



FROM THE DIRECTOR

The Doha round of global trade talks stalled after hitting numerous roadblocks last summer. However, a thaw is apparent; in Geneva, officials from key WTO Member countries began talking last month to try to break the impasse. U.S. negotiators, after being on the sidelines for months, have started taking part in fresh talks with trading partners on thorny issues, such as cutting farm supports. Optimists see this as a precursor to renewal of the Trade Promotion Authority of the US President.

The Doha round has been tough going from the start. Many of the issues under discussion now, like agricultural trade liberalization, are more sensitive than those tackled during past talks. The field of players who must reach consensus, meanwhile, has expanded from a small club of wealthy nations led by the U.S. to about 150. A failure of Doha, however, would signal a crisis of confidence in the multilateral trading system. Says Fred Bergsten, Director of Institute for International Economics, "The WTO would continue to exist. But there would be a big loss of its standing and its credibility".

In line with what was agreed, the Chairs have started talking to Members in a variety of formats, from "fireside chats" to "transparency forums", in order to explore possible options to take the negotiations ahead. While no real changes in numbers, notably in agriculture domestic support or tariff protection, have shown up in these discussions so far, an increasing level of engagement is starting to appear. And that is heartening.

Rajiv Kumar

Director & Chief Executive, ICRIER

LEAD ARTICLE

Plurilateral Negotiations in Services

Negotiations in services have been based on the bilateral request-offer approach using the bottoms-up architecture of the General Agreement on Trade in Services (GATS) where flexibilities are inbuilt....

More on page....2

SCHOOL BRIEF

Use of Antidumping Measures: Offence or Defence?

Provisions of trade defence measures have been a part of the multilateral trading system since the beginning of the General Agreement on Tariffs and Trade (GATT), justified by the need to provide for exceptional treatment to the general intention of providing an increasingly open trading regime. In the early years of GATT, the most used measure was renegotiation, supplemented by emergency actions under GATT Article XIX. By the early 1980s these instruments had given way to negotiated or 'voluntary' export restraints (VERs), and in the 1990s antidumping (AD) emerged as the instrument of choice....

More on Page....4

IN THIS ISSUE

- ▶ **Lead Article: Plurilateral Negotiations in Services**
by Sumanta Chaudhuri
- ▶ **School Brief: Use of Antidumping Measures: Offence or Defence?**
by Suparna Karmakar
- ▶ **Dispute Settlement Mechanisms in RTAs: Some Key Issues**
by Samir R. Gandhi
- ▶ **ICRIER News and Events on WTO Issues**
- ▶ **Recent Developments in WTO**
by Shravani Prakash

Plurilateral Negotiations in Services

by Sumanta Chaudhuri¹

Introduction

Negotiations in Services have been based on the bilateral request-offer approach using the bottoms-up architecture of the General Agreement on Trade in Services (GATS) where flexibilities are inbuilt.

The Doha Round of services negotiations started with this negotiating modality as is contained in the Negotiating Guidelines and Procedures (NGP). Two rounds of offers were submitted using only this modality. However, there has been dissatisfaction expressed by a large number of members on both the coverage as well as the quality of offers. The reasons provided were not only the general lack of progress in other areas of the Doha Round but also the bilateral request-offer approach itself.

It is in this context that plurilateral negotiations were suggested as one of the possible ways to put more momentum in the services negotiations. The possibility of using this approach has been recognized both in the GATS Article XIX itself as well as in the NGP. However, it had not been used in practice by members.

A number of apprehensions and misgivings started to emerge particularly from some non-government organizations (NGOs) and some developing countries. These related to the possibility of this plurilateral approach being converted into sectoral negotiations and later becoming mandatory, as was the case in financial and basic telecommunication services in 1997 with predetermined outcomes for the participating members. Basically, the fear was that the flexibility and bottoms-up approach of GATS, which was the greatest source of comfort for developing countries, would be compromised. Some quarters also felt that only sectors of offensive interest to major developed countries (like infrastructure sectors) would be taken up, leaving by the wayside areas of interest to developing countries (like Mode 4, professional services, etc.). Doubts were raised on the capacity and resourcefulness of developing countries, especially the smaller ones, to cope with the enormity of this approach.

Background and Rationale for Plurilateral Negotiations

Each member put bilateral requests to its major trading partners covering sectors and modes of export interest. These requests were supposedly based on the priority interests in

each member but more often than not the same request was repeated to each of them rather than focusing on specific barriers or limitations. By and large, the requests made, asking for full market access and national treatment commitments, were too ambitious and did not provide clear priorities.

