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Members finally give up on Doha trade talks

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The Eighth Ministerial Meeting of the WTO (MC8) held at Geneva on December 15-17, 2011, approved the accession of Montenegro, the Russian Federation and Samoa. Given the size of its economy, the accession of the Russian Federation represents a significant development. Another important development was the approval of a revised Agreement on Government Procurement, with expanded entity coverage. A number of decisions, which are of interest to the least developed countries, were also taken. Details of these are given in a separate article in this issue of the Newsletter.

The ministers also adopted consensus documents covering protectionism and the way forward in the Doha Round of trade talks. However, these are full of ambiguities, which deepen when read with the pronouncements made in individual statements by the ministers at the conference. There is clarity only on one aspect: the trade talks are not going to conclude any time soon.

Addressing protectionism

Time and again, world leaders have affirmed their resolve to resist protectionism. And yet new protectionist measures have continued to be adopted. There is an issue on whether trade restrictive measures that are consistent with the WTO obligations are also covered by the definition of protectionism that members vow to resist. The G20 documents have been harping on a standstill commitment, which implies avoidance of trade restrictive measures even if they are in accordance with the WTO disciplines. At the MC8, a large coalition of members, calling itself the 'Friends of Development', which includes Brazil, China and India, sought full recognition of the rights of members to take recourse to WTO-consistent measures 'to achieve ... legitimate objectives of growth, development and stability'. The Australian minister expressed concern at the possibility of members reserving their right to increase tariffs and non-tariff barriers. As a result, the Chairman's statement, which reflects the consensus at the Ministerial, is equivocal on this aspect. 'Ministers fully recognize WTO rights and obligations of Members and affirm their commitment to firmly resist protectionism in all its forms.' Does this mean that resistance to protectionism is limited to refraining from measures that are in conflict with WTO obligations?

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Doha Development Agenda

Contrary to the declarations made at the G20 summit meetings in earlier years, the world leaders seem to have finally given up on the possibility of concluding the trade talks within the parameters on which they had launched them as a single undertaking. At the G20 Summit meeting held in Cannes on November 3-4, 2011, the leaders had recognised that ‘it is clear that we will not complete the DDA if we continue to conduct negotiations as we have in the past’. At the APEC Meeting on November 12-13, 2011, while expressing deep concerns at the impasse confronting the Doha Development Agenda (DDA), the leaders similarly came to the joint assessment that ‘the reality is that a conclusion of all elements of the Doha agenda is unlikely in the near future’. Likewise, at the MC8, there was consensus that ‘it is unlikely that all elements of the Doha Development Round could be concluded simultaneously in the near future’. On the way forward, both the G20 and APEC meetings have called for fresh, credible approaches for furthering negotiations. At the MC8 too, ministers recognised the need to explore different negotiating approaches, while respecting the principles of transparency and inclusiveness. The APEC Summit mentions ‘possibilities of advancing specific parts of the Doha agenda where consensus might be reached on a provisional or definitive basis’. Likewise the WTO ministers agreed to advance negotiations on specific elements of the Doha Declaration to reach provisional or definitive agreements earlier than the full conclusion of the single undertaking. This is not a procedural innovation by the ministers as the Doha Ministerial Declaration already envisages that agreements reached at an early stage may be implemented on a provisional or definitive basis.

Are there other alternative approaches that members might be willing to consider? There is less than full clarity on this. What approaches do the ministers rule out by emphasising the elements of transparency and inclusiveness? In their individual statements, not many ministers from the major players have been specific on this. The Japanese minister spoke approvingly of agreement among a critical mass of members as in the case of the Information Technology Agreement. Mr Anand Sharma, the Indian minister, spoke in a different vein, somewhat disapprovingly of both plurilateral agreements and suggestions for agreement among a critical mass of members. The ‘Friends of Development’ statement clearly rejects the plurilateral approach but is less clear on proceeding on the basis of a critical mass of members.

The main difficulty in translating the early harvest idea into concrete results is psychological. Past experience has demonstrated that, on all topics, differences among participating countries are carried forward to the very end, as no one wants to give away negotiating chips midway. The differences get resolved through a procedure of give and take only during the endgame, after the more divisive issues have been settled. We shall see in coming months if past experience is repeated or members are able to reach agreement early in areas such as trade facilitation and dispute settlement procedures.

