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In This Issue

Has the Doha Round of Trade Talks Collapsed for Good?

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In April 2011, Mr Pascal Lamy, Director General of the World Trade Organization, declared that the differences between the major players in the trade talks were unbridgeable. Deadlocks are a common occurrence in trade negotiations: the situation looked as bleak when talks broke down in 1999 (Seattle), 2003 (Cancun), Geneva (2006, 2008). However, this time things look more serious.

In the nearly 10 years since the Doha Round was launched, the world economic scenario has changed. Over the last three years, USA and Europe has been debilitated by a financial crisis and by the ensuing great recession. Today, the uppermost concern in these economies is the sovereign debt crises. Serious imbalances due to persistent current account surpluses in some economies and deficits in others have confronted the major economies with a seemingly intractable problem. Liberalisation of trade in goods and services is no longer at the top of the agenda.

Furthermore, the trade issues that motivated the governments in 2001 have receded into the background and new concerns have emerged. In agriculture, surplus production in developed countries, pushing down international prices of agricultural produce, was the main driving force at the time the round was launched. Today, the world is reeling under high food prices and the forecast is that the situation will continue. The mounting concern on food security has caused leaders to look for opportunities to increase food production. In 2001, trade and investment barriers in developing countries like India were high and economic operators in developed countries were keen to open opportunities in these countries for exports and investment. Today, India has brought down its industrial tariffs and barriers to FDI to very low levels. The developed countries are already benefiting from the autonomous liberalisation measures and further lowering of barriers in developing countries has become less urgent.

There has been a radical change in the world trade setting as well. In 2000, the USA and Germany occupied the first and second positions in exports, with world export shares of 12.3 and 8.7 per cent. In 2009, China with a share of 9.6 per cent has toppled both and has emerged as the world's most competitive manufacturer on a range of goods. Exports of merchandise by India and Brazil have also increased manifold and special and differential treatment of developing countries is making less sense to developed countries.

Against this background, the latest impasse could have done more than causing a temporary loss of momentum. The Doha Round could well have collapsed for good.

Outcome of Geneva discussions April-July 2011

Over the last three months or so, the Geneva-based representatives of WTO members have been trying to salvage something from the ruins. But these efforts have also gone nowhere. Here is an account of what has transpired.

Following the recognition at the Geneva talks that progress could not be made on a broad front, there were calls for a Plan B and a mini-package. LDC issues, including duty-free, quota-free, related rules of origin, the LDC services waiver and a forward step on cotton were identified as the core of the mini-package. Before full agreement could be reached on LDC issues, the USA came out with the view that these issues would not be enough to win support from domestic constituencies in non-LDC members of the WTO and some more issues would need to be added. Among the LDC plus issues proposed by the USA were trade facilitation, export competition, fisheries subsidies, and environmental goods and services. Following consultations, the DG proposed initially that for the Eighth WTO Ministerial Conference (MC8), scheduled for December 2011, the process at Geneva should move on three tracks: the fast track on LDC issues; the middle track on LDC plus issues; and the slow track on the issues like on market access in NAMA, agriculture and services, trade remedies and TRIPS issues on which no outcome seemed possible during 2011. He proposed an indicative list of five LDC plus items which could be considered: 'trade facilitation, export competition, S&D monitoring mechanism, a step forward on fisheries subsidies and a step forward on environmental goods and services'.

Further discussions at Geneva on the 'deliverables' for MC8 reflected deep divisions on almost all issues proposed for the LDC plus package, endangering a possible accord on the LDC package as well. Consequently, the Geneva based representatives have given up efforts to agree on a mini-package. The Geneva process for MC8 would now concentrate on the non-Doha Development Agenda (DDA) issues and on how to deal with the DDA after the Ministerial. There is hope still on MC 8 delivering some results on LDC issues.

LDC package

At the core of the debates was the LDC package built around the proposal for duty free and quota free access to all goods originating in these countries. At the Hong Kong Ministerial Conference in December 2005, it was agreed that 'developed country Members shall, and developing country Members declaring themselves in a position to do so should' provide duty-free and quota-free (DFQF) market access for all products originating from all LDCs by 2008 or no later than the start of the implementation period. To take into account US concerns, it was agreed that members facing difficulties shall provide such access on 97 per cent of products and progressively achieve compliance on a later date. On rules of origin, the Hong Kong Ministerial Declaration had urged members to ensure that preferential rules of origin that apply are simple and transparent. Separately, the ministers had also agreed to reduce trade distorting domestic subsidies for cotton production 'more ambitiously than under whatever general formula is agreed and that it should be implemented over a shorter period' and this commitment is being given almost equal importance by the LDCs as DFQF.

During the discussions, the main obstacle to the LDC package has come from the USA. On DFQF, the view expressed by the USA was that it had already extended such treatment to the African LDCs and found it difficult to accord the benefit to LDCs like Bangladesh and Cambodia who were major suppliers of textiles and clothing to that country. The USA also pointed out that any new GSP benefits to LDCs could be considered by its Administration on the basis of the report of the US International Trade Commission, which was expected in February 2012, two months after MC8 would adopt the mini-package. On domestic support for cotton, the USA was inflexible, taking the stand that it was not possible to proceed on the basis of what was agreed at Hong Kong at a time when there was no generally agreed formula and no generally applicable period of time. When the benchmark had not been agreed, it was not possible to do more than what that benchmark would envisage. The USA also raised the issue of cotton subsidies by China and India and sought from them an indication of the measures that they would take to lower trade distorting subsidies at the same time as the USA.

During the debates on DFQF, the European Union was a major supporter of the LDC package, having already implemented its ‘everything but arms’ initiative for free access to goods from LDCs. Major developing countries like Brazil, China and India too were supportive, in light of the flexibility envisaged for them in the Hong Kong Ministerial Declaration and the substantial progress made by them in enlarging access to the LDCs. China stated that its DFQF regime for LDCs already provided 60 per cent product coverage and it was willing to move towards 95 per cent.

There was not much discussion on the services waiver for the LDCs. GATS mandates that special priority would be given to LDCs through negotiated specific commitments for increasing their participation in world trade in services. At the Ministerial gathering in July 2008, the view had emerged that the best way to achieve this objective was to enable WTO members to grant preferential treatment to service suppliers in LDCs. In order to make this possible, it is necessary to use the waiver mechanism allowing WTO members to grant preferential treatment to service suppliers in LDCs notwithstanding the MFN obligation. Negotiations have been ongoing on an LDC proposal for a waiver text and the subject is one of the less contentious areas of negotiations although there are still differences on the scope of the measures to be covered and the applicable rules of origin. On the preferential rules of origin being simple and transparent, there was no dissent but when the proposal was made for such rules to be more liberal, by reducing the value addition criterion for instance, the observation was made that it was essential to ensure that the benefits were not passed on to the advanced country suppliers of non-originating components.

LDC Plus

While the LDC package was sabotaged almost exclusively by the USA, the LDC plus issues proposed mainly by the USA came in for criticism from both developing and developed countries. India was of the opinion that negotiations on trade facilitation, fisheries subsidies, and environmental goods and services had not reached maturity. Moreover, environmental goods and services was a market access issue and could not be detached from other such issues. The EU opposed putting export competition in the mini-package, stating that the EU had joined in the consensus in 2005 on eliminating export subsidies in the context of an overall Doha Round Agreement, including domestic support, market access and geographical indications. It also wanted to see a see a comparable level of ambition being achieved in disciplining industrial subsidies, including subsidised financing and inputs. The EU also agreed with India that the negotiations on fisheries subsidies had not advanced enough in substance to make an agreement by December feasible. The US demand on disciplining fisheries subsidies were opposed by Japan and South Korea as well.