Members started questioning whether the bilateral approach was one of the primary reasons for the failure to reach desired levels of ambition in services. The solution was not to shelve the bilateral approach but to provide it with more teeth by supplementing it with the plurilateral approach. The main objective was to provide an indication of the levels of ambition and the commonality of interests in specific sectors/modes of supply of export interest to members which would enable requested members to have a better sense of the priorities of the requesting members.

Negotiation Progress - Before and During the Hong Kong Ministerial Conference

A clear mandate was obtained at Hong Kong, contained in Annex C of the Ministerial Declaration endorsing the plurilateral approach. The GATS architecture and flexibility for developing countries was fully preserved. The mandate was limited to only a process and it was clear that no separate outcome was envisaged except through the revised offers of members. It was voluntary in terms of participation and recognized the resource constraints of smaller developing countries. There was no specific selection or choice of sectors/modes of supply where the plurilateral approach could be used but this was left to the interests of groups of members to pursue any sector/mode of supply.

Further, certain timelines were specified at Hong Kong—the presentation of collective requests by 28 February 2006 followed by bilateral/plurilateral negotiations leading to submission of revised offers by July 2006. These timelines were fixed keeping in view the conclusion of the negotiations by end 2006.

Process - Post-Hong Kong

The deadline of end February set at Hong Kong was largely met and 22 plurilateral requests (counting the MFN Exemptions request—general exemptions, financial services-

related, and audiovisual services-related—as three separate ones) covering a large range of sectors/modes of supply in which members had trade interests were made. Plurilateral requests have been made in the following sectors/modes of supply: Legal; Architecture/ Engineering; Computer Related Services; Postal/Courier; Telecom; Audio-Visual; Construction; Distribution; Education; Environmental; Financial; Maritime ; Air Logistics; Energy; Cross-Border Services - (Mode 1/2) ; Mode 3 ; Mode 4; MFN Exemptions (General) ; MFN Exemptions (Financial) ; MFN Exemptions (Audio Visual); and Services related to agriculture.

Most of the plurilateral groups were mixed groups involving developed and developing countries as both requesting and requested members. Further, most groups contained a selective list of 30–5 members including both requested and requesting members. It is not totally a one-sided story. Developed countries, for example, the QUAD, were recipients of several requests themselves. While it is true that, in general, developing countries have received more requests than they have made while the reverse is true for the developed ones, there seems to have been reasonable articulation of offensive interests by some developing countries also. It may also be noted that most of these developing countries have made requests in Mode 4 which is a horizontal request covering a large number of sectors and, hence, cannot be strictly compared one to one with a specific sectoral request. A similar situation also holds for the plurilateral request in cross-border supply which extends gain to a large number of sectors and again a simple counting may be a trifle misleading. Least developed countries (LDCs) have been kept out completely from this process and most small developing countries have also not been targeted.

In most of the groups, requesting members are also deemed recipients of the collective request, hence, they too are expected to try and meet the contents of the request commensurate with their own situation. The advantage is that the credibility of the requesting members is greatly enhanced if they are themselves willing to undertake at least the minimum levels of commitments they are seeking from the respondents. While there is no legal requirement for all requesting members to become deemed recipients, there could be a greater possibility of enhanced ambition with such reciprocal treatment compared to the bilateral approach.

Many groups were able to prioritize requests in comparison with bilateral requests which were often maximalist in nature by requesting removal of specific market access barriers that would have the largest commercial impact. On the contrary,

in a majority of the plurilateral requests, specific market access and national treatment limitations have been targeted and possible flexibilities in undertaking such commitments mentioned. However, it is true that this pattern has not been repeated in every plurilateral group and a few of them have chosen to follow the maximalist approach of the bilateral requests.

The process, as mandated, has been largely voluntary. It became restricted to a core group of 30-5 members who would negotiate amongst themselves without undue interference by other members who are more or less free to determine their levels of commitments.

Two rounds of plurilateral meetings have been held in March/April and May 2006. There has been much greater participation of sectoral experts from the capital. Fruitful engagement on a number of technical issues—including classification and clarification of scope—and relevant regulatory issues has also taken place. There has been a positive exchange amongst all participants on the current policy regimes domestically. Members have spelt out certain political sensitivities in specific areas that are red lines for them. At the same time there have been indications of some flexibility in other areas.

Impact on the Revised Offers

For recipient countries, this approach has enabled better appreciation of the collective requests and removal of limitations that would add value for most demanders.

Responses under the plurilateral approach continue to be those of individual members and not collective responses of all the recipients though it is true that to some extent individual responses may be shaped by collective discussions. This is what preserves the flexibility of individual developing countries to undertake commitments in line with their levels of development and their needs and priorities and, thereby, fully preserves the GATS Architecture. Responses can only be operationalized through the Revised Offers of each member just as was the case in the bilateral approach.

