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LEAD ARTICLE

Market Access Negotiations on Non-Agricultural Products: India and the Choice of Modalities (Anwarul Hoda and Monika Verma)

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Market Access Negotiations on Non-Agricultural Products: India and the Choice of Modalities

by Anwarul Hoda and Monika Verma

The Ministerial Declaration that launched the Doha Round of Multilateral Trade Negotiations contains a separate mandate for negotiations on market access in non-agricultural products covering both tariffs and non-tariff measures. In respect of tariffs, WTO Members have been discussing mainly the modalities for liberalisation that should be adopted by Members. The paper analyses the main proposals on modalities and related aspects of negotiations and draws conclusions on the best approach for India.

Considerations for India's overall approach towards NAMA negotiations

In the run up to the meeting at Doha at which the Ministers agreed on the Doha Development Agenda, the Government of India was opposed to a round, which went beyond the built-in-agenda of the WTO Agreement and objected in particular to the inclusion of negotiations on non-agricultural products. Even when the negotiations had begun, the initial approach of the Indian delegation was one of reticence. The authors therefore start with the consideration of factors that should determine India's overall approach. They bring out the following points:

- India has embarked on a process of reform to bring its tariffs down to international levels to promote efficiency in an integrating world economy. While impressive progress in trade liberalisation has been made since the introduction of economic reforms in 1991-92, its tariff levels remain high by international standards.
- There is a remarkable convergence of views among experts that tariff levels on non-agricultural products must continue to come down over a comparatively short time frame, and the political leadership shares this view.
- India had bound only about 70 per cent of its non-agricultural tariff lines before the Doha Round. Reduction of peak levels of applied tariffs during the past few years has brought down the levels of duty much below the rates at which they were bound. These aspects give to India considerable bargaining leverage in the current negotiations.
- India's trade interest is suffering because of the formation of new regional trading arrangements and the expansion of existing ones. While entering into Free Trade Agreements (FTAs) with some of the trading

partners in Asia will help to enhance its trade interest in Asia, it being linked with the major industrialised countries is not likely in the foreseeable future. In the situation, the best bet for India to alleviate the situation created by tariff discrimination arising from Regional Trade Agreements (RTAs) is to ensure that the adopted modality results in the steepest reduction of tariffs.

In light of the above, the authors are of the view that India should eschew the defensive posture that it had initially struck in the NAMA negotiations and adopt a proactive role. India's continuing tariff reform gives it a tremendous bargaining ability in securing tariff reduction from its trading partners, and India must be ready to use this ability in the Doha Round. Having reduced its import duties on non-agricultural products considerably from the level at which it had bound them in the Uruguay Round, and not having undertaken any binding commitment on 30 per cent of its tariff lines, India has a large repertoire of potential tariff concessions that it can offer in exchange for obtaining reciprocal concessions in the negotiations. The wave of regional agreements that is sweeping across the world provides another reason that should impel India to action in the NAMA negotiations. The only option for non-preference receiving countries is to join in a multilateral endeavour to inject into the world trading system, a strong dose of non-discriminatory trade liberalisation. Success in this endeavour would erode the preferential margin and alleviate the trade diversion potential of preferential arrangements.

Proposed elements of India's stand on modalities in NAMA negotiations

The authors proceed to describe and analyse proposals made on modalities by various developed and developing country Members as well as the draft elements of modalities for the negotiations submitted by the Chairman of the Negotiating Group in order to facilitate the negotiating process. The conclusions on the negotiating position to be taken by India on the modalities and related aspects drawn by them are given below:

Core modality

There is already a broad understanding among Members that multiple modalities would have to be adopted in the negotiations and the main discussion is on the choice of the core modality. The authors advocate that the core modality must be a non-linear harmonisation formula such as the Swiss

formula as only such a formula can reduce high and peak tariffs by a larger proportion. Equally important, the coefficient must be linked to the tariff average of the individual country concerned as this is a good way of taking into account the dependence of developing countries on import tariffs for their revenues and at the same time to achieve tariff compression.

Differentiated formula for developing countries

It is entirely reasonable for India to press for a differentiated formula, envisaging a lower cut, to apply to the developing countries. Such differentiation flows from the concept of non-reciprocity embedded in the WTO Agreement and reiterated in the Doha Ministerial Declaration. It would be a superior strategy to try to endogenise differentiation in the formula of general application as can be accomplished by making the tariff average of individual countries a coefficient in the non-linear formula, as was proposed by the Chairman of the Negotiating Group.

Coverage

India must maintain the stand that the agreed formula must be applied to all bound tariffs without exception, as this is the only way of ensuring that, unlike in the past rounds, the products of interest to the developing countries are subjected to major reductions by the industrialised countries. Only by disallowing exceptions can India obtain a reduction of peak and high tariffs that it has been seeking. It follows that India too must be willing to bring all products within the coverage of bindings. In the post-reform era, India is unlikely to maintain tariffs on any industrial product at such high levels that it should want to avoid binding altogether.

Sectorial elimination

The proposal for sectorial elimination of tariff on a mandatory basis is attractive for India as an exporting country. But the modality would have problems for India's tariffs, as its application would result in negative protection in the case of finished products in many cases. For the proposal to be acceptable, India must take the stand that developing countries must be allowed to maintain tariffs at 5 per cent. The same pattern of commitment could be acceptable if the non-mandatory sectorial approach is to be followed.