Developing countries are justified in their disapproval of plurilateral agreements like the Agreement on Government Procurement, where the benefits are not extended to all members on an MFN basis. However, there is not much wisdom in opposing initiatives on the basis of agreement among members representing a critical mass of importing or exporting countries, where the benefits are extended to all members, irrespective of their participation. Of course, there should be transparency and inclusiveness and all members must know what is being negotiated and must have the freedom to join when they are ready. This has happened not only in the Information Technology Agreement but also during the Uruguay Round in all the sectoral agreements on eliminating or harmonising tariffs. During the Tokyo Round too, all non-tariff measure agreements were adhered to by only those contracting parties that were willing to do so, and others created no obstacles. This, therefore, is an approach that members should be willing to embrace.

New Issues

New issues are back on the agenda of the WTO. As in the past, during the run up to the Doha Ministerial Meeting, the initiative has come from the European Union, which made a strong pitch for the WTO to begin consideration of trade rules being extended to cover new issues. It argued that the current rulebook was insufficiently equipped to deal with issues like energy, food security, climate change, competition and investment. New Zealand brought up the need to study the implications of the global supply chain for the WTO rules. They argued that for the WTO to remain credible, it needed to address current global challenges. The major developing countries dampened the enthusiasm of the proponents by merely recognising that the WTO provided a forum for discussion of trade related matters and any such matter could be discussed in an appropriate body constituted under the WTO, in accordance with their rules and procedures and within their respective mandates. They feared that discussion of new issues would shift the focus away from unresolved issues in the Doha Round.

In the environment of non-co-operation now prevailing in Geneva, the move for a concerted discussion on new issues was bound to fail. The future will show how successful attempts to raise these issues in the existing bodies are.

Regional developments

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Are we going to see an EU-USA Free Trade Area soon?

In 1990-91, when the Uruguay Round of trade talks were teetering on the brink, economists and political observers feared that the world would break up into three trading blocs around the US, EC and Japan. However, the trade talks succeeded, and a new trade institution was born, the World Trade Organisation, strengthening multilateralism. But paradoxically, geo-political dynamics generated the impulse for a new wave of regionalism that has swept across the world in the last two decades. The numbers are increasing by the day and the Japanese minister mentioned a count of 500 existing arrangements in his speech at the Eighth Ministerial Conference of the WTO at Geneva. The biggest of them at present is the European Union with 27 member states that have gone far beyond a free trade area and even a customs union in economic integration. Today, the chances appear bright that an even bigger trade compact might come into existence soon.

At the EU-USA Summit held on November 28, 2011 at Washington D.C., the leaders established a joint High Level Working Group on Jobs and Growth, to be co-chaired by the European Commissioner for Trade and the US Trade Representative. The Working Group has been mandated to identify and assess options for strengthening the EU-US economic relations, 'especially those that have the highest potential to support jobs and growth' and submit its report by the end of 2012, with an interim report expected in June 2012.

Before the latest decision, public opinion has been building in the world's two major economies to work towards greater economic integration. It has been argued that with the Doha Round virtually dead, there are dim chances of a multilaterally induced initiative that can make a difference to the flagging growth and high unemployment in both the EU and the US. In the US\$15 trillion dollar economy of the US, the three regional arrangements that were approved recently with Colombia, Panama and Korea would not have a sizeable impact.

There is wide support among business associations on the US side for action to achieve economic integration between the two economies. The US Chamber of Commerce has proposed the elimination of all trade barriers on goods as a first step towards a full free trade area agreement. The US Coalition of Service Industries, which had played a major role in the 1980s to bring trade in services under the purview of multilateral disciplines, has suggested that the US pursue a transatlantic free trade area in services. The Transatlantic Business Dialogue, which was constituted in 1995 as the principal interlocutor between American and European business leaders and the US Government the EU Commission, has set its goal 'to achieve the freest possible exchange of capital, goods, services, people and ideas across the Atlantic'. The idea has received endorsement from the European Parliament as well. In a resolution on September 27, 2011, the European Parliament has suggested that the European Union and the United States work 'to develop the evolving, comprehensive "Transatlantic Growth and Jobs Initiative", which would include plans for the removal of remaining non-tariff barriers to trade and investment by 2020' and steps towards zero tariff levels in some product areas.