Thus, this approach in conjunction with the bilateral one is more likely to achieve better trade-offs between the different interests of members as compared to the use of only the bilateral approach. The other foreseeable event is the continuation of the bilateral approach and the plurilateral approach in tandem. In fact, the primacy of the bilateral approach as the main method of GATS negotiations would most certainly continue.

Participation of Developing Countries

Contrary to fears, it appears that developing countries that are part of the plurilateral negotiations have found this approach more reasonable and fruitful than simply the bilateral one that is often repetitive and isolated. There has been a much freer exchange between Members of their current regimes, the problems and hurdles that come in the way of enhanced liberalization, and areas where serious efforts at offering improved commitments are being made. This has also enabled a better comparative picture to emerge about Members' experiences/problems in specific sectors/modes of supply and also possible emulation in solving some specific problems. Clarification of issues relating to scheduling and classification seems to be another potential gain. The participation of developing-country sectoral experts has been greatly facilitated by intensive and well-planned clusters.

The apprehension that plurilateral negotiations would cater to only rich and developed-country interests seems to be unfounded. A look at the profiles of the plurilateral requests indicates clearly that developing countries are demanders in many plurilateral groups though obviously, much more the targets.

Mode 4 Group

Sixteen developing countries are the demanders and have specifically targeted only 9 developed members. The request is restricted to categories de-linked from commercial presence as this is where major gaps existed in the schedules of the developed-country members and which has hardly improved in two rounds of bilateral request-offer negotiations. This request is characterized by very clear and specific demands spelling out the categories of interest to the group—Market Access and National Treatment—, limitations that may be removed for each of the categories, along with specific sectors/sub-sectors of interest in each.

Conclusion

The plurilateral approach in services negotiations is neither the devil, as some had feared, nor is it the panacea for bringing about an ambitious outcome for services negotiations. The limited experience till date shows that this approach is unlikely to alter the basic architecture of GATS or fundamentally change the outcome of the negotiations. It will continue to supplement the bilateral approach and both will have their own role to play, though possibly the roles for each will differ depending upon the stage of the negotiations.

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School Brief

Use of Antidumping Measures: Offence or Defence?

by Suparna Karmakar

Introduction

Provisions of trade defence measures have been a part of the multilateral trading system since the beginning of the General Agreement on Tariffs and Trade (GATT), justified by the need to provide for exceptional treatment to the general intention of providing an increasingly open trading regime. In the early

years of GATT, the most used measure was renegotiation, supplemented by emergency actions under GATT Article XIX. By the early 1980s these instruments had given way to negotiated or 'voluntary' export restraints (VERs), and in the 1990s antidumping (AD) emerged as the instrument of choice.

This evolution shifted the focal point for the decision from international negotiations to a domestic administrative process. It also shifted the source of discipline from reciprocity to rules, that is, specification in domestic regulations and in the WTO Agreement on Antidumping (ADA) as to when action could be taken. These shifts have brought with them a burgeoning of the usage of AD—in recent times more by the developing economies than by the developed ones, with almost 2500 cases by WTO Members since the Uruguay Round agreements went into effect (1995-2003). This is a ten-fold increase in the number of (per year) increases of protection beyond limits bound at the WTO¹. Data on usage of different measures indicate that between 1 January 1995 and 30 June 2006 WTO Members imposed 1875 AD measures, 113 countervailing duties, and 76 safeguard measures.

Economists, by and large, have argued that these rules are distortionary practices that cause more economic harm than good. In a market economy, no industry would export products at a loss unless it expects to recoup the loss of selling below price by its ability to charge a monopolistic price in the near future; it is increasingly impossible to ensure such a market situation in today's world. Prof. Joseph Stiglitz further argues in his recent book *Making Globalisation Work* that most of the AD investigations by developed countries would fail to meet the test of anti-trust requirements in their home countries.

However, once it was proved that antidumping could be applicable to any case of troublesome imports, its other attractions (especially in terms of its ability to single out exporters and the unilateral nature of the AD actions) became apparent to protection-seeking industries and governments inclined to provide protection. Most importantly, the investigation process itself is a deterrent to imports; there are additional legal and administrative costs to be met for foreign exporters, backdated AD duties further add to costs and reduce competitiveness, and there is a significant chilling effect on future imports for up to 5 years after the investigation is completed. For example, in a traditionally aggressive user like the United States, current AD measures depress annual imports by almost 20 billion USD on top of the cumulative negative reputation effects.

