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In This Issue

Global Developments in International Trade

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The news from Geneva is that of an impasse once again in the world trade talks. On April 13, 2011, after holding a series of meetings (confessionals) with the representatives of the G7 countries (Australia, Brazil, China, the EU, India, Japan and the US) on non-agricultural market access (NAMA), Pascal Lamy declared that the gap between the industrialised and emerging countries was unbridgeable. On April 21, the WTO secretariat released texts in all areas of negotiations. These texts reveal that equally significant divergences exist in all the other major areas of negotiations. Clearly, when the Trade Negotiations Committee meets on April 29, 2011 to take a view on the reports of the Chairpersons of various negotiating groups and the comments of the Director General, WTO members will face their moment of decision – whether to let ten years of trade negotiations go to waste or to try and salvage some of the more positive outcomes from the negotiations. This article offers a preliminary analysis of the state of the negotiations on key issues.

NAMA is the main hurdle

Market access issues have continued to dominate the discussions that have taken place after the G20 November summit intensified negotiations, with the change that NAMA displaced agriculture as the central issue on which divergences need to be resolved. The main problem is the insistence by major developed countries that developing countries must participate in sector specific agreements for elimination of duty and that Brazil, China and India must do so on a mandatory basis. In 2009, it was the US alone, which had taken the stand that the major emerging countries must do more than just agreeing to the Swiss formula with the proposed coefficients but subsequently, the EC and Japan and others such as Australia and Canada have also put their weight behind the proposal. Initially the US interest was focused on three areas – chemicals, electrical/electronic products and industrial machinery – but other

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major developed countries have added new sectors. The Director General's report on his NAMA consultations mentions four other product groups in which the elimination of duty was proposed viz., enhanced health care, forest products, raw materials and gems and jewellery.

A feature of the sectoral debate is that the US (and now other major developed countries) ignores protestations from developing countries that the addition of sectoral initiative would tilt the reciprocity balance in the NAMA package even further to their disadvantage. The developing countries pointed out that at the Hong Kong ministerial meeting held in 2005, it had been specifically been agreed that adherence to sectoral agreements would be voluntary. Another significant aspect is that developed countries do not envisage that they would have to make a reciprocal commitment in other products of interest to developing countries in the event of developing countries agreeing to join sectoral agreements. The developed countries' position is not based on WTO provisions or the declarations adopted at previous ministerial sessions but on their unilateral perception that developing countries had gained greatly under the current regime and they must assume more responsibilities and undertake higher levels of commitments. During the latest consultations with the Director General, developed countries seem to have repeated the point that has been the main plank of their recent position in the negotiations – that the proposed cuts (without agreement on sectoral elimination) would deliver only limited reduction from the applied levels of tariffs in some developing countries. This argument ignores totally the tradition in GATT/WTO negotiations, and indeed the tacit agreement so far in the current negotiations, to take bound tariff levels at the commencement of negotiations as 'base rate' for calculating cuts.

Consultations and discussions among WTO members had thrown up the proposal for a "basket approach", a less ambitious alternative to zero-for-zero. Under this, there would have been differentiated tariff treatment on products allocated to different baskets in each sector. However, this milder suggestion also did not go any further as the issue remained whether adherence of developing countries would be on a mandatory or voluntary basis.

Agriculture

During the months preceding the Easter break, the negotiations on agriculture were no longer generating the heat that they did earlier in the Doha Round and NAMA negotiations assumed greater importance. One possible reason for this is that high agricultural commodity prices that have prevailed in recent times have created a situation in which trade distorting subsidies and access barriers do not really hurt agricultural exporting countries. Nevertheless, low intensity work has continued on about nine outstanding points of difference among representatives and groups of delegations have been working informally in the search for solutions.

The latest Chairman's text shows that the WTO members are still divided on several issues. These include the Blue Box (what should be the product-specific limits); cotton (extent of reduction of AMS); sensitive products (whether Japan and Canada should have flexibility over the four per cent limit proposed for sensitive products); tariff caps (whether there should be flexibility to allow maintaining tariff above 100 per cent, outside of sensitive products); tariff quota creation (whether members would be entitled to declare any tariff line as sensitive or would be restricted to only pre-Doha tariff quotas);

tariff simplification (whether all bound tariffs or only up to 90 per cent shall be expressed as simple ad valorem tariffs); special products (the percentage of tariff lines that developing countries would be entitled to designate as special products and the tariff treatment of such products); special safeguards mechanism (the conditions for exceeding the pre-Doha bound rates); and long standing preferences and preference erosion (the extent to which tariff cuts should be delayed on such products)

Services

In the services negotiations, the Chairman's report conveys the sense of prevailing dissatisfaction among members over progress in bilateral and plurilateral negotiations. As a measure of lack of progress, the Chair noted substantial gaps between offers (or signals given informally) and the requests or even the applied regimes. Three aspects on which there is particular need for progress in market access are binding of autonomous liberalisation, improved levels of access under Mode 3 (including restrictions on foreign equity participation and forms of commercial presence) and 'a robust and satisfactory outcome in Mode 4'. The Chair has also included in his report an account of where negotiations stand in respect of about 20 service sub-sectors and modes of supply in which plurilateral requests were made by cosponsors to particular recipients. Although in some cases, plurilateral requests elicited response by way of signals or improved offers by the recipients, in most sub-sectors a 'sizable gap remained between the request's ambition as well as autonomous market openings and the offers and signals of recipients'.

On services, in parallel with the negotiations on market access, work is being done on domestic regulations and GATS rules (safeguards, government procurement and subsidies). There is no convergence on any of the three areas of GATS rules. In domestic regulations too, despite some progress, differences exist on some basic issues.

Rules

The rules negotiations have not shown promise at any stage; and the text now put forward by the Chairperson does not show any progress either. On anti-dumping, all the 12 important issues remain unresolved and the chairperson has only made a report on them. Some of the politically sensitive issues on which deep divisions exist within the membership are the use of zeroing methodology for determining the margin of dumping, the desirability of a procedure to take account of the representations of domestic interest groups when deciding on whether to impose a duty and the inclusion of a mandatory lesser duty rule. These rules in particular are aimed at liberalisation and at making the anti-dumping system less protectionist, but in at least one major economy, the USA, there is no stomach for accepting such suggestions.

The utter lack of convergence among WTO members has compelled the chairman to submit reports instead of texts on the other two issues of subsidies and countervailing measures, and fishery subsidies. On subsidies, the contentious issues include:

- new disciplines on the provision of loans and loan guarantees by government financial institutions that do not operate on an independent, commercial basis (proposed by EU)

- relaxation of export competitiveness criteria for developing countries (proposed by Egypt, India, Kenya and Pakistan)
- change of benchmark for export credit from cost to government to benefit to recipient (proposed by Brazil)
- amendment of the safe harbour position given in the Illustrative List to the OECD undertaking on officially supported credit (proposed by Brazil).

The opposition of developed countries to the last two proposals aims to preserve their advantageous position that they seem to have wrested in the WTO Agreement.

On fishery subsidies, the Chairman's report brings out a paradox. While all WTO members seem to agree that 'the state of global fisheries resources is alarming and getting worse' and all recognise that 'this is a crisis of exceptionally serious implications for all humankind'. There is disagreement on what needs to be done. Delegations seem to have concentrated on creating exceptions rather than on building rules. In the words of the chairman, they 'appear to be focusing principally on maintaining their own status quo by placing on "others" the main responsibility to implement solutions, while minimising the impact of disciplines on their own activities'.

Trade and Environment

The most important area of negotiations on this subject relates to the reduction or elimination of tariff and non-tariff barriers to trade in environmental goods and services. On this, the WTO members are still grappling with ideas on coverage of products as well as on their tariff treatment. Agreement on a common list has proved elusive. There are alternative proposals for an agreed reference universe of environmental goods (air pollution control, renewable energy, waste management and water treatment, environmental technologies, carbon capture and storage and others), a core list and a complementary list, adoption of a request offer process of negotiations and identification of environmental goods on the basis of environmental projects. On the proposed modalities for reduction of tariffs, the ideas mooted include duty elimination; 50 per cent reduction; or complete elimination by Developed Countries in return for x per cent reduction by Developing Countries. The important point, however, is that the range of possibilities has not been narrowed down.

The keenness shown by developed countries in seeking ambitious results on liberalisation of trade in environmental goods is clearly motivated by their objective to retain the market dominance that they enjoy on these products. On the other hand, the hesitancy of major emerging countries is on account of their concern to retain space to develop the technology and capability to manufacture these goods in view of the potential for global expansion of demand for these products.