When the interim report of the joint high-level group comes in June 2012, we should have a clearer picture of where we are heading. Trade friction between the US and the European Union has been a regular feature in the WTO and the two economies have their differences on trade matters. In the industrial sector, the issue of aircraft subsidies is the main matter that has resulted in high profile litigation in the WTO. Most of the disputes, raised mainly by the US have related to the agriculture sector, the famous ones being those on hormone-fed beef and Genetically Modified Organisms (GMOs). However, in overall terms, there is a commonality in the economic situations of the two economies, which might seem to indicate that insuperable difficulties are not likely to surface in the dialogue that has been launched. Agriculture might cause some knotty issues, but in the area of services, there would be fewer problems, confined to limited areas such as audiovisual services. In intellectual property rights, the difficulties would be even less, although not non-existent. At least two disputes have been raised by the US in the past relating to the enforcement of IPR in motion pictures and protection of trademarks and Geographical Indication (GI) protection on agricultural foodstuffs.

If a trade alliance across the Atlantic does materialise, it could make a difference to the trade prospects of emerging countries like India. The interim report of June 2012, therefore, would be of great interest in these countries.

Trans-Pacific Partnership

One of the objectives of Asia Pacific Economic Co-operation (APEC) is strengthening regional co-operation and the countries involved have been working for a region wide free trade area, the Free Trade Area of the Asia-Pacific (FTAAP). At the 2010 meeting, the leaders had referred to both the ASEAN Plus approach and the Trans-Pacific Partnership (TPP) approach for achieving the objective. At the 2011 summit held at Honolulu, they seem to have kept their options open on the choice of the path towards a region wide free trade area. However, the indications are that the US has been working towards the TPP alternative.

The TPP was signed among four Pacific countries (Brunei, Chile, New Zealand and Singapore) on June 3, 2005, as a free trade area agreement and it entered into force on May 28, 2006. The decision by the US to seek accession to the TPP and to promote it among other Pacific countries has been a significant development in world trade over the past two years. At present, four other countries, Australia, Malaysia, Peru and Viet Nam are also in the process of negotiating accession to it. Japan has been under diplomatic pressure from the US to come on board. Recently, Prime Minister Yoshihiko gave a tremendous impetus to the TPP by announcing in November 2011 that Japan was ready to enter into negotiations with the members for participating in the agreement.

China, which is the biggest economy in the region, has not been invited. In fact, it is widely speculated that the intention of the US is to keep China out, in part because of its political strategy to diminish China's influence in the region and even in the world.

The US strategy appears to be to develop a high standard, regional agreement with provisions related to patents, worker's rights and environment protection.

