Trade Policy and WTO Newsletter

ICRIER

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ICRIER is an autonomous, policy oriented, not-for-profit economic policy think tank. Our main focus is to enhance the knowledge content of policy making by undertaking analytical research that is targeted at improving India's interface with the global economy. We have recently adopted a medium-term strategy for our research and research related activities with the main thrust areas including trade openness, WTO related issues, regional co-operation and the strategic aspects of India's international economic relations.

Since ICRIER's inception, GATT has been one of the main thrust areas of research activities. After the establishment of the WTO, services became one of our niche areas of research and an ambitious project for study of individual service sub-sectors was implemented with support from the Ministry of Commerce and Industry. Subsequently, the research was broadened to include other WTO issues such as agriculture, NAMA, anti-dumping, subsidies and countervailing measures and intellectual property rights. With the agenda of the WTO becoming more comprehensive and with the launch of the Doha Round, we substantially expanded and intensified WTO research at ICRIER.

From June 2000 to 2007, ICRIER's WTO research was funded by the SIR RATAN TATA TRUST and this was being headed by Prof. Anwarul Hoda. He has now returned from the Planning Commission and once again leading the WTO research programme at ICRIER.

In this context we have decided to launch a quarterly titled the Trade Policy Newsletter. The newsletter will keep track of national, regional and global trade and investment policy developments and offer critical insights. Each issue will also contain feature articles on various aspects of these developments as well as on WTO issues.

Articles in the newsletter will be written by ICRIER research staff and invited guest writers. The opinions reflected in these articles will be of the authors and should not be attributed to the institution.

Kumar

Dr. Rajiv Kumar
Director & CE, ICRIER

In This Issue

Doha Talks Continue to Flounder

Anwarul Hoda[1]

The Doha talks continue to flounder. The three months of intensified engagement at Geneva set off by the Delhi meeting of trade ministers in the first week of September 2009 ended on December 16 with virtually no movement. The unresolved issues remain frozen in the pre-existing condition.

Three months of talks show no progress on substantive issues

At the Seventh WTO Ministerial Meeting, held at Geneva from November 30 to December 2, 2009, the Doha Round was not on the agenda but ministers did not ignore the subject. A large majority of them reaffirmed yet again their intention to bring the Doha Round to a conclusion by the end of 2010. Paradoxically, however, they had given no mandate to their officials to seek and negotiate solutions in areas of disagreement. The actual negotiations during the three months of dialogue remained confined to technical discussions and did not address critical issues. As observed by the Minister for Commerce and Industry, the major focus during these talks was on the 'non-headline issues' and the gaps in the 'headline issues' did not receive attention. One of the reasons for the standoff was that while most members want to continue work on texts that have been put forward by the chairpersons, the United States wants an overhaul of the texts. At a meeting of senior officials of the G14 (Australia, Brazil, China, Canada, Egypt, the EU, India, Japan, Malaysia, Mexico, New Zealand, South Africa, South Korea and the United States), the developing countries expressed total opposition to reopening the major compromises worked out so far. The EU too was not willing to give more by way of market access. Most members would be happy with the access resulting from the application of the modalities broadly reflected in the texts on the table but the United States wants commitments on additional access mainly from the advanced developing countries. In the words of the United States Trade Representatives (USTR), the United States seeks the 'creation of new trade flows and meaningful market opening, particularly in key emerging markets'.

The lack of constructive engagement among the representatives resulted in very brief meetings during the third round of talks among senior officials from December 14 to 16, 2009. The meetings on agriculture and non-agricultural market access, organised by the chairs, were over in less than half an hour. Senior officials participating in the meetings had nothing new to say in services too; they only repeated their well-known positions. But members kept their faith by deciding on the future process. There would be stocktaking at the vice-ministers level in the week beginning March 22, 2010 in order to assess progress and to determine whether concluding the negotiations by the end of 2010 is doable.

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State of play in agriculture

In agriculture, there has been some progress in the technical discussions on the identification of the base date and the appropriate tables and on the preparation of the templates to be used for scheduling specific commitments. But, there is no reduction in the number of substantive issues on which gaps remain to be bridged viz., the special safeguards mechanism, tariff simplification, tariff rate quotas, sensitive products, cotton subsidies, tropical products and tariff preferences. In fact, the disagreement seemed to widen on the related issues of sensitive products, tariff capping and the creation of new TRQs. For instance, the USA sought to revive an old proposal that developed countries, other than countries like Canada and Japan, should also be allowed to exceed the limit of 4 per cent for sensitive products.

Some favourable news relevant to the negotiations on agriculture came from outside the Doha Round talks. The EC and the Latin American countries ended their 16-year old bananas dispute in the WTO by initialling an accord on December 15, 2009. The EC will lower its MFN tariffs on bananas progressively from €176 to €114 in 2017, while Ecuador and other Latin American countries will drop their disputes in the WTO and not seek further cuts in the Doha Round. The African-Caribbean-Pacific (ACP) countries will retain their duty-free status in bananas and get a grant of €200 million to help them adapt to increased competitive conditions in bananas in the EC market. The USA also signed a complementary agreement with the EC, ending the WTO dispute, since the deal between the EC and the Latin American producers of bananas will benefit the big US distribution companies like Chiquita and Dole too. Alongside the agreement on bananas, the EC and the Latin American and ACP countries are reported to have agreed also on the faster liberalisation of a long list of tropical products (for the benefit of the Latin American countries) as well as on another list in which the liberalisation would be slowed down (for the benefit of the ACP countries, which have duty free access to the EC for tropical products except for rice and sugar). Unlike the agreement on bananas, the agreements on other tropical products are subject to a successful conclusion of the Doha Round. The agreements on tropical products would remain provisional until the significant Asian producers of such products join the emerging consensus.

State of play in NAMA

There is a wide measure of agreement among members that the Swiss formula would be applied, by developed and developing countries alike, to reduce tariffs during the Round. There is further, a meeting of minds that higher coefficients would apply to the developing countries than to the developed, so that the former are able to retain higher levels of tariffs overall. The Chairman's text proposes certain numbers for these coefficients and also takes on board the developing countries' proposal for flexibility in the application of the formula in identified tariff lines.

The major hurdle is the call given by the US for key developing country members, including India, to adhere to the proposed sectoral agreements for elimination or deeper reduction of tariffs, particularly in chemicals, electrical products and environmental goods. This is not acceptable to developing countries and there was no progress in resolving the impasse on this issue. As in agriculture, the representatives concentrated on technical level discussions, more on non-tariff barriers and less on sectoral initiatives.

