic conditions, regional crisis, internal political instability and low technical development etc. As a result, Bangladesh can't maintain quality standard in production and also fulfill internal demand of the country. It is one of the poorest countries in the world.

However, some of the provisions of GATT and WTO are directed to protect the interests of the under developing countries. Part IV of the GATT, which was added to the GATT agreement in 1965¹⁵ may be an example to this. According to this part, the developed countries are not looking for same kind of trade liberalization as they do in their trade relation with the under developing countries. Though, all it was determined that the GATT will regulate both industrial and agricultural products. But soon after its activities it became clear that most of the contracting parties are not interested to give same kind of treatment in respect to agricultural products and they suppose to apply GATT provisions with certain reservations on this respect. As a result, agriculture was out of liberalization agenda till establishment of the WTO. The developed countries were not interested to import agricultural products from the

15 See Jackson World Trading System. P.38

underdeveloped countries in exchange of their industrial goods. Moreover, they subsidized their agriculture and export to capture the market of the under developed countries, as such the under developed countries become competitive in.

To protect the interest of under developed countries the Uruguay Round has formulated some provisions regulations to set up tariff system and reduce non-tariff barriers and subsidies in international trade by the GATT members. These regulations are mandatory for the contracting parties. But flexibility for the under developed countries which allowed them to abstain in observing these regulations for certain period of time in compliance with their hard domestic economic conditions.¹⁶ Consequently, to these provisions Bangladesh has submitted to WTO its tariff valuation on different kinds of products. It is almost clear to us that the present condition of the country does not permit to reduce subsidies and tariffs on import for protection of its domestic industries as regulated by the WTO agreement. On the other hand, implementation of the agreement will increase price of agricultural products, especially food stuffs inside the country. So, it is quite inadequate for an agricultural country like Bangladesh to fulfill the requirements of the WTO and observe its regulations in full.

From the very beginning of Bangladesh membership in GATT it tried to implement all GATT norms in both internal and external economic relations. But practical implementation with the view to radical changes, harmonization of GATT norms with the existing rules of the country was not possible due to the subjective and objective reasons related with internal and external forces. Like most of the under developed countries Bangladesh is getting foreign aid from the developed world and also from the international organizations. But to some extent, these aids are not coming without fulfillment of conditions

¹⁶ See Part IV of the GATT. These provisions are also induced into the following protocols for agriculture and also into the agreements on Agriculture

imposed by the donors. Some times donors are keeping control over the implementation process of the beneficiary country, which seems to be threatening to its sovereignty as well. Such a situation appeared with Bangladesh in this year to get fund from the European countries at Paris conference. The donors have made a clear-cut statement to the Bangladesh delegations to submit poverty reduction strategy paper (PRSP) for their further approval. Our government is not able to give security to the foreign investors, which is also one of the reasons of its poorness of the country. As a result most of the importer started shifting their trade and investment policy related to the ready made garments from Bangladesh to some African and Arabian countries. Meanwhile a big part of the garments factories have closed. Quantity of unemployment has risen. Therefore, our integration process into the globalization at stake. We consider that each country has freedom of invest and organize its foreign economic relations in accordance to its benefit and interest. But in all case we appreciate same time a standard regulations of building and regulating inter state economic relations, which could serve the interests of world community with out any differences of their level of development. The WTO is such an effort. It is clear that the successful implementation of the WTO programme follows auto globalization. But it seeks mutual cooperation with utmost good faith between the states not depending upon their economic strength. To realize the implementation processes the developed countries are to provide all kinds of support (technology, financial, policy making, counseling etc.) to the under developed countries. This is their international obligation. In fact, the developed countries in several WTO conferences made such commitments.¹⁷ Today, after seven years of WTO activities the scenario of interstate economic relations between the rich and poor, north and south states have not developed as it desired. On the other hand, it

¹⁷ See The Ministerial Conferences of the WTO at Singapore, Seattle, and Doha etc.

¹⁸ See Article XII (1-2) of the Agreement establishing the World Trade Organization.

was suggested for regional economic grouping among the member of the WTO for their successful integration into globalization.¹⁸ With such a view in 1983 seven South Asian Countries like Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka have organized South Asian Association for Regional Cooperation (SAARC) in economic fields.¹⁹ But till today no such successful cooperation has obtained due to political unrest among some of the member countries. It proves that we are not totally ready to fulfill our contractual obligations even within the region. For example, bilateral trade agreement within the SAARC scope between Bangladesh and India on consumer goods achieved in 2000 where India has been agreed to give tariff free access of 25 categories consumer goods of about 191 items of Bangladeshi products into its market when India exports its products into Bangladesh market frequently. We exported only accumulator batteries into Indian market, which was not even enough to meet requirement of internal market. But an anti dumping claim was raised by India against Bangladesh. These facts prove that a big gap in balance of payments between the two countries. Now both the country have again negotiating and India has agreed to allow tariff free access of 40 items of 16 categories of Bangladeshi products into its market. May be this is a matter of good sign of regionalism and globalism as well.