Plurilateral initiative for the liberalisation of services

In recent months, proposals for the liberalisation of services on a plurilateral basis have been doing the rounds in Geneva and in academia across the world. The Australian economist, Jane Drake-Brockman, has suggested that there are four possible routes to pursue this objective. The first approach was followed in the WTO Information Technology Agreement (ITA), in which the agreement entered into force only if it had been accepted by members accounting for a certain share (say 90 per cent) of international trade. In this approach, the benefits are extended on an MFN basis to non-signatories as well. The second approach was followed in the Government Procurement Agreement (GPA), in which the benefits have not been extended to non-signatories. The third route was followed by the participants in the Anti-Counterfeit Trade Agreement (ACTA), in which negotiations were held outside the WTO among a closed group of WTO members. In this, the signatories have accepted a higher level of obligations on the enforcement of the TRIPS Agreement, which are not apparently inconsistent with that Agreement. The last alternative is an agreement under Article V of the GATS, which allows a limited number of members to enter into a services liberalisation agreement, subject to two main conditions. The agreement should have substantial sectoral coverage and it should provide for the absence or elimination of substantially all the discrimination between or among the parties. After the December 2011 Ministerial Conference of the WTO, the US seems to have come out with the idea of pursuing plurilateral liberalisation of services under Article V of GATS. After the initiatives by the US for a possible US-EU FTA and the Trans-Pacific Partnership involving Japan, it appears ready to strike a third blow on multilateralism through its plurilateral initiative in services. It would be a far better alternative to adopt the critical mass approach, which was adopted not only in the ITA, but also in the sectoral tariff agreements in the Uruguay Round. Of the four possible approaches analysed by Drake-Brockman, this is the only approach that is not only fully consistent with the WTO Agreement, but also is designed to attract into its fold the maximum number of participants. It is surprising that Brazil, China and India have summarily rejected the idea of plurilateral agreements, without going into the merits of various alternatives. Of the four alternatives analysed by Drake-Brockman, the GPA alternative is not legally feasible for any agreement going beyond government procurement; as such, an agreement would be inconsistent with the MFN obligation of the GATS. The ACTA format will also be inapplicable to an agreement involving market access, as the MFN obligation would again be a binding factor. Both the GATS Article V approach and the critical mass approach are legally viable, but the critical mass approach is immensely superior, as it adheres to the MFN principle and also has the potential to involve a larger number of members as parties. By rejecting this approach, Brazil, China and India may have inadvertently incentivised the US to opt for the Article V approach, which would not be in the interest of any group of countries that is left out.

WTO Ministerial Conference Decisions on Least Developed Countries

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Decisions on accession guidelines, MFN waiver, and extension of transitional period

One of the features of the WTO framework is special and differential (S&D) treatment of developing countries in respect of rights and obligations. Not only do they have flexibility in the disciplines relating to trade policy but they are also entitled to receive more favourable treatment in the trade policies of developed countries. Within the overall S&D structure, the grouping of countries recognised in the UN as least developed countries (LDCs) have been accorded additional benefits by virtue of further affirmative action, not only by developed countries but also by other developing countries. Since the entry into force of the WTO Agreement, the main effort of the developing countries has generally been to get the provisions regarding S&D treatment enforced and implemented. On the other hand, the main aim of the LDCs has been to get additional benefits. At the MC8, there was a general disposition to agree on a package of such additional benefits for the LDCs. Accordingly, the ministers agreed on three key decisions on which the WTO bodies had been working for some time.

The first is concerned with accession of LDCs to the WTO. The experience of the recently acceded LDCs has been that during the accession process, they were subjected to very burdensome requests from the WTO members and, in many cases, compelled to agree to concessions that were not justified at their level of economic development. These were far in excess of the level of commitments made by the existing LDC members of the WTO. In 2002, LDC accession guidelines were approved but these had been found wanting in the absence of clearly defined standards. To redress the situation, the Ministerial Conference has directed the WTO Sub-Committee on LDCs ‘to develop recommendations to further strengthen, streamline and operationalize the 2002 guidelines by, inter alia, including benchmarks, in particular in the area of goods, which take into account the level of commitments undertaken by existing LDC Members. It cannot be expected that benchmarks will eliminate discretion from the process of accession negotiations but they will certainly strengthen the negotiating position of the new LDCs.

The second decision is even more significant. In the area of goods, the enabling clause agreed in 1979 makes it possible to grant preferences to developing countries and, within such preferences, a further preference to the LDCs. However, there is no counterpart provision in the GATS. The MC8 has agreed to grant a 15-year general waiver to enable developed countries to grant preferential market access to services and service suppliers of LDCs. What makes the waiver potentially beneficial for the LDCs is the generous definition of juridical person adopted in the waiver decision. Even where a juridical person is owned or controlled by natural persons of non-least developed country members, it would be eligible for the preference as long as it is engaged in substantive business operations in the territory of any LDC.

The third decision is about waiver for the LDCs from the obligations of the TRIPS Agreement. The TRIPS Agreement provided for delayed application (of all provisions except those relating to the MFN and National Treatment obligations) by one year for all members, an additional four years for developing countries and an additional ten years for LDCs. The additional 10-year period for the LDCs expired in 2006 but, in November 2005, they were given a general waiver valid up to mid-2013. Since not much time remains before the general waiver expires, the LDCs are concerned about the obligations of the TRIPS Agreement becoming applicable to them. Now they want another waiver. On this matter, the Ministerial Conference has merely invited the TRIPS Council ‘to give full consideration to a duly motivated request from Least-Developed Country Members for an extension of their transition period under Article 66.1 of the TRIPS Agreement’. This does not appear to be a blank cheque for the extension of the waiver to all LDCs, but only an indication that requests should be considered on a case-by-case basis.