Some WTO members floated one other proposal for inclusion in the LDC Plus package. A US proposal supported by the EU and Australia sought a standstill on raising tariffs above the currently applied rates to be included in the min-package. It was manifest that the proposal was aimed at wresting a benefit from developing countries like India, which had reduced their tariff levels considerably after the launching of Doha Round. Under the rules followed in past negotiations, the existing bound rates and, in case of unbound rates, the rates of tariff prevailing at the time of commencement of negotiations, are considered as the base rates and due credit is given for the subsequent reduction and binding of autonomously reduced rates. As a matter of fact, in the current round, the negotiations have been proceeding on the assumption that for members with unbound rates, the rates prevailing at the commencement of the Round would be subjected to a non-linear mark up for determining the base rate. This rule is of no interest to the major developed countries, which have retained the post-Uruguay bound rates as the applied rates in almost all cases. The standstill agreement sought by the USA, the EU and Australia was, therefore, an attempt to secure a non-reciprocal benefit from developing countries. It would rob them of the opportunity to seek reciprocal concessions from developed countries for binding the reduced duties when the negotiations eventually conclude. As was to be expected, it was roundly rejected by Brazil and India, the former advocating that members consider only a small LDC package for December.

Conclusions

Thus, efforts to retrieve some results from the tremendous amount of work done by participants since the commencement of the negotiations have failed. The reasons for the failure to agree on a mini-package are the same as those that have led to unbridgeable differences on market access issues. In the words of the Director General during his statement before the Trade Negotiations Committee on July 26 2011:

"What we are seeing today is the paralysis in the negotiating function of the WTO, whether it is on market access or on the (sic) rule-making. What we are facing is the inability of the WTO to adapt and adjust to emerging global trade priorities, those you cannot solve through bilateral deals."

What does not come out in the Director General's statement is that the mini-package has been killed by the USA by shooting two bullets. First, it refused to agree on DFQF for LDCs and on measures on domestic support for cotton. Second, it made the acceptance of results on certain non-LDC issues, on which members are known to be widely divided, a condition for agreeing to the LDC package.

The normal expectation has been that the WTO members would pick up the threads in 2013 after the US elections. However, the prospects of such resumption are becoming dimmer by the day. The Doha Ministerial Declaration is already dated. Multilateral trade negotiations might need to be launched again in 2013. In the meantime, the world seems to be destined for more free trade area agreements.

Trade Implications of India Malaysia Comprehensive Economic Cooperation Agreement (CECA)

Anwarul Hoda

India's drive for deeper economic relations with ASEAN countries had a somewhat confused beginning. On July 9, 2003, India and Thailand signed a comprehensive FTA Agreement, starting with the elimination of tariff on a list of 84 products, but envisaging the eventual establishment of a Bilateral Free Trade Area. Within three months, on October 8, 2003, India and the ASEAN countries signed a Comprehensive Framework Agreement for the establishment of ASEAN-India Regional Trade and Investment Area (RTIA) including an FTA in goods, services and investment. There was a change of government in India in May 2004, but it soon became evident that the new government would continue to follow the strategy of seeking parallel economic co-operation with ASEAN countries at the regional as well as the individual country levels. However, the reasons for this strategy were never clarified by either the NDA or UPA governments. On August 1, 2005, the India-Singapore CECA entered into force. On January 1, 2010, the Trade in Goods Agreement under the Comprehensive Framework Agreement between India and ASEAN nations became operational. There have been reports that the negotiations at the regional level are also being pursued on trade in services but that they are not making much headway because of lack of integration in services among ASEAN countries. In this context, the CECA negotiations with individual member states of the ASEAN group are beginning to make some sense. India has been pursuing such negotiations with two ASEAN countries, Malaysia and Indonesia. It is also seeking the broadening of the agreement with Thailand beyond the partial goods agreement. Out of these, the negotiations with Malaysia have been completed and in fact, the Indo-Malaysia CECA has entered into force on July 1, 2011.

This piece examines the India-Malaysia CECA and makes a preliminary assessment of the concessions exchanged by the trading partners for stimulating trade flows in goods and services between the two countries.

Liberalisation in Goods

In order to judge the significance of tariff concessions granted by the two trading partners, we will first look at the existing structure of trade.

Important categories of goods traded between India and Malaysia

With a total trade turnover of US$8 billion, Malaysia is India's 19th largest trading partner. During 2009-10, India's exports to Malaysia totalled US$2,835 million, and this made it the 13th largest exports destination. Export levels of important agricultural items in 2009-10 in million US $ were bovine meat (127), onions (88), chilly (74), maize (109), groundnut kernel (57) and soybean meal (48.66). India also exported smaller quantities of spices (coriander and cumin) and fresh fruits such as mangoes. In industrial products, the main export items were mineral fuels (367), organic chemicals such as benzene, oxylene, paraxylene, and tetrapthalic salts (225), miscellaneous inorganic chemicals (41), miscellaneous chemical products (31), articles of apparel (61), cut diamonds (64), iron and steel (96), articles of iron and steel (72), copper and articles thereof (92), aluminium and articles thereof (58), zinc and article (64), non-electrical machinery (131), electrical machinery (112) and ships (339).

During the same year, India's imports from the country amounted to US$5,177 million and Malaysia was the 18th largest source of imports. Agricultural imports in million US $ were dominated by palm oil (750) but smaller quantities of coconut oil, cocoa and cocoa preparations and manufactured tobacco were also imported. Among industrial products, the largest import item is petroleum products (1605); the next single important product is wood and articles of wood, including particleboards and fibreboard (506). Iron and steel and articles of iron and steel have been important exports to India. Among non-ferrous metals, the imports into India from Malaysia are dominated by tin (44) in which Malaysia is one of the important world suppliers. Imports of machinery items under HS Chapter 84 (492) include air conditioners, computers and computer parts; electrical machinery under HS Chapter 85 (500) includes telecommunication equipment, radio receivers, picture tubes and similar items. Wooden furniture (42) is another important import from Malaysia. Auto parts figure in the export lists of both countries; besides, India is also an exporter of motor cars, commercial vehicles and motor cycles.

India-ASEAN Agreement on Trade in Goods named ASEAN- India FTA (AIFTA)

The AIFTA envisages tariff elimination or reduction in five differentiated tracks. There is the Normal Track1 (NT-1) for expedited reduction/elimination and Normal Track 2 (NT-2) for a slower schedule. In the Sensitive Track, rates above five per cent will be reduced to five per cent. There is a category of Special Products (SP) created only for India's benefit for certain agricultural items – crude palm oil, refined palm oil, coffee, black tea and pepper. There are Highly Sensitive (HS) categories as well: in category 1, reduction is to be made to 50 per cent, in category 2, the reduction is by 50 per cent and in category 3, by 25 per cent. Finally there is an exclusion list (EL).

All major agricultural products figuring in India's list of exports to Malaysia are already free of duty on MFN basis in that country. On some fresh fruits like guavas, mangoes and bananas on which India has a potential interest but not very large volumes currently, mixed exports duties apply with an ad valorem component of 5 per cent and specific duty equivalent to about Rupees 3 per kg on mangoes, Rupees 6 on guavas and Rupees 20 on bananas. These fresh fruits were exempted from tariff reduction by Malaysia in AIFTA. Among industrial goods, mineral fuels, organic chemicals and non-ferrous metals exported by India are already free of duty on MFN basis. Some steel items in which India has an export interest such as flat rolled products attract a duty of 50 per cent in Malaysia and these have been put on the exempted list in AIFTA. India exports non-galvanised steel pipes to Malaysia and these too attract an MFN duty of 30 per cent and are also excluded from reductions in AIFTA. India has an interest in exports of apparel products on which Malaysia has reduced duties of 20 per cent to 5 per cent in AIFTA. Motor cycles, motor cars and commercial vehicles in which India has an interest have been placed on the exclusion list by Malaysia in AIFTA. At present, these items attract MFN duties ranging from 10 per cent for completely knocked down (CKD) units to 30 per cent for completely built up (CBU) units.

Almost all the agricultural products of export interest to Malaysia have been included in India's list of special products and the following reductions have been agreed to the in AIFTA, with the final reduced rate being achieved on December 31, 2019.