Supplementary approaches

India's export of industrial products is fairly diversified and the application of a non-linear formula may still leave the possibility for improving access in particular markets in certain countries even further. India must therefore be ready to supplement the formula approach by request-offer procedures for seeking deeper tariff reduction than what the eventual formula delivers in products in which it has principal or substantial supplier interest in its trading partners.

Treatment of unbound tariffs

India's first position must be that unbound tariff lines must be out of the purview of the agreed formula and subject only to negotiations on a request-offer basis. India could accept the application of the formula to these tariff lines only if a reasonable allowance is made for the fact that unbound tariff lines were not a part of the balance that was struck in the WTO Agreement, and credit is given as well for autonomous liberalisation since the end of the Uruguay Round. These conditions are met to a large extent in the proposals of the Chairman of the Negotiating Group before the Cancun Meet. Bringing in unbound tariffs within the purview of the formula would cause some problems for India, as the current applied levels of tariffs would have to be brought down considerably on a few products such as motor vehicles. However, economic good sense dictates that tariffs on these products must fall in line with the prevailing general rate for other products. The special needs of the industry such the auto industry can be met by securing a longer period for implementation.

Base rate

For bound tariffs, the base rate is the rate at which the binding was made in the Uruguay Round. For unbound tariffs, India must press for the rate prevailing in April 1994 to be the bound rate. The Chairman's suggestion for the base rate for unbound tariff lines to be two times the applied rate in 2001 is also an effective way for giving credit for autonomous liberalisation. The Chairman's suggestion for the base rate in the case of items that were not bound in the Uruguay Round but were bound before the current Round (two times the applied level at the time of binding or the bound rate, whichever is higher) is also fair and pragmatic.

Implementation period

India can accept five years as the norm for the implementation of the agreed reductions but must press for developing countries to be allowed 10 years. The suggested periods approximate closely to what was agreed in the Uruguay Round.

Non-ad valorem tariffs

Specific duties have the effect of impeding imports of cheaper products as the ad valorem incidence varies inversely with the unit value. In the major markets, non ad valorem duties are not known to have a significant impact on non-agricultural exports of interest to India. On the other hand, specific customs duties were introduced in India in the mid-1990s as an alternative to ad valorem duties (on the basis of the condition 'whichever is higher') on many textile and clothing products, to provide an additional safeguard against cheap imports. India need not maintain a high profile on the issue. If there is an emerging consensus in favour of the conversion,

India should try to secure a time-limited exemption for developing countries.

Special and differential treatment

The concept of special and differential treatment should be used with discretion. The idea should not be to make the contributions of developing countries minimal because in the ultimate analysis, meaningful reciprocal concessions are politically imperative for the major industrialised countries to make substantial concessions. Application of the concept could help to a modest extent in lightening the

burden of commitments that developing countries may have to undertake, as proposed in respect of some of the elements in the previous paragraphs. However, it would be a mistake to depend upon it too much or to propose that pursuant to the concept, developing countries should be allowed to make very little contributions. In the past, recognition of the concept served India well as in the days of high tariffs it helped in fending off pressures for reduction of tariffs. However, it is a poor bargaining instrument for eliciting concessions from the industrialised countries, which should be the main aim of developing countries in the current negotiations.

School Brief

Tariffs and Tariff Negotiations in the WTO Agreement

by Deepa Bhaskaran

General Obligations

The WTO Agreement allows Members to use 'duties, taxes or other charges' for regulation of trade without stipulating the general or specific levels of tariff that Members can maintain. It, however, encourages them to periodically enter into rounds of tariff negotiation directed towards substantial reduction of the general level of tariffs and other charges on imports and exports and in particular, to the reduction of such high tariffs that discourage the importation even of minimum quantities. At these negotiations, Members undertake commitments to reduce or eliminate tariffs on specific or groups of products or not to raise them above the existing low level. Whether or not, tariffs on particular products are subject to any commitment, the most-favoured-nation (MFN) clause of GATT 1994 applies, whereby a Member must not only treat all other Members equally but also extend to each of them, the best treatment that it accords to any trading partner. There are some exceptions to this rule. Members may enter into regional trading arrangements, such as free trade areas and customs unions, within which they may eliminate tariffs among the members of such arrangements. Special dispensation has also been given to the developed Members countries for extending preferential tariffs to developing countries, or for the developing countries to have preferential arrangements among themselves.

Implications of tariff commitments

After tariff negotiations conclude, the results are incorporated in the Schedules of Concessions of the Members concerned, which are lodged with the WTO Secretariat. Once a tariff concession has been entered into the Schedule of a Member, the most important implication is that there is a commitment not to apply customs duty on the import of the product above

the level indicated in the Schedule. The tariff level is said to have been 'bound'. The binding against increase affects not only the basic customs duty but also 'other duties and charges of any kind' (ODCs). As a broad definition of ODCs, it has been accepted as only those levies that discriminate against imports are covered, e.g. stamp duty, development tax, revenue duty etc. When a tariff commitment is made, all ODCs have also to be recorded in the Schedules of Concessions against the tariff items to which they apply.

Internal taxes, anti-dumping, countervailing or safeguard duties and fees or other charges (such as port charges) commensurate with the cost of services rendered are not affected by the level at which concessions have been bound during the negotiations. Thus a Member is entitled to impose on imports, charges that are equivalent to an internal tax such as excise duty. Tariff commitments have an implication also for the pricing practices of import monopolies. The mark-up on the price of products imported by an import monopoly must not afford protection to domestic goods above the level provided by the tariff commitment. Furthermore, if the level of subsidies granted to the producers of the product subject to a tariff commitment is increased beyond the level at which it was prevailing at the time the commitment was entered into, the Member adversely affected by such an increase is entitled to raise a dispute for nullification or impairment of the tariff concession.