The Statistical Position

On 27 November 2006, the WTO Secretariat reported on the basis of the latest available figures that in the period January-June 2006 the number of initiations of new AD investigations had continued its recently-reported declining trend, while the number of new final measures had increased relative to the

corresponding period of 2005. During January-June 2006, 20 Members had reported initiating a total of 87 new investigations, down from 105 initiations in the corresponding period of 2005; of these, 56 cases had been initiated by developing countries, or 64.37 per cent of new investigations initiated during the reporting period. A total of 15 Members had reported applying 71 new final AD measures during January-June 2006, compared with 55 new measures applied during January-June 2005 (a 29 per cent increase); of these 62 or 87 per cent of the new final measures imposed were by developing-country Members.

During the past decade, India has been a prolific user of the AD provisions, drawing adverse attention from the international community. The domestic law was enacted in 1985, though the first measure was imposed in 1993. During January-June 2006, India reported 20 new initiations, up from 14 during the corresponding period of 2005; this corresponds to 35.7 per cent of the new initiations by developing countries in the reporting period. Concerning new final AD measures, India reported applying eight new measures, or 13 per cent of the new final measures imposed by developing countries. India also was subjected to four new initiations and six final measures against its exports in the reporting period.

However, a detailed analysis of India's actions in the reporting period indicates that a large number of the new initiations have been against China, a non-market economy, and that the subject of investigations has mostly been the imports of different chemicals. Also, these statistics do not reveal the fact that while the measures imposed by India may have been more numerous, in terms of the trade affected (including chilling effect on products of India's export interest) in trade weighted USD, the measures imposed on India has been more onerous. And, going by the simple frequency analysis, it is a well-known fact that large importing countries tend to initiate a larger number of cases.

Moreover, several research papers analysing the macroeconomic effects of AD filings indicate the notable differences between the causes of AD filings for countries at different levels of economic development. Countries at initial levels of industrialization have different inducements (and likely more justification) for AD initiations as compared to mature industrialized countries where AD is used as a purely protectionist measure. Recent research results² show that a one-standard deviation real currency appreciation or GDP decline increases AD filings by developed-country AD users by 33 per cent and 23 per cent, respectively. The political economy school of thought states that authorities and interest

groups take advantage of macroeconomic conditions to be able to pass the AD statute tests and increase protectionism.

A Way Forward

Maintaining an economically sensible trade policy is often a matter of managing pressures for exceptions, for protection for a particular industry. The ADA has given a legitimate ground to countries to continue with the political convenience of giving in to the demands of protectionist factions. Cognisant of the great potential for abuse of AD actions, the WTO Agreement on Implementation of GATT Article VI represents an extraordinarily detailed attempt by WTO Member governments to ‘reign in’ this potential for abuse through a detailed set of rules governing the acceptable methodologies and procedures for initiating AD actions.

Expressions of concern to modify the rules so as to restrain this use have brought forward equally intense defences. The relevant part of the Doha Ministerial Declaration—the agreement that initiated the current round of WTO negotiations—is paragraph 28, titled ‘WTO Rules’. It states:

[Members] agree to negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 [antidumping] and on Subsidies and Countervailing Measures, while preserving the basic concepts, principles and effectiveness of these Agreements and their instruments and objectives.

The paragraph highlights that some Members want to change things (improve disciplines) while other Members want to keep things the same (preserve the effectiveness of the instruments).

Most proposals on AD submitted to the WTO reflect the tendency to think within the box. Members who would like to see fewer AD measures propose to tweak the existing structure of rules in one direction, other Members prefer clarifications that will allow them to hold the line. However, it is contended by some that this struggle over technicalities will have no impact on the quality or the quantity of import restrictions applied. There exist sufficient favourable tools that any national authority with a mind to reach an affirmative determination can use to make a case. A mathematician would say that the system is overdetermined; for example, there are currently 15 equations to solve for two unknowns. Any two equations are sufficient for a solution; choosing the ‘right’ equations provides considerable flexibility in what appears to be a technical system.