The TRIPS Agreement contains separate transitional provisions in respect of patents for pharmaceuticals, with the proviso that until patents become applicable on such products in the member country concerned, a mail box should be provided for receiving applications and exclusive marketing rights should be granted if marketing approval has been obtained in the home country. In the case of India, the provisions on pharmaceutical patents are now fully applicable. In 2002, the LDCs had been given a waiver from providing exclusive marketing rights up to January 2016.

Market access issues

Consensus eluded the WTO members on the more important LDC issues of duty-free, quota-free access and elimination of trade distortive measures on cotton. In December 2005, at the Hong Kong Ministerial Conference, the idea of duty-free, quota-free treatment by developed countries of all products originating in LDCs received a certain level of recognition. For countries like the US, which could not agree to full implementation, the target was reduced to 97 per cent, with the suggestion that the coverage would be successively improved until the full target is achieved. At the time of the Hong Kong Ministerial, the target year set for implementation was 2008 or no later than the start of implementation of the Doha Round. The Doha Round does not look like ending any time soon and it is more than three years since the end of 2008. At the MC8, the ministers could not agree to do any more than urge the full implementation of the relevant part of the Hong Kong document.

On cotton, in Paragraph 11 of the Hong Kong Declaration, the ministers had recalled the mandate given by the members in the General Council in 2004 ‘to address cotton ambitiously, expeditiously and specifically, within the agriculture negotiations in relation to all trade-distorting policies affecting the sector in all three pillars of market access, domestic support and export competition’. They reaffirmed their commitment toward an explicit decision on cotton in the agriculture negotiations Six years later at the MC8, ministers once again did no more than confirm ‘their commitment to on-going dialogue and engagement to progress the mandate in paragraph 11 of the Hong Kong Ministerial Declaration to address cotton “ambitiously, expeditiously and specifically”, within the agriculture negotiations. What a shame!

National Developments in Trade and Investment Policy

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Trade Policy

India's trade policy has not been subject to much change from year to year after the withdrawal of quantitative restrictions on imports about 10 years ago. In fact, there is a five-year policy that was announced in 2009 for the period 2009-14, including all aspects such as licensing of imports and exports wherever necessary, export promotion programmes and the handbook of procedures. There is some tinkering, nevertheless, at the beginning of each year. The import tariff regime has also been relatively stable during the last three years after successive years of solid reform, with the peak duties on industrial products being reduced from 35 per cent in 2000-01 to 10 per cent in 2007-08, at which level it has stayed since then. Minor changes are still made at the time of the budget every year.

In a reform-minded government, initiatives may come any time for changes in trade policy. Sometimes a crisis is the harbinger of change. The crisis confronting a private carrier, Kingfisher Airlines, has led it to seek permission to import Aviation Turbine Fuel (ATF) directly instead of routing its requirements through the Indian Oil Corporation, which has been granted a monopoly for imports of the product under the Foreign Trade (Regulation and Development Act) 1922. The request by Kingfisher Airlines has led to a welcome development: DGFT is examining the rationale for continuing the policy of canalisation (of imports and exports) for certain products, which is a part of the current foreign trade policy.

State trading monopolies

In the pre-reform era, when imports were rigorously controlled, there was widespread recourse to canalisation of imports, mainly as an instrument of control. With the implementation of economic reforms, the list of canalised items was considerably trimmed both for imports and exports. However, there has been no further effort to examine the need for continuing with the policy, until the recent initiative, which was induced by the request of Kingfisher Airlines for direct imports of ATF.

