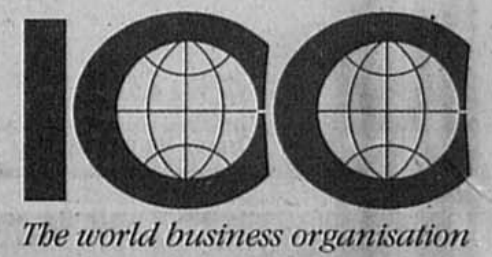


# International Business Conference on Global Economic Governance and Challenges of Multilateralism

Dhaka, Bangladesh



## SPECIAL SUPPLEMENT: GLIMPSES OF THE CONFERENCE

**Bangladesh**

International Chamber of Commerce-Bangladesh

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**Abdul Jalil MP, Former Minister for Commerce, Bangladesh**

After the setback at Cancun, it has now appeared to all concerned that the conference should have been held to find out ways and means for clearing the debris of the restrictive trade regime of the past centuries. Various groups of countries may accuse each other for the failure of the talks but it appears that all the groups contributed to the failure. The developed countries who took up 'make it or leave it' approach was not anyway helpful to clear out the impediments to free trade flow in the world. At the same time, the developing countries which were straining their nerves to extend their trade relations should not have expected a dramatic change in international trade order overnight.

**Dr. Supachai Panitchpakdi, Director General, WTO**

The outstanding issues of trade talks could be resolved before the December 31 deadline. We are making ground works for restarting the talks afresh. As trade talks are complex in nature, it will however, be a hard task for negotiations to meet the deadline.

The developed and developing countries need to be flexible for the success of talks. The WTO talks also need support to businesspeople and non-governmental organisations which will be most affected by agreements.

When the next round of talks starts in February, issues of the least developed countries including mobility of natural person of Bangladesh will be placed.

After Cancun, nobody knew what was going to happen. Whether we will go on with the left-over in Cancun or we will start again by going back to the pre-Cancun position.

After meeting with different parties, one single fact became clear, which is all members, all negotiating parties like to come back to the negotiating process.

From now on, we'll be trying to set force the programme for 2004 and to address them in way that will be touching on the key substantive issues. We will be looking at special and differential treatment and dispute settlement. So, the whole set of Doha Round negotiations would be resumed. But of course, as we agree because of the limited time, we may need to concentrate on the few key issues. Particularly in the first half of the year, probably we need to look at the key market access issue of agriculture, non-agriculture market access and services. And of course, there will be discussions on special and differential treatment issue. So the question of interests of developing countries that are needed to be covered will always be there.

We will be dealing with things of interest for the small economies, the LDCs. We will be dealing the technical assistance too. Those things would be handled in any way. But the focus of the issue would be the key areas, in which we should be able to make a breakthrough.

**Carin Jamtin, Minister for Development Cooperation, Sweden**

Some issues are more pressing than others: Firstly, agriculture reforms. This round should put an end to many unfair practices of developed countries that jeopardize the livelihood of millions of poor around the globe.

Secondly, to increase real market access for the poor countries is also essential. Opportunities for increasing South-South trade should be exploited. And finally, the time for making a serious commitment to the overall simplifications of trade is long overdue. Today, enormous amount of time and money are wasted on complicated and non-transparent procedures at the borders.

**Pascal Lamy, Commissioner for Trade, EU**

The EU is in favour of a balance of rules and market access. It is also positive to some hard thinking about how to address the problem of eroded developing country preferences as they are going to lose out more and more to the super competitive countries such as China. We, in the EU, have come up with a revised, refreshed position at the end of last year.

On market access, we want developing countries to get more comfortable with this. So two key themes: first, further market opening should be progressive. Second, it needs to really boost south-south trade.

Linked to this last idea, we really hope we will see some targeted market opening from the richer developing countries, including obviously the G20, in the direction of the poorer and poorest developing countries.

On industrial tariffs, we want more ambition, but we are ready to find middle ground: reduced tariff across the board, a real effort to address the scourge of tariff escalation and with a developing rebate. On agriculture, we have done a lot with our initial proposal. We showed in the summer that we are ready to go further following CAP reform.