According to the Multi Fibre Arrangement (MFA) 1974 we had an access to the European and American markets with ready-made garments (RMG) with certain tariff facility and quota (accordingly GSP was given to Bangladesh). This quota was a great protection for Bangladesh and relevant to its technological standards. On the basis of these we built garments manufacturing sector and subsequently other sector related to this were developing. Bangladesh was earning foreign currency. But under the influence of the WTO the quota system

19 See Agreement on South Asian Association for Regional cooperation (SAARC) 1983.

is waved by the Europe and America and Bangladesh has lost its market. This quota was waved for the sake of globalization, which follows equal treatment on the basis of most favored nation Treatment. As a result, Bangladesh has fallen into a financial crisis. To over come this crisis we must do, as the big powers want. In such way the big powers are compelling us to get into so call Globalization process. This is merely an example. In our understanding, globalization is a running economic process where the participants take part in accordance with their capacity. This does not make any pressure and totally individual matter of choice of the participants how they will play the globalization game. It is clear that he who plays successfully this game earns stronger position, in world economic integration.

Today, what is happening in the name of globalization it is an ultimate frustration. This frustration threats national sovereignty of the weaker partners. Most of the players of globalization do not agree with the process and are still trying gently to overcome globalization pressure through negotiations. If they can't negotiate then WTO will lose its acceptability and globalization will not be in the heart of the failures. Therefore, for its success WTO must understand and fulfill the essential needs of its weaker members like Bangladesh. Only then Bangladesh will not hesitate to go for globalization.

6. Dispute settlement Mechanism in WTO regime:

During establishment of the WTO, it was presumed that the dispute settlement understanding would provide security and predictability to the multilateral trading system and will be the central element to serve interest equally of its members. But soon it became clear that the dispute settlement procedure of WTO does not based on the principles of equity and onerous for the third world countries. It allows only state government legal representation to the exclusion of private legal representation. The initial stage of plaintiff starts with consultation and if it

fails to obtain any solution within the prescribed time then panel may be established by the request of any party. It is to be mentioned that the dispute settlement procedures time for the judgement and choice of judges/panelists are limited for the parties. These are regulated by the WTO secretariat. Any member state, which is a third interested party may be heard by the panel, without being party to the dispute,²⁰ as disgracefully, active joinder of plaintiffs is only allowed when the complaint is jointly filed. The joinder of defendants is totally disallowed. This is major short-coming of the system, because this allows for different panels to analyse related matters and possibly enact different awards. This imperfection can be further aggravated by the fact that, in the DSU, the terms of reference²¹ of a dispute are not given by plaintiff, but the secretariat of the WTO through its legal division. Therefore, it could happen that identical cases brought by different member states against single country be transformed into different matters, brought to different panels and even draw different decisions.²²

The DSU does not permit counterclaims or cross complaints, which may result in two different panels, with the same parties and different terms of reference for the same basic issue at stake with disparate decisions. Because all panel deliberations are confidential,²³ as well as petitions and briefings filed by the parties, the system fails dramatically in terms of governance and presents formidable obstacles to dramatic controls, within the member states, of the action taken by their representatives before the WTO. Moreover, the WTO proceedings do not have

20 See article 17(4) of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

21 See article 7 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

22 For a complete analysis of the procedural aspects of the DRS, see the bilingual "Essays on International Law" by Durval de Noronha Goyos Jr, Legal Observer, Sao Paul/Miami, 2000