The main argument advanced by the US is that it needs new real effective market access for its exporters in order to win the support of the Congress for the trade deal and this could be delivered only by the sectoral agreements. Developing countries have resisted the proposal on the ground that the understanding from the outset has been that, as in the past, members would have the option to join sectoral agreements on a voluntary basis. A more fundamental reason for their non-acceptance of the proposal is that the application of the proposed formula and the coefficients would itself result in an imbalance in the exchange of concessions between them and the developed countries. They are being required to lower tariffs by a larger proportion than developed countries with the result that they would suffer from a reciprocity deficit after the proposals are implemented. The existence of such a deficit would constitute a departure even from the norms that apply to negotiations among the developed countries and would diverge even further from the WTO rule that less than full reciprocity should be required from the developing countries. Adherence to sectoral agreements would skew the balance further. In requiring 'new trade flows and meaningful market opening', the United States is ignoring the reduction in tariffs brought about in India on an autonomous basis after the WTO Agreement entered into force. In fact, even after the launching of the Doha Round in 2001, peak industrial tariffs have been brought down from 35 to 10 per cent. By demanding new and meaningful market openings, the United States seeks further reduction of applied levels of industrial tariffs. It is not unreasonable for a WTO member to demand more concessions from its trading partners provided it is itself willing to grant additional concessions. However, it is unprecedented in the WTO and against its rules and spirit to ignore altogether the autonomous and unilateral concessions made by a trading partner, particularly after the negotiations were launched, when it is willing to bind these concessions. If unilateral concessions are not recognised and fully paid for upon their conversion into binding commitments, it would discourage WTO members from undertaking liberalisation between rounds in the future. That would be a serious setback to the trading system.

State of play in services

In market access, the negotiations during the last three months took the form mainly of clarifications on the signals given during the ministerial gathering in July 2008. One of the reasons for the lack of progress is that at the Hong Kong Ministerial Meeting in 2005, it was decided to give priority to the task of finalising the modalities for negotiations in agriculture and NAMA. In fact, in earlier discussions, India and other developing countries had rejected a move by the United States, Australia and Canada to prepare draft schedules of specific commitments based on signals made by the trade ministers in July 2008 on the ground that the modalities for negotiations in agriculture and NAMA should first be agreed upon as mandated by the ministers at Hong Kong. In any case, in the current environment when the world is emerging from a deep recession and jobs are a major concern in the industrialised countries, it is going to be difficult to engage them in negotiations for market access in Mode 4 (movement of natural persons).

Apart from market access, negotiations in other areas of services have also not moved forward. In GATS rules (subsidies, emergency safeguards and government procurement), progress 'has been minimal' in the words of Mr Pascal Lamy, while reporting to the Trade Negotiations Committee on November 17 2009, and there is not even a negotiating text on the table. On domestic regulations, there is a text on which members are focusing attention.

Other areas of negotiations

There has been no breakthrough in other areas of negotiations either viz., rules, trade and environment, TRIPS issues including geographical indications and the relationship between the TRIPS Agreement and the Convention on Biological Diversity and dispute settlement. Negotiations in the area of trade facilitation have, however, shown some promise and a consolidated text was issued on December 14, 2009.

Concluding remarks

The latest round of failed talks has highlighted the fact that the US is not fully engaged in the negotiations, as the present administration has not yet focused on trade issues. It has become amply clear that unless the current US leadership pronounces itself on trade policy and also initiates discussions with the Congress to obtain trade promotion authority, the Doha talks will continue to face hurdles.

The next stage to watch for in the Doha Round will be the stocktaking meeting in the fourth week of March, 2010.

India's Current Engagements in Free Trade Area Agreements/Preferential Trade Agreements

Swapna Nair and Tonisha Chadha[1]

From Multilateralism to Regionalism

India has traditionally favoured multilateralism over regionalism or bilateralism. In the 1960s and 1970s, while a wave of regionalism swept the developing world, India remained aloof from any such initiative.[2] However, over the last two decades, geo-political considerations have dictated a policy change and led India to seek regional integration initially with South Asian countries and later with the economies of South East Asia and East Asia. India has ventured outside the region as well in seeking closer economic relations with dynamic economies, both developing and developed.

Given this context, we give an overview of India's regional engagements, those that are operational and those that are being negotiated, highlighting recent developments.[3] In this issue, we do not analyse the regional agreements or their functioning in detail but merely provide a starting point for future analysis.

Operational FTA's/PTAs

South Asia

India was the main promoter of the Agreement on South Asian Free Trade Area (SAFTA), which came into force in 2006. Other members are Pakistan, Sri Lanka (non-LDCs), Bangladesh, Bhutan, Maldives and Nepal (LDCs). The agreement covers only trade in goods and negotiations on trade in services are currently underway.

Along with SAFTA, India has been pursuing closer economic integration with some of the SAFTA members individually. The India Sri Lanka Free Trade Agreement has been operational since 2000. Following the FTA coming into force, negotiations on a Comprehensive Economic Package Agreement (CEPA) have been concluded, though the agreement has not come into operation yet. This would include trade in goods, services, increased economic co-operation and investment between both economies. It is expected to become functional in 2010. There is also an FTA agreement with Bhutan and a trade treaty with Nepal. The Indo-Nepal Trade Treaty envisages free trade on

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2. The most that India did was to enter into largely inconsequential global or selective preferential trade agreements among developing countries. These were the Tripartite Agreement among India, United Arab Republic and Yugoslavia (1968), Trade Negotiating Protocol among Developing Countries (1971), the Bangkok Agreement (1975) and the Global System of Trade Preferences – GSTP (1986). Of these, the first two are extinct and although the Bangkok Agreement (now known as the Asia Pacific Trade Agreement) and the GSTP have survived, they remain anaemic arrangements with little trade flowing under them

3. We do not cover here the talks with countries with which negotiations for RTA/PTA have not commenced, even if Joint Study Groups have already submitted their reports as in the cases of China, Indonesia and New Zealand. We also exclude MFN type bilateral agreements.

a mutually agreed list of primary products and duty free access to industrial goods from Nepal to India on a non-reciprocal basis, subject to quotas in respect of four identified tariff lines (vanaspati, acrylic yarn, copper products and zinc oxide). India has also entered into a Preferential Trade Agreement with Afghanistan, which is likely to be assimilated into the SAFTA Agreement once the process of accession of that country has been completed.