While improving the provisions is laudable, what the Doha Round should aim to do is to emerge from the box and think beyond. Adding a few technicalities here, trimming a few there, will have no impact. Researchers have argued that a plausible reason that AD actions are so widely abused for protectionist purposes is that they represent a rare instance of essentially unilateral actions that are permissible within the WTO; under the banner of AD actions, governments can block imports and provide their industries with import relief without fear of retaliation or demands for compensation from their trading partners. But as long as the underlying incentives for abuse remain, governments are likely to continue to find new and increasingly ingenious ways to respond to these incentives without running afoul of the rules. To create incentives for the use of AD measures that are more in line with a cooperative international environment, it is suggested that WTO compensation provisions be extended to cover anti-dumping actions. In this way, the WTO might in effect ‘harness retaliation’ and convert it into a tool of international order in the area of anti-dumping actions.³

Several proposals suggest that the ‘public interest’ be taken into account. The public interest, however, is treated as something ethereal, a socialist will-o’-the-wisp that the government must represent. As of now, only if there are ‘externalities’ that are infrequently present when import protection is sought, is there an unidentified remainder that requires public representation. Moreover, this bad economics presumes that the public interest would be defended by limiting the restriction to no more than that which is necessary to eliminate the impact of import competition on the protection seeker. “Defending the public interest thus means treating other private interests, user interests, as bastard children”. They are served after the ‘legitimate’ protection seeker has been satisfied. The relevant concept of interest, as Finger and Zlate suggest, is the sum of all the private interests affected.

As to how international rules might shape the domestic processes through which a government takes decisions to impose protection, one hopes that they will be such so as to guide a country to identify those interventions that add more to the national economic interest than they take away. There will be cases, however, in which other domestic considerations make it impossible to avoid an economically unsound trade intervention. In such instances, good policy becomes a matter of managing interventions so as to strengthen the politics of openness and liberalization—of avoiding rather than of imposing such restrictions in the future. AD excludes the domestic

interests that will bear the costs. Its unfair trade rhetoric undercuts rather than supports a policy of openness.

As to what would be the better option, the key consideration in a domestic policy decision should be its impact on the domestic economy—who in the domestic economy would benefit from the proposed import restriction, who would lose and by how much. Such a policy mechanism will (a) help the government to identify trade interventions that will serve the national economic interest and (b) support the politics of openness and liberalization even in those instances in which the decision is to restrict imports.

The technicalities are simple: recognize domestic users/consumers as ‘interested parties’; require that the investigation determine the impact of the proposed restriction on them in tandem with its determination of ‘injury’ from trade to the protection seeker. The impact of the restriction on users/

consumers should be measured in the same dimensions as injury (jobs lost because of higher costs, lower profits)—the standard metric of impact. In short, treat all affected domestic interests as equals. Until this is done, buyers will be free to bring forward their interests in such unofficial ways as threatening to boycott any domestic producer who supports an antidumping petition.

Reform depends less on the goodwill of WTO delegates toward the public interest; a better option would be to insist on bringing all concerns to the forefront and all business interests given the same standing as the law now recognizes for the few protection seekers.

¹J. Michael Finger and Andrei Zlate (2005) ‘Antidumping: Prospects for Discipline from the Doha Negotiations’, http://escholarship.bc.edu/econ_papers/179.

²M.M. Knetter and T.J. Prusa (2003) ‘Macroeconomic Factors and Antidumping Filings: Evidence from Four Countries’, *Journal of International Economics*, 61(1).

³Robert W. Staiger (2005) ‘Some Remarks on Reforming WTO AD/CVD Rules’, *The World Economy*, 28(5).

Dispute Settlement Mechanisms in RTAs : Some Key Issues

by Samir R. Gandhi¹

The current proliferation of regional trade agreements (RTAs) and other ‘not-so-regional’ comprehensive economic arrangements (CECAs) have resulted in a ‘spaghetti bowl’ of rights and obligations between India and her trading partners. Every now and again a dispute on the interpretation or implementation of the rules of the relevant RTA or CECA results in the invocation of a dispute settlement process, which is aimed at resolving such disputes with the minimum amount of trade disruption. The dispute settlement mechanism (DSM) enshrined in an RTA may take the form of an elaborate process explaining how disputes are to be referred, adjudicated, and resolved; or it may be a single paragraph laying down a general statement of intent on the resolution of disputes. Conventional wisdom suggests that the greater the level of economic integration and ambition in an RTA, the more detailed will be the dispute settlement mechanism.

The value of an effective DSM cannot be overstated. The effective resolution of disputes saves time, reduces additional transaction costs, promotes the use of an RTA, and is likely to result in greater trade volume and value. However, the DSMs in the current Indian RTAs often fail to address the very purpose for which they have been drafted, viz. to provide recourse to legal resolution of potential disputes.

There are serious systemic issues and procedural problems afflicting our RTAs which must be addressed prior to the signing of more ambitious RTAs such as the proposed India-EU CECA. The procedural shortcomings in DSMs range from addressing the very basic right to appeal from the decision of the adjudicatory authority to the more complicated issue of whether to allow private parties the right to use DSMs. The systemic issues are, as their name suggests, issues that arise with respect to the very structure of the DSM and are

essentially focused on the relationship between the DSM contained in an RTA and the WTO dispute settlement mechanism.