We want the rich countries to offer access at zero duty for 50 per cent their imports from poor countries and want a special safeguard for food security.

**Professor Rehman Sobhan, Chairman, Centre for Policy Dialogue**

Failure in Cancun was not because of a breakdown in negotiations but because of unilateral aggression on Iraq and also an increase in striking bilateral and regional trading arrangements.

Bangladeshi exporters received only \$ 5 for a piece of garment product which was sold at \$ 25 in the US retail market. Equitable outcome of trade is essential.

Bangladesh Suhel Ahmed Chowdhury, Vice-Chairman, ICC Yong Sung Park, Executive Chairman, Board of Investment, Bangladesh Mahmudur Rahman and Executive Director, Centre for Policy Dialogue Debapriya Bhattacharya spoke, among others.

**Kyosuke Shinozawa, Governor, Japan Bank for International Cooperation (JBIC)**

Appropriate and sound government policy is important to win the confidence of domestic and foreign investors in order to promote investment. In August last, the JBIC conducted the study on Business Obstacles in Bangladesh, with a view to encourage foreign investment.

The research revealed that major obstacles comprise political risk, including policy changes following the change of governments, and administrative risk caused by problems with execution capabilities of the government organizations.

I am pleased to hear that the Bangladesh government is earnestly engaged in improving the investment environment in the country and hope that these efforts will be further continued. Asian countries compete in terms of capacity building in order to achieve economic growth and countries that are highly competitive have been successful in attracting foreign investment.

**Ravi Karunanayake, Minister for Commerce and Consumer Affairs, Sri Lanka**

The capacity building for LDCs must go deeper and into more difficult areas and behind the enabling forces behind industrial and technological development. In this sense international bodies should undertake collective action to assist developing countries in this vital area of economic development.

**Kim Hak-Su, Executive Secretary, UN ESCAP**

As many developing countries have pursued investment liberalisation policies and measures to promote and attract FDI, focus on institutional capacity-building is becoming increasingly important. In this context, the creation and strengthening of investment promotion agencies at the national level with proper authority and coordinating role, could be identified as a source of competitive advantage of a country as far as the institutional capacity-building for FDI promotion is concerned.

**Yong Sung Park, Vice-Chairman, International Chamber of Commerce**

Developing countries should simplify investment regulations and remove bureaucratic obstacles to attract more FDI.

**Suhel Ahmed Chowdhury, Secretary, Ministry of Commerce, Bangladesh**

We need to work towards effective mechanisms for expansion of markets of LDCs and arrangements for implementation; follow-up, review and monitoring of these policies and measures are also critical.

Since the vulnerabilities and constraints of these countries represent major challenge for LDCs themselves as well as the global community, the developed countries may embark upon special trade and development initiative for market expansion of primary and labour-intensive manufactured products as the large majority of LDCs remain dependent on a few basic minerals or agricultural commodities or labour intensive manufactured goods in particular for their export earnings and formal sector employment.

**A. S. M. Quasem, Vice-President, ICC Bangladesh**

Despite broad-based policy liberalisation, flows of investment to the developing countries, especially LDCs are insignificant and therefore, developed nations are required to bolster technical infrastructure and capacity building assistance to these economies.

We need to identify supportive measures for infrastructure-building, institutional and human resources development, expansion of production-base, developing investment information network and trade facilitation services.

**Mahmudur Rahman, Executive Chairman, Board of Investment, Bangladesh**

National taskforce formed to improve investment climate in Bangladesh which is working and it is helping to better the climate.

**Prof. Wahiduddin Mahmud, Former Adviser to the Care-taker Government, Bangladesh**

The poor countries need quality investment for growth and poverty reduction. Tea export from Bangladesh is declining as domestic demand shoots up and good investment dries up.

In countries like Bangladesh, government agencies lack the capacity to negotiate international contracts or settle disputes. For lack of enough investment countries tea export have fallen in recent times.

**Dr. Debapriya Bhattacharya, Executive Director, CPD**

Though capacity building projects funded by multilateral agencies are costly they are not so effective as they lack indigenous reality.