South East and East Asia

Outside South Asia, India entered into a framework agreement for establishing an FTA with Thailand in 2003 and signed a Comprehensive Economic Cooperation Agreement with Singapore in 2005. This agreement covers trade in goods, services and investment. The Indo-Thailand FTA initially provided for an Early Harvest Scheme under which the two countries eliminated tariffs on 82 tariff lines by September 1, 2006.

The oldest preferential agreement India is party to is the Asia Pacific Trade Agreement (APTA), earlier known as the Bangkok Agreement. This was signed in 1975 and the current members are Bangladesh, China, India, South Korea, Laos and Sri Lanka.

Latin America

India has also signed preferential trade agreements with the MERCOSUR in 2004 and with Chile in 2005, with the intention of upgrading them eventually into Free Trade Areas. The PTA with Chile became operational in September 2007 and with the MERCOSUR in June 2009. While negotiations for broadening and deepening the PTA are taking place with Chile, there is no such initiative in respect of MERCOSUR (The Southern common market in Latin America comprising of Argentina, Brazil, Paraguay and Uruguay with Chile and Bolivia as associate members).

GSTP

India was one of the main initiators of the agreement establishing the Global System of Trade Preferences (GSTP) among developing countries, which was signed on April 13, 1988, at Belgrade. The agreement came into force on April 19, 1989 and 44 countries have ratified it. Two rounds of negotiations have already been held under the GSTP and the third round has been launched.

Recent Developments

The last six months have been particularly directed towards a Look East' policy and FTAs have been signed and operationalised with the ASEAN and South Korea.

The Indo-ASEAN FTA in goods was signed in August 2009, after six years of negotiations. This FTA will eliminate tariffs on over 4000 products by 2016. The agreement on goods became effective from January 1, 2010 between India on the one hand and Malaysia, Singapore and Thailand on the other. The seven other members of the ASEAN have not completed their internal procedures for ratification of the agreement. The agreement on trade in services is still being negotiated and is hoped to be concluded by August 2010.

India has also signed a Comprehensive Economic Partnership Agreement (CEPA) with South Korea in August 2009. The agreement covers more than 85 per cent of India's trade and more than 90 per cent of Korea's trade and tariff lines. It came into force on January 1, 2010.

Agreements in the pipeline

Japan

Negotiations for the India-Japan CEPA began in January 2007 and 12 rounds have been held so far, the last during September-October, 2009. Although the negotiations seem to be advancing, there are a number of difficult, unresolved issues. In the area of goods, there are differences over whether Japan's negative list of exclusions complies with the agreed modalities. Further, Japan is not yet willing to make a time-bound commitment for permitting registration and entry of generic drugs. In services, three of the outstanding issues pertain to repatriation of social security benefits by Indian professionals working in Japan, delinking of modes 1 and 3 and mutual recognition agreements (MRA's) for professional qualifications.

European Union

The India-EU FTA negotiations, which began in 2007, covers trade in goods, trade in services, investment, sanitary and phyto sanitary measures, technical barriers to trade, rules of origin, trade facilitation and customs co-operation, competition, trade defence mechanism, government procurement, dispute settlement, intellectual property rights and geographical indicators. The tenth India-EU summit was held in November 2009 and it was decided during the summit to fast track the FTA negotiations with a probable conclusion by the end of 2010. The negotiations have been slow due to differences between the two regions on negotiations on intellectual property rights and the EU attempts at including extraneous issues such as climate change and labour standards within the agreement

European Free Trade Association (EFTA)

In January 2008, negotiations were launched with EFTA countries as well for a broad-based, bilateral trade and investment agreement. Three rounds of negotiations were held until the end of 2009.

Gulf Co-operation Council

A framework agreement on economic co-operation was signed between India and the Gulf Co-operation Council in 2004. Two rounds of negotiations have been held, in 2006 and 2008, to discuss the modalities of the FTA.

Malaysia

In parallel with the Indo-ASEAN FTA negotiations, bilateral negotiations for FTA are also taking place with Malaysia.

BIMSTEC

India is also a party to another regional integration framework arrangement namely, the Bay of Bengal Initiative for Multisectoral and Technical Co-operation (BIMSTEC) among Bangladesh, India, Myanmar, Sri Lanka, and Thailand. Negotiations under this framework have been completed in goods and are under way on services and investment.

SACU

India is also negotiating a preferential trade agreement with the South African Customs Union (South Africa, Lesotho, Swaziland, Botswana and Namibia) and a Memorandum of Understanding was signed in 2008.

Mauritius

An India-Mauritius Comprehensive Economic Co-operation and Partnership Agreement (CECPA) is also being negotiated. The negotiations on trade in goods have been concluded and an MOU has been signed on a preferential trade agreement. However, the negotiations on the CECPA have been put on hold because India's proposals for modifications to the India-Mauritius Double Tax Avoidance Convention (DTAC) have not been accepted by Mauritius.

Recent Trade and Investment Policy Developments in India

Anwarul Hoda

Overview of trade and investment policy in India

After the introduction of economic reforms in 1991-92, trade and investment policy in India has changed beyond recognition. Comprehensive import restrictions imposed for three decades for balance-of-payments reasons have been eliminated. Now they apply only for such reasons as protection of human, animal or plant life or health or protection of public morals, conservation of exhaustible natural resources etc. Import tariffs on non-agricultural products have also been reduced gradually from the level of 150 per cent and, barring a few tariff lines, the peak duty is 10 per cent. Export incentives such as cash assistance and blanket exemption for profits from exports have been phased out and the main incentives now (duty drawback, advance authorisation for duty free imports of inputs and export promotion capital goods (EPCG) scheme) have been designed mainly to provide rebate and reimbursement of import duties and indirect taxes on inputs used in the production of exported goods.

Industrial licensing that once applied across the board has been virtually eliminated, except for such areas as tobacco manufactures, defence production, hazardous chemicals and industrial explosives. Foreign equity limits in manufacturing apply only in the case of defence production. Public sector monopoly in important service sub-sectors such as air transport, insurance and telecommunications is history and the private sector has now become the main source of investment in these areas. The scope for FDI has been progressively widened and foreign equity participation is disallowed only in a very few sub-sectors. There is full transparency in the policy on foreign direct investment in the country and a consolidated policy has been published (for comments initially).