In May 2010, the Government of India has made a notification to the WTO of the special privileges on exports and imports granted to state trading enterprises. Export monopoly has been granted to the National Agricultural Co-operative Marketing Federation of India Ltd. (NAFED) and several-state level institutions for export of onion; to the Tribal Co-operative Marketing Development Federation of India Ltd (TRIFED) for Gum Karaya; to the Indian Sugar Exim Corporation for preferential quota sugar, the Kundremukh Iron Ore Company Ltd. for beneficiated iron ore concentrate and iron ore pellets; to the MMTC for certain types of iron ore, manganese ores, and chrome and chromite ores; to the Manganese Ore India Ltd. for certain types of manganese ores; and to the Indian Oil Corporation for crude oil.

Import monopolies have been granted to the Food Corporation of India for food grains, to the State Trading Corporation for copra and coconut oil, to a number of public sector oil marketing companies for refined petroleum products, Indian Oil Corporation specifically for ATF, the MMTC for urea and Indian Potash Limited for urea and potassic fertilisers.

The notification to the WTO gives justification for the monopolies in some but not all cases. In the case of onions, it is stated that exports are canalised for safeguarding the interest of small farmers in terms of getting a remunerative price and for regulation of the domestic price and availability. In respect of minor forest produce, it is stated that the objective is to provide marketing assistance to poor tribal communities and to

obviate possible exploitation of these communities by middlemen. The justification sought to be given for onion and minor forest produce is not credible. The entry of middlemen in trade operations is inevitable and the grant of export monopoly to state trading enterprises adds one more middleman. For quota sugar, obviously the policy of canalisation helps in the administration of exports quotas. For other products, no justification for canalisation of exports has been given in the notification.

As for import monopolies, there is obvious justification for granting import monopoly rights to the Food Corporation of India in respect of wheat and rice, for which the Corporation carries out massive domestic procurement and distribution programmes. There is also justification for canalisation of imports of urea in order to tie up with the massive subsidy scheme for supply of the fertiliser to the farmers. Imported urea cannot be sold in the domestic market unless it benefits from subsidies. The subsidy regime could perhaps also provide justification for import of kerosene and LPG. However, there is little justification provided in the WTO notification in support of import monopolies for copra, coconut oil, coarse food grains and refined petroleum products other than kerosene and LPG.

Government organisations in the country generally are not suitable for commercial operations and, in most cases, the adoption of bureaucratic procedures makes them inefficient. The policy on canalisation needs therefore to be subjected to rigorous examination to assess whether there is a compelling rationale for granting export or import monopolies. It is not enough to assert that they operate on the basis of commercial considerations because their inefficiencies are derived from bureaucratic procedures and are not in their control. Vigilance should be exercised also for ensuring that we do not create de facto import monopolies. That can happen, as has been happening, for instance, in the case of National Dairy Development Board that has been granted the full tariff rate quota (TRQ) for import of milk powder at the lower in-quota rate.

Foreign Investment Policy

Multi-brand and single brand retail

Although over the past few months, there was considerable excitement over the Government of India's proposal to open up the multi-brand retail sector for foreign investment, there was disappointment in store. The central cabinet was reported to have taken a decision in favour of foreign investment in multi-brand retail, but the decision was first suspended and then seemingly abandoned, temporarily at least, in the face of hostility from parties opposed to the ruling alliance, as well as some parties within that alliance. It remains to be seen if, after the state level elections in a number of states, the proposal would be revived. There is a reasonable chance of that happening, given the unassailable arguments in its favour chief amongst which is greater competition leading to lower consumer prices, more money in the hands of the farmer with the reduction of intermediaries, and the creation of new and better employment opportunities. All this will follow once the supply chain infrastructure has been created. Hawkers and small traders will also gain from sale by the retail chains of larger cash and carry packs. However, for the present, we have to wait.

Although the decision on foreign investment in multi-brand retail has been put off for the present, there has been a development in respect of the policy on foreign investment in single-brand product retail trading. In its Press Note dated January 10, 2012 (1 of 2012 series), the Department of Industrial Policy and Promotion has notified that foreign investment up to 100 per cent would be allowed, subject to specified conditions. One condition is that, where foreign equity is invested beyond 51 per cent, 'mandatory sourcing of at least 30 per cent of the value of the products sold would have to be done from Indian "small industries/village and cottage industries, artisans and craftsmen"'.