It is apparent that multilateral agencies are on a race to take lead in capacity building projects for poor countries. So, there is duplication of projects, which are not coherent and coordinated.

**Business Session on Trade Facilitation through Dispute Resolution**

This session was split into two parts i) ICC Arbitration and ADR, and ii) WTO Dispute Settlement Procedure. The speakers in this session stressed the need for alternative dispute resolution mechanisms and more diplomatic and negotiation system to settle international disputes.

They said trade and economic disputes between two or more contracting parties often lead to expensive and time consuming litigation, hampering global economic governance. Eminent lawyer Dr. Kamal Hossain moderated the session.

Fali S. Nariman, MP, Vice Chairman, Intl. Court of Arbitration, ICC

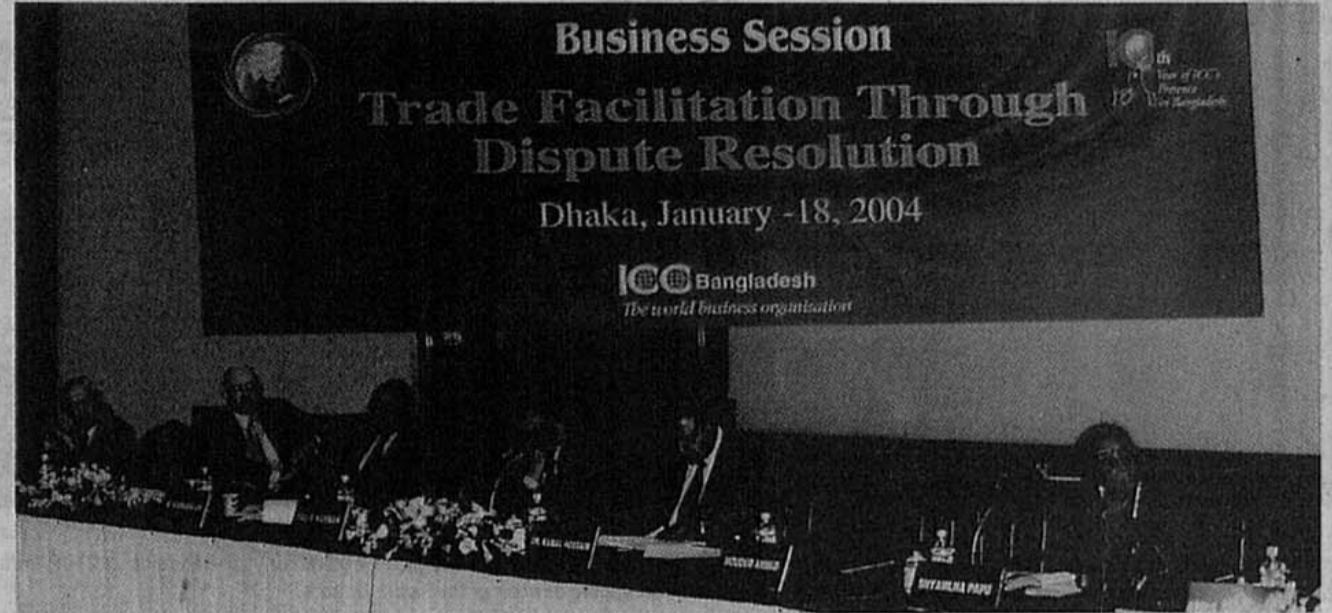
The new upgraded Rules of Arbitration of the International Chamber of Commerce effective from January 1, 1998 provide a frame work not only for dispute resolution in international trade, but also ensure

**Business Session**

**Trade Facilitation Through Dispute Resolution**

Dhaka, January -18, 2004

ICC Bangladesh  
The world business organisation



Speakers at the Business Session on "Trade Facilitation Through Dispute Resolution"

a close supervision of the entire arbitral process from the time the arbitrators take charge of the file, till the time the ultimate award is rendered by the arbitral tribunal: in fact this is one of the abiding characteristics of ICC arbitration.

One advantage of ICC Arbitration over ad-hoc arbitration is that the scale of administrative expenses and arbitrators' fees are known at the outset and are dependent upon and calculated in accordance with arbitrators' fees. This is a chilling factor - it compels parties to be realistic when making claims in an ICC Arbitration.