TRIPS

There are three areas of negotiations relating to Trade Related Aspects of Intellectual Property Rights (TRIPS). The first is based on Article 23.4 of the TRIPS Agreement, which mandates negotiations for the establishment of a multilateral system of notification and registration of geographical indications for wines. At the first WTO ministerial meeting, it was agreed to broaden the mandate to cover spirits as well. Two other subjects, extension of higher standards of protection of geographical indications envisaged for wines and spirits to other products and the relationship between the TRIPS Agreement and the Convention on Biological Diversity (CBD), flow from the implementation agenda of the Doha Round. Reports of the chair of the Special Session of the TRIPS Council on the first issue and of the Director General, WTO, on the other two issues show that deep divisions exist on all three issues. The difference from most other issues is that on these, the differences are not on North- South lines and there are both developing and developed countries on both sides.

On the multilateral register, differences persist among groups of members on whether participation in the system should be voluntary or mandatory and on the legal effect of registration. The EC has proposed that each member must consult the register and that registration would create a rebuttable presumption that the registered geographical indication satisfies the definition of "geographical indication" and that the indication is protected in the country of origin. On the other hand, opponents maintain that participation should be voluntary and the register should be no more than a database and members can only be encouraged, not obliged, to consult it.

On the other two issues, the discussions continue to be marred by a dispute on whether there is a mandate for the negotiations. On the extension issue, while proponents consider the level of Article 22 protection to be inadequate, opponents argue that extension of Article 23 protection to all products would create unreasonable burden and entail a fundamental overhaul in their legal systems. On the issue of the relationship between CBD and TRIPS, the WTO members agree on the need to avoid erroneous patents by, inter alia, relying on the use of databases on existing traditional resources. They agree also on the principle of prior informed consent and the principle of equitable sharing of benefits. However, there is no agreement on the proposal that patents should not be granted unless there is complete disclosure on the source of genetic material used and on the related issue of prior informed consent.

What Next?

The picture that emerges from the April 21 documents is that the Doha Round is in mortal danger. In an unprecedented departure from the GATT/WTO framework on the basis of which tariff negotiations have been held in the past and the letter and spirit of the Ministerial Declaration of Doha that launched these negotiations, the major developed countries are calling for rebalancing 'the disparity in the contribution between developed and emerging countries' and a harmonisation, if not equalisation, of their tariffs. It is a gross departure from the rules-based approach that underpins the WTO Agreement and is reminiscent of the dark era that preceded the establishment of the multilateral trading system about seventy years ago. The concept of reciprocity that has governed trade negotiations in the WTO/ GATT framework has disappeared from the vocabulary of trade negotiators at Geneva, and less-than-full reciprocity has become a dead letter. The latest focus of discord is the NAMA negotiations, in which the ministers had taken a leap forward at Hong Kong in 2005 by deciding on the Swiss formula as the principal modality and agreeing that adherence to sectoral agreements would be voluntary. In deciding to ignore one part of the deal, developed countries have risked unravelling the agreement arrived at so far. What if the developing countries go back on the other part of the agreement in 2005 and recant from adherence to the Swiss formula? The Doha Round would surely be dead.

The undoing of ten years of hard work in the trade talks is difficult to contemplate. Paradoxically, there is a large measure of agreement in the two areas, which have been the main reasons for repeated stalemate, agriculture and NAMA. Judged from the standards of the past rounds of negotiations in the GATT, 1947, it would seem unbelievable that the industrialised countries are virtually agreed on prohibiting export subsidies and cutting domestic support by 70 to 80 per cent. On tariffs, the developed countries are in agreement on reductions ranging between 50 to 70 per cent and the developing countries by two-thirds of those percentages. Even more remarkable is the fact that the developing countries have accepted the Swiss formula for the reduction of their industrial tariffs with the alternative coefficients of 20 or 22. Another area in which negotiations have created great hope is that of trade facilitation in which an agreement is achievable by all accounts. If we have not covered the subject in the analysis above, it is because it is not affected by profound differences. What is now left to be seen is how best can these positive results be salvaged in the near future.

How much difference will India-Japan CEPA make ?

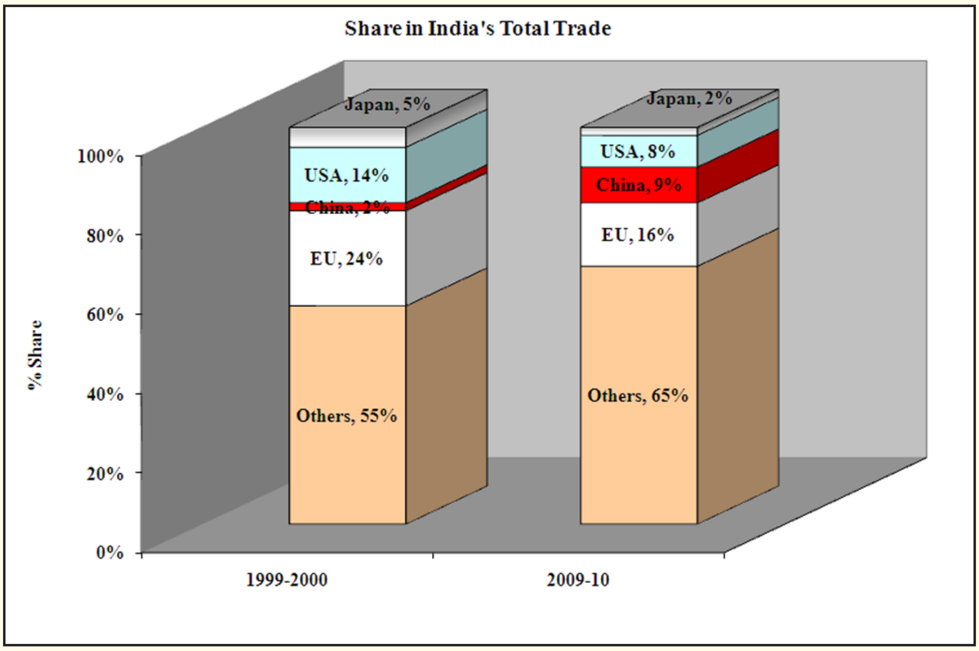
Anwarul Hoda

In recent years, India has been very active in seeking economic integration with its trading partners. Recently, it concluded a Comprehensive Economic Partnership Agreement (CEPA) with Japan, its first with a major economic power. This piece offers a preliminary analysis of the potential that the India- Japan CEPA offers to stimulate two-way trade flows.

Preferential Treatment in Goods

Japan is not a major trading partner for India and in 2009-10, it accounted for a share of 2 per cent against 10.9 and 20.2 per cent of the US and EU (27) respectively in India's global trade of merchandise exports (Figure 1). Japan's position as India's trading partner has been on the decline over the last 10 years as can be seen in the chart below. The range of goods exported by India is also narrow, low value-added goods such as animal fodder, ores and slag and mineral fuels accounting for 30 per cent of India's exports in 2009-10. In India's merchandise imports too, Japan lags behind with a share of 2.3 per cent against 5.9 of the US and 20.2 of the EU (27). Does the CEPA create new opportunities for India or Japan?

Figure 1



Source: DGCI&S

Farm and fishery products

For India, Japan is a good market for products of farm and fishery. In 2009-10, fish accounted for $215 million (all dollar figures are in US dollars), edible fruits and nuts for $38 million, coffee, tea and spices for $31 million, animal and vegetable fat for $40 million and soybean oilcake and other similar residues used for animal fodder for $175 million. Frozen shrimp and prawn, which accounts for the bulk of India's export of farm and fishery products, attract a duty of only one per cent, which will be

[1] Reprinted from March, 2011 issue of the Diplomatist

reduced to zero on the date of entry into force of the Agreement. The other large agricultural item is soybean oilcake, on which the import duty is already zero. India's exports of vegetable fats are mainly of castor oil, on which the current duty of 4.5 per cent would be eliminated on the date of entry into force of the Agreement.

In the case of spices, the import duty in Japan is zero for most items. Indian black tea in small packages attracts a duty of 12-17 per cent and in large packages, 2.5 per cent. Under the CEPA, these duties will be eliminated in10-15 years. The Japanese market for black tea is limited as the preference there is for green tea. Japan will eliminate duties on most fruits and vegetables either immediately or in 10 to 15 years. Exports of fresh mango and mango pulp have made some inroads into Japan in recent years. These attract a duty of 3 per cent on MFN basis but zero on GSP basis. Fresh grapes, which have emerged as a potential item for exports, are not being exported at present into Japan. The duties in Japan, ranging from 7.8 to 17 per cent, will be eliminated in 10-15 years. There are other fruits and vegetables too in which the elimination of duties could open up possibilities of export for India.