A preliminary analysis of Indian RTAs reveals that the basic right of appeal is absent in some RTAs. While it is true that not all RTAs require an appeal mechanism since the disputes are likely to be few and far between and the appeal process costly and time-consuming, it is important to note that most RTA dispute settlement mechanisms signed across the world provide a procedure for appellate review in some form. Given the probable importance of the decisions of an adjudicatory authority in an RTA and the bearing that such decisions may have on a particular industry or even an economy, it is desirable that future RTAs or CECAs which envisage a greater volume of trade and integration provide for some mechanism of appeal and/or review from the decision of the panel.

Notwithstanding a party's right to appeal under an RTA, the final decision of an adjudicatory authority under a DSM is only useful if it can be enforced by the countries or contracting parties in a timely and efficient manner. The enforcement of the 'award' or the decision of an adjudicatory authority under an RTA is usually achieved by directing the defaulting country or commercial entity to bring its laws or practices in conformity with the obligations contained in the RTA as interpreted by the authority. The failure to do so usually results in the right to withdraw concessions or benefits provided under the RTA. However, most RTA disputes tend to be related to specific instances of a breach or misapplication of an RTA rule and the withdrawal of concessions is unlikely to benefit anyone, least of all the country or commercial party aggrieved by such a breach. To be truly effective, DSM rulings must be enforceable as a decree of a local court in the defaulting country. This will ensure that commercial entities or contracting countries are able to enforce DSM decisions through the established judicial mechanism in the defaulting country through local legal remedies such as debt recovery, winding up of companies, liquidation, etc. The caveat here is that not all trade disputes—such as those requiring an interpretation of the rules of origin under an RTA—are capable of resolution through local courts.

One of the key defining aspects on the basis of which a DSM should be structured is the procedural right granted to a private party or commercial entity to bring a complaint to the DSM. Most Indian RTAs only allow governments to refer issues to the respective DSM although the Indo-Sri Lanka FTA (ISLFTA) and the Indo-Afghanistan PTA are notable exceptions

that allow commercial entities of the Contracting Parties recourse to the DSM. Other international trade agreements such as the NAFTA and the EC Treaty also allow private parties access to their respective dispute systems in specific instances. Any decision on whether to allow private parties access to a DSM must be based on whether the RTA or CECA incorporates rights or obligations, which will directly affect commercial entities. For example, a dispute on the general interpretation of the rules of origin is likely to indirectly affect every commercial entity using the RTA. So this is an issue which should be resolved within the domain of a government. However, a breach of RTA rules relating to the establishment of undertakings or rules pertaining to investment will directly affect the commercial undertaking which has used the rules to establish a commercial presence or make an investment. Much like NAFTA investment panels, private parties should be permitted to refer disputes of such nature to a DSM.

Along with the right conferred on a private party to refer a dispute to a DSM, will come the burden to provide the necessary infrastructure to resolve the dispute and the consequent issue of how to implement a decision of the DSM. This will undoubtedly throw up questions of time and cost since large volumes of private party disputes are likely to require a permanent dispute resolution court as opposed to an ad hoc panel of experts. Again, before making any final decision allowing private party participation or the creation of a permanent dispute settlement panel under the RTA in question, parties to an RTA or CECA need to consider the volume of trade that is likely to be transacted under an RTA and the likelihood of contentious issues arising.

In conclusion, with the ongoing Doha Round of trade negotiations languishing and showing no signs of an immediate revival, the current proliferation of RTAs seems likely to continue. Consequently, RTA signatories will be called upon to negotiate increasingly complex RTA rules and give shape to effective DSMs capable of addressing the various issues arising out of such agreements. While only some of the key procedural issues which need to be addressed in the future have been identified here, there is no doubt that the single most important issue will remain the compatibility of a DSM with the WTO Dispute Settlement Understanding (DSU Rules). It is possible and indeed likely that the disputes referred to DSMs under an RTA may also become the subject matter of a WTO dispute. The WTO Appellate Body has in the Mexico Soft Drinks dispute held that the WTO's

jurisdiction over an RTA dispute cannot be excluded only because parties to the dispute are also parties to an RTA. The Appellate Body has interpreted Article 3 of the DSU Rules to mean that the WTO DSM has both the authority and obligation to investigate the violation of WTO obligations irrespective of the existence of an RTA. This has a far-reaching effect on the method and manner in which DSMs under RTAs are designed, interpreted, and implemented. While there is no clear ruling on whether a WTO DSB ruling will supercede a decision of a

DSM under an RTA, it is clear that all trade disputes between WTO Member countries lie within the domain of the WTO DSB even though that same dispute has been adjudicated upon bilaterally under the RTA DSM. Consequently, Indian negotiators would do well to ensure that DSMs in future RTAs between India and other WTO Member countries are aligned as closely as possible to DSU Rules so as to minimize the possibility of any conflict between the two.