Renegotiations

Once a tariff concession has been granted and the commitment has been entered into the Schedule of Concession, Members cannot modify or withdraw the concession, except after entering into renegotiations with the Members with whom the initial negotiations were held and

with those Members, who have a principal supplying interest. Consultations have also to be held with Members, who have a substantial interest in such concessions. In such renegotiations or consultations, the Member seeking modification or withdrawal is expected to make compensatory concessions on other products. If agreement is not reached in the renegotiations and consultations, the Member concerned may still go ahead with the proposed changes, but the affected Members get the right to withdraw substantially equivalent concessions initially negotiated with the Member making the change. There may be three categories of affected Members, viz., those with initial negotiating rights (INRs), principal supplying interest, and substantial supplying interest. Member with INRs are those with whom the specific tariff concession was negotiated at an earlier round or during subsequent renegotiations. Members with the largest share in imports in a particular product are deemed to be having principal supplying interest with respect to that product and those with a share of 10 per cent or more have in practice been considered to have substantial supplying interest.

Principle of reciprocity and concept of non-reciprocity

A central requirement of GATT 1994 is that negotiations should be held on a reciprocal and mutually advantageous basis. A reciprocal balance is to be maintained in renegotiations as well. There is no provision on the manner in which reciprocity should be measured and the understanding has been that governments participating in negotiations have freedom to adopt any method for evaluating the concessions. In practice, the basic criteria for measuring reciprocity have been trade coverage and depth of tariff reduction. When formula approaches were adopted, adherence to the formula was subject to a criterion: if a participating Member made an exception in the application of the agreed formula to a particular product, it was expected that a deeper cut would be made in other products to maintain a reciprocal balance.

In the 1960s, the concept of non-reciprocity came to be recognised for trade negotiations between developed and developing countries. This concept was later explained to mean that in the exchange of concessions during negotiations, the developing countries would make concessions that are consistent with the individual development, financial and trade needs rather than none at all.

Past Rounds of Multilateral Trade Negotiations

Eight tariff conferences and rounds of multilateral trade negotiations were held under the auspices of GATT 1947 between 1947 and 1994. These were Geneva Tariff Conference (1947), the Annecy Tariff Conference (1949), the Torquay Tariff Conference (1950-51), the Geneva Tariff Conference (1956), the Geneva Tariff Conference (1960-61),

also known as the Dillon Round, the Kennedy Round (1964-67), the Tokyo Round (1973-79) and the Uruguay Round (1986-94). The Doha Round, launched in 2001 is the first under the WTO Agreement but the ninth in the series, if the earlier ones held under the precursor organisation, GATT 1947, are also taken into account.

The first five rounds were held exclusively for reduction of tariffs, but in the Kennedy and Tokyo Rounds, negotiations covered non-tariff measures also. The Uruguay Round was even more comprehensive, encompassing negotiations for, inter alia extending multilateral disciplines to new areas as well, namely trade in services and trade related aspects of intellectual property rights. In the Doha Round, the negotiations on agricultural tariffs form part of the negotiations on agriculture. The negotiations on non-agricultural products are being undertaken separately, under a separate Ministerial mandate for Non-Agricultural Market Access (NAMA), which covers non-tariff measures also.

Modalities of Tariff Negotiations

In the WTO Agreement, as in GATT 1947 earlier, it has been stated that the tariff negotiations would be carried out on a selective product-by-product basis or by the application of any such multilateral procedures as may be accepted. The product-by-product technique or any other multilateral procedure adopted in its place is known as the modality of tariff negotiations.

In the first five rounds, the selective product-by-product procedure was adopted. In the Kennedy Round, for industrial products, the selective procedure was replaced by linear tariff reduction, and the working hypothesis adopted for the rate of reduction was 50 per cent. The main reason for the change was that the product-by-product negotiations led to only very small reductions and the procedures had become cumbersome and unwieldy with the increase in the number of contracting parties to GATT 1947.

In the Tokyo Round, the industrialised countries agreed on the use of a harmonisation formula, the Swiss formula, which was $Z = AX/(A + X)$, where coefficient $A = 14$ or 16 , $X =$ initial rate of duty, and $Z =$ resulting rate of duty. The advantage of the harmonisation formula was that the higher tariffs were reduced by a larger proportion than lower ones, and the value of the coefficient became the effective ceiling.

In the Uruguay Round, the conflicting approaches on modalities could not be resolved and in the end, it was agreed that the participants would aim at a target amount for overall reductions at least as ambitious as that achieved by the formula participants in the Tokyo Round. This translated into the target amount of overall reductions by one-third. It was left to each participant to determine the manner in which it would reach the overall target of reductions.

An important innovation in the Uruguay Round was the sectorial approach. The major industrialised countries (EC,

US, Japan and Canada) also agreed to eliminate tariffs on 10 products or product groups (sectors). They also agreed on the harmonisation of chemical tariffs, whereby tariffs in certain headings were eliminated, while for others they were reduced to 5.5-6.5 per cent. Joining the harmonisation initiative or the zero-for-zero initiatives (also known as sectorial elimination of tariffs approach) was not mandatory even for other developed countries although, several of them joined for particular products. After the Uruguay Round, another similar initiative was taken by a group of Members in respect of information technology products. But an unique feature of the modality adopted in the Information Technology Agreement was that the Agreement became effective only when participants representing 90 per cent of trade in these products had accepted it.