While there could be some gains over time in the exports of fresh fruits, it is well known that in Japan exporters encounter SPS problems. The volume of exports of fresh farm produce can become significant only if these problems are resolved. Here, the only comfort that we have is that the Agreement establishes a sub-committee on Technical Regulations, Standards and Conformity assessment procedures and SPS measures for undertaking science-based consultations to identify and address specific issues.

Japan's exports of agricultural products to India are negligible at present and it is not expected that there would be any significant change.

Industrial Products

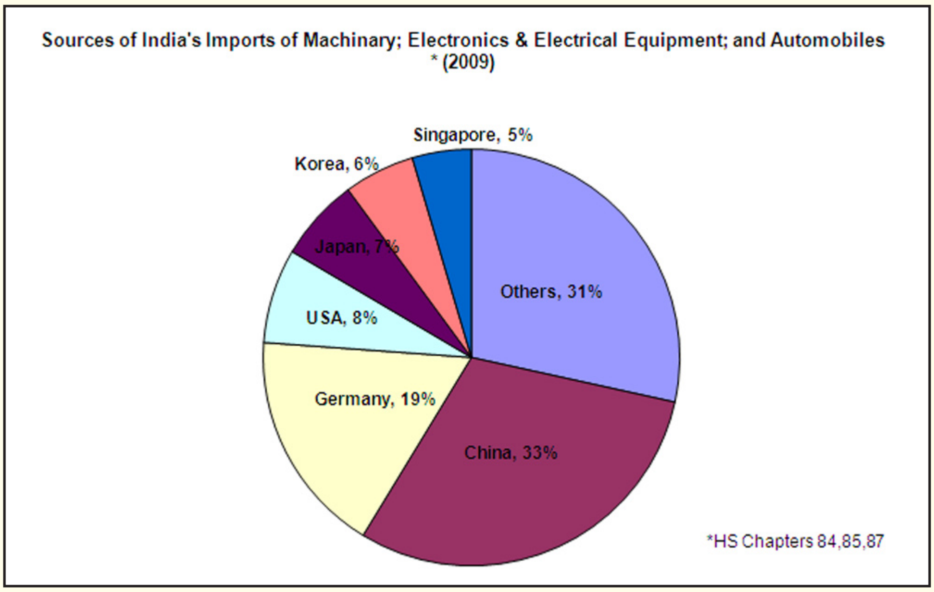
On industrial products, import duties had already come down to very low levels in Japan at the last round of negotiations and the simple average has stood at 2.7 per cent since 2001. In India, the simple average of applied duties in that year was about 35 per cent but since then the peak duties have come down to 10 per cent, except in a few products like automobiles, textiles and fish, making the average a little over 10 per cent.

In the CEPA, India has offered elimination of duties generally in 10 years but there are exclusions as well. Passenger cars, on which tariffs remain 60 per cent, are excluded from tariff reduction; so are some automotive components, including petrol engines and gear boxes. Only in the case of diesel engines for cars, the duty has been reduced to 5 per cent. Other products that are also excluded are some chemical items such as glycerol, glycol, insecticides, selected plastic products and some white goods. Japan's big gain is in electrical and non-electrical machinery as it would get the opportunity to export capital goods to India on a preferential basis as compared to its competitors such as China, Germany and the USA (figure 2), which would have to pay a duty at the general rate of 7.5 per cent.

Textiles and Apparel Products

The tariff liberalisation envisaged by both parties for textiles and clothing makes the agreement unique in that, with some exceptions, both sides are offering immediate elimination of duty upon the entry into force of the agreement. The current duties in Japan are 1.9 per cent for cotton yarn, 3.7 per cent

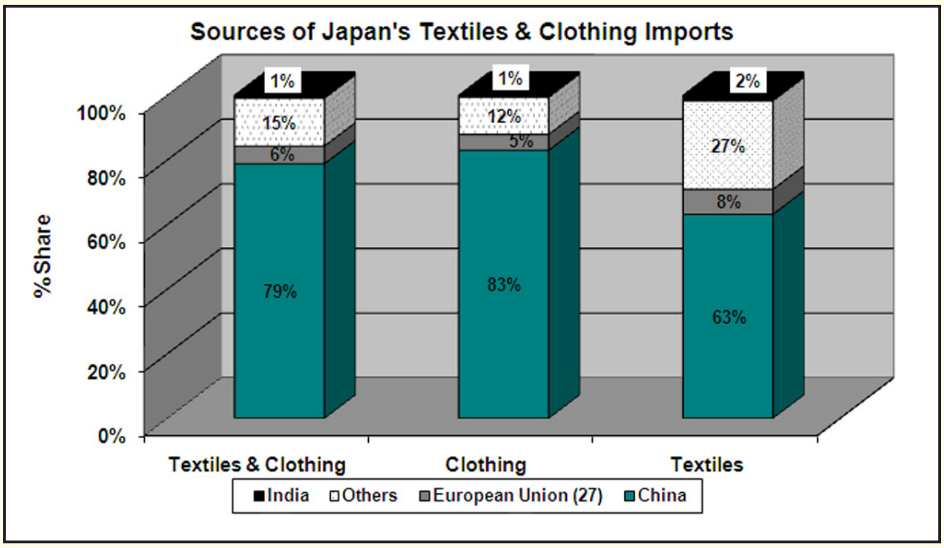
Figure 2



Source: DGCI&S

for cotton fabric (in both cases not considering the specific duty alternative), 10.9 per cent for knotted garments, 9.1 per cent for woven garments and 6.5-7.4 per cent for made up items. Normally, one would be inclined to regard this as a huge opening for Indian exporters but, on present indications, India's competitiveness in these products is an issue. In 2009-10, China had cornered a share of 78.7 per cent of the Japanese market of $32.26 billion and India's share was a poor 0.9 per cent; even Indonesia (4.2 per cent), Thailand (1.3 per cent) and Viet Nam (1.1 per cent) had more (figure 3). Japan too could get market access opportunity from the elimination of duty in India. Indian duties on most of the textiles and clothing products are much higher than Japan's. However, the assessment is that, being a high cost producer, Japan will be in a position to export to India only for the richer sections of the population.

Figure 3



Source: DGCI&S

Nevertheless, the elimination of duty on textile and clothing products must be regarded as a huge plus for India. It could provide the springboard for promotional efforts to raise the share of exports to that market.

Pharmaceutical products

An important issue for India was access for our pharmaceutical products, particularly generic medicines. The issue was not tariffs, as Japan has already eliminated duties on these products on an MFN basis. The issue is regulatory clearance and approval of generic drugs by the competent authority of Japan. Here, what has been promised to the Indian pharmaceutical companies is that their applications for regulatory approval would be accorded national treatment.

Other products of export interest to India

Mineral fuels have emerged as one of the largest items of export interest to India accounting for exports of $1.2 billion in 2009-10. Here, Japan's current rate of duty varies from 2.2 to 3.9 per cent. Phased elimination of these duties in 10 years should be of interest to India.

In jewellery items, India's exports to Japan touched $255 million in 2009-10. The existing MFN duty is already zero on the major item of export in this sector, i.e. cut diamonds. In some other items such as gold jewellery studded with diamonds, while there is an MFN duty of 2.08 per cent, under the GSP scheme, the duty has already been reduced to zero.

Among iron and steel items, India has an export interest in Ferro-manganese, ferro-silico-manganese and Ferro-chromium. Export in 2009-10 stood at about $60 million. The MFN duties on these items range from 2.5 to 6.3 per cent but these have already been reduced somewhat under the GSP. Under the CEPA, the duties would be eliminated straightaway or phased out in 7-8 years.

India has an interest in exports of engineering goods, including automotive components. In 2009-10, its exports of machinery falling under chapter 84 of HS nomenclature amounted to $94 million and of electrical machinery to $54 million. In auto parts too it has made small inroads into Japan in recent years. But in these areas, India's export achievement is far below the potential. There is very little to complain about as far as tariffs are concerned since Japan has completely eliminated tariffs on imports of all goods falling under HS Chapters 80 to 96. To the extent that technical regulations and conformity assessment procedures are an issue, they can be addressed in the sub-committee on technical regulations referred to earlier.