The ultimate success of international commercial arbitration whether ICC Arbitration or any other - is not measured by the number of business disputes that demand resolution. Its ultimate success lies in how such disputes are actually resolved to the satisfactions of the losing party.

The real weakness of the WTO dispute settlement mechanism lies in the fact that the WTO members are independent states. And independent, sovereign states often act like billiard-balls which collide, and do not cooperate.

**Moudud Ahmed, MP - Law, Justice and Parliamentary Affairs Minister of Bangladesh**

Trade facilitation should ensure that all relevant activities take place in an efficient, transparent and predictable manner, based on internationally accepted norms, standard and best practices.

ADR or Alternative Dispute Resolution can be understood as mechanism through which differences coming out of the trade transactions could be settled or minimized in a very transparent and neutral process. Dispute settlement generally refers to the process through which countries resolve the differences over their rights and obligations under various agreements.

The International Chamber of Commerce has almost eight decades of experience in devising rules to govern and facilitate the conduct of international business. The ICC offers a frame work for the amicable settlement of commercial disputes with the assistance of a transparent and neutral body.

**Rokanuddin Mahmud, President, Bangladesh Supreme Court Bar Association**

As a lawyer or as a member of an arbitration court and a Bangladeshi or a third world national, I would say that the ICC should consider setting up a centre like the one in Paris, somewhere in the region in Asia like Delhi and then there should be a separate panel of arbitrators for parties where business people from third world country will be involved.

**Abdul Awal Mintoo, President, FBCCI**

The private sector in the developing countries, particularly in the LDCs faces huge challenges. On the one hand, the private sector is increasingly facing the trade remedial measures by more advanced countries. On the other, the domestic industry is facing uneven competition from the dumped products in the local market. It is quite impossible for Bangladeshi private sector to run anti-dumping and other trade remedy laws as there is no effective mechanism for protection of interests of domestic industries. Both the government and international donor agencies can play significant role in meeting the emerging challenges of trade remedial actions.

**Dr. Shyamliha Pappu, Senior Advocate, Supreme Court of India**

The WTO dispute settlement system is valiant attempt to subject controversies over international trade to the rule of international law. However, in the WTO process, the political branch (the General Council and the Ministerial Conference) does not commonly exercise this power.

There is also a need to establish alternative dispute resolution methods and more diplomatic and negotiation-based dispute settlement.

In addition there is a need to expand the resources of developing countries to allow them to participate more effectively in the system. There also a need to open the dispute settlement process to allow greater transparency and participation by non-governmental organisations.

**Dr. Kamal Hossain, Senior Advocate, Supreme Court of Bangladesh**

We have heard about the asymmetry of power, asymmetry of resources and the asymmetry of technical expertise. Now we are also hearing how we might be able to make a constructive response. We do have resources; intellectual and professional resources. We could pool them together and use fora such as this where the business world comes together with the professionals and where there is a convergence of interests. We can begin to see how we can have our legitimate interest and international institutions like ICC and WTO. All parties are entitled to serve the legitimate interest and entitlement and expectation. It is for us to progressively build our capacity and help each others.

**Dr. M. Zahir, Senior Advocate, Bangladesh Supreme Court**

The ICC may consider separate fee structure for arbitration involving a developing country and arbitration may be held at the place where the cause of action arose. Cost reduction should be addressed to encourage arbitration and mediation.

Trade facilitation also involves consideration of law and order, corruption, speedy trial etc apart from dispute settlement. This is the high time whether ICC should think whether there should be ICC centres of arbitration in developing countries i.e. Dhaka, Hong Kong or New Delhi.

**Rafique-ul-Huq, Bar-at-Law, Senior Advocate, Supreme Court of Bangladesh**

We are concerned about the cost in arbitration such as scheduling of arbitrator's fees. The fees in international arbitration are a burden on parties from developing countries like Bangladesh.

Some important observations made by the speakers at this session:

**ADR and the LDCs**

The speakers emphasized the advantage of ADR for the LDCs which lies in the very nature of these approaches.

Participants were unequivocal that litigation or arbitration destroys relationship between parties involved.