Though there has been impressive progress towards the liberalisation of trade and investment policies since 1991-92, there are some points of concern. Import tariffs remain unconscionably high on agricultural products, pushing up prices of wage goods. Even in industrial products, automobiles continue to be protected with very high tariffs. With import duty set at 10 per cent for components and automobiles in CKD condition, the import duty of 60 per cent for fully assembled automobiles affords an extraordinary effective rate of protection, estimated in ICRIER at 125 per cent. Further, India has emerged as one of the world's leading users of anti-dumping measures. In case of export incentives, the trend, even before the recent onset of worldwide recession, had changed from progressive phase-out to expansion. Several incentives being given now go well beyond the rebate of indirect taxes. These include promotional measures for diversification of products and markets for exports, interest subvention for pre-shipment credit and income tax exemption for profits from exports made by units in the special economic zones (SEZs). The income tax concessions for SEZ units will also result in a non-level playing field for exported oriented units (EOUs) and software technology parks of india (STPIs) once the current time limited exemption for these units has expired. The duty exemption pass book (DEPB) scheme, which was originally intended to be a substitution drawback scheme, has proved to be vulnerable to countervailing action in importing countries because of technical flaws. Further, as a survey of about 400 firms undertaken as part of an ICRIER study found out, more than 40 per cent of the exporters do not avail of these incentives because of high transactions costs. The much-needed reform to adapt it into a scheme for reimbursement of levies by the state governments has not been carried out.

In services, FDI is still prohibited in the important sub-sector of multi-brand retail, although research has shown that FDI entry in the area could be beneficial for both consumers and producers, particularly farmers. Low or very low limits apply on foreign equity in such areas as scheduled air transport (49 per cent), broadcasting (cable network, DTH and hardware facilities – 49 per cent), insurance (26 per cent) and media (publishing of newspapers and periodicals – 26 per cent). In air transport, there is the additional odd condition that foreign airlines are ineligible for any equity investment.

There have been occasional blips in import policy as well as the FDI policy away from the overall trend toward liberalisation. In February 2009, the Department of Industrial Policy and Promotion issued a press note changing the system of calculation of foreign investment in a company, which increased the restrictive effect of limits on foreign equity in areas in which such limits applied. In the same financial year, import prohibitions/restrictions were suddenly imposed on imports of toys from China and specific steel items used in the manufacture of automobile components. It was only later that these restrictions were regularised as technical regulations.

Recent developments in trade policy

Recent policy announcements (those made during the second half of 2009) have been aimed at stability of trade policy. There has been no stepping back on the import policy, despite strong protectionist pressures created by the recession in developed country markets and the slowdown in the domestic market.

India's exports of merchandise had registered a steep decline since the onset of recession in developed countries. A response to this decline necessitated not only a continuation of existing export promotion measures but also the introduction of new measures to provide a stimulus to exports. The foreign trade policy for the years 2009-14, announced in August 2009, was focused entirely on export promotion measures. It aimed first at continuity. In the budget for 2009-10, the interest subsidy of 2 per cent on pre-shipment credit had already been extended till March 31, 2010, and the income tax exemption to 100 per cent EOUs and to STPI units continued until March 31, 2011. The new foreign trade policy extends the duty entitlement passbook (DEPB) scheme beyond December 21, 2009 to December 31, 2010. It also envisages streamlining procedures to cut down transaction costs for exporters. In addition, a number of promotional measures have been taken to provide stimulus to falling exports, the more significant of which are described below:

1. In order to achieve diversification of export products and export markets, the focus market and focus product schemes were already in position, under which duty free credit scrip

equivalent to 2.5 per cent was given as incentive for exports to identified non-traditional markets and 1.25 per cent for non-traditional products. This scheme was broadened with the addition of 16 new markets in Latin America and ten in Asia-Oceania and deepened by raising the incentive to 3 per cent for non-traditional markets and 2 per cent for non-traditional products.

2. There is an extant scheme whereby procedural privileges (such as authorisation and customs clearances for both imports and exports) are extended to exporters with high turnover. As an additional promotional measure, all status holders have been given duty free scrips at the rate of 1 per cent of the FOB value of past exports.

3. Under the existing export promotion capital goods (EPCG) scheme, import of capital goods is allowed at a concessional customs duty of three per cent, subject to an export obligation equivalent to eight times the duty saved on capital goods imported under the scheme. The new Foreign Trade Policy (2009-14) introduced a zero duty EPCG scheme, allowing import of capital goods on the condition of export obligation equivalent to six times the import duty saved. The zero duty EPCG scheme is applicable to certain dynamic areas of Indian exports such as engineering and electronic products, basic chemicals and pharmaceuticals, apparel and textiles, plastics, handicrafts, chemicals and allied products and leather and leather products. The scheme will remain in operation up to March 31, 2011.

In the WTO Agreement on Subsidies and Countervailing Measures (ASCM), India is one of the listed Annex VII countries not subject to prohibition on export subsidies on manufactures. However, if subsidised exports cause material injury to domestic industry, the importing countries is entitled to take countervailing action. As the world economy emerges from the current recession, the Government of India will have to take a decision to exit from the economic stimulus measures, including those that were aimed at boosting exports. The paramount reason for this is not so much the vulnerability of subsidised exports to countervailing action as the need to reduce fiscal deficit.

Recent developments in import tariffs

In the 2009-2010 budget, the Finance Minister declared that he was maintaining the overall structure of customs duty. In other words, the peak duty of 10 per cent on non-agricultural goods and relatively high duties on agricultural goods were maintained. Some marginal changes were made nevertheless, mostly to bring down the customs duty. Basic customs duty was raised from zero to five per cent on set top boxes used for receiving TV broadcasts. A reduction in customs duty was effected on LCD panels (from 10 to 5 per cent), permanent magnets used for wind-operated electricity generation equipment (from 7.5 to 5 per cent), certain vaccines and specified life saving drugs (from 10 to 5 per cent) and on specified life saving devices used in the treatment of heart disease (from 7.5 to 5 per cent).

The picture on trade defence measures is a mixed one. In the period from July 1 to December 21, 2008, as many as 42 new anti-dumping investigations were initiated, making India the world's leading user of anti-dumping action. The number has come down since then to seven new investigations in the first six months of 2009 and another seven in the second six months. The number of safeguard actions initiated in the first six months spurted to 13 but thereafter came down to one solitary case in the second half.