Preferential Treatment in Services

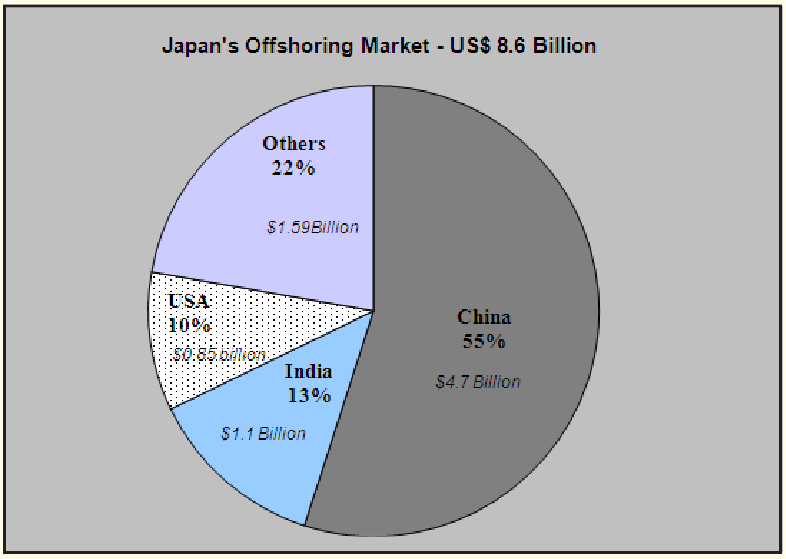
The CEPA covers the area of services as well in which both India and Japan are active players. India's specific commitments on services in CEPA cover professional services, business services other than professional services, telecommunications services, audio-visual services, construction services, distribution services, educational services, environmental services, financial services, tourism and travel-related services, recreational services and transport services. However, following the practice in other CEPAs to which India is a party, very little, if any, has been given by way of preferential treatment to Japan. In fact, the India-Japan CEPA commitments parallel closely the revised offer made by India in the context of the WTO negotiations on services under the GATS. Another feature is that the commitments made in the CEPA closely follow the existing applied policy. Thus, in telecommunication services, foreign equity is limited to 74 per cent and in audio-visual services, there is a numerical ceiling of 100 on the number of titles that can be imported. In fact, it is specifically mentioned that the numerical ceilings would be in accordance with the revised offer in GATS. In distribution, FDI has been permitted up to 51 per cent in single brand retail and there is no commitment on multi-brand retail. In respect of maritime services, we have retained the right to grant preference to Indian flag vessels for government cargo, by way of the right to first refusal for carrying such cargo.

On financial services, there is a restriction of 26 per cent on equity in both life and non-life insurance. In respect of banking, all the conditions applicable to foreign banks in the existing policy apply as detailed also in the revised GATS offers. However, in the GATS offer, it is stated that a limit of 20 licences per year would apply for both new entrants and existing banks. In the CEPA, it is provided that India shall give 'favourable consideration' to the application for establishment of branches by Japanese banks, up to ten applications over four years. It is specifically mentioned that 'favourable consideration' does not imply that a legal obligation has been undertaken in this regard.

Japan's services market is fairly liberalized in most sub-sectors and India's concern has been only with restrictions in mode 4 in which our main interest lies. India's particular interest in services trade is in the area of IT and IT-enabled services, which at present constitute more than 50 per cent of India's exports. According to NASSCOM, in 2008 Japan's IT services market was estimated at $108 billion, of which only about $8.6 billion was outsourced to foreign service-providers. China had a major share of the offshore market and India came second as can be seen in the figure 4 below.

As in the multilateral negotiations in the WTO, India had made a special pitch for commitments with respect to contract service suppliers and independent professionals. Here, India has had qualified success. There is a special chapter on specific commitments relating to mode 4 and Japan has agreed to grant temporary stay for a period of one or three years, which may be extended, to both contract service suppliers and independent professionals. The activities in respect of which such temporary stay would be allowed are listed and include computer-related services, engineering services, architectural services and accounting and book-keeping services. Services of skilled workers in Indian cuisine

Figure 4



Source: NASSCOM

are also included. However, it is provided that the application and the scope of activities permitted would be examined in accordance with the Immigration Control and Refugee Recognition Act.

Japan has also allowed for temporary stay instructors in the English language, Indian cuisine, yoga and Indian classical music and dance. No agreement could be reached to include nurses and healthcare workers in the list of natural persons whose applications for temporary stay would be allowed. India had put a great deal of emphasis on securing access in respect of this category. It has been agreed that the two sides would enter into negotiations on the issue with a view to reaching an agreement latest within two years of the entry into force of the Agreement.

Conclusions

In farm and fishery products, imports into Japan are already totally free of duties on soybean oilcake and almost free (the duty level being 1per cent) for frozen shrimps and prawns, which are India's largest export items. In tropical fruits and vegetables, India would be making gains by way of reduction or elimination of duties. However, going by the experience of existing exporters with the Japanese sanitary and phyto-sanitary requirements, it is going to be a long haul to get even a modest improvement in export volumes. Exports of castor oil could improve with the elimination of duty.

In industrial products, the most significant gain for India by way of immediate improvement in market access will be in textiles and clothing. In the area of generic medicines, there is considerable potential as India has already achieved large export volumes in other developed markets such as the USA. Expeditious regulatory clearance of generic medicines could be facilitated by national treatment but it would have to seen how this translates into practice. In the movement of natural persons, the agreement in respect of contract service suppliers and independent professionals looks significant. We have been active in seeking agreement on this, both multilaterally and bilaterally. However, here too we shall have to see how the new agreement translates into practice.

Japan's main gain will be that it would also have an opportunity to export machinery items and machine tools in which it would have a preferential advantage vis-à-vis other suppliers not benefiting from preferential tariffs. For machinery items, Japan is at present the fourth largest supplier to India after China, Germany and USA and for electrical machinery China, Germany and the USA are larger suppliers to India. Japan will also gain in textiles and clothing products in which tariffs would be eliminated in India, giving an opportunity to suppliers to target the requirements of the richer sections in India. Japan could also rely on the provisions of CEPA to seek licences for additional bank branches but, given the language of the Agreement, it cannot hope to secure this automatically.

India could not have hoped for spectacular gains from the CEPA in merchandise exports, given the fact that Japan is a low tariff country and on many products of interest to India the duties have already been eliminated for all trading partners. Indian exports are impeded only by SPS measures and the requirement for regulatory approval (in generic medicines), and on these a great deal of hard work will need to be done in future. In services too, our gains in respect of movement of natural persons will be tested in the process of implementation. For Japan, exclusion of motor vehicles and the main auto components from Indian commitments shrinks the package. In the result, neither side can hope to make dramatic gains but the CEPA could provide the basis for both India and Japan to improve their respective market shares in each others market over time.

Developments in India's Trade and Investment Policy

Shravani Prakash[1]

Developments in India's merchandise trade for the financial year 2010-11 have been encouraging. Exports, recorded at $245.9 billion, crossed the $200 billion target for the year (all $ figures are in US dollars). While the trade imbalance remained high with imports recorded at $350.3 billion, the trend in the balance of trade showed improvement with exports having grown by 37.5 per cent, higher than the 18 per cent rise in imports. Foreign Direct Investment (FDI) inflows in 2010-11, however, showed a decline of 25 per cent from the previous year, amounting to $18.4 billion in the April 2010-February 2011 period.

A number of changes in the trade and investment policies were introduced during the first quarter of 2011. The measures, introduced mainly under the budget proposals for 2011-12 and in the third Consolidated FDI Policy Circular, are geared towards enhancing exports, promoting imports of manufacturing inputs and green technology as well as liberalising the investment environment.

Developments in India's Trade Policy

Changes in Imports Tariffs

In view of persistent uncertainties in the global economy, the peak rate of basic customs duty was left unchanged in the current budget and held at its current level of 10 per cent. As a measure of rationalisation of duty structure, the rates of 2 per cent and 3 per cent have been unified at a median rate of 2.5 per cent.

Import tariffs have been reduced on specific products, inter alia to boost agriculture, to make economical inputs and intermediate goods available to the manufacturing sector, to encourage green technology and energy saving products, and to lower the cost of critical medicines and medical equipment. A few other significant alterations were made in import tariffs as well. The important tariff changes implemented in the first quarter of 2011 are listed below.

Tariff concessions to boost Agriculture

- Basic Customs Duty (BCD) on micro-irrigation equipment was reduced from 7.5 per cent to 5 per cent to promote micro-irrigation that is an environment-friendly and efficient means of irrigation, especially for dry land farming.
- Basic customs duty on specified agricultural machinery has been cut from 5 per cent to 2.5 per cent. BCD on the parts and components of these has been reduced from 7.5 per cent to 2.5 per cent to encourage their domestic production
- De-oiled rice bran cake, an important ingredient of cattle feed, has been exempted from basic customs duty to ensure that its improved availability enhances milk production.