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ICRIER News and Events on WTO Issues



L to R : Nobel Laureate Joseph Stiglitz, Professor Columbia University, Hon'ble Minister of Commerce & Industry, Mr. Kamal Nath, Dr. Rajiv Kumar, Director and Chief Executive, ICRIER and Dr. Subir Gokarn, Chief Economist, CRISIL.

Agriculture, he said, is very mixed in its effects. Agricultural exporters are obviously hurt by all the subsidies. At the same time, food importing countries will be worse off if subsidies are eliminated. He also said that the developing countries should push for a larger development agenda at global trade conferences.

He was also of the view that DSB was as good an option for developing countries as the WTO Negotiating Rounds insofar as targeting subsidies are concerned; the crop subsidies in the US have been actioned upon and the cotton subsidies may disappear through the dispute settlement mechanism much before the conclusion of the Doha Round.

At an interactive session organized by ICRIER on “Making Globalization Work for India” on 19 December 2006, Joseph Stiglitz, Nobel prize winner in economics in 2001 and professor at Columbia University, provided a rare insight into as how the bilateral, multilateral and WTO plus trade agreements could help India to grow tremendously in global markets.

Dr. Stiglitz said that calling the present round a Development Round was not justified going by the agenda set; it was done merely to begin the new round of talks. “We have to understand that the trade ministers are not development economists”. However, the response to the failure of the Doha Round was the multiplicity of bilateral and regional trade agreements. And this in his view would be disastrous as WTO is a protection against going back.



Hon'ble Minister Mr. Kamal Nath addressing the participants at the Interactive Session on 'Making Globalization Work for India'

In his opening remarks, Commerce Minister Kamal Nath spoke about India's recent growth rates and added that "for India, the rule-based multilateral system is very important but there could be no globalization without globalization in

agriculture. And there cannot be globalization in agriculture as long as the structural flaws in that sector remain unaddressed." Other participants in the working session suggested that the developing countries must explore new policy alternatives.

Recent Developments in WTO

by *Shravani Prakash*

- 👉 **Lamy urges for successful conclusion of Doha Round**
- 👉 **Boost in share of oil exporters in world trade in 2005; US trade deficit reaches record level**
- 👉 **Viet Nam to join WTO**
- 👉 **WTO highlights developing world's growing role in world trade**
- 👉 **New anti-dumping investigations continue decline; new final measures increase**
- 👉 **Government Procurement Agreement revised**
- 👉 **Agencies agree on plan for food safety, animal/plant health assistance**
- 👉 **Trade Policy Reviews**

Lamy urges for successful conclusion of Doha Round

In his report to the General Council on 14 December 2006 Director General Pascal Lamy said that an increasing level of engagement was becoming evident in the consultations by the chairs of the negotiating groups. He stressed on the 'need to maintain the rhythm of the informal work' and noted that if things stayed on track the Doha Round negotiations could be successfully concluded by the first quarter of 2007.

Mr. Lamy said that the challenge was to translate the emerging political will and flexibilities signals into substantive changes in position, which are necessary in order to unblock the process. He noted that it was also necessary to multilateralize the increasing number of informal contacts among members and bring them back to the negotiating groups in Geneva.

In his earlier report to the General Council in October he had pointed out that it was clear that the cost of failure, and the missed opportunity to rebalance the trading system, would hurt developing countries more than others.

The DG also warned that bilateral agreements were not the 'easy way out' from the suspended talks. He said that there was a need to ensure that regional trade agreements were complementary—and not substitutes—to the multilateral

trading system. According to him 'if the multilateral system dies away, so does the positive potential of regional trade agreements'.

Boost in share of oil exporters in world trade in 2005; US trade deficit reaches record level

The WTO Annual Report on the International Trade Statistics 2006 showed that real merchandise exports slowed to 6 per cent in 2005 from 9.5 per cent in 2004, but continued to rise significantly faster than global merchandise output. Price developments exerted a strong influence on global trade patterns in 2005. The impact of the highly divergent price developments was that trade flows in real terms differed sharply from the nominal trade developments. In nominal terms, the value of world merchandise exports rose by 13 per cent to \$10.16 trillion. Merchandise trade expanded faster than commercial services trade for the third year in a row, with commercial services exports growing by 10 per cent to \$2.41 trillion.