Product	Tariff in 2010	Tariff in 2019
Crude palm oil	80	37.5
Refined palm oil	90	45
Coffee	100	45
Black Tea	100	45
Black Pepper	70	50

India, however, has reduced duties on cocoa and cocoa powder but not cocoa paste. Among industrial products, India has excluded refined petroleum products from cuts in its AIFTA schedule and the full MFN duty of 10 per cent applies. In AIFTA, India has already committed to eliminate expeditiously duty on chemical products imported by India from Malaysia. The same is the case for wood in the rough, sawn wood, particle and fibreboard, which Malaysia exports to India. India has eliminated tariffs on computers and telecommunication equipment as part of its commitment under the WTO Information Technology Agreement. On other machinery items exported by Malaysia, it has agreed to accelerated elimination of duty in the normal track under AIFTA with only a few exceptions. India is restrictive only in respect of motor vehicles; these are all on the exclusion list in AIFTA and the applicable MFN duty is 100 per cent. Malaysia's exports of wooden furniture attracted a duty of 10 per cent in 2010 and it has been agreed in the AIFTA to reduce the duty to zero under the normal track, some on an accelerated basis and others more slowly.

Commercial significance of concessions in goods in India-Malaysia CECA

Many categories of goods figuring in Indo-Malaysia trade were already free of duties in 2010 when the AIFTA entered into effect. In many other cases, the two governments have agreed to reduce tariff to zero or five per cent in the AIFTA. In some cases, the final duties will be well above zero even after the full reduction has taken effect, and this is the case in five agricultural products (crude palm oil, refined palm oil, coffee, tea and pepper) imported by India. What then is the additional liberalisation on offer in the India-Malaysia CECA?

Among agricultural products, the biggest gain for India is that Malaysia will reduce its duty on basmati rice from 40 to 20 per cent by 2015. The duty on rice-based animal feed will also be reduced to five per cent by 2016. On mangoes, the duty will be eliminated by 2016 and on guavas and bananas; the specific duty component will be eliminated by 2016 after which only five per cent ad valorem duty will apply. Malaysia has also opened a tariff quota of 3 million hen and duck eggs with an in-quota tariff of zero and out of quota tariff of 10 per cent.

The concessions on industrial products gained by India are more significant. The duty on trucks and buses will be reduced from the current level of 30 per cent to five per cent by 2016. Similarly, the duty on motor cycles will be reduced from 30 per cent to five per cent by the same date.

India's concessions to Malaysia are exclusively on agricultural products. First, the final level of 45 per cent duty on refined palm oil will be achieved on December 31, 2018, one year ahead of the date agreed in the AIFTA. Second, cocoa paste, which was exempted from tariff reduction in the AIFTA, will now have the duty reduced from 30 to five per cent. India will eliminate duty on papayas and water melon and reduce it from 30 to 10 per cent on pineapple. On eggs, India will eliminate duty for Malaysia without any quota restriction.

The concessions secured by India on trucks and motor cycles are significant as it would improve the competitiveness of Indian manufacturers to export these products. Malaysia imports commercial vehicles as well as motor cycles in the range of about US$100 million each. Commercial vehicles are imported mainly from Japan and China and motor cycles from Thailand, Indonesia and Japan. Thailand and Indonesia are ASEAN partners and the ASEAN have FTAs with both China and Japan. The concessions secured by India in the India-Malaysia CECA will thus serve to reduce the preferential disadvantage of Indian suppliers in the future and provide export opportunities to them in Malaysia for commercial vehicles and motor cycles. The duty reductions secured on basmati rice and some tropical fruits may also result in small increases in the exports of these items from India. Malaysia's big gain will be in eggs in which it gets a duty free entry into India. Malaysia exports about US$100 million annually, mainly to Singapore and access to the large Indian market could provide a good commercial opportunity to Malaysian exporters. There could be smaller gains for Malaysia in fresh fruits. In palm oil, the only gain is that the implementation of the final rate of 45 per cent on refined palm oil will be advanced by one year from 31 December 2019 to 2018.

Liberalisation of Trade in Services

The India-ASEAN FTA does not cover the services sector currently and, therefore, the India-Malaysia CECA in respect of this sector has to be assessed with reference to the existing MFN regime in both countries. Both India and Malaysia are WTO members who have been participating in the GATS negotiations and both have made offers in that context. In fact, both countries have improved their initial offers and made revised offers. These offers also represent one benchmark against which the CECA commitments could be evaluated.

The India-Malaysia CECA follows the pattern set by the GATS and contains the market access and national treatment commitments of the two parties in separate schedules of commitments. These schedules set out the limitations on market access and national treatment on individual sub-sectors according to the four modes of supply viz., cross-border supply (mode 1), consumption abroad (mode 2), commercial presence (mode 3), and presence of natural persons (mode 4). The CECA does not cover all service sub-sectors and one of the most important – financial services – does not figure in the commitments made by either party. In order to evaluate the concessions made by the two sides, we examine the language of the commitments made in five sub-sectors in which both countries are known to have commercial interest, namely, computer and related services, construction and related engineering services, educational services, hospital services, tourism and travel related services. A general requirement in Indian laws until recently was that foreign investors with prior collaboration in a specific sector needed clearance from the Foreign Investment Policy Board (FIPB) in order to protect the interest of the Indian joint venture partner. This requirement has been withdrawn by the government but it figures in India's commitments in the CECA as well as in India's offers in the GATS negotiations. In the analysis of sub-sectoral commitments below, we do not mention this requirement.

In computer and related services, both India and Malaysia have liberalised trade in modes 1, 2 and 3, completely on an autonomous basis and both countries have offered to bind the existing level of liberalisation in their revised offer submitted in the WTO GATS negotiations (TN/S/O/MYS/Rev.1 of 31 January 2006;TN/S/O/IND/Rev.1 of 24 August 2005). The only qualification made by India is that for establishment under mode 3, there is a requirement of local incorporation. The two countries have inscribed their autonomous regimes into their schedules.

In construction and related engineering services, India has already liberalised its FDI regime fully and 100 per cent foreign equity is allowed. In the revised GATS offer, India has offered to bind the commitment for 100 per cent equity. In the CECA, India has imposed the condition of local incorporation and a foreign equity ceiling of 74 per cent. Malaysia allows establishment through a representative office as well as through joint ventures and generally imposes a foreign equity ceiling of 30 per cent and it is this position that is embodied in Malaysia's revised GATS offer. In the CECA schedule, Malaysia has raised the foreign equity ceiling to 49-51 per cent for different grades of contractors from India.

In educational services, India has liberalised the foreign direct investment policy autonomously but there are strong regulatory requirements. In its revised GATS offer in respect of higher education services on mode 1, India has imposed the condition that the service providers would be subject to regulations as applicable to domestic providers in the country of origin. In respect of mode 3, the condition has been imposed that the fees to be charged would be liable to be fixed by an appropriate regulatory authority and that such fees should not lead to charging of capitation fees or profiteering. In the CECA schedule, India has reproduced the same conditions and, in addition, it has imposed a foreign equity ceiling of 51 per cent.

On higher education, Malaysia has made an offer in its GATS revised offer for market access in mode 1 only in respect of franchise and twinning arrangements between foreign based and Malaysian based educational institutions. In mode 3, foreign equity investment is allowed up to 49 per cent (and could be more in courses considered critical for Malaysia) but is subject to an economic needs test. In the CECA schedule, Malaysia has made an improvement over its GATS offer. Importantly, it has dropped the economic needs test condition and specified the situation in which the foreign equity limit would be enhanced from 49 to 51 per cent. In addition, it has committed to allow up to 10 lecturers/experts but not more than 30 per cent of the lecturers employed in the institution as intra-corporate transferees.

In hospital services, India has fully liberalised the foreign direct investment regime and there is no ceiling on such investment. In the revised GATS document, India has made an offer in respect of modes 1, 2 and 3 in respect of hospital services. In mode 1, there is no market access restriction on transactions between service providers in India and foreign countries. In mode 2, there are no restrictions and in mode 3, the condition of local incorporation applies. In addition, the requirement is that the latest technology would be used for treatment. India has also put a restriction of 74 per cent on foreign equity. In the CECA, the same conditions and qualifications have been imposed by India; in addition, the foreign equity ceiling has been lowered to 51 per cent.