In the Doha Round, discussions are ongoing on the choice of modalities, but there is some amount of agreement that multiple modalities would have to be adopted and that the principal modality would be a non-linear formula.

Developing Countries in Past Negotiations

In the first five rounds, developing countries participated in the negotiations with developed countries as equal partners and exchanged concessions with them on the basis of

reciprocity. However, with the recognition of the concept of non-reciprocity in the mid-1960s, the level of their engagement in tariff negotiations was very low during the Kennedy and Tokyo Rounds. During the Kennedy Round, they were not called upon to participate in the linear reduction of tariff. During the Tokyo Round, the developing countries were not asked to adopt the formula for the reduction of industrial tariffs. During the Uruguay Round also, the developing countries were not expected to subscribe to the generally agreed target of one-third for overall reduction of industrial tariffs, but instead asked to increase the coverage of tariff commitments. While increasing the level of bindings, they were also allowed to undertake ceiling bindings whereby the bound levels could be higher than the current applied levels.

But the Uruguay Round witnessed a sea change in the attitude of the developing countries towards tariff negotiations. Many of them had reduced their tariffs in the context of wide-ranging economic reforms undertaken since the Tokyo Round. They were keen on fuller participation in the tariff negotiations, without insisting too much on the concept of non-reciprocity. Even though they were under no pressure to subscribe to the overall reduction of tariffs by one-third agreed on earlier, they made generous tariff concessions and some of them such as Korea and India even exceeded the target.

India and GATS: Negotiating Strategies in Distribution Services

by Arpita Mukherjee & Nitisha Patel

The Uruguay Round (1986–94) of the WTO negotiations introduced services for the first time into the multilateral trading system. The General Agreement on Trade in Services or GATS, which came into force on January 1, 1995, envisages progressive liberalisation of trade and investment in services through periodic rounds of negotiations, the first of such rounds was to begin no later than five years after the entry into force of the WTO Agreement. Accordingly, services negotiations were launched in January 2000 and were known as the GATS 2000 negotiations. These negotiations were subsumed in the wider round under the Doha Ministerial Declaration of November 2001. The Doha Round is known as the “Development Round” since the negotiating mandate aims to address the development concerns of the developing countries and redress the past imbalances in benefits across the developed and developing nations due to the poor and inadequate implementation of the Uruguay Round commitments. Services negotiations are an integral part of this Round.

As a member of the WTO, India is actively participating in the Doha Round of services negotiations. These negotiations are crucial for India since services is the dominant sector of the economy - accounting for more than fifty per cent of the GDP and one-fourth of total trade. Distribution services is an

important sector covered under these negotiations. This sector includes four sub-sectors - commission agents' services, wholesale trade services, retailing services and franchising services. In the Doha Round, India received requests from many trading partners such as the US, EU, China, Japan, Korea, Singapore and Brazil to offer liberal commitments in distribution services.

This paper discusses the possible negotiating strategies for India in the current round of negotiations. More specifically, it provides a brief overview of GATS and the extent of liberalisation in the Uruguay Round. It analyses the requests of India's trading partners and suggests how India may respond to these demands and on its own push for the removal of barrier in markets of export interest.

1.1 Overview of GATS and Uruguay Round

GATS classifies services trade under four different modes:

- a) *Cross-border Supply or Mode 1* refers to the delivery of services across countries such as the cross-country movement of passengers and freight, electronic delivery of information and data, etc.

- b) *Consumption Abroad or Mode 2* refers to the physical movement of the consumer of the service to the location where the service is provided and consumed.
- c) *Commercial Presence or Mode 3* refers to the establishment of foreign affiliates and subsidiaries of foreign service companies, joint ventures, partnerships, representative offices and branches. It is analogous to foreign direct investment in services.
- d) *Presence of Natural Persons or Mode 4* refers to natural persons who are themselves service suppliers, as well as natural persons who are employees of service suppliers temporarily present in the other member's market to provide services.

The GATS envisages progressive liberalisation of services trade under the above mentioned four modes of service supply. For each mode, a country can impose two types of barriers: market access barriers and/or national treatment barriers. A country is said to have imposed a market access barrier if it does not allow (or partially allow with some restrictions) foreign service providers to enter and operate in its market. A national treatment barrier exists when foreign service providers are allowed to enter the market but are treated less favourably than domestic service providers. During the successive rounds of GATS negotiations, WTO member countries negotiate and undertake commitments to liberalise market access and/or national treatment in specific sectors in what is known as sectoral schedule of commitments and across all or several sectors in the horizontal schedule of commitments. It is possible for countries not to grant full market access and deny national treatment by putting limitations and conditions on market access and conditions and qualifications on national treatment in particular sectors/sub-sectors. It is expected that successive rounds of negotiations will secure further liberalisation by adding more sectors to a country's schedule and removing limitations and qualifications, if any, in sectors/sub-sectors already in the schedule. This is done mode-wise for each sector/sub-sector.

GATS covers all services except those supplied in the exercise of government authority. It follows a positive list approach which indicates that there is no a-priori exclusion of any service sector and that countries are free to choose the service sectors/sub-sectors and modes within those sectors/sub-sectors for scheduling commitments.