23 See item 3 of Annex 3 of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

24 See Article 12 (6) of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

a physical file of the case, as in any reliable judiciary or arbitration case anywhere in the world. Panels will establish time periods for filing of petitions and briefs on a case-by-case basis.²⁴ This will allow for different treatments to parties in a dispute, face each other, as well as before similar situations applicable to other parties. The awards are drafted without the presence of the parties.²⁵ Individual opinions of arbitrators are anonymous and, whenever dissenting, are excluded from the award.²⁶ This situation serves to mask the true and correct deliberations of the panel and present an unfair disadvantage for the defeated party, with respect to the merits and changes of an eventual appeal. The secretariat of the WTO maintains a roster of arbitrators²⁷ who shall be well-qualified governmental or non-governmental individuals.²⁸ The arbitrators are chosen by the legal division of the secretariat of the WTO according to criteria not subject to transparency, governance and after in contradiction with the diversity requirement of the treaty. WTO arbitrators of both first instance and appellate level function on an "ad hoc" basis, therefore on a non-permanent situation. Frequently, they do not reside in Geneva, Switzerland, where the headquarters of the WTO are situated, and they do not have any independent or own infrastructure of support for their activities. Therefore, they have to rely on the technical support and assistance on the "legal, historical and procedural aspects of the matters dealt with"²⁹ by the secretariat of the WTO. This situation has caused serious distortions in the DRS.

The simple reality is that many WTO members specially, third world countries do not have the necessary resource to afford a full time international trade lawyer. This resource constraint is clearly borne out by statistics. In the six years since the creation

25 See Article 14 (2) of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

26 See Article 14 (3) of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

27 See Article 8(4) of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

28 See Article 8(1) of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

29 See Article 27 (1) of the Understanding on Rules and Procedures Governing the Settlement of Disputes.

of the WTO on January 1, 1995, 220 complaints were notified by the member states to the secretariat, the majority of which, 116 were resolved one way or another during the phase of consultations; 51 have been object to definite decisions by the DRS; 39 have been settled by the parties or are inactive; 14 cases are presently under way on first instance or appellate level. In accordance with the WTO, s annual report for the year 2000, "Developed countries files about three quarters of the complaints under Dispute Settlement Understanding (DSU), and were respondent in the same share of complaints. Developing countries filed the remaining one-quarter of complaints, against developed countries in over 50% of the complaints and the rest against developing countries. The USA and the European Union (EU) are the most frequent complaints to the WTO. . . "30

It is clear that this procedural requirement of the WTO system undermines the impartiality and the due process of the panel proceeding. It can ensure only a quantitative, not qualitative, equality of opportunity at its best and can leave third world countries with a feeling of unequal treatment at its worse.

7. Globalization-WTO and their consequences

From the aforesaid it is clear, that in all these WTO arrangements developed countries are clear-cut winners, which are the "rule makers" and have the authority to set and implement the rules of world trade. Third world countries are merely the 'rule-takers' with very limited power to invoke and implement them in their favor.

It is unrealistic to expect third world countries to indefinitely accept economic arrangements that require them to make the most compromise and concessions, yet offer a limited participation in the WTO and the global market place. If the

30 Sec WTO FOCUS, December 2000, No.50, page 6.

globalization of trade is unable to deliver positive economic and welfare benefits for them soon, the likelihood of socio-political reaction will increase. The deep-seated dissatisfaction with the outcomes of economic globalization at the grass-root has gathered momentum in developed countries. Organized protests took place in the WTO Seattle Conference in November 1999, in the World Bank and IMF joint meetings in Washington in early 2000 and in Prague on 26-28 September 2000, in London on 18 June 2000, and in the World Economic Forum's Asian Summit Meeting in Melbourne in late 2000. Economic globalization must be made beneficial to all, particularly third world countries and poor people, its institution must be accountable to the countries and the people they affect directly. No economic system can operate effectively without basic-political support. The capitalist market and its value must not take precedence over socio-political values. If it does, it will suffer from a legitimacy crisis. This message sent loud and clear through the chain of public reactions referred to.

8. Conclusion:

In the conclusion it may be pointed that the process "Globalization" must not be forced by any state or group of states. It is an automatic process of the development of economic relationship. The recent trend of globalization which is propagated through the WTO arrangements by the developed countries are exclusively in their favour to take control over the third world markets, to fulfill the demand of their capitalist test. Today, the maximum liabilities of globalization lay on the developed countries. For the sake of globalization, they must not be limited with their commitments to ensure assistance to foster the economic prosperity of the third world countries. These commitments must be legally binding within the WTO system. There should exist a legal regime that engulfs "economic globalization" as a right for each and every state

toward promotion of "common heritage" notion. If so, economic globalization will give rise to a sound and viable regime for developing and developed states. The gap between "laissez- faire" economy of developed states and "most favored nation treatment" economy of developing countries will be narrowed down. Global economy will then be a guarantee for participation of all states. The developed countries must contemplate the real socio-economic demands of the third world countries and fulfill their commitments given in different WTO Conferences on utmost good faith only then the real globalization is possible otherwise, it will remain rhetoric.