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Measures to provide cheaper inputs for the manufacturing sector

- The basic customs duty on petcoke and gypsum, two critical raw materials for the cement industry, is proposed to be halved from 5 per cent to 2.5 per cent. The move is expected to help Indian cement makers to bring in better quality raw materials from outside.
- The duty concessions that were available to parts, components and accessories for manufacture of mobile handsets have been extended until March 31, 2012, and the list of products receiving these benefits has been expanded to include a few more items in its ambit.
- The list of raw materials used in electronics and IT industries, eligible for custom duty exemption, has been expanded to include some more items.
- LED, used for manufacture of LED lights and light fixtures, is being fully exempted from levy of a special customs duty.
- Basic customs duty on raw silk has been reduced from 30 per cent to 5 per cent, on cotton waste from 10 per cent to nil and on nylon yarn and nylon fibre from 10 per cent to 7.5 per cent.
- Benefit of duty free import has been given to trimmings, embellishments, components, etc. to merchant exporters against their exports of leather goods, footwear and textile garments.
- Basic customs duty has been reduced from 5 per cent to 2.5 per cent on certain textile intermediates and inputs for chemicals, Ferro-alloys and paper.
- Stainless steel scrap has been fully exempted from basic customs duty
- Full import duty exemption, which was earlier available to spares and capital goods required for ship-repair units, has now been extended to imports by ship owners.

Measures to encourage green technology and energy- saving products

- Specified parts of hybrid vehicles have been granted full exemption from basic customs duty, since hybrid vehicles are highly import-dependent for critical parts/sub-assemblies.
- The benefit of exemption available on ultra mega power projects is extended for development of facilities such as ash disposal systems
- Given that bio-based asphalt is an emerging green technology for road surfacing, full exemption from basic customs duty is being extended to bio-asphalt and specified machinery for its application in the construction of national highways.
- Full exemption from basic customs duty has been given to crude palm stearin for use in the manufacture of laundry soap, on environmental considerations to promote laundry soaps that conserve water and are gentle on the soil.
- To promote developments in green technology in rural areas, basic customs duty on solar lanterns has been reduced from 10 per cent to 5 per cent and completely removed on some inputs used in the manufacture of solar modules/cells.
- The full exemption from basic customs duty provided to specified parts of electrical vehicles has been extended to batteries imported by such manufacturers for the replacement market.

Tariff cuts directed at lowering costs of pharmaceutical products and medical equipment

- A concessional rate of 5 per cent basic customs duty has been provided on four life saving drugs (rasburicase, nilotinib, pneumococcal sacchride conjugate vaccine adsorbed 13- valent suspension for injection, and micafungin sodium for injection), as well as on bulk drugs used in the manufacture of these four drugs.
- BCD is reduced from 25 per cent to 10 per cent on lactose for use in the manufacture of homeopathic medicine
- Import duties on specified raw materials for the manufacture of syringes, catheters, cannulae and needles has been reduced from 10 per cent to 5 per cent basic and 4 per cent CVD.
- Endovascular stents have been fully exempted from basic customs duty

Other Tariff changes

- Units for vehicles (motor cars and other motor vehicles including two wheelers) that contain a pre-assembled engine or gearbox or transmission mechanism or a chassis, where such parts or sub-assemblies are installed, have now been excluded from the definition of "completely knocked down (CKD) unit". As a result, engines, gearboxes and chassis, which were imported into the country as CKDs at a duty of around 10 per cent, will now be considered semi-knocked down (SKD) units that attract a higher duty of more than 60 per cent. This move represents a reversal of liberalisation in the automobile sector, which is already being given a high level of protection.
- Some other relief measures provided include reduction in BCD from 30 per cent to 10 per cent on pistachios, from 100 per cent to 30 per cent on sun-dried dark seedless raisin, and from 30 per cent to 10 per cent on cranberry products.
- Cash dispensers and their parts have been fully exempt from basic customs duty, as a move under the government's financial inclusion agenda
- A concessional 5 per cent basic customs duty of and 5 per cent countervailing duty (CVD), at present applicable to high-speed printing presses imported by newspaper establishments, has been extended to mailroom equipment.

Export Restrictions

The notifications relating to export restrictions, published in the first quarter of 2011, mostly contained measures that were short-term in nature. An export duty of 10 per cent has been levied on de-oiled rice bran cake to discourage its export and improve its availability domestically. Export duty on iron ore, which was 15 per cent in the case of lumps and 5 per cent in the case of fines, has been enhanced and unified at 20 per cent ad valorem for all types of iron ore in the current budget. This is a move directed at encouraging steel manufacturing for domestic consumption. Additionally, full exemption from export duty is being provided for value-added, pelletized form of iron ore to encourage the value addition process for fines.

A prohibition was imposed on exports of milk powders, casein and casein products. Exports of certain varieties of rice (Sona Masuri, Ponni Samba and Matta) have been permitted with a limitation on the quantity of export. The ban on exports of onions, imposed in December 2010 in response to supply shortages, was lifted in February 2011. The export of cotton yarn as well as cotton, that was earlier "restricted" to exports only against licence, was made "free" subject to registration of export contracts with DGFT.

Export Promotion Measures

A number of measures were announced about to promote and incentivise exports. The commerce and industry minister announced export incentives for more than six hundred products in sectors like agriculture, chemicals, engineering, electronics and plastics. These were targeted at enhancing competitiveness for labour intensive, technology intensive and value added products.

A bunch of measures were announced towards procedural simplification and export facilitation, including the introduction of a facility to file on-line applications for obtaining IEC (Importer Exporter Code) and the introduction of self-assessment in customs.

Antidumping and Safeguard measures

The usage of trade defence measures by India, which had declined in 2009, showed an uptrend in 2010. India, which continues to be the leading initiator of antidumping initiations, had initiated 41 new antidumping investigations in 2010, compared to 31 in 2009 and 55 in 2008. In the first quarter of 2011, only five new anti-dumping investigations have been initiated by India.

No new safeguard investigations have begun in 2011, against 1 initiated in 2010 and 10 initiated in 2009. However, a review of safeguard action originally taken in 2009 was started in February 2011 on Aluminium Flat Rolled Products and Aluminium Foil from China, for continued imposition of safeguard duty.

Developments in India's FDI Policy

The budget for 2011-12 did not contain any significant announcement introducing changed in the country's foreign direct investment policy, although the finance minister noted that discussions were underway to liberalise the FDI policy further.

Liberal conditions under a major policy reform agenda were announced under the third edition of the Consolidated FDI Policy (Circular 1 of 2011), published and effective from April 1, 2011. It incorporated the following major changes in FDI policy:

- The restrictive "existing venture/ tie-up" condition (Press Note No.1, 2010 Series) stands abolished. This condition required non-resident investors, who already had existing joint venture/technical collaboration in India, to obtain prior approval from the government if they wanted to make new investments in the "same field". This measure is a significant move towards attracting greater FDI and technology inflows into the country.

- Guidelines relating to downstream investments have been comprehensively simplified and rationalised. Companies have now been classified into only two categories – 'companies owned or controlled by foreign investors' and 'companies owned and controlled by Indian residents'. The earlier categorisation of 'investing companies', 'operating companies' and 'investing-cum-operating companies' has been done away with. This decision will affect those companies that have a majority foreign equity shareholding since they would now be classified as foreign companies.
- Instead of specifying the price of convertible instruments upfront, companies will now have the option to prescribe a conversion formula, subject to the FEMA (Foreign Exchange Management Act) or SEBI (Securities and Exchange Board of India) guidelines on pricing. This would help the recipient companies in obtaining a better valuation based upon their performance.
- Indian companies were allowed to convert External Commercial Borrowings (ECB) in convertible foreign currency into equity shares/convertible preference shares. The existing policy provides for conversion of only ECB/lump-sum fee/Royalty into equity. The Government has now decided to permit issue of equity, under the Government route, in two categories :(a) import of capital goods/ machinery/ equipment (including second-hand machinery); (b) pre-operative/ pre-incorporation expenses (including payments of rent etc.). This measure, which liberalises conditions for conversion of non-cash items into equity, is expected to significantly ease the conduct of business.
- In the agriculture sector, FDI has been permitted in the development and production of seeds and planting material, without the stipulation of having to do so under 'controlled conditions'.