Recent developments in foreign direct investment policy

In the past few months, most of the press notes issued by the Department of Industrial Policy and Promotion has been clarificatory in nature. However, Press Note 8, dated December 16, 2009 has brought about a major liberalisation in the foreign technology agreement policy. The policy existing earlier provided for automatic approval of foreign technology transfers involving payment of lump sum fee of US$2 million and payment of royalty of five per cent on domestic sales and eight per cent on exports. In addition, where there was no technology transfer, royalty up to two per cent of exports and one per cent of domestic sales were allowed under the automatic route for the use of trade marks and brand names of foreign collaborators. Where payments were to be made above these limits, the permission of the Government of India was required.

Press Note 8 of December 16, 2009, has removed the limits and now payments of lump sum fee or royalty for transfer of technology or of royalty for use of trade marks or brand names have been put on the automatic route and no permission is required from the Government of India.

Further progress was made in the last week of December 2009 in improving the transparency of foreign direct investment policy. On December 24, 2009, the Department of Industrial Policy and Promotion published a draft of the consolidated FDI policy, which would be subject to comments until 31 January, '2010. A final document is proposed to be issued on April 1, 2010.

Dispute Settlement in the WTO and the Developing Countries

Anwarul Hoda

The world-view of the WTO is too often guided by the state of play in the trade negotiations (for the liberalisation of trade) taking place at that time. The public tends to forget that the WTO has a two fold function, first to facilitate implementation of the existing agreement and second to provide a forum for further negotiations among its members. Even when negotiations are at a standstill, as they are at present, there is the important business of operating the framework to conduct trade relations embodied in the WTO agreement. Central to the operation of the framework is the Dispute Settlement Understanding (DSU), which provides the mechanism for settlement of disputes.

A widely shared assessment of the WTO dispute settlement mechanism is that it has worked reasonably well. Its efficient functioning has lent strength to the multilateral trading system through effective enforcement of rights and obligations. At the same time it has reflected the consensus support that the WTO Agreement continues to enjoy among its membership. If the WTO agreement has served as a bulwark against protectionism during the world's worst recession since World War II, it is to a large extent due to its dispute settlement system.

Infusion of judicial approach in DSU

The work done on the DSU during the Uruguay Round was not at all original as the negotiators relied basically on the GATT customary practice and codified it. But they also made some important improvements in the practice by eliminating the blockages, which had reduced the effectiveness of dispute settlement during the GATT days. The DSU granted to members the right of access to panels, created an appellate body for appeal against panel reports on questions of law and made the adoption of panel and appellate body reports automatic by introducing the requirement of negative consensus to block any decision. The effectiveness of the dispute settlement procedures was enhanced further by applying the same decision making procedure to consider requests for authorisation to suspend concessions or other obligations in the event of non-compliance with the recommendation of the DSB. Thus, the participants in the Uruguay Round infused a strong dose of judicialization into the DSU to make the process of dispute settlement more efficient. This has been one of the main reasons for the success of the WTO dispute settlement process. It has been a refreshing contrast to the divisive manner in which the WTO has been functioning otherwise, particularly in the Doha Round of trade negotiations. The judicialization has helped in the current situation in which there is a general unwillingness to work towards compromises. One cannot say, however, that the system has become faultless. There are loopholes that permit foot-dragging in compliance, and allow members to get away with deficiencies in the quality of compliance.

Retaliation and cross-retaliation in DSU

One source of anxiety among developing countries while the DSU was being drafted in the Uruguay Round was that they would not be able to get their rights enforced through dispute settlement since they lacked retaliatory strength. Another major source of unease among them was the possibility of cross retaliation across the areas of goods, services and intellectual property rights if a single agreement covered them all. This was why a large number of developing countries demanded that the negotiations on goods, services and intellectual property rights (IPRs) should be held in the Uruguay Round on different tracks so that they resulted in separate agreements. Their fear was that without such a separation, the developed countries would be able to leverage access in the area of goods to obtain access in services or policy changes in the area of IPRs, which at that time were problematic for them.

Special and Differential Treatment in DSU

As in other areas of negotiations during the Uruguay Round, developing countries invested a great deal of effort to introduce provisions in the DSU that granted them special and differential treatment in the procedures. We consider this further in a section below.

Developing country experience with DSU

What has been the experience of the developing countries in the nearly 15 years that have elapsed since the WTO Agreement was established? Unlike in the pre-WTO days, developing countries have been big users of the dispute settlement system. Of the 402 complaints up to November 24, 2009, 157 were initiated by the developing countries, multiple complaints by them being counted as one. Ninety-three were against the developed countries and 64 against the developing. Thirty-three developing countries have brought one or more complaints so far, nine of them once, 14 more than twice and seven more than 10 times. The top three users have been Brazil (24), Mexico (21) and India (18). Their share of disputes has been far in excess of their share in world trade. In panels established on the complaints of developing countries, panel/APB reports have been adopted by the Dispute Settlement Body (DSB) in 49 cases, of which 36 were against the developed countries.

Use of retaliation

There have been in all 11 cases in which non-compliance by the losing party has led to requests for retaliation (covering 19 disputes of which, eight related to the Byrd Amendment). Only four of these resulted in the actual imposition of retaliatory measures. Although a number of developing countries have obtained authorisation for retaliation in five cases – US-Byrd Amendment, EC-Bananas, Canada-Aircraft, US-Cross-Border Gambling and US-Subsidies for Upland Cotton – it has been acted upon so far by only one country (Mexico in the US-Byrd Amendment). If Brazil goes ahead in the US-Subsidies for Upland Cotton case as it is now considering, it would be only the second instance of suspension of concession or other obligation in a dispute by a developing country. In a majority of the cases, developing countries have not needed retaliatory measures to obtain compliance.

Retaliation does not square the dispute, which remains on the agenda and is monitored until the non-compliant measure has been withdrawn. Surveillance of compliance by the DSB serves to maintain constant pressure on members and is perhaps the more important factor behind compliance. No government wishes to be seen as a transgressor in the community of nations.

However, retaliation has proved useful for nudging the member concerned toward compliance in cases where there were deep-seated political difficulties.