The new order on foreign investment in single-brand retail raises questions both of practicality and WTO

inconsistency. The practicality issue arises because it is unlikely that foreign brands would risk their reputation in the hands of the Indian small scale industry sector, which has multiple handicaps by way of power supply, labour rigidity and inadequacy of credit from commercial banks. The condition would have been viable if purchase had been required from Indian industry of any size. However, the problem of WTO inconsistency would still remain. The WTO TRIMs Agreement clearly bars mandatory requirements under domestic law for 'the purchase or use by an enterprise of products of domestic origin or from any domestic source'.

Civil aviation

The current foreign investments policy allows foreign investment in scheduled air transport services/domestic scheduled passenger airlines up to 49 per cent and in respect of non-scheduled air transport services up to 74 per cent. NRIs are allowed to invest up to 100 per cent. However, foreign airlines are barred from equity participation in an air transport undertaking engaged in operating passenger air transport services.

The financial crisis facing Kingfisher Airlines and indeed some other domestic airlines seems to have induced rethinking in the Government of India on the issue. This is another good development. India is not alone in limiting foreign ownership of airlines. The US, which has been in the forefront of nations seeking liberalisation of foreign investment policy, limits foreign investment in US carriers to 25 per cent. A favourable decision by the Government of India would open up avenues for Indian carriers to seek capital infusion from abroad. It is important to ensure that domestic carriers are strengthened so that they are able to cope with the increasing air traffic within the country.

India-US trade in agricultural products- SPS restrictions the main impediment

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India has registered phenomenal growth in its overall exports and imports over the past 10 years (2001-02 to 2010-11). India's trade with the US has grown at a slower pace, but exports have still increased from US\$8.5 billion to US\$22.5 billion. Imports into India have been somewhat more dynamic, growing from US\$3 billion to US\$20 billion during this period. Indo-US trade in agricultural and fishery products has followed broadly the pattern of overall trade. India's exports of these products to the US increased from US\$ 0.8 billion to US\$1.8 billion and imports from US\$0.3 billion to US\$0.8 billion.

It is well established that world trade in agricultural products is constrained by high tariffs as well as by sanitary and phytosanitary restrictions. The US has had high import duties on sugar, dairy and groundnuts, but it has zero tariff on products such as shrimps and prawns, guar seeds and guar gum, cashew nuts, black tea, pepper, sesame seeds, castor oil and some essential oils, casein and low duties on other products like milled rice including basmati rice, oleoresins, and gelatine sheets. The highest duties at 9.6 per cent are on prepared and preserved gherkins and at 6 cents per kg plus 8.5 per cent on prepared and preserved mushroom.

The popular image of India is of a high tariff country for agricultural products. However, the major import items from the US such as peas, chickpeas, lentils, crude soybean oil, crude rapeseed oil and cotton enter duty free in India. Relatively high duties apply on other major agricultural imports from the US such as almonds, pistachio, fresh apples and isolated soya proteins. Reduction of duties in these items would obviously help but exporters are of the opinion that the step may not lead to a sizeable increase in imports. Sanitary and phytosanitary (SPS) restrictions are the really big obstacles in the expansion of India US agricultural trade.

Sanitary and phytosanitary (SPS) restrictions in the US

Such restrictions in the USA constrain mainly exports of fresh fruits, mangoes, litchis, table grapes and pomegranates from India. An opening was given in April 2007 by the USA in mangoes after high-level intervention, but here also the cost of compliance with US requirements is proving to be prohibitive. In other fruits, there is no progress at all. A measure of the restrictive effect of SPS measures is provided by the fact that while in 2010-11 India exported fresh mangoes valued at about US\$36 million to the world, its exports to the US were less than US\$0.5 million. Similarly, India exported US\$83 million of fresh grapes to the world in that year, but could not export at all to the US.

Mangoes

The concern of the US Animal and Plant Health Inspection Service (APHIS) is that imports of mangoes, for instance, do not result in the introduction or dissemination in the United States of quarantine pests, such as the fruit fly or stone weevil. In 2007, it was agreed that to mitigate the risk, export consignments of mangoes should be irradiated under the supervision of US inspectors, for which the cost was to be borne by the Indian side. A Trust Fund was created in which India deposited the required funds in advance, amounting to US\$336,582 up to the 2011 mango season. Bearing the cost of inspection by US inspectors is making India's exports of mangoes uncompetitive. It has been suggested by the Indian side that the US authorities should follow procedures pursuant to US Regulation (CFR 305.3) which allow acceptance of certification by officials from plant protection organisations of the exporting country. In the case of organic products, certification by Indian certifying bodies has already been accepted by the US authorities.