Geographical Indications in the Doha Round: the Way Forward on the Extension Question

Anwarul Hoda

In July 2008 the Doha trade talks broke down on the issue of special agricultural safeguards and in April 2011 they have broken down on the issue of participation by the major developing countries in the elimination of tariffs in certain sectors. Disagreements on market access issues have been widely reported and are well known. What is less widely known is that in other issues (with the sole exception of trade facilitation perhaps) the WTO members are poles apart. This article reviews the status of negotiations in respect of extension of higher standards of protection of Geographical Indications to products other than wines and spirits (GI extension). As we shall see below a number of related issues have got linked to the GI extension issues. First and foremost there is the negotiation for a multilateral system of notification and registration of wines, which is in the built in agenda of the WTO Agreement. Next is the issue of relationship between the Convention for Biological Diversity (CBD) and the TRIPS Agreement, which is being pursued by a number of developing countries on the basis of the Implementation agenda. Lastly there is the issue of claw back of GIs, which have become generic in many countries, but which the EC proposes to negotiate back as a part of market access in the negotiations on agriculture. This piece deals with only one of these four issues that is the GI extension issue.

Duality in TRIPS Standards of Protection on GIs

GIs are one of the intellectual property rights (IPRs) protected under the WTO TRIPS Agreement. GIs refer to indications that identify a good as originating within the territory of a Member or a region or locality within that territory where there is a specific quality, reputation or other characteristics of the goods attributable to its geographical origin. GIs are to be distinguished from simple marks of origin, which are used as a tool to determine the tariff treatment of the product in the importing country and do not have a bearing on the quality aspects.

A feature of the protection for GIs envisaged in the TRIPS Agreement is that the standards of protection are set at two levels. The normal standard is that WTO members shall provide the legal means for interested parties to prevent the use of such indications in a manner that misleads the public on the geographical origin of any good or constitutes an act of unfair competition. The Agreement also requires that a Member, acting ex officio if its law so permits, or at any rate at the request of interested parties refuse or invalidate registration of a trademark which contains or consists of GI with respect to goods not originating in the territory indicated, if the use of the indication in the trademark is likely to mislead the public on the true place of origin. Under this standard the test of deception is essential for the use of GIs to be regarded as wrongful.

Higher standards of protection are stipulated in the TRIPS Agreement in respect of GIs for wines and spirits. In respect of these goods the use of GIs is to be prohibited per se, without the need to apply the test of deception. Thus these GIs cannot be allowed to be used even if the true origin of goods is indicated, or the GI is used in translation or accompanied by expressions such as ‘kind’, ‘type’, ‘style’, ‘imitation’ or the like. Similarly, registration of trademarks containing or consisting of a GI has to be refused in respect of goods not originating in the territory indicated. The crucial point of difference in the two levels of protection is that there is no requirement for proving deception in the case of wines and spirits.

To give an example, under the higher standards applicable to wines and spirits it would not be permissible to allow Indian manufacturers to label sparkling wines produced in Maharashtra as Indian champagne. Nor would it acceptable for an Indian Made Foreign Liquor (IMFL) manufacturer to use images such as bagpipes on the label of the whisky bottle (which evokes Scotland the region where Scotch whisky is produced), even if it is specifically mentioned on the label that it has been distilled in India. A requirement for proving deception is not a prerequisite for wrong-doing where the higher standards of protection apply. On the other hand under the normal standard of protection it would be prima facie WTO compliant to label Sri Lankan tea as 'Darjeeling' tea as long as it is mentioned on the label that it is the produce of Sri Lanka, unless the right holder can lead evidence to show that the consumers have been deceived about the true origin of the product.

Article 24 of the TRIPS Agreement provides for a number of broad exceptions in the protection of GIs. Like the two levels of protection of GIs the exceptions too do not rest on any intellectual foundations but they reflect rather compromises struck on the subject during the difficult negotiations in the Uruguay Round. One exception is GIs of another WTO member for goods or services that have become generic and are used as common names with respect of such goods and services in a WTO Member. GIs with respect to products of the vine are similarly excepted if they are identical with the customary name of a grape variety in another WTO member. A major exception is GIs for wines and spirits that have been used in another WTO member in a continuous manner either (a) for at least 10 years preceding 15 April 1994 or (b) in good faith preceding that date. Similarly the validity and use of trademarks identical with or similar to a geographical indication that have been applied for or registered in good faith either before the date the provision became applicable for the member concerned or before the GI was protected in the country of origin, are not affected. Also excluded from protection is a geographical indication that is not protected in the country of origin or has fallen into disuse.

Doha Round Negotiations on Geographical Indications

Mandate

The TRIPS Agreement contains a built in agenda for further negotiations relating to GIs. Article 23.4 of that Agreement mandates negotiations to be undertaken in the Council for TRIPS for the establishment of a multilateral system of notification and registration of GIs for wines in order to facilitate the protection of GIs on wines. At the first WTO Ministerial meeting at Singapore in 1996 it was agreed that the system would apply not only to wines but spirits as well. Pursuant to the mandate of Article 23.4 as modified at Singapore work was undertaken in the TRIPS Council in 1997. In 2001 at Doha the Ministers agreed to continue the ongoing work within the new round that was launched. In fact they gave the matter priority in time and agreed to complete it by the Fifth Meeting (held later at Cancun in 2003). This did not happen and the negotiations on the establishment of a multilateral system of notification and registration of GIs became a part of the mainstream agenda of the Doha Round.

In the run up to the Doha meeting the developing countries had raised concerns relating to asymmetries and imbalances resulting from the Uruguay Round and demanded priority consideration of these concerns before the launching of a new round. Some of these concerns were resolved through a separate Ministerial Decision at Doha while others were referred by the Ministers to the various WTO bodies for being addressed in parallel with the negotiations. It was agreed that the negotiations on implementation issues would constitute a part of the single undertaking of the Round. One of the issues raised by the developing countries under the rubric of 'Implementation Issues' was the need to redress the inequity arising from the fact that higher standards of protection applied to wines and spirits, which were produced mainly by the developed countries while lower standards applied to other products, which were produced by the developing. The developing country supporters of extension of higher standards of GI (referred to hereinafter as GI extension) argue that in agreeing to roll over the implementation issues into the new round the Ministers also agreed to keep alive this issue. In fact these developing countries claim the same status in respect of another issue viz. proposed amendment of Article 27.3 (b) of the TRIPS Agreement to take into account the Convention on Biological Diversity (CBD) and the International Undertaking on Plant Genetic Resources. The question of mandate for negotiation of GI extension or of CBD/ TRIPS issue has remained contentious, and a number of WTO members have continued to maintain that the issues are not included in the Doha Round agenda, even as they have participated in the substantive discussions.

The Ministerial Declaration contains the following mandate for negotiations on GIs:

'With a view to completing the work started in the Council for Trade-Related Aspects of Intellectual Property Rights (Council for TRIPS) on the implementation of Article 23.4, we agree to negotiate the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Session of the Ministerial Conference. We note that issues related to the extension of the protection of geographical indications provided for in Article 23 to products other than wines and spirits will be addressed in the Council for TRIPS pursuant to paragraph 12 of this Declaration.'

Thus there are two matters in the Doha Round on GIs: the establishment of the multilateral system of notification and registration of GIs with respect to wines and spirits and the extension of the higher level of protection to products other than wines and spirits. The negotiations on these two subjects have got intertwined as the proponents of extension want the multilateral register to be equally applicable to products other than wine and spirits. In fact the EC proposal on the multilateral system is not confined to wines and spirits but applies to GIs on all products. As a part of market access under the negotiations on agriculture the EC has also raised the issue of negotiating back the GIs on wines and spirits and several food products, which have become generic in WTO member countries, and are therefore covered by the exception under the TRIPS Agreement. The EC has succeeded bilaterally in negotiating back several such GIs outside of the WTO framework, but it has sought to make further progress within that framework.

After almost nine years of negotiations the WTO membership is split down the middle on both matters.

Coalitions

The EC is the main proponent of a strong multilateral system of notification and registration of GIs and it faces opposition of large coalition of new world countries, namely Argentina, Australia, Canada, Chile, the Dominican Republic, Ecuador, El Salvador, Honduras, Mexico, New Zealand, Chinese Taipei and the United States. As regards GI extension the main proponents are Bulgaria, Cuba, Cyprus, the Czech Republic, the EU and their member States, Georgia, Hungary, Iceland, India, Kenya, Liechtenstein, Malta, Mauritius, Pakistan, Romania, the Slovak Republic, Slovenia, Sri Lanka, Switzerland, Thailand and Turkey and the opposition comes largely from the same group that advocates a weaker multilateral system of notification and registration. At the time of the July 2008 Ministerial the proponents of a strong multilateral system of notification and registration and GI extension clubbed the TRIPS/CBD issue along with the GI issues and demanded parallelism in dealing with all three issues. The explicit linkage of the TRIPS/CBD issue with the GI issues brought with it the support of a large number of WTO members for GI extension and a strong multilateral system of notification and registration of GIs and led to the emergence of an impressive alliance of 110 WTO members comprising not only important players like Brazil, China, India and the EC but also the ACP countries and the African Group.