Retaliatory measures cause pain in the exporting industries affected by the measures and serve to create a constituency within the country for compliance. In one case, a developing country did adopt retaliatory measures and in one or two others, it is possible to (surmise that had the developing country concerned had a credible and effective retaliatory capacity, the cases would have been settled with less delay).

Some of the difficult cases that have been resolved, albeit after some delay, have involved retaliation. The Byrd Amendment was repealed within nine months of retaliatory action by the EC, although the non-complying measure was continued for some time as a transitional step. In mid-2009, the US and the EC reached an agreement, which will eventually allow a final settlement in the US-Hormones case after many years during which retaliatory action has remained in position. On December 15, 2009, the EC initialed an agreement with the Latin American countries and the USA that would settle the 16-year-old bananas dispute. In the US-Byrd Amendment, retaliation by the EC and other developed country members and, in the EC-Bananas cases, retaliatory action by the US served as a proxy for retaliation by developing country complainants.

Use of Cross-Retaliation

As for cross-retaliation, corrective action had been taken, to some extent, in the later stages of negotiations to mitigate the fears of developing countries and the possible use of retaliation across agreements had been curtailed in the DSU. The general principle adopted was that the complaining party should first seek to suspend concessions or other obligations with respect to the same sector (s) as that in which the panel or APB had found a violation or other nullification or impairment. All goods were deemed to belong to the same sector, but the sectors identified in the sectoral classification of services and various categories of IPRs were treated as different sectors. If it was not practicable or effective to suspend concessions or other obligations with respect to the same sector(s), action could be taken in other sectors under the same agreement. Cross retaliation under another covered agreement was possible only if retaliation in other sectors of the same agreement was not practicable or effective and additionally if 'the circumstances are serious enough'.

In actual experience, the fears of developing countries on cross-retaliation have proved to be overly exaggerated. The question of cross-retaliation across agreements in disputes raised by developed countries against developing countries has not arisen at all. In fact, in three cases, the possibility of cross-retaliation against developed countries in the area of TRIPS to obtain compliance with the recommendations of panel/AB in the areas of goods and services has been shown to have some potential for developing countries, although the potential remains unutilised so far.

In the EC-Bananas case, the arbitrators had found that to the extent the suspension of concessions under GATT 1994 and GATS was insufficient to reach the level of nullification and impairment determined by the arbitrators, Ecuador could request such authorisation under TRIPS in Section

1 (copyright and related rights); Article 14 (protection of performers, producers of phonograms and broadcasting organisations), Section 3 (geographical indications) and Section 4 (industrial designs). Similarly, in the US-Gambling case, the arbitrator determined that Antigua could request authorisation from the DSB to suspend obligations under the TRIPS agreement at a level not exceeding US$21 million annually. In a more recent case, US-Subsidies on Upland Cotton, while approving the formula for Brazil to determine the annual amount of sanctions on imports from the US (based on the current US spending on cotton subsidies), the arbitrators have ruled that Brazil could impose sanctions not only by way of increased tariffs on imports of goods from the USA but also in the form of restrictions on US service providers as well as by way of lifting of intellectual property rights for US right holders in copyright, trademarks, industrial designs, patents and protection of undisclosed information. They have, however, put the condition that Brazil may begin exercising the right relating to services by US service suppliers and US IPRs only if the sanctions exceed a certain threshold (estimated at US$409.7 million based on 2008 figures).

As things turned out, in the EC-Bananas case, Ecuador did not go beyond the goods and services areas in seeking authorisation for suspension of concessions and other obligations and did not proceed with retaliation at all even in the areas in which it had been authorised to do so by the DSB. In the US-Gambling case, Antigua did not proceed to seek an authorisation from the DSB for retaliation/cross-retaliation under the TRIPS agreement.

The Brazilian case against the US subsidies on cotton is still unfolding. At its meeting on November 19, 2009, the DSB has granted Brazil's request for authorisation to retaliate against the US in the case in terms of the determination made by the arbitrators. Thus, Brazil can now proceed with the suspension of concessions on goods straightaway and later, if the stipulated thresholds are reached, with cross-retaliation in the form of restrictions on US service suppliers and by lifting certain IPRs for US right holders in certain areas of TRIPS. It must be acknowledged here that the use of retaliatory measure in the area of TRIPs would not be as straightforward as raising tariffs on goods or imposing a restriction on service providers. There is no precedent as yet of suspension of obligations in the TRIPS Agreement and it would be a challenge to design the precise modality for taking such measures.

Experience with S&D Treatment

The developing countries do not seem to have benefited much so far from the provisions on special and differential treatment (S&DT). Article 12.10 allows time extensions to them in consultations. Only one case of an extension by 10 days for submitting a written submission (India in the QRs case) is recorded. Article 12.11 requires an explicit indication of the form in which account was taken of the S&DT of developing countries. Of the 5 cases in which it was invoked (Mexico-Taxes on Soft Drinks, US-Byrd, US-Safeguards, Brazil-Aircraft and India-QRs), it was actually interpreted and applied only in the India-QRs case. Article 21.2 requires that particular attention be paid to matters affecting developing countries in surveillance and monitoring of compliance. Ten of the 13 invocations of this provision related to arbitration proceedings regarding a reasonable period of time for compliance, and no specific additional time was added by the arbitrator in any case on this account. Lastly, Article 24.1 requires that particular consideration be given to the special situation of least developed countries (LDCs). It was invoked by Benin and Chad, but was not accepted by the panel, as they were third parties. Thus, S&DT provisions in the DSU have not proved to be very meaningful so far.

The most important problem that developing countries have in taking recourse to dispute settlement is not the absence of meaningful provisions for special and differential treatment in the DSU but the dearth of human and financial resources to push the cases effectively. Initially, even a relatively better-endowed country like India was overwhelmed by the human resource needs for dispute settlement and was compelled to use external legal assistance, although it has more recently started relying on its own lawyers. What most developing countries need is support to build the case for complaints in appropriate cases and in defending themselves in cases brought against them. One good development here has been the establishment of the Advisory Centre on WTO Law (ACWL), set up with the help of the WTO for the benefit of developing countries. Thailand, Ecuador, Paraguay, Colombia, Honduras, Dominican Republic and Indonesia have frequently used the ACWL. ACWL provides free legal advice and acts as the lawyer for developing countries at a concessional fee. There is evidence to suggest that a number of developing countries are benefiting greatly from the assistance given by ACWL.