In the Uruguay Round, commitments in distribution services were restrictive – both in terms of sectoral coverage and modes of delivery. Only 36 WTO members (including EU as one) undertook commitments in at least one of the sub-sectors of distribution services. Even countries with liberal foreign investment regime such as Singapore, Malaysia, Indonesia and Chile have not scheduled commitments. India, too, did not schedule any commitments in this sector. One of the reasons for the low level of commitments from the Asian and Pacific countries is that, compared to other services sectors, developed countries gave relatively low priority to distribution services

and negotiators, especially the US negotiators, who were more interested in obtaining commitments from the OECD countries and transitional economies of Central Europe than countries in Asia and Pacific Region. Both paucity of commitments and narrow scope of the schedules explain that the sector was not high on the agenda of the services negotiations. This scenario has changed completely in the Doha Round - facing a saturated market at home, international retailers are now targeting developing countries with a large consumer base, such as India and China, to offer liberal commitments in distribution services. This is evident from the fact that since the beginning of the Round, a large number of countries including the US, EU, Canada, Korea, Switzerland and Australia have submitted negotiating proposals to liberalise trade in distribution services.

1.2 India's Negotiating Strategies

Distribution services are an important service sector of India, contributing to over 12 per cent of GDP and 7-8 per cent of employment. However, the sector is highly fragmented and major part of the business lies in the unorganised sector. For instance, organised retailing constitutes only 2-3 per cent of total retailing. The sector witnessed significant developments and modernisation in the past ten years with the liberalisation of the economy, rise in per capital income and purchasing power, entry of big business houses, manufacturers, real estate companies, foreign retailers, etc. in distribution services. The growing Indian market has attracted foreign investors and India has been portrayed as an attractive destination for investment in distribution services. In the on-going Doha Round of negotiations, India would receive pressure from its trading partners to offer liberal commitments in distribution services. In their requests to India, most trading partners have asked for full commitments in Modes 1, 2 and 3. Commitments in Mode 4 can be to an extent stated in the horizontal schedule.

India's commitments in distribution services depends upon many factors such as the current policy regime, what the country gets in return, the extent of liberalisation made by its trading partners, etc. As per the current policy, FDI (foreign direct investment) is not allowed in retailing, while there are some sectoral caps for FDI through franchising. The FDI policy is liberal for commission agents' services and wholesale trade services. Since India has already liberalised wholesale trade, franchising services and commission agents' services, India can offer to bind the existing regime. An offer consistent with the existing regime would enhance India's bargaining position during the negotiations. Prior to making the offers, the government should carefully draw up the list of excluded commodities which includes sensitive commodities such as arms and ammunition.

Since Indian distribution service sector is still in its developmental stage, it would take at least 6-8 years for the

sector to become globally competitive and consider cross-border expansion. Hence, as of now, Indian companies do not have a major export interest in this sector. In future, with the development of organised formats, Indian companies may explore the possibilities of opening affiliates/retail chains in countries with similar taste (such as Pakistan, Bangladesh, Singapore, Malaysia, Sri Lanka and Middle East) and countries with large NRI (non-resident Indian) population (such as the US, the UK, Australia, Canada). In the Uruguay Round, the US has offered liberal commitments in commercial presence, while the commitments of EU, Canada, etc. are subject to some market access and national treatment restrictions. India should negotiate with the latter group of countries for removal of these restrictions. Many countries where Indian companies have established presence such as, Sri Lanka and the UAE did not schedule any commitments in the Uruguay Round. India can negotiate with these countries to schedule commitments in the current round.

The Government has repeatedly pointed out that India is pushing for full commitments in Mode 1. India can offer commitments in Mode 1 for distribution services and in return push its trading partners to do the same. The gains from Mode 1 liberalisation in distribution sector depends to a certain extent on the growth of e-commerce. The development of e-commerce, in turn, is constrained by the lack of international regulations governing such trade. In order to improve e-commerce security and the confidence of traders using it, legal issues such as encryption, electronic authentication, electronic payment of taxes and tariffs, protection of personal data, intellectual property and liability, electronic contracts, commercial communications and the domain name system needs to be regulated on a world-wide basis where a minimum set of requirement is acceptable to all countries. India needs to push forward the e-commerce negotiations in the WTO.

At present, retail experts are in short supply. However, in future, with growth of organised retailing and investment in training facilities, India can export retail personnel, consultants, mall managers, etc. Cross-country movements of these workers are restricted by various barriers and in the Uruguay Round, none of the WTO member countries made commitments to liberalise the movement of these labours. India should push for more liberal access to lower skilled workers such as retail personnel in the markets of developed countries, South Asian countries and the Middle East.

Increasing vertical integration in the distribution chain raises certain policy-related concerns as to whether such integration inhibits entry and competition. Anti-competitive behaviour of certain firms may reduce the likely gains from vertical integration. An important issue for discussion in the current round of negotiations is whether vertical integration leading to anti-competitive practices can create barriers to trade in distribution services and if so, how can such anti-competitive practices be best addressed. During the current

round of negotiations, anti-competitive practices can be addressed under Article IX of the GATS Agreement which deals with business practices or it can be negotiated as a Reference Paper under Article XVIII if there are any issues which are specific to the distribution services sector.