The Current Status of Negotiations on GI Extension

The proponents propose that the protection of Article 23 of the TRIPS Agreement be applied to GIs for all products. The exceptions envisaged in Article 24 of the Agreement would also apply: in other words the proposal would have effect only for the future and would not affect existing uses of names.

Arguments advanced in favour of extension

The main arguments advanced by the proponents in support of their proposal are that there is no economic or systemic reasons for discriminating in favour of certain products in the protection of geographical indications; that the protection currently afforded to these products is inadequate; reliance on the system for the protection of collective or certification marks would not secure Article 23 level protection; and that the requirement to prove that the public is being misled in the existing protection is costly to fulfil as it involves furnishing of extensive evidence that the consumer is confused. They argue further that the extension will facilitate examination of trademarks by the administrative and judicial authorities when deciding on whether or not to refuse the registration of a trademark, which contains or consists of a geographical indication. They will need to refer to a simple criterion: do the identified products have the geographical indication referred by the geographical indication.

Arguments advanced by opponents of extension

On the other hand the opposition is based on the lack of mandate for undertaking negotiations for extension. They point out that although the subject is mentioned in the list of implementation issues drawn up by the proponents there has never been an agreement on negotiating extension of Article 23 protection to products other than wines and spirits. They maintain that Article 22 provides for a sufficient level of protection for products other than wines and spirits and this can be improved upon by relying upon the system of protection of collective or certification marks. An important point made by the opponents is that GIs in respect of products other than wines and spirits have skewed ownership among WTO members: the EC has nearly 600 names of foodstuffs and beverages that are registered under their regulations whereas other members have only a few GIs, which protected nationally. The final point is that extension would entail substantial costs for governments as countries that have a system of protection based on trademarks, collective marks, and unfair competition law would have to dilute one of the fundamental concepts of trademark systems and unfair competition law, which is the test of confusion or misleading standards.

The positions taken by the protagonists have not changed at all during more than nine years of negotiations and both sides remain locked in the arguments initially advanced by them.. One of the earliest informal documents [Job (01)/152/Rev.1 dated 27 October 2001] circulated just before the Doha Ministerial Meeting, containing a list of 'implementation issues' proposed by the developing countries the GI extension issue was reflected as follows:

'In light of provisions contained in Articles 23 and 24 of the TRIPS Agreement additional protection for geographical indications shall be extended for products other than wines and spirits'.

In the submission (TN/C/W/52 dated 19 July 2008) made by a large formation of WTO members that includes the European Communities, the major emerging economies, namely Brazil, China and India, other South Asian countries, the ACP countries and the African Group, the proponents ask for the same decision that they proposed from the outset, that members 'agree to the extension of the protection of Article 23 of the TRIPS Agreement to geographical indications for all products, including the extension of the Register'. The proposal also envisages that the exceptions provided in Article 24 of the TRIPS Agreement would apply mutatis mutandis. There is no change as far as the substance of the proposal is concerned.

Equally there is no change in the position of the WTO members on the other side of the divide. At no stage they have indicated any willingness to make any concession on the issue. Their position was and still is that there is no need for an agreement at all.

Due to the disagreement on the mandate of the negotiations on GI extension as also on the relationship between CBD and the TRIPS Agreement, these two issues are being discussed in the separate consultations being chaired by the Director General. They are not being discussed in the Special Session of the TRIPS Council where the issues relating to the multilateral system of notification and registration of GIs addressed. This is so, not withstanding the close connection among these three issues that is seen by the EU and the large body of the like-minded countries. There are wide divergences in the positions of WTO members on all these linked issues. However, on the multilateral register the chair has been able to bring out a composite text before the Easter break of 2011 for consideration of representatives, whereas on the other two issues such an exercise has not borne fruit. A report brought out by the Director General on April 21st reported on the consultative process without addressing the wider context of these issues.

India and the Geographical Indications Debate

During the Uruguay Round negotiations on TRIPS India's focus of attention was the area of patents because of concerns relating to pharmaceutical prices and the interests of the domestic pharmaceutical industry. Broadly speaking the sense among trade policy officials was that strong norms in areas of intellectual property rights other than patents would not do any harm and its negotiators did not have a position necessarily on many of the issues in the debate among the developed countries. On geographical indications there was a vague notion prevailing in the Government of India that the higher level of protection should be extended to products other than wines and spirits, particularly high quality products such as Darjeeling tea. However, the matter was not seriously pursued because India did not have at that time a domestic system of protection of geographical indications.

Although India did not have a specific law for geographical indications until December 1999, the Tea Board had been taking a number of measures for securing legal rights for the brand of Darjeeling tea. The logo "Darjeeling" was created in 1983 under the Indian Trade and Merchandise Marks Act 1958 (TMM Act, 1958) and both the logo and the word 'Darjeeling' were registered by the Tea Board in 1986. In the same year the logo was registered in the important markets of the UK (as a certification mark for the logo), the USA (as a certification mark both for logo and word, Canada (as a certification mark), Japan (as trade mark for the logo) and Egypt (as trade mark). International registration as a collective mark was also secured in Europe (Benelux countries, Germany, Austria, Spain, France, Portugal, Italy, Switzerland and the former Yugoslavia)

In December 1999, the Geographical Indications of Goods (Registration and Protection) Act, 1999 was enacted and four years later on September 2003 it entered into force. Darjeeling Tea was the first product for which registration was made under the new Act. Up to March 2010 120 GIs had been registered in India, mostly handicrafts but a number of agricultural products as well. Besides Darjeeling tea, other agricultural products such as Malabar pepper and Alleppey green cardamom have also been registered. However, clearly the most important product in India benefiting from the reputation and quality attributed to its quality is Darjeeling tea.

India produces about 1000 million kilograms of tea, which is about 31 per cent of world production. India's share of world tea exports has been dwindling because of cheaper exports from Sri Lanka, Kenya and a host of new producing countries. High value Darjeeling tea, grown in the district of Darjeeling in West Bengal, has a distinctive taste and has acquired a worldwide reputation for its fine taste. About 8.5 million kg out of a production of 11.5 million kg is exported, valued at about US $ 30 million. Because of its reputation this Indian geographical indication faces maximum challenges in the world and requires constant vigilance to protect it from abuse. The Tea Board spends large amounts on legal and registration expenses and on hiring an international watch agency for detecting infringements in overseas jurisdiction. Lack of the higher level of protection for products other than wines and spirits granted by the TRIPS Agreement and the absence of a multilateral system for registration increases the cost of preventing infringements. Registration of certification and collective marks is needed in civil law countries and the proof of local reputation and goodwill required in common law countries. If there is agreement in the Doha Round on extending the higher standards of protection of GIs the protection GI for tea would be greatly facilitated. The cost of preventing infringements will come down and the unit value realization from export of Darjeeling tea will rise.

Outlook for Negotiations of GI extension in the Doha Round and the Way Forward

Negotiations for GI extension have not shown any promise despite more than eight years of discussion. There is disagreement on even whether the issue is covered by the mandate of the Doha Round. The opposition comes strongly from the new world countries who have hard commercial interests to protect as in several of them the GIs for many food products are being used as generic terms just as in the case of wines and spirits. In a number of cases this is the result of production methods being brought by the emigrants when they moved to the new world in waves of migration from the 17th century onwards. Agreement on GI extension could have come out in a grand bargain on agricultural negotiations in the Doha Round, had the Europeans or the South Asian countries had negotiating chips to offer. However, the negotiations on the big agricultural issues such as cuts in domestic support and reduction of tariffs or sensitive and special products have reached a final stage and the process of give and take has been virtually exhausted. As far as the remaining issues are concerned the prospects are that there would be internal trade offs rather than one in which an issue like the GI extension can be fitted in. The possibility of the opponents being brought around to accept the idea of GI extension on merit is extremely small. In the circumstance can there be a Plan B on the basis of which the proponents can salvage some meaningful results in this area?