Concluding remarks

Contrary to the fears of developing countries during the Uruguay Round, the WTO dispute settlement mechanism has strengthened their position in the trading system. For most parts, developing countries have not needed to use retaliatory measures, although in one case, a developing country has been able to exert greater pressure for obtaining compliance by actually using retaliation and in one or two other instances, it is possible to speculate that the cases would have been settled with less delay if the developing country concerned had an effective ability to adopt retaliatory measures. And cross retaliation by developed countries has been a non-issue. The most daunting challenge for developing countries, whether in initiating disputes or in defending themselves in disputes, has been access to human and financial resources needed for the purpose.

Fiscal Stimulus Measures and the WTO Agreement

Anwarul Hoda

Measures to deal with the financial crisis and the economic downswing that followed in its aftermath have been in the news for more than a year now. Shortly after the Lehmann collapse, financial sector support programmes came spontaneously in almost all the major economies and were followed by assistance programmes for other businesses. There has been wide approval of these support programmes for two reasons. First, because bolstering the world financial markets is seen as vital for the functioning of the world economy; second because the need for boosting real aggregate demand made such support inevitable. The IMF recommended a global fiscal stimulus target of two per cent of aggregate GDP in each year for 2009-10.

The prevailing sentiment around the world now is that these measures have to continue for some time more but there is an expectation that an exit strategy from the economic stimulus measures will have to be considered in the not-too-distant future. The excessive government budgetary deficits through which these measures have been funded generate pressures within the country for such an exit as high government debt can affect economic growth in the long-term. There is also the question of the distortions to trade and production that may be caused by these measures but, domestically, the adverse effects because of such distortions are felt to a lesser degree and it is left to the trading partners to worry about them. For the present, most governments are willing to live with the adverse trade effects because of the larger objective of getting economic growth going worldwide coupled with the expectation of an exit when the time is ripe.

What if these expectations are not fulfilled and the measures continue even after the industries and economies have been restored to health? Are there any means of redress for other governments? In this column, we seek to examine whether the WTO Agreement provides any such means. Compilations by the WTO Secretariat, OECD and UNCTAD that have been presented to G20 ministers reveal a wide variety of economic stimulus measures and we take up for examination only an illustrative list of five groups of measures Since full information on these measures is not available, what is possible is only a prima facie assessment of the legal status in the WTO Agreement of these groups of measures, including whether they are actionable by other WTO members.

The financial sector support programmes

Support for the financial sector has taken the form of cleaning bad assets from banks' balance sheets, encouraging takeover of weak banks by better capitalised ones, recapitalisation of troubled financial institutions, partial or total nationalisation of financial institutions or expanded government guarantees for banks' liabilities such as increase in the threshold of savings eligible for deposit insurance. In determining whether these measures could be actionable under GATS if they cause adverse effects to the interests of other members, we encounter a problem at the outset. Many of these measures may qualify as measures taken for prudential reasons for 'the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system, which the GATS Annex on Financial Services expressly allows. Further, the GATS does not contain any substantive disciplines on subsidies as yet and negotiations for developing multilateral disciplines for avoiding the trade distorting effects of subsidies have not produced any results. Despite all these exclusions, there could be questions on national treatment in respect of some of these measures. However, many, if not most, WTO members have insulated themselves from disputes on this aspect by either not making any national treatment commitment at all on subsidies in financial services or alternatively restricting eligibility for subsidies to juridical persons established within their territory.

Questions have been raised about the consistency of actions taken by governments in restricting hiring and offshore outsourcing by financial institutions benefiting from bailouts with the GATS. If the financial institution has been nationalised, then it is obviously covered by the GATS exemption for government procurement from the most favoured nation (MFN), national treatment and market access obligations. However, in other cases, the restriction will have to be examined against the horizontal market access commitment in Mode 4 or specific Mode 4 commitment made by a member in respect of financial services to determine if the measure is vulnerable under the GATS.

The WTO Agreement on Subsidies and Countervailing Measures

In the context of the fiscal stimulus measures, the WTO Agreement on Subsidies and Countervailing Measures (ASCM) would seem to be most relevant. It may be useful to recall some of the basic provisions of this agreement.

The ASCM defines a subsidy by spelling out the elements that the concept covers. A subsidy is deemed to exist if there is a financial contribution by a government or any public body and a benefit is thereby conferred. A financial contribution may occur by means of a direct transfer of funds, a potential transfer of funds or liabilities, foregoing of government revenue, or the provision of goods and services other than general infrastructure, or purchase of goods. It is provided further that a subsidy shall be subject to the provisions of the agreement if it is specific to an enterprise or industry or group of enterprises or industries. Thus, the disciplines of the ASCM apply to governmental measures if three conditions are met: first, there is financial contribution by a government; second, a benefit is thereby conferred; and third, if the subsidy is specific to an enterprise or industry or groups of enterprises or industries.

In the ASCM as it exists now, there are two categories of subsidies: those that are prohibited and those that are not but are, nevertheless, actionable in certain circumstances. The provisions relating to the third category of non-actionable subsidies (assistance for research and development, assistance to disadvantaged regions and assistance to promote adaptation to new environmental requirements) had initially a limited life of five years and were subject to review thereafter. These provisions were not renewed after the review and are no longer in force.

Two kinds of subsidies are prohibited, namely, subsidies contingent upon export performance and subsidies contingent upon the use of domestic in preference to imported goods. As regards subsidies that are not prohibited, the ASCM enjoins members not to cause adverse effects to the interests of other members. Such adverse effects may take the form of injury to the domestic industry of another member importing the subsidised product or nullification or impairment of a tariff or other commitments made by the subsidising member or serious prejudice to the interests of another member. The concept of serious prejudice is far reaching and includes the displacement or impedance of imports into the market of the subsidising member, displacement or impedance of exports of another member from third country markets or significant price undercutting, price suppression or price depression in the market of another member. If such adverse effects are caused, the members get the right to raise the matter under the accelerated dispute settlement provisions of the ASCM. Thus, the ASCM adopts what may be termed as an effects-oriented approach in respect of non-prohibited subsidies: they become actionable by other members if they cause adverse effects. In case the adverse effects was caused by a member importing a product benefiting from actionable subsidies of another member, the former can also take recourse to the alternative remedy of imposing a countervailing duty equivalent to the amount of subsidy found to exist on any product.