Malaysia's autonomous regime on hospital services is more restrictive than in India; this is reflected in its GATS offer. For supply of services in modes 1 and 2, there are no market access restrictions but in mode 3, the draconian stipulation of an economic needs test applies. Further, the aggregate foreign shareholding allowed in joint ventures is only 40 per cent and the additional condition is that the joint venture corporation should operate a hospital with a minimum of 100 beds. In its CECA schedule, Malaysia has eliminated the economic test stipulation and raised the foreign equity ceiling to 49 per cent but the condition on the minimum number of beds continues to apply.

In tourism and tourism related services too, India has liberalised its FDI policy fully with no restrictions applying on foreign equity investment. In its revised GATS offer, India has offered to bind the existing autonomous regime in respect of both hotel and travel agency and tour operator services with 100 per cent foreign equity but with the stipulation that establishment can be only through incorporation. In its CECA schedule, however, India has committed foreign investment limit of only 51 per cent and retained the condition on local incorporation.

As in the case of hospital services, Malaysia's FDI regime in respect of hotel, tourist resort and restaurant services are restrictive relative to India. In its GATS offer, Malaysia has stipulated that mode 3 presence can be only through joint ventures and that the aggregate foreign shareholding must not exceed 30 per cent. In its CECA schedule, Malaysia is more liberal. There is no limitation on mode 3 for four and five-star rated hotels, implying that foreign equity can be 100 per cent. For smaller hotels, the condition that the service provider must be a joint venture applies with a limit of 51 per cent on foreign equity.

With respect to mode 4 (movement of natural persons), two points must be made at the outset. First, most, if not all, WTO members deal with this mode through an across-the-board (horizontal) entry in their offer or schedule of commitments and avoid making sub-sector wise entry. The same pattern has been followed in the India-Malaysia CECA. Second, the most important initiative taken by India and a number of like-minded countries in GATS negotiations is to ask for commitments on temporary relocation in host countries of contract service suppliers and independent professionals. India's offer in GATS negotiations includes offers in respect of both these categories prominently. For contract service suppliers, India has made an offer in respect of engineering, integrated engineering, architectural, urban planning, computer and related, R&D, management consulting, management consulting related, hotel and restaurant, travel agency and tour operator and tourist guide services, allowing short periods of stay up to one year. India's GATS offer also includes offers on independent professionals in the same services sub-sectors plus accounting and bookkeeping. Malaysia's GATS offer, however, does not contain this element and the horizontal section is confined only to intra-corporate transferees and business visitors.

In the India-Malaysia CECA, commitments have been made by both sides in respect of contract service suppliers and independent professionals. India has made commitments in respect of both contract service suppliers and independent professionals for engineering, integrated engineering, architectural, urban planning and computer and related services. In addition, commitments have been undertaken for management consultancy services in respect of contract service suppliers and accounting and book-keeping services in respect of independent professionals.

Commercial significance of the specific commitments on services in India-Malaysia CECA

What is the commercial significance of the specific commitments made by the two sides in trade in services? In modes 1, 2 and 3, the specific commitments made by India in the five sub-sectors that we have looked at are less than the autonomous applied regime in existence at present. In the background of a liberal MFN regime on foreign direct investments, the specific commitments made by India in CECA would not seem to have any commercial significance for Malaysia. It must be noted, however, that in case Malaysian investors are willing to make a higher level of investment in any of the areas in which the Indian specific commitment is at a lower level than the autonomous regime in force, they will not be denied the opportunity by the Indian authorities. This makes the Indian commitment at a lower level quite meaningless in practice. The only implication is that, in the unlikely event of India wanting to make its FDI regime more restrictive in a specific sub-sector in future, it cannot make it worse than the specific commitment it has made in the CECA. On the other hand, Malaysia's specific commitments on foreign equity have to be seen in the background of a restrictive applied regime and, therefore, would seem to be meaningful for Indian investors in the services sector. Particularly significant is the aspect that Malaysia has dropped the economic needs test for India, which because of its discretionary nature can become a highly restrictive instrument. In hotels and hospitals, Indian entrepreneurs can exploit the opportunity that has been created by being given immunity from the economic needs test. It is also significant that in respect of luxury four or five-star rated hotels, Malaysia has imposed no foreign equity ceiling or joint venture compulsion. Malaysia is a growing destination for ecotourism as well as for sports tourism and Indian tourists form a large proportion of tourist arrivals. Prima facie Indian hoteliers have been given a big opportunity. Hospitals too could provide an opportunity for Indian entrepreneurs who have shown an interest in the South East Asian region.

The specific commitments made in mode 4 for contract service providers and independent professionals in five or six areas also look promising for both countries, although India might be able to utilise the opportunity more. There is always a doubt on how transparently the commitments would be implemented. It is to be hoped that there would be a two-way movement of contract service suppliers and independent professionals and, if that happens, then a more effective implementation of the commitments may become a reality.

Conclusions

India and Malaysia have used the bilateral CECA to seek additional liberalisation in goods beyond what has already been achieved in the FTA between India and the ASEAN countries as a group. There are a few additional concessions obtained by both sides but the overall commercial significance of these concessions is small compared to what has been secured in the India-ASEAN FTA Agreement. The real additionality of the India- Malaysia CECA is in respect of trade in services as the scope of the India-ASEAN FTA is limited to goods. But here too, the commercial significance of the concessions exchanged by the two sides is not very substantial. India's specific commitments in mode 3 (on foreign equity) are set at a lower level than India's currently applied level and even lower than the level at which India has offered to bind in the GATS negotiations. Malaysia's specific commitments in mode 3 do have more value for India because of the restrictive policy prevailing in that country. Of particular significance is the fact that Malaysia has given immunity to India from the economic needs test which apparently applies normally in that country when considering applications for commercial presence. The concessions made in mode 4 on contract service suppliers and independent professionals have some value for both partners. However, during the process of implementation, the real value of these concessions would be tested in practice.

National Trade and Investment Policy Developments

Shravani Prakash

During the second quarter of 2011, changes in India's trade policy were related essentially to export promotion measures and export restrictions. There were no amendments in the import policy. Developments on the foreign investment front included changes in FDI caps in the pharmaceutical and DTH services sectors, as well as proposed changes in the investment regimes in the retail and telecom services sectors.

Developments in India's Trade Policy

Changes in Import Policy and Tariffs

Under the 2011-12 budget presented in March, import tariffs were reduced on specific products, the details of which were reported in the May issue of this newsletter. Thereafter, no further changes in any tariffs have been notified in this quarter.

Export Promotion Measures

The government decided to extend the Duty Entitlement Pass Book (DEPB) Scheme until September 20, 2011. The DEPB scheme was introduced in 1997, allowing exporters to earn duty credit at a notified percentage of the FOB value of exports. The DEPB rates are notified based on the assumption that the exporter has used duty-paid imported inputs, whether or not he actually does. The scheme had been identified for early sunset but has been getting periodic extensions in view of the difficult international economic situation and contraction of demand in developing economies. The finance minister had last extended the scheme up to June 30, 2011, when it was supposed to end, but it has been extended further for another three months.

The bonus benefit under Focus Product Scheme, available to silk carpets, was extended to include silk carpets exported under ITC HS code 57019090. The objective of the Focus Product Scheme is to incentivise export of those products that have high employment intensity in rural and semi-urban areas; exports of these notified products are entitled for duty credit scrip equivalent to 1.25 per cent of the FOB value of exports.

Export restrictions

Restrictions on cotton exports

India has removed all restrictions on export of cotton following fall in prices and weak demand in domestic market. The cap on cotton exports imposed by the government in October last year to protect the domestic textiles industry in the face of rising raw material prices was initially increased from 55 lakh bales to just 65 lakh bales after prices had corrected sharply. A further decline in prices and the build up of excess inventories prompted the government to remove completely all restrictions. Clearance of cotton consignments by Customs, however, would continue to be subject to verification that the contracts have been registered with the Directorate General of Foreign Trade prior to shipment. Now cotton export has been put under open general license (OGL) for the rest of the current cotton season, and a new procedure of registration of contracts has been notified for export of Cotton [ITC (HS) Code 5201 & 5203].