In the Uruguay Round, a large number of developed countries have excluded selected products from their schedule of commitments. Some of these products have been excluded because of their sensitive nature and national interest while others have been reserved for state monopoly. The exclusion of products such as agricultural raw materials, food and beverages affects developing countries such as India. Furthermore, some members have excluded certain products (many of these are agricultural products) subject to import permits or licenses from the scope of commitments. Prohibitions on the establishment of a commercial presence by intermediaries or distributors of agricultural products prevent developing countries from (i) implementing comprehensive export strategies for products and services of interest to them, (ii) promoting their export adequately, and (iii) establishing alliances and networks to gain access to external markets. In the on-going round of negotiations, India can point out that the list of excluded products should be re-examined and kept to a bare minimum. In particular, limitations on trade in agricultural products, pharmaceuticals and luxury goods should be confined to those which are strictly necessary for public health.

It is now widely debated whether India should open up the retail sector to FDI and whether multilateral liberalisation should precede unilateral liberalisation or *vice versa*. One view is that, as in the case of China, India should first liberalise retail trade multilaterally (i.e., India should offer commitments to open up retailing in a phased manner at a future date) and in return ask for greater market access in areas/modes of its export interest. This would increase India's bargaining power at the WTO. However, for such forward looking commitments, the country needs to carefully plan out the domestic reform strategy, since it is difficult to roll back from multilateral commitments. Given the sensitivity of the sector, others suggest a more cautious approach. The country should first open up the sector unilaterally and then bind the unilateral regime in the WTO. The process of opening up should be gradual - giving enough time to the domestic industry to adjust to the changes and to the government to implement complementary regulations. In the meantime, to enhance its negotiating position and gain greater market access in areas of export interest, India can partially open up certain sectors such as fuel retailing and direct selling, where FDI is already allowed subject to certain conditions. For instance, FDI is allowed in fuel retailing provided that the foreign company invests or proposes to invest Rs. 2000 crores in areas such as exploration and production, refining, pipelines and terminals. In direct selling, FDI is allowed if the foreign companies manufacture locally or source products from India.

Parallel to the multilateral negotiations, India is in the process of negotiating crucial bilateral/regional agreements. In these agreements too, India is being pressurised by its trading partners to offer commitments in distribution services. In the recently signed Indo-Singapore CECA (Comprehensive Economic Cooperation Agreements), India has opened up wholesale trade services and commission agents' services. Within the country there is a growing realisation that in order to modernise the distribution chain, there is need for foreign investment in supply chain. FDI would not only ease the capital constraints but also lead to the inflow of technical know-how and global best management practices.

Experiences of countries such as China, Brazil and Thailand which have opened up the distribution services show that it has expedite the growth of modern formats, led to improved productivity and efficiency, stimulated allied sectors such as food processing industry and increased sourcing from the country. Hence, pressure to open up the sector would remain both from within and outside GATS. Binding the unilateral regime in the WTO for sub-sectors such as wholesale trade services and commission agents' services would lend credibility to the domestic reform programme. India can use commitments in this sector to gain greater market access in sectors of export interest such as IT and BPO.

Developing subsidy disciplines in GATS

by Rajeev Ahuja

According to the guidelines and procedures for the negotiations on trade in services, among other things, negotiations on subsidies should conclude before negotiations concerning specific commitments are completed. However, progress on developing subsidy disciplines is tardy. Most member countries have not yet even furnished information on their subsidy programs for different service sectors. Whatever limited evidence that is available suggests that subsidies to various services sectors are fairly widespread, and so are the forms that such subsidies take. At present there are no effective subsidy disciplines in the general agreement on trade in services (GATS). Subsidy disciplines are necessary to encourage members from making greater commitments, which in turn is necessary for achieving higher trade in services. Subsidy disciplines in services would be particularly beneficial to those developing countries that have considerable benefits to reap from trade in services, have limited capacity to subsidise, and would anyway stand to gain exemptions from certain subsidy provisions as and when these provisions are developed.

The basic difference between trading in goods and trading in services on the one hand and between the design of goods agreement (GATT) and services agreement (GATS) on the other, limit the scope of applying subsidy provisions already developed in goods case and contained in the Agreement on Subsidies and Countervailing Measures (ASCM). Further, certain peculiarities and complexities in trade in services give rise to additional complications that a subsidy framework needs to grapple with.

While GATS provide considerable flexibility to member countries in liberalizing their services sectors, the national treatment obligation (which restricts ability of member countries from treating foreign service providers differently from the domestic service suppliers) discourages member countries from providing subsidies. Nevertheless, there is a need to develop subsidy disciplines. Subsidy disciplines, as

and when they are developed, should address only those measures that qualify as subsidies. Public measures such as regulatory policies and/or practices of monopolies and exclusive service providers that generate subsidy-like effect need to be addressed separately from those arising due to subsidies. Therefore, any attempt to develop subsidies framework needs to focus on distortions due to subsidies alone.

In thinking about subsidies framework in GATS, it is useful to examine the applicability of the Agreement on Subsidies and Countervailing Measures (ASCM) to services case. The subsidy definition in ASCM (namely, financial contribution by the government leading to conferral of benefit) seems useful in services case as well; so is the definition of specificity. The idea that non-specific subsidies i.e., subsidies available more generally, are non-trade distortionary is applicable in services too.