The higher fuel prices contributed to changes in regional trade flows, boosting oil-exporting economies and stimulating their import growth of goods and services. The Middle East, Africa, the Commonwealth of Independent States, and South and Central America, which primarily export fuels and other mining

products, all recorded a merchandise export of 25-35 per cent in 2005. Imports into these four regions also rose much faster than the global average (between 17 and 25 per cent). The trade surplus of the oil-exporting economies and regions further increased while the United States' trade deficit rose to \$793 billion—nearly 8 per cent of world exports.

Viet Nam to join WTO

Viet Nam will become a member of the WTO on 11 January 2007 after having ratified its membership agreement. It will be the 150th member of the WTO.

WTO highlights developing world's growing role in world trade

The WTO Annual Report noted that trade growth was strong again in 2005 and the major contributors to the dynamism in trade were the developing countries with Brazil, China, India, Malaysia, Mexico, and Thailand all posting double-digit growth in exports. It also showed that developing countries are now playing an increasing role in the WTO, not only in the Doha negotiations but also in the dispute settlement process and in all facets of WTO activity.

The new edition of the Annual Report presents an overview of the activities of the WTO from the latest Ministerial Conference to the work of the different committees and bodies, and also presents facts and figures to illustrate the functioning of the Organization.

New anti-dumping investigations continue decline; new final measures increase

According to the WTO Secretariat, in the period January-June 2006, the number of initiations of new anti-dumping investigations continued its recently-reported declining trend, while the number of new final measures increased relative to the corresponding period of 2005. In the first half of 2006, 20 Members reported initiating a total of 87 new investigations, down from 105 initiations in the corresponding period of 2005. A total of 15 Members reported applying 71 new final anti-dumping measures during January-June 2006, compared with 55 new measures applied during the first half of 2005.

India reported the most number of new initiations (20) during

the period; the other major initiations being those of the EC (17) and Australia (9). China remained the most frequent subject of anti-dumping inquiries, accounting for 32 of the 87 new initiations. The products that were most frequently subject to the reported new investigations were in the base metals sector (19 initiations), followed by machinery (16 initiations), plastics (13 initiations), and chemicals (11 initiations).

China reported applying the largest number (15) of new final anti-dumping measures during the first half of 2006, followed by Turkey (11) and India (8). Products exported from China continued as the most frequent subject of new measures, accounting for 15 of the new measures reported. Products in the chemicals sector were the most frequent subject of new anti-dumping measures during January-June 2006, accounting for 23 of the 71 total new measures reported, followed by the plastics sector (14), the textiles sector (9), and base metals (7).

Government Procurement Agreement revised

The Committee on Government Procurement reached an agreement to revise the text of the 1994 plurilateral Agreement on Government Procurement (GPA). The agreement, however, is provisional. It is subject to a mutually satisfactory outcome to the other aspect of the negotiations on a new Government Procurement Agreement—the expansion of coverage (that is, the areas of government business opened up to international competition). It was agreed that the coverage negotiations would be concluded by spring 2007.

The revised text entails a complete revision of the provisions of the Agreement with a view to making them more user-friendly. The provisions have also been updated to take into account developments in current government procurement practice, including the role of electronic tools in the procurement process. Additional flexibility has been built in on some points, for example, shorter time-periods for procuring goods and services of a type available on the commercial marketplace. Special and differential treatment for developing countries has been more clearly spelled out.

Agencies agree on plan for food safety, animal/plant health assistance

Five international organizations, donors, and representatives of beneficiary countries approved a new medium-term strategy for their joint efforts to help developing countries implement

internationally-agreed standards for food safety and animal and plant health. The strategy will strengthen the Standards and Trade Development Facility (STDF) in its continued efforts to assist developing countries implement international sanitary and phytosanitary (SPS) standards. The STDF was created in 2002 as a trust fund by five organizations: the UN Food and Agriculture Organization (FAO), the World Bank, the World Health Organization (WHO), the World Organization for Animal Health (OIE) and the World Trade Organization (WTO). The STDF is administered by the WTO. To date, the STDF has approved 23 projects and 21 project-preparation grants benefiting developing and least developed countries.

Trade Policy Reviews

Trade Policy reviews for Kyrgyz Republic, Hong Kong, Columbia, and the East African Community were released in the last quarter of 2006. The Kyrgyz economy showed impressive progress but it was noted that the process of reforms needs to continue. The review of Hong Kong, China pointed to a strong open economy in expansion, capable of facing challenges. Progress in modernization and liberalization is visible in Columbia but further reforms are needed. The East African Community (Kenya, Tanzania, and Uganda) also showed economic progress but continuous reforms are still needed as per the WTO review.



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