India is the world's second largest producer and processor of raw fibre, as well as the second largest exporter of cotton. However, it has come under severe criticism for its cotton export restrictions, on the allegation that the restrictions had contributed to global price volatility and uncertainty in the world cotton market. Following the export ban, an artificial gap had been introduced between world and internal prices in India, and resulted in conveying benefits to its textile industry at the expense of textile industries in other countries. India's uncertain export regime had also sharply reduced its presence in the world cotton market. Thus, the removal of the export caps can be expected to increase cotton exports from India and reduce price volatility that had been caused by them.

This move would also absolve India of the accusations of violating its WTO obligations. A number of countries' textile groups (including EU) had been protesting against the quantitative restrictions on cotton export and the US has threatened to drag India to the WTO to discuss the appropriateness of the restrictions. India, however, had maintained that its export restrictions on cotton fell under GATT Article XI. It has also refrained from imposing permanent bans on cotton exports despite demands from the textile industry.

Minimum Export Prices

The minimum export price (MEP) of Bangalore Rose onions and Krishnapuram onions was reduced to US$400 per metric ton F.O.B from US$600 per metric ton. The MEP of onions other than Bangalore Rose onions and Krishnapuram onions will be US$275 per metric ton F.O.B (increased from US$230 per metric ton)

Export Prohibitions

India issues ad hoc prohibitions on exports of sensitive products such as on rice, wheat, pulses, edible oil and sugar. Prohibitions on edible oils, pulses and sugar have been relaxed for organic varieties of these commodities, subject to conditions that (a) the commodity should be duly certified by APEDA as being organic (b) export contracts should be registered with APEDA prior to shipment and (c) exports shall be allowed only from Customs EDI Ports. Specifically:

i) The prohibition of export of edible oils up to September 2011 was removed in the case of the export of organic edible oils, but with a ceiling of 10,000 MTs per annum and subject to the above conditions.

ii) Export of organic pulses was exempted earlier from the ban on export of pulses with a ceiling of 10,000 tonnes upto March 31, 2012 and subject to certain conditions. Now exemption on export of organic pulses and lentils will be with the ceiling of 10,000 MTs per annum; and subject to conditions mentioned above.

iii) Export of sugar is free, but subject to the requirement that a release order is obtained from the Chief Director (Sugar), Directorate of Sugar. This condition will not be required for export of organic sugar with a ceiling of 10,000 MTs per annum and subject to the above mentioned conditions.

Anti-dumping and safeguard measures

India initiated three anti-dumping in the last three months (in addition to five anti-dumping investigations earlier in the year). The new anti-dumping investigations were initiated against phthalic anhydride from Korea, Taiwan, Israel and Iran; grinding media balls from Thailand and China and digital offset printing plates from China and Japan. Definitive duty was imposed on five products and provisional duty on one. Duty imposition is awaited on PVC flex films and sewing machine needles from China. One case against polypropylene from Korea, Taiwan and USA was terminated, as the investigation could not establish imports from the three countries caused injury to local producers.

In addition to anti-dumping, India also initiated safeguard investigation concerning imports of phthalic anhydride into India.

Developments in India's FDI Policy

TRAI Recommends Measures to Boost Domestic Manufacturing under a Telecom Equipment Manufacturing Policy

The Telecom Regulatory Authority of India (TRAI) released new "recommendations on Telecom Equipment Manufacturing Policy" in April, proposing new regulations to boost domestic manufacturing and to cap the amount of equipment made outside India used in its telecom industry. This is motivated by the fact that, in spite of being the second largest telecom market in the world, telecom equipment manufacturing in India is still to take off. Despite the huge requirement for hardware, there are few Indian manufacturers and Indian telecom operators primarily import most of the equipment required for setting up a network

The recommendations propose providing Indian equipment manufacturers with preferential licensing rights and government subsidies to increase proactively Indian-owned market share, while simultaneously implementing cuts on the market share allowed to foreign manufacturers. The proposed policy aims to enhance significantly the share of the domestic manufactured products, i.e., products manufactured by companies registered in India. They can be either Indian Manufactured Products (IMP) or Indian Products (IP), based on where the IPRs resides. In both the cases, the product must also satisfy a minimum value addition. TRAI proposes that by 2020, at least 50 per cent of all equipment – including mobile handsets, internet data cards and chips – would be manufactured by Indian groups and at least 80 per cent will be produced domestically. If they are accepted by the Indian Department of Telecommunications, TRAI's policy recommendations will be incorporated into India's new 2011 National Telecommunications Policy (NTP) expected to go into effect at the end of this year.

If approved, TRAI's recommendations will have profound effects on both foreign importers of telecommunications equipment and foreign companies that manufacture their equipment in local factories within India. Cellular operators in India have opposed this move, saying that mandating domestically manufactured products could amount to limiting choice and go against the National Telecom Policy, which provides for technology neutrality, flexibility of choice and openness to provide the best of telecom services using state of the art equipment. Additionally, such requirements would make India vulnerable under its WTO commitments under GATT Article III and the TRIMS Agreement.

FDI Cap for Pharma Sector May be Cut to 49 per cent

Foreign direct investment (FDI) cap in existing pharmaceutical ventures is likely to be lowered to 49 per cent from 100 per cent in India. A government panel had recommended that in case of Brownfield ventures, not only should FDI be capped but these investments should also be approved by the government. The panel, however, has said that the present system of 100 per cent FDI through the automatic route be retained for Greenfield ventures.

This has been proposed by the government to control the takeover of local companies by multinationals, and has been referred for a second opinion to the Planning Commission. Controlling the share of foreign players in the industry would help the government pursue its policy of affordable medicine and continue to use domestic manufacturing facilities to cope with epidemics and health emergency.

FDI Cap on DTH services to be increased

The FDI ceiling for services offered by the various carriage services including direct to home TV, Internet protocol TV and teleport is likely to be enhanced from 49 per cent to 74 per cent, after the Information and Broadcasting Ministry endorsed the recommendation by the Telecom Regulatory Authority of India (TRAI). While platforms such as HITS and mobile TV are allowed to invite FDI up to 74 per cent, parity is now being sought to be restored by allowing DTH, Teleport and IPTV operators also to attract the same level of foreign investment.

FDI in retail

The outline of the policy for allowing foreign direct investment in retail has been finalised after two rounds of inter-ministerial consultations and is likely to be approved by a panel of secretaries later this month. The plan envisages allowing foreign chains to hold up to 51 per cent stake in an Indian venture, which is higher than that proposed during the first round of consultations. However, there would be an additional rider that the permission of states would be mandatory to open stores. Therefore, it would be left to state governments to decide whether they would allow foreign chains or not. Also, the government intends to allow these chains to operate in large cities only.

The US GSP Scheme and India

Anwarul Hoda and Shravani Prakash

The GSP schemes of developed countries have been in operation for more than three decades. In 1968, the Second United Nations Conference on Trade and Development (UNCTAD II) adopted a resolution recommending the establishment by the developed countries of a "generalized, non-reciprocal, non-discriminatory system of preferences in favour of the developing countries, including special measures in favour of the least advanced among the developing countries". The aim was to increase their export earnings, promote their industrialisation and to accelerate their rates of economic growth. Products included in the GSP scheme are exempt from duty and there are no products on which intermediate levels of duty apply. Competitive need limitations apply for imports of specific 8 digit product lines, in which imports exceed a certain value limit or the prescribed share of global GSP imports. The continuance of the US scheme is also subject to conditions relating to certain policies and practices in the beneficiary countries, some of which are not trade-related. Additionally, the US has extended deeper preferences under the GSP not only to the least developed countries (LLDCs) but also to countries in a particular region (sub-Saharan Africa). The US has also introduced parallel preferential schemes outside of the GSP scheme for certain developing countries (in the Caribbean and Andean sub-regions).