WTO status of economic stimulus measures

Against the background of the WTO rules on subsidies outlined above, we examine below whether five groups of economic stimulus measures taken by WTO members are actionable if they cause adverse effects to the interests of other members.

Aid to businesses in financial difficulties comprising grants, interest rate subsidies, subsidised public loans, loan guarantees, limited to SMEs in some cases

All direct grants, interest rate subsidies and public loans at reduced interest rates are cases of direct transfer of funds and it is apparent that a benefit is conferred. Loan guarantees are a case of potential transfer of funds and a benefit can be considered to have been conferred by them only if these have been provided on terms that are more advantageous than those that would have been available on the market. In economies in recession that are also experiencing a credit squeeze, it is highly likely that governments have offered more advantageous terms but this would nevertheless have to be probed further by a trading partner contemplating action. The limitation of grant of subsidies to businesses in financial difficulties makes them specific as well. Thus, all the conditions exist for making the disciplines of the ASCM applicable and the WTO members adversely affected by the stimulus measures can seek redress either by raising a dispute or, in the case of imports into their own market, by levying a countervailing duty.

A caveat must be entered here in respect of the subsidies granted exclusively to the SMEs. The relevant provision in the ASCM provides that where the granting authority establishes objective criteria or conditions governing eligibility for the subsidy, specificity shall not exist. It is further clarified as follows:

'Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.'

The WTO Members granting subsidies to SMEs may design the scheme in such a way that they are able to show that such objective criteria or conditions have been applied, and thus claim immunity from action under the WTO Agreement.

Assistance to businesses by means of interest rate subsidies and loan guarantees for investing in or producing environmentally friendly products

As stated above, interest rate subsidies are to be treated as a direct transfer of funds and loan guarantees as a potential direct transfer. These, therefore, constitute actionable subsidies liable for both disputes and countervailing duties. The fact that they also subserve the environment objective of the member concerned will not be a defence once it is shown that adverse effects are being caused by such subsidies by impeding or displacing imports into the market of the subsidising member or by causing such effects in third country markets or by significant price undercutting in the market of another member.

Reduction in or refund of consumption tax, sales tax or excise duty for purchase of cars or home appliances, whether or not in replacement

Measures to boost demand of particular products or groups of products, whether by tax concessions or direct grants meet all the three conditions for the applicability of the ASCM disciplines: there is financial contribution by a government, a benefit is conferred on the producers (through increased sales and revenues) and the subsidies are specific in that they are limited to the industries producing certain products. The ASCM treats foregoing of revenue on the same footing as a direct transfer such as a grant. However, where the subsidies are applicable to both domestic and imported products, it would be difficult for another member to argue that the subsidies are causing adverse effects. It is also possible that, de jure, the subsidies apply to imported products but the measure is applied in such a manner that imported products do not benefit. A question has been raised by the USA about Japan's car scrappage subsidies being applied in a discriminatory manner to imports from the former. If the subsidies are not applicable equally to domestic and imported products, they are also in conflict with the national treatment obligation of GATT 1994.

Equity infusion in or loans for specific or groups of enterprises manufacturing automobiles, paper and pulp etc.

In loans given to or equity infusion effected in a specific enterprise or industry, there is clearly a government contribution that also meets the test of specificity stipulated in the ASCM. The question is how we could determine that a benefit is conferred. In the case of equity, the ASCM provides that government provision of equity capital must not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice of private investors. Another ASCM provision stipulates that a government loan to a firm must not be considered as conferring a benefit unless there is a difference in the interest rate the firm pays on the government loan compared to what it would be charged for a similar loan from the market.

Both these aspects would need to be investigated by a WTO member, which considers that its interest has been adversely affected by the subsidy. However, in cases such as that of the US automobile industry, it is most likely that substantial benefits would be found to have been conferred because the industry was on the verge of collapse. In fact, one of the big firms (GM) filed for bankruptcy. Other WTO members, therefore, could seek redress against adverse effects caused by the subsidies in any of the three markets viz., the market of the subsidising member, the market of the member affected by imports of the subsidised product or third country markets. China considers that its domestic market has been adversely affected by the US government support for the automobile industry and has begun a countervailing duty investigation against US subsidies to the car industry.

Investment in infrastructure, including roads, bridges, railways, metro rail, ports, sewers etc.

As mentioned above, the ASCM creates a presumption that a subsidy exists where a government provides goods and services other than general infrastructure. In other words, provision of general infrastructure is not regarded as a subsidy. The term 'general infrastructure' is not defined but it could be reasonably assumed to encompass transport infrastructure viz., roads and bridges, railways (including metro rail), ports as well as such basic, urban facilities as sewerage systems. Thus, investment in general infrastructure is not an actionable subsidy. In any case, it may also be difficult for a member to demonstrate that investment in general infrastructure by another member affects its interests adversely.

Some questions of consistency with WTO obligations have arisen from certain provisions in the American Recovery and Reinvestment Act (ARRA) 2009, which seeks to ensure that the benefits of stimulus packages are retained to the maximum extent possible in domestic firms and are not passed on to other countries through increased imports. The ARRA provides that "none of the funds appropriated or otherwise made available by this Act may be used for a project for the construction, alteration, maintenance or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States". There is, however, a further provision that "this section shall be applied in a manner consistent with United States obligations under international agreements".

Here, it may be relevant to mention that GATT 1994 exempts government procurement from the national treatment obligation and thus the exclusion of imported goods from use in public works cannot generally give any cause for action to WTO members. Government procurement is governed by the provisions of the WTO Agreement on Government Procurement (GPA), which is a plurilateral agreement among 13 parties (covering 40 WTO Members including the 27 EU member states). India is not a party to the agreement. The GPA extends the national treatment obligation only to the parties. Only the parties to the GPA can therefore seek redress through the WTO dispute settlement machinery in case in actual practice the US authorities do not extend national treatment to them while purchasing goods for use in the construction of infrastructure. Parties to regional agreements with the USA may also be able to raise the issue to the extent such agreements extend national treatment to government procurement.

Concluding Remarks

Thus, the WTO Agreement provides avenues for members to protect their trade interests from the adverse effects of fiscal stimulus measures taken by other governments. In case the government of a WTO member delays exit from the fiscal stimulus measures even after the economy has been restored to health, it might come under pressure from other WTO members either through the WTO dispute settlement procedures or by means of domestic countervailing duty procedures. Some WTO members have shown a readiness to take recourse to these procedures even earlier.

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