However, disciplines on specific subsidies based on their trade distortionary effect would differ in services. Unlike goods case where trade takes place only through cross border movement (i.e., Mode 1), trade in services can additionally take place when consumers move abroad (Mode 2) or when service supplier sets up a base in foreign market (Mode 3) or when labour, both skilled and semi-skilled, temporarily move abroad (Mode 4). This has some implications: one, trade flows become relatively complex; and, the link between trade distortion and competition distortion is no longer clear cut, two, trade within the domestic territory of a member country can occur much more than in case of goods; and so is the possibility of subsidy-induced trade distortion within the domestic territory of subsidizing country than in other member countries. As a result, the distinction between export subsidy and production subsidy becomes difficult, even if it is still useful. Furthermore, given considerable cross-linkages across services sectors, invisibility of many types of service transactions, practical difficulties involved in calculating subsidy margins, and limited scope of remedy by way of countervailing duties, it is prudent, as a general principal, to ban on all subsidy practices. At the same

time, the need for achieving public policy goals calls for having a “positive list approach” that provides certain derogations from the general principle of ban or prohibition. These derogations or exceptions could be to achieve certain well defined social and cultural, environmental, and development goals. Such an approach can take care of many challenges that come up in the design of subsidy provisions in services such as competition distortion across modes or across sub-sectors or a service supplier located abroad and supplying service through cross border movement facing unfair competition in the market where domestic suppliers are subsidized.

There is strong relationship between public services provided in exercise of governmental authority (i.e., Article I:3(b)) and public policy goals for which subsidies are allowed. One possible way to dealing with the issue is to leave the scope of public services open, and let the members decide what services they would treat as basic services, which should eventually get reflected in their commitments in GATS, and then treat the issue of subsidies to social sectors not very different from other service sectors in the subsidies agreement. Another possible way is to tighten the scope of I:3(b), and then leave large enough room in subsidies agreement to enable member countries achieve their legitimate social objectives through subsidies in these sectors.

Indeed, the European community has adopted the “positive list approach” that has been tested for the past several years. While this “positive list approach” would be possible in a full blown subsidy framework which would take some time to develop, in the meantime it is probably a good idea to identify

and limit those subsidies that are viewed to be the most trade distortionary. One type of trade distortion that has necessitated the need for having some subsidy disciplines is the undermining of market access commitments especially in a “third country market” due to subsidy practices of member countries.

All discretionary and ad hoc subsidies given to the infrastructure services (telecommunications, financial and transport sectors) that go as input into the production of other goods and services need to be disciplined as priority. So are certain sector specific subsidies given, for example, to tourism sector that is known to receive significant financial support from governments, and has a clearer bearing on trade. Similarly, subsidies that encourage the use of domestic inputs (both goods and services) over imported inputs must be taken up on a priority basis. Also subsidies that are specifically targeted at firms/sectors known for their foreign exchange potential ought to be zeroed in first. Likewise, consumption subsidies that are linked to purchase decision could also be focused in the initial disciplines. Sectors in which member countries have made greater commitment can be targeted first. Whether the subsidy disciplines developed in the interim need to be applied only to the sectors in which member countries have made commitments or whether subsidy disciplines need to be applied more generally, that is, even to those sectors in which members that have not made commitments remains an open issue. In the absence of good information on various subsidy practices of member countries, it is difficult to make progress on subsidy disciplines even on a limited scale.

Recent Developments in WTO

By Shravani Prakash

- **Developing Countries' Share in World Merchandise Trade Reaches 50-year peak**
- **WTO Director General Expresses Concern about the Progress of the Doha Negotiations**
- **Dalian Mini Ministerial Attempts to Break the Dead Lock**
- **Decline in number of Anti-Dumping Cases**
- **Pascal Lamy chosen as new Director General at WTO**
- **Arthur Dunkel passes away**

Developing Countries' Share in World Merchandise Trade Reaches 50-year peak

According to WTO figures released on 14 April 2005, developing countries saw their share in world merchandise trade rise to 31% in 2004, the highest since 1950. The Asian region recorded the highest volume of real merchandise export growth in 2004. China, the Republic of Korea and Singapore recorded rates in excess of 20%. India's export growth was around 16 percent that year.

The world economy grew at 4% in 2004, the strongest annual growth rate in more than a decade. This strong economic growth boosted world merchandise and services trade. In nominal terms, the value of world merchandise trade rose by 21%, to \$8.88 trillion, and that of world commercial services trade by 16%, to \$2.10 trillion. Both merchandise and commercial services trade experienced an acceleration of growth for the third year in a row, and the strongest rise since 2000. In real terms, world merchandise trade growth was almost 10% in 2004. The growth in merchandise has been attributed to higher oil and commodity prices that improved the terms of trade of developing countries. Very high exports growth from China and recovery in the trade of office and telecom equipment also contributed to the sharp increase in the merchandise exports from developing economies.

However this remarkable growth may not be sustainable as a marked slow-down in overall economic growth that began in the second half of 2004 is likely to decelerate world merchandise trade growth to 6.5% in 2005.

WTO Director General Expresses Concern about the Progress of the Doha Negotiations

The slow progress of the ongoing Doha Round of Negotiations has raised apprehensions that the forthcoming Hong Kong Ministerial might get overburdened with unresolved issues. Current negotiations are already well behind the schedule set by the Doha Development Agenda and any further delays will reduce the chances of a successful Ministerial Conference in Hong Kong. The WTO roadmap indicates that the Hong Kong Ministerial needs to play a pivotal role if the current round of negotiations is to conclude in 2006. According to WTO officials, failure of this Ministerial will be a major setback for growth, development and the multilateral system. Top WTO officials have warned that unless the current round of negotiations picks up momentum, it will be difficult to avert such a crisis. In a statement in early July, WTO Director-General Supachai Panitchpakdi has said, "although some progress has been made in certain areas of negotiations, the progress is nowhere near sufficient in terms of the critical path to Hong Kong".