The US GSP has had certain distinctive features from the outset as compared to the EC. In the EC scheme, country graduation is provided for on the basis of a number of parameters against a single yardstick of per capita income in the US. Countries which are designated by the World Bank as high income on the basis of per capita gross national product lose the GSP benefit. But there is a provision in the US law, which also gives room for the use by the government of a modicum of discretion in deciding on country graduation. The preference margin is not modulated according to the sensitivity of the product as in the EC, but if there is any degree of import sensitivity, the product line is excluded altogether from the purview of the GSP scheme. There are a number of products that are barred by statute from inclusion in the scheme. Subject to these exclusions the President is authorised to consider requests by importers and exporters for addition of products during annual reviews and is guided by the advice given on each request by the International Trade Commission. During the reviews the President may also consider requests from the domestic industry for exclusions.

The US GSP scheme needs legislative renewal from time to time and in fact, the validity of the earlier statute expired on December 31, 2010, and since then, it has been awaiting approval from the Congress. However, internal discussions are being held in which various options are being debated, including allowing the whole scheme to expire for good in favour of an FTA option. Going by the recent trends in the thinking on trade policy in influential circles in the Congress and elsewhere in the US and the stance that the country has adopted in the Doha Round, an extension of the GSP is likely to see the strengthening of the reciprocity element already existing in the US statute. In fact, the opportunity for seeking reciprocal trade benefits from the beneficiary countries might lead the US Congress to consider positively the proposal for extension of the GSP. The future attitude on the GSP might also be coloured by what happens in multilateral negotiations.

After nearly four decades of implementation, it is time to evaluate the contribution of this experiment. In this context, this paper undertakes an evaluation the US GSP scheme from India's perspective. How have these schemes evolved and what have been the trends in their operation and implementation? What does the future hold in respect of preferential tariff treatment under the GSP in the EU and the USA for countries like India?

We begin by examining the important features of the scheme in detail.

Reciprocity and policy conditionality

The US Trade Act 1974, as originally enacted, imposed certain policy conditions on developing countries before they could be designated as beneficiary developing countries eligible for the GSP benefit. The US Trade Act 1974 barred the designation as GSP beneficiaries of countries which participate in action to withhold supplies of 'vital commodity resources from the international trade or to raise the price of such commodities to an unreasonable level'. Other countries were barred from designation as beneficiary countries on conditions that pertained largely to the external economic policies of the beneficiary countries and included egregious actions that affected the interests of the US, its citizens and corporate entities. Matters of international concern were also included such as the adequacy of the steps taken by the country concerned for controlling production, processing and transport of drugs.

Workers rights have figured significantly in the applications made by domestic lobbies to deny beneficiary status to individual countries. Several countries have been temporarily suspended from the benefits on account of shortcomings in their enforcement of labour laws. IPRs have also figured in actions by the US Government to limit GSP benefit on account of 'country practices'. The GSP benefit was curtailed for Mexico in 1987, India in 1992 and Argentina in 1997 for reasons related to their IPR regimes.

Country graduation

The GSP Renewal Act 1996 stipulated that any country with a per capita income that meets the World Bank definition of 'high income' country would be excluded from GSP benefits. When the US GSP expired in December 2010, the per capita income level defined by the World Bank as high income was US$12,196. Hong Kong, the Republic of Korea, Singapore and Taiwan and Malaysia have faced graduation from GSP beneficiary status.

Product coverage and tariff treatment

The President has been authorised to designate any article as eligible for GSP on the advice of the US International Trade Commission on the probable domestic impact of the preference. However, the law generally bars the granting of the benefit to certain categories of products, which have been subject to only minor definitional variations since the US Trade Act 1974 was enacted. These products are textiles and apparel articles, watches, import-sensitive electronic articles, import-sensitive steel articles, footwear, handbags, luggage, flat goods, work gloves, leather wearing apparel, import-sensitive semi-manufactured and manufactured glass products, and any other article considered to be import-sensitive. It should be noted that the exclusions cover labour intensive products, which have a dominant share in the exports of many developing countries. The exclusion of labour intensive products from the purview of US GSP greatly limits the value of the scheme from India's perspective.

Within these limitations, the US holds annual reviews at which requests for additions to the lists of eligible products are considered, along with requests from domestic industries for exclusion of products that have already been included. As for agricultural products, most tropical products benefit from zero MFN tariffs and, therefore, do not find a place under the GSP. On the other hand, for reasons of domestic sensitivity most temperate zone agricultural foodstuffs are not covered by the GSP.

Competitive Need Limitation

From its inception, the US GSP programme has envisaged the mandatory application of certain limitations in the case of products in which the imports in a particular year meet the criteria of competitive need set in the statute. The US Trade Act of 1974 provided for two such criteria: first, if the imports from a beneficiary country exceed the value limit of $25 million in a calendar year, and second, if such import equals or exceeds a share of 50 per cent of total imports. The GSP Renewal Act of 1996 provided that the value limit for 1996 would be $75 million, which would be increased by $5 million each calendar year. Thus, the value limit for 2010 before it expired was $145 million.

A country, which has been affected by the competitive limitation, may be re-designated as a beneficiary if, in any subsequent year, imports from that country fall below the limits. However, the decision for re-designation is not automatic and the US Government is required to factor in such general considerations as the extent of the beneficiary country's competitiveness and the anticipated impact on US producers.

Waiver of competitive need limitation

The US President has been authorised by law to waive the application of the competitive need limitation with respect to any eligible article of a beneficiary country if he considers such action to be in the national economic interest of the United States. A strong reciprocity element has been built into the rules by stipulating that, in taking a decision on waiver, the President should take into consideration the extent to which the country concerned affords to the US access to markets and commodity supplies and provides adequate and effective protection of IPRs. An overall limitation that was introduced in the US Trade and Tariffs Act of 1984 and that remains valid still is that waiver shall not be granted in respect of an eligible article if the share of imports of that article exceeds 30 per cent of the value of all GSP imports during the preceding year. Another limitation is that the aggregate value of imports of that article from the beneficiary developing country should not exceed 15 per cent of GSP imports from all beneficiary countries with a per capita GNP of $5,000 or more or from countries that had a share of more than 10 per cent in total GSP imports.

Rules of Origin

The value of the domestic material used and the processing operations should constitute not less than 35 per cent of the appraised value of the imported product. For the purposes of meeting the rule of origin there is provision for regional cumulation among members of six associations of developing countries, namely the Andean Group signatories of the Cartagena Agreement, the Caribbean Common Market (CARICOM), the West African Economic and Monetary Union (WAEMU), the Southern African Development Community (SADC), the Association of South Eastern Asian Nations (ASEAN) and the South Eastern Association for Regional Cooperation (SAARC).

Parallel Preferential Arrangements with Regional and Sub-Regional Groups

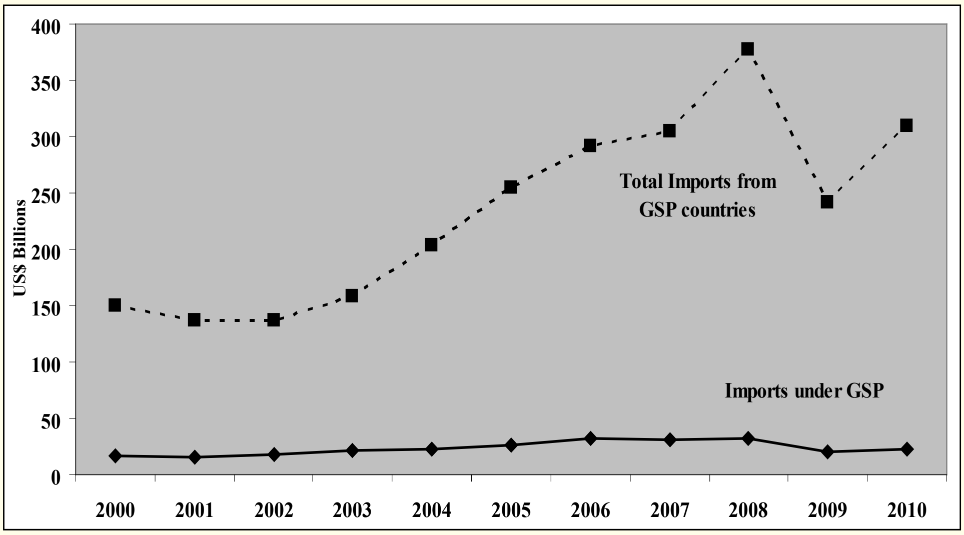
Apart from granting more extensive preferential benefits for the LLDCs within the framework of the GSP, for the last three decades, the US has followed a policy of according better preferential benefits on a unilateral basis to regional or sub-regional groups of countries and territories. This is quite apart from the Free Trade Area agreements that it has entered into with several developing and developed countries.