Another issue concerning mango exports to the USA is the delay in the customs clearance process in the case of shipments sent by sea. In the case of a consignment of Kesar mangoes, which arrived at the Newark Container Terminal on July 6, 2010, the delivery was made to the importer on July 15, 2010. By that time, the quality of the mangoes had deteriorated and the whole consignment was lost. It is necessary for the US Customs and Border Protection Department to complete customs clearance of consignments of perishable goods immediately.

Litchis

The problem in the case of litchis arises from the fact that, in India, sulphur dioxide is used for post-harvest treatment for extending the shelf life of the fruit, which make it difficult for consignments to clear US environment regulations. To resolve the problem, India approached the US Environmental Agency (EPA) in November 2009 to determine the maximum residue limit (MRL) for sulphur dioxide. Although almost two years have elapsed, the MRL limit has not been determined. There is also a potential problem due to doubts on whether the EPA is the appropriate agency for regulating imports in the case of litchis in which the chemical is used not for pesticide purposes but for enhancing the shelf life of the fruit.

Pomegranates and Table Grapes

In September 2007, India requested the US to grant clearance from the quarantine pest angle for pomegranates and in March 2008, it made a similar request in respect of table grapes. From the Indian side, the complaint is that the pest risk analysis work in the US APHIS has not concluded although more than three years have elapsed since the request was made. The Indian authorities have also not been fully alert on the issue. It was learnt that the Indian government did not reply promptly to the US request for the list of pests for grapes.

SPS restrictions in India

Pulses

Quarantine clearance of pulses shipped from the USA is given in India on the strength of phytosanitary certificates issued by USDA/APHIS. However, under the Plant Quarantine Order, 2003, it is required that the consignment must be fumigated with methyl bromide at the port from which the shipment is made. In the view of US exporters, no fumigation is necessary for consignments coming from the USA as the shipments are free of any quarantine pests on account of the low temperatures prevailing at the point of origin. This has not been agreed to, but a dispensation is given for six months at a time for the fumigation to be done at the port of arrival. For stability and predictability of the trade regime, the US side has requested that the dispensation for fumigation at the port of arrival be made permanent.

Grains

The main SPS problem in respect of grains imports from India is the very low tolerance levels stipulated in India for weed seeds in all grains and for ergot in maize and sorghum. India has not been importing wheat in recent years, but in the past, whenever there was a weather induced shortage, imports from the USA were facilitated through temporary exemptions from the application of SPS restrictions.

The weed seeds requirement shuts out imports from the USA not only of wheat but other grains such as barley, which are being imported made from other countries.

Dairy

Imports of dairy products into India from the USA are effectively prohibited under the current sanitary import protocol. India requires certifications that dairy products are free of recombinant bovine sematotropin (rBST) and animal derived rennet. There is another certification requirement to the effect that animal parts have not been used in the feed for the cows from which the dairy product is derived. The contention of the US side has been that the Codex has approved the use of both rBST and animal-derived rennet and no scientific basis has been provided for applying more stringent measures.

The two sides have been discussing these issues and progress is reported to have been made in respect of the use of rBST and rennet. However, the problem relating to the use in the USA of animal parts in the feed of dairy animals has proved to be intractable, as religious sentiments are involved.

Poultry

In 2007, India banned imports of poultry, swine and pet food on account of detection of low pathogen avian influenza (LPAI) in the USA. The US side contends that the ban is inconsistent with the OIE guidelines, which merely require that poultry products may be exported from countries reporting detection of LPAI with minimal restrictions. The US side has sought science based justification for the use of the more stringent measure of a ban. While discussions have been held to resolve the issues, no progress has been made.

Grappling with SPS restrictions is the main task before the two governments if the objective is to give a significant push to two-way international trade between the US and India.



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