In the context of the prolonged impasse in WTO negotiations the need to look at possible changes in the negotiating framework in future is already a live issue at Geneva and in the academia. At the focus of the debate is the viability of continuing with the notion of 'single undertaking', which is premised on the assumption that all WTO members would find it possible to agree to a balanced outcome on trade liberalization and reform. However, it has become evident during the current round that consensus among 153 participating countries is difficult to secure on many issues. Owing to diversity of economic situations the interests of countries don't converge. In many cases there are political hurdles that make it difficult for the executive branch of a country to agree on changes required in trade and related policies. In the circumstance, it is being suggested that in future negotiations the WTO membership could proceed on the basis of less than consensus involving all members. One alternative worth considering is an agreement among a critical mass of WTO members, in which the signatories agree to make the accord operational among them without waiting for the others to come on board. Even in the current round an agreement binding only the signatories may be feasible. Within the WTO framework in several cases, such as in the Information Technology Agreement (ITA) and in the Basic Telecommunications and Financial Services, WTO members have proceeded on the basis of less than consensus. One safeguard included in those agreements is that the benefits are extended to non-signatories as well on an MFN basis. However, given the 'single undertaking' mandate acquiescence of non-signatories would still be needed to include such an agreement in the overall outcome of the negotiations within the WTO framework.

Interim Report of the High Level Trade Experts Group-a Critique

Anwarul Hoda

In November 2010 the heads of governments of Germany, Great Britain, Indonesia and Turkey had established an Experts Group to report on the priority action that needed to be taken to combat protectionism and stimulate global trade. Peter Sutherland, formerly the Director General of the WTO and Jagdish Bhagwati, the eminent economist has been given stewardship of the group as co-chairs. In January 2011 the group submitted an interim report on the completion of the Doha Round, recommending mainly that to bring the trade talks to a quick conclusion; world leaders should set an inflexible deadline for ending the talks. The Interim Report has put forward the following proposition:

"No individual player is willing to be the first to declare the Round moribund, knowing that they will then be accused of precipitating its demise. At the same time, there is not sufficient political momentum to push for a final deal. The only way to change this is to make the prospect of failure concrete, collective and unavoidable. At the G20 level political leaders should set themselves a deadline within 2011 by which the Round must be completed or declared a failure. This should be inflexible and bind all players at the level of Heads of Government."

The idea that an inflexible deadline will impel the main protagonists to sink their differences and reach an agreement is not convincing. The suggestion looks particularly futile in the context of the latest development. Deadlines are no doubt an important tool for inducing participating governments to seek an agreement in a finite time frame. However, they are of no avail if there is a lack of political will to conclude the negotiations on the basis of what is achievable. The G20 leaders have already been setting targets but this has not led anywhere. If they were to say now that the latest deadline is inflexible it will only damage their credibility further. The important point that needs to be understood is that lack of political will among important players to resolve differences is the most important reason for the current trade talks languishing and political will cannot be instilled by setting an inflexible deadline.

The Interim Report has also made a number of unacceptable observations, on which a response is needed. Commenting on the current chairman's texts on modalities it observes as follows:

"…while the modalities provide a basic level of ambition, the devil is in the detail: until it is clear where all countries will exercise their flexibilities to shield tariff lines from cuts through exclusions or where the special safeguard mechanism will apply, it is impossible, or at least very difficult, to value a final package in a way that makes it possible to sell to domestic constituencies. The formula plus flexibility system is both the greatest potential strength of the Doha Round, and potentially its fatal weakness."

The view expressed here would not be shared by the vast majority of participating countries. Flexibility for individual or groups of countries in respect of selected aspects of trade policy has been the traditional way of dealing with national sensitivities in the GATT/WTO system. In fact the pattern of obligations in GATT 1994, as in GATT 1947, is to lay down the rules and then provide for exceptions. The same pattern is mirrored in the rules for individual rounds of negotiations. During these rounds bilateral negotiations have been used to obtain assurance about the use or non-use of flexibilities on products of interest to the trading partners. As noted in the interim report the modalities on agriculture envisage flexibilities for both developed and developing countries.

The report has targeted the special agricultural safeguards for particular criticism. An escape clause is not new to trade agreements, and the GATT 1947 provided for such a clause in its Article 19 (now elaborated in the WTO Agreement on Safeguards). The WTO Agreement already has a provision in Article 5 of the Agreement on Agriculture, which closely parallels the new proposals on special agricultural safeguards. What has to be remembered is that special safeguard measures will be applied only temporarily, when there is major fall in prices or a sharp rise in imports. Fluctuation in international agricultural prices can do tremendous harm to both consumers and producers and it is imperative to put in place a mechanism that enables governments to moderate the volatility. Instead of criticising the special agricultural safeguard for diminishing the value of concessions for reduction of barriers the right course for the detractors is to suggest that reasonable limits should be put on its use. Negotiations on the special agricultural safeguards have been aimed precisely to fulfil this objective.

Commenting on the negotiations in NAMA the Interim Report observes as follows:

"Other big emerging economies would undertake much less new market opening, chiefly because their current applied tariffs are much lower than the rates they bound into their WTO Schedules in the previous Uruguay Round. Brazil would cut its current level of duties by just 8%, from 8.5 % to 7.8 % of the value of imports. It would also be an 8% reduction on the part of India, from 13 to 12 % of the value of imports of industrial products. India can argue that it has reduced its tariffs substantially over the last decade, and it deserves some credit for this. Brazil however currently levies duties at almost the same level as at the end of the Uruguay Round."

There is a serious flaw in the calculations of reductions of tariffs in India's case that would result from the application of the formula. The modalities proposed by the chairperson in NAMA clearly provide for the base rate to be the pre-Uruguay Round bound rate and where the rates were not bound earlier for the base rate to be the applied rate in 2001, marked up by 25 per cent. As in the past negotiations the modalities provide for full credit to be given for autonomous reduction of tariffs during the course of negotiations. It has so happened that India has reduced its peak level of non-agricultural applied tariffs (with a few exceptions such as automobiles) from 35 per cent in 2001 (when the negotiations began) to 10 per cent in 2011. According to the proposed modalities and by any standards of logic the starting point for measuring the reduction of tariffs has to be the prevailing tariffs at the time of commencement of negotiations and the sizeable reduction in the applied tariffs during the course of negotiations has to be taken into account. Instead, what has been done in India's case in the study quoted by the Interim Report is to take the prevailing applied level of tariff in a recent year and pronouncing the verdict that the reduction would be only from 13 per cent to 12 per cent. In India the gap between the applied and bound tariffs has widened because of the delay in concluding the negotiations, and if there is any further delay it is possible that the gap would widen further. To ask India to do more than is justified on the basis of the principle of reciprocity (not to speak of the concept of non-reciprocity) is penalising a Member for unilateral liberalisation. It is true that the Interim Report concedes that India 'deserves some credit' for the autonomous reduction of tariffs. The language is somewhat patronising and there is no basis for suggesting that India should get 'some credit' and not full credit.

On services, the Interim Report calls for the WTO Members to improve the current offers in order to close the gap between these offers and the current level of actual openness provided in practice. It also recommends that the indications of fresh concessions given by Members at the "signalling conference" in 2008 should "captured and capitalized on" and further recommends that the "services negotiation now needs to be the chief focus of the energies of all negotiators".

The Interim Report's recommendation that the service negotiation now needs to be the chief focus of the energies of all negotiators is a sound one as the negotiation in this area has been neglected after the Ministers decided in 2005 at Hong Kong to give priority to agriculture and NAMA. However, to suggest merely that the gap should be closed between the offers and the current level of openness and the indications given in the signalling conference should be "captured and capitalized on" will leave an imbalance against many developing countries, which have liberalised autonomously in a big way, and for whom concessions on mode 4 are fundamental. In the negotiations the idea has emerged that the exchange of concessions in services would involve offers from the developing countries to bind the existing level of openness (and even go beyond in respect of mode 3) in exchange for reciprocity by the developed countries by way of concessions on mode 4. But the Interim Report does not even mention mode 4, when concessions in this mode by the developed countries are the main demand of a large number of developing countries.

By way of conclusions the Interim Report observes as follows:

"Compared to what negotiators have already achieved, additional concessions needed are balanced, and they would lead to an outcome that is balanced relative to the starting point. Much of what needs to be done is of relatively small size, involving limited political pain."

It is difficult to accept to accept the assessment that additional concessions needed are small in size and would make the package balanced and would involve little political pain, when there is no clarity in the Interim Report as to what additional concessions would help to conclude the negotiations. Are the elements of liberalisation in respect of cotton in agriculture, sectoral agreements in NAMA and concessions on Mode 4 in services included? What about geographical indications, fishery subsidies, anti-dumping rules. Is it being suggested that the concessions in these areas on the basis of proposals made by participants would cause very little pain?

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