These unilateral preferential arrangements obviously impinge on the operation of the GSP schemes and affect the interests of GSP beneficiaries. The three main preferential arrangements in respect of which the US has obtained temporary WTO waivers are the Caribbean Economic Recovery Act (CBERA) up to December 31, 2014, the Andean Trade Preference Act (ATPA) up to December 31, 2014 and the African Growth and Opportunity Act (AGOA) up to September 30, 2015. In the beginning, the products excluded from the GSP were also excluded from CBERA and ATPA, but these products were included later.

Trends in preferential imports into the US under the GSP

The US GSP scheme was implemented more than 35 years ago but its impact has remained remarkably limited. As Figure1 shows, while total imports from GSP countries have been going up steeply, a flat line reflects the trend in preferential imports from these countries.

Figure 1: US Imports from GSP Eligible Countries (US$ Billion)



Source: US ITC, Trade Dataweb

The data in Table I offer one explanation for the low share of preferential imports in the total imports from GSP countries. Over the last 10 years, the proportion of GSP imports relative to dutiable imports, already low at about 20 per cent in 2001 has come down to about 16 per cent in 2010. The US GSP scheme envisages a priori exclusion of several categories of products such as textiles and apparel, footwear, leather goods and electronic products, all labour intensive products, which are the very areas in which many developing countries specialise. Outside of the categories, which are barred by law against inclusion, there is some room for manoeuvre for the Administration to include new items. However, since 2001, petitions have been accepted for inclusion in respect of only 34 products for all developing countries while 27 petitions have been accepted for exclusion.

The implementation of the competitive need limitation provision during the years from 2001 to 2009 has tended to whittle down progressively the scope of the US GSP. As pointed out above, exclusion is mandatory when the thresholds are crossed but re-designation is discretionary when the exports fall below the limits. During these years, 112 products were excluded by virtue of competitive need limitation while only 67 products were re-designated for restoration of GSP treatment. There have been no favourable decisions on re-designation during the last four years and all petitions (146 in 2008 and 176 in 2009) have been rejected. Up to 2005, waiver requests from competitive need limitation were considered positively and as many as 21 were allowed between 2001 and 2005. From 2006, the trend changed and between 2006 and 2009, 13 existing waivers were revoked while only 8 new waiver requests were granted.

On top of all this, there is an ever-present real threat of the US limiting the benefits for individual beneficiaries because of the controversial US law provisions on country practice reviews. It is not only that the provisions exist in the US statutes but also that business associations and individual corporate entities are active in seeking recourse to these provisions. Every year, the Administration considers petitions for reviews related to workers rights (from AFL-CIO or ILRF) or to IPRs (from IIPA) or to miscellaneous questions such as arbitration awards (from individual companies). In 2009, two petitions were accepted for review, one against Sri Lanka from AFL-CIO on workers rights and another from Azurix Corporation against Argentina on arbitration awards.

Table 1: Imports into US from Beneficiaries (US$ Billion)

	Total Imports into US	Total Imports from GSP countries	Total Dutiable Imports from GSP countries	GSP Imports
2000	1,205	150	83	16
2001	1,133	137	73	16
2002	1,155	137	72	18
2003	1,250	158	79	21
2004	1,460	204	87	23
2005	1,662	254	107	27
2006	1,845	291	126	33
2007	1,943	305	132	31
2008	2,090	378	161	32
2009	1,549	241	112	20
2010	1,899	310	138	23

Source: USITC, Trade Dataweb

The importance of the GSP in US trade with developing countries, already reduced by statutory exclusion of several products and increasingly emasculated by the lop-sided implementation of the competitive need limitation, has diminished further under the twin impact of unilateral preferences granted to groups of countries in a region or sub-region and reciprocal preference in the framework of FTA agreements. The establishment of NAFTA was a big step which immediately resulted in a huge redirection of trade, and several other FTA agreements have entered into effect, while three (Korea, Colombia and Panama) are pending ratification. The relative magnitude of trade under these arrangements and of trade under the GSP can be seen in Table 2.

Table 2: Imports into US under Preferential Agreements (US$ Billion)

	Imports under GSP	Imports under FTAs	*Of which imports from Mexico*	Imports under AGOA, Andean Act and Caribbean
2000	16	209	*84*	5
2001	16	196	*81*	12
2002	18	203	*85*	12
2003	21	209	*88*	22
2004	23	233	*96*	33
2005	27	264	*107*	48
2006	33	304	*127*	54
2007	31	314	*134*	57
2008	32	330	*141*	77
2009	20	240	*107*	39
2010	23	311	*141*	54

Source: USITC, Trade Dataweb

US GSP and India

India is one of the 10 major beneficiaries of the US GSP scheme as shown in Table 3. Its share of GSP imports into the US reached a peak of 17 per cent in 2006 but fell to 15 per cent in 2010. Thailand was the largest beneficiary in 2010 and Angola the second largest, although its position is largely due to its exports of crude petroleum.

Table 3: GSP Imports from the Top GSP Beneficiaries (US$ Million)

	Country	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
1	Thailand	2,205	2,201	2,312	2,702	3,143	3,575	4,252	3,820	3,533	2,886	3,612
2	Angola	2,844	2,511	2,826	3,883	3,066	4,098	6,774	6,924	7,529	4,142	3,544
3	India	1,138	1,334	2,041	2,646	3,270	4,179	5,678	4,735	3,965	2,848	3,482
4	Brazil	2,086	1,950	2,124	2,490	3,168	3,628	3,738	3,427	2,754	1,978	2,124
5	Indonesia	1,369	1,322	1,513	1,347	1,290	1,594	1,946	2,243	2,161	1,455	1,856
6	Equatorial Guinea	136	116	401	764	895	1,487	1,559	1,313	2,805	1,677	1,275
7	South Africa	583	506	553	670	949	1,017	1,066	1,190	1,457	742	1,200
8	Philippines	745	676	708	895	967	1,008	1,141	1,165	913	734	913
9	Turkey	435	437	472	723	970	1,068	1,126	1,128	917	644	793
10	Russia	515	378	381	430	554	738	512	469	594	252	578
	Sub-Total of top 10	*12,056*	*11,431*	*13,331*	*16,550*	*18,271*	*22,394*	*27,792*	*26,413*	*26,627*	*17,359*	*19,377*
	Total GSP Imports	**16,439**	**15,726**	**17,663**	**21,278**	**22,709**	**26,747**	**32,598**	**30,850**	**31,663**	**20,259**	**22,554**

Source: USITC Tariff and Trade DataWeb

Table 4 gives the picture of preferential imports from India relative to total imports. GSP imports as a proportion of total dutiable imports from India reached a peak of about 46 per cent in 2006 but thereafter, it fell to about 24 per cent in 2010.

Table 4: Imports from India into US (US$ Million)

	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
Total	10,680	9,708	11,790	13,034	15,503	18,710	21,674	23,857	25,866	21,228	29,614
MFN Dutiable	5,885	5,586	6,689	7,542	8,306	10,643	12,333	13,015	12,550	10,697	14,777
Imports under GSP	1,138	1,334	2,041	2,646	3,270	4,179	5,678	4,735	3,965	2,848	3,482

Source: USITC Tariff and Trade DataWeb

Table 5 gives a break up of the products imported from India receiving GSP treatment. Automobile vehicles and parts are the largest items imported from India under the GSP, followed by other engineering items under machinery, articles of iron and steel and electrical machinery. The importance of organic chemicals and plastics and articles thereof is also increasing. The main reason for the fall in the proportion of GSP imports from India was the revocation in 2007 of competitive need limitation waiver (originally granted in 2001) in respect of certain jewellery items (HSUS 71131929 and 71131950) and further revocation of the

2001 waiver in 2009 of another category (HSUS 71131925). The US took further action to exclude in 2009 one other category (HSUS 71131921) on account of the competitive need limitation. The GSP imports of gems and jewellery fell from $2,441 million in 2006 to $163 million in 2010.