To facilitate the progress of the current negotiations, about 30 prominent WTO Members have recently met in an informal mini ministerial meeting at Dalian, China. Although some progress was made, most delegations felt that the 2006 deadline of concluding the current round of negotiations will be almost impossible to meet.

Dalian Mini Ministerial Attempts to Break the Dead Lock

Ministers from thirty WTO member countries met at Dalian, China for a two-day mini-ministerial meeting, in an effort to try and break the deadlock on the stalled Doha round of negotiations. The Ministers, meeting five months before the 6th Ministerial Conference in Hong Kong, reaffirmed their commitment to a successful conclusion of the Doha Development Agenda (DDA) negotiations in 2006. They said that they were committed to establishing comprehensive modalities for agriculture and non-agricultural market access (NAMA), a critical mass of market opening offers in services, meaningful and substantial progress in Rules and Trade Facilitation, and substantive integration of the development dimension in all areas of the negotiations.

The Ministers welcomed the strong backing for the DDA negotiations given by the recent meeting of the G8 and by other international meetings and emphasized the need to capitalize on the added impetus. They recognised the fact that the successful conclusion of an ambitious and balanced multilateral package of trade liberalizing measures was vital to the welfare of developed and developing economies alike. Consequently, they declared that they would work to further increase the momentum towards the goal of a successful conclusion of the DDA negotiations by the end of 2006.

The discussions at Dalian were guided mainly by a recent status report by the Chairman of the Trade Negotiations Committee (TNC) on the Doha negotiations. The report had clearly indicated that the requisite progress had not been made, and there was an urgent need to expedite progress. Therefore, the main focus of discussions during the meet was the five key areas that, according the Chairman's report, needed political guidance:

Agriculture - On the Market Access formula, Ministers recognized the need to seek a middle ground between the Swiss formula and the UR approach. With respect to internal support, the immediate focus up to the end of July was decided to be on the cuts and disciplines that will apply to trade distorting support. Regarding the export competition pillar, noting that the essential structure was already in place, the need was felt to focus on adding further "building blocks" to the parallel commitments already in place.

Non-Market Agricultural Access (NAMA) – The urgent need to seek convergence on the structure of the tariff reduction formula was agreed upon, although there were different views on the precise form of the formula. Towards the end of discussion, there were some indications that the possibility of a Swiss formula with a couple of coefficients that would accommodate specific concerns could be further explored.

Development – It was recognised that the biggest gains for Developing Countries from this Round would come from genuine new market access across the board, including from the further liberalization of trade between Developing Countries. It was felt that the development dimension should be substantively integrated in all areas of the negotiations and the special concerns of the newly acceded Members should be effectively addressed.

Services – It was noted that the offers on Market Access by Members submitted so far still fell short of expectations in terms of both numbers and content. Consequently, the need was felt for increased engagement in terms of more and better quality offers by Hong Kong.

Rules – The Ministers reached a broad agreement to embark on text-based negotiations as soon as possible, and Hong Kong onwards at the latest. They instructed their officials in Geneva to intensify their discussions and to exchange ideas in text form wherever possible so that, by Hong Kong, they could present them with an agreed universe of areas where improvements were necessary.

Decline in number of Anti-Dumping Cases

The WTO Secretariat has reported that in the period 1st July – 31st December 2004, both the number of initiations of new anti-dumping investigations, and the number of new final anti-dumping measures applied, showed substantial declines compared with corresponding period 2003. For example, during the July-December 2004 period, 17 Members initiated a total of 103 new investigations, down from 135 initiations in the corresponding period of 2003. While European Union headed the list of Members initiating most Anti-Dumping measures, China was the most frequent subject of new investigations, with 25 initiations directed at its exports during July-December 2004.

Pascal Lamy chosen as new Director General at WTO

WTO members formally selected Pascal Lamy of France as the organisation's 5th Director General on 26th May. The decision was taken by consensus at the General Council. Mr Lamy will assume his four-year, renewable term on 1st September. He will succeed the present Director-General Supachai Panitchpakdi, who will be assuming the post of Secretary General of UNCTAD. Congratulating Mr. Lamy, Supachai said, "his grasp of detail and his proven track record in institutional management ensure that he will be an excellent Director-General". He voiced his intentions to make every effort to move the Doha negotiations as far as possible before the Hong Kong Ministerial Conference in December. He also said "a solid outcome at the July General Council would give Pascal a very good platform from which to launch the last stage of Ministerial preparations".

The process of selecting Supachai's successor lasted five months. In addition to Mr. Lamy, three other candidates competed for the position - Carlos Perez del Castillo of Uruguay, Jaya Krishna Cuttaree of Mauritius and Luiz Felipe Seixas Correa of Brazil. The four candidates were nominated by their respective Governments.

Arthur Dunkel passes away

Arthur Dunkel, former Director-General of the GATT, died on 8th June in Geneva. He was aged 72. Mr Dunkel had been the Director-General of the GATT from 1980 to 1993 and was at the helm of the launch of the Uruguay Round of multilateral trade negotiations in September 1986. The "Dunkel Draft" in December 1991 is considered to be a historic turning point in the negotiations.



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