The speakers recommended that ICC should play a more proactive role in safeguarding the interest of domestic producers and business, and of consumers as well and here the Alternate Dispute Resolution (ADR) could play a very crucial role in safeguarding the interest of LDCs such as Bangladesh.

The Dispute Settlement Body is becoming increasingly powerful within the institutional architecture of the WTO.

The speakers highlighted that Effective Implementation of WTO Dispute Settlement Mechanism will depend on various factors:

WTO members need to fully and promptly comply with WTO obligations because cleverly drafted rules on dispute settlement makes compliance an economic necessity;

WTO Litigation should approach disputes from a narrow perspective of the provisions of the WTO law in dispute instead of redressing the trading equilibrium between members;

The 'Covered Agreements' need to be drafted simply and succinctly, without leaving room for different interpretations;

The real weakness of the WTO Dispute Settlement Mechanism is that members of the WTO are independent, sovereign states with often conflicting view points and ideas; they are often found to be non-cooperative.

The speakers stressed that the present system of WTO DS is not friendly to the LDCs.

The speakers highlighted a number of concerns of the developing countries with respect to the Dispute Settlement Mechanism.

The major concern of the developing countries in the future is whether they have made too many concessions as to substantive rules bringing about definitive commitments in the areas of intellectual property, services and investment which are now enforceable through a dispute settlement mechanism. The developing nations should ensure that the disputes which arise are settled through more democratic means than are provided by trade tribunals.

It is necessary that the disputes that are generated be looked at in the wider concept of issues such as economic development and issues of poverty

Obligations relating to areas such as the environment and human rights are areas subject to consensus principles and should not be subject to dispute resolution by a tribunal, which was intended to cater to lesser types of obligations.

The consideration of disputes involving concerns common to the international community should be subject to decisions by tribunals that better reflect the international community and are capable of taking a view of the problems than a trade tribunal would.

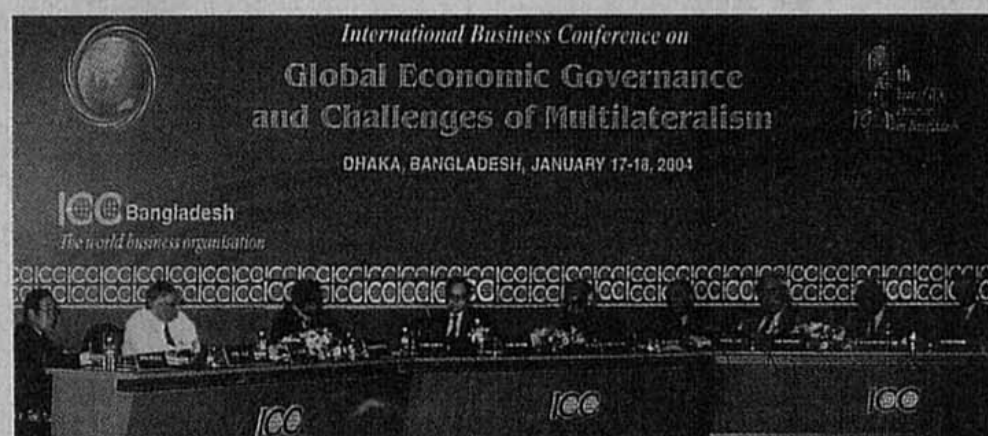
Tribunals that are constituted to deal with specific areas of international law should not dispose of matters that implicate the general interests of the international community.

Promotion of economic development, the environment and human rights

The participants came up with a number of recommendations to improve the DSM in the WTO. Some of these were:

There has to be means by which the final decision of the appellate body (whose decisions are adopted automatically without scrutiny) is reviewed and a mechanism is installed to correct mistakes of the Appellate Body.

Effective 'checks and balances' need to be put in place. They called for creation of a Peer Review Group in the WTO to examine and criticize reports of the appellate body. Establish alternate dispute resolution methods and more diplomatic and negotiation based dispute settlement.



Rahmi M. Koc, Former International President of ICC is seen moderating the Business Session on "Capacity Building for Investment Promotion in Developing Countries"