Table 5: Top Imports into US under GSP from India (US$ million)

HS	Chapter	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
87	Vehicles and Parts	99	85	109	109	156	224	268	310	335	256	424
84	Nuclear Reactors & Machinery	70	81	91	113	168	283	406	479	523	321	383
73	Articles of Iron or Steel	141	150	147	153	217	269	314	373	408	293	321
29	Organic Chemicals	0	0	0	0	0	54	167	152	214	199	320
39	Plastic and Articles Thereof.	75	72	79	127	131	221	298	225	273	235	275
85	Electrical Machinery	78	79	76	127	142	240	495	370	267	189	266
71	Gems and Jewellery	103	285	862	1,204	1,508	1,798	2,441	1,538	492	279	163
57	Carpets and Other Floor Coverings	0.02	1	15	11	0	38	100	106	102	82	121
76	Aluminium and Articles Thereof	28	29	32	40	61	96	112	104	120	81	95
68	Articles of Stone, Plaster, Cement	83	90	109	148	211	184	138	142	114	79	79

Source: USITC Tariff and Trade DataWeb

Competitive Need Limitations and India

How has India fared under the provisions on the competitive needs limitation? As India has become a more successful exporter and its export volumes have increased, it has become more vulnerable to exclusions under the competitive need limitation. Simultaneously, India has also been denied requests for re-designation when export volumes have fallen below the threshold. During the decade 2001-2010, no product was re-designated at all for India and, in fact, all nine requests in 2008 and all 14 in 2009 were declined. India has also received fewer waivers from the application of competitive need limitation and there has been a greater readiness to revoke earlier waivers than to grant new ones. During the period 2007-09, waivers were granted for two products but revoked in four. Table 6 shows the cumulative position each year during the period 2001-10 of the number of products that remained excluded for India (net of re-designation and waivers) due to the competitive needs limitation and the trade coverage of exclusions.

Table 6: Imports from India subject to CNLS Exclusions (US$ million)

	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010
No of Tariff lines	13	10	11	12	13	17	21	21	31	34
Import value of excluded products	601	56	79	89	260	316	2,509	1,783	1,877	2,271
Total imports from India	9,708	11,790	13,034	15,503	18,710	21,674	23,854	25,866	21,228	29,614
GSP imports from India	1,334	2,041	2,646	3,270	4,179	5,678	4,735	3,965	2,848	3,482

Source: Office of the United States Trade Representative (USTR), Notice of the Results of the Annual Product Reviews, various years

What can be said about the difference that the duty free treatment under the GSP is making for India's exports? Export trends in respect of items in which India has been excluded from GSP treatment on account of competitive needs limitation or for any other reason give some idea about the value of GSP benefit.

Table 7: Jewellery Imports from India affected by CNLS Exclusion*

(US$ Millions)

HS	71131150	71131921	71131925	71131929	71131950
Products	*Silver articles of jewellery and parts, valued over $18 per dozen pieces or parts*	*Gold rope necklaces and neck chains*	*Gold mixed link necklaces and neck chains*	*Gold necklaces and neck chains (except of rope or mixed links)*	*Precious metal (except silver) articles of jewellery and parts, whether or not plated or clad with precious metal*
2000	15	7	33	26	565
2001	16	14	4	23	493
2002	27	7	5	39	773
2003	32	3	3	59	1,061
2004	37	1	4	65	1,355
2005	54	0	6	60	1,608
2006	72	0	6	89	2,211
2007	91	3	26	266	1,901
2008	143	60	64	197	1,014
2009	197	71	66	56	883
2010	270	47	33	45	1,001

Source: USITC Tariff and Trade DataWeb, The Federal Register (various years)
** Shaded area shows the years in which the product was excluded*

Table 7 gives the data for India's exports of five jewellery sub-headings in which competitive needs exclusions took place. It is seen that in four of them, the withdrawal of duty free treatment had a pronounced effect and reduced overall imports. From this, the inference can also be drawn that the preferential duty free treatment has stimulated India's exports in jewellery items in which the MFN duty is in the range of 5-5.5 per cent. In one, silver articles of jewellery, there seems to have been no impact and the volume of imports has continued to surge forward. The export trend will have to be observed over a longer period on all these items to evaluate the effect of tariff elimination as the imports of jewellery items can be influenced by myriad factors, including the difference in competitiveness between domestic and foreign producers, fashion trends etc.

Other items that were affected by competitive needs exclusions were certain chemicals. In fact, as we have noted earlier, chemical items were excluded from GSP for India in 1992 when the US took the decision under Special 301 investigations launched against India for perceived shortcomings in its protection of IPRs and India remained excluded until 2005, when its new patent legislation entered into force and granted patent protection to chemical and pharmaceutical products. Table 8 gives the data in respect of these items.

During the period before 2005, when chemicals imported from India were denied GSP treatment due to the Indian law excluding chemical and pharmaceutical products from patentability, imports of these chemicals into the US from India were negligible. The imports took off, however, soon after the GSP preference was restored in 2005. The relatively impressive rise in imports led to exclusion on account of the application of the competitive needs limitation. The withdrawal of duty free treatment dampened imports somewhat in two out of three items (HSUS 29189930 and 29269030) in which the MFN duty is 6.5 per cent.

Table 8: Chemical Imports from India affected by CNLS Exclusion*

(US$ Millions)

HS	29189930	29269030	29335959
Products	*Aromatic drugs derived from carboxylic acids with additional oxygen function, and their derivatives*	*Other aromatic nitrile-function pesticides*	*Non-aromatic drugs of heterocyclic compounds, with nitrogen hetero-atom(s) only*
2000	0	3	4
2001	0	1	0
2002	0	6	1
2003	0	1	2
2004	0	2	2
2005	0	9	4
2006	0	28	6
2007	43	39	23
2008	39	44	106
2009	22	44	143
2010	39	36	180

Source: USITC Tariff and Trade DataWeb, The Federal Register (various years)

**Shaded area shows the years in which the product was excluded*

However, in a third item (HSUS 29335959), the withdrawal of duty free treatment does not seem to have had an effect as imports from India have soared from $105 million in 2008, when the concession was withdrawn, to $180 million in 2010.

Conclusions

The above analysis brings out the fact that the statutory exclusion from the US GSP scheme of labour intensive manufactures like textiles, leather products and electronic items greatly limits the value of the scheme from India's perspective. For the products that are included, there is evidence to suggest that that the preference has a favourable impact on India's exports. However, the competitive needs limitation is a major constraining factor. It gives to the US Administration a discretionary authority to alter the conditions of competition among developing country suppliers and thus disrupt the market. From the angle of promoting industrialisation of developing countries, which was one of the aims of the preferential system, it does not make sense to discontinue the benefit to a developing country just as its suppliers have become successful in establishing themselves in the export market. The reciprocity requirement and the policy conditionality in the US scheme is another major flaw in the scheme. However, these shortcomings are so deeply entrenched that efforts to persuade the US government to shed them are not likely to be successful. In fact, considering the present environment in the US, it is quite possible that these features would be strengthened during the Congressional consideration of the proposal to extend the scheme beyond December 31, 2010. Instead of making futile efforts to improve the US GSP, it may be a better idea for India to seek international co-operation to put the Doha Round back on the rails. If there is accord on the Swiss formula and the coefficient of 8 for the developed countries as proposed by the Chairman of the Negotiating Group on NAMA, the highest level of MFN duty on industrial products will come down from 37.5 to 6.6 per cent in the USA after the implementation of the Doha Round concessions. Most of the prevailing MFN duties in the USA on items other than textiles and footwear are much lower and the level of duties on them will eventually be in the range of 3-4 per cent. With low MFN tariffs, we could even say good-bye to GSP.

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