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INDIA, WTO AND TRADE ISSUES

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Commerce Secretary launches WTO Centre Logo

Mr. G.K.Pillai, Commerce Secretary, unveils the logo of the Centre for WTO Studies in New Delhi on 1st October 2008.

In this issue

Research Papers

EFFECT OF PRODUCT PATENTS ON INDIAN PHARMACEUTICAL INDUSTRY: RAPID STRIDES IN PHARMA R & D, BUT TRIPS FLEXIBILITIES REMAIN IMPORTANT, SAYS WTO CENTRE STUDY

The growth of the Indian pharmaceutical industry was largely contributed by the Patents Act of 1970, which had two key features. First, only process patents were allowed for chemical entities, including pharmaceuticals; in other words the patent regime did not allow granting of product patents in India. And two, the term of patent protection was made shorter for pharmaceutical patents. This meant that generic manufacturers were able to make products using

Following implementation of the commitments undertaken by India under the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) as part of the Uruguay Round accord, India's patent regime was amended. A study undertaken by the Centre for WTO Studies, titled "Effect of Product Patents on the Indian Pharmaceutical Industry" has analysed the performance of the pharmaceutical industry in the post-TRIPS regime since 1995, i.e., the year of India's accession to the World Trade Organization (WTO). **The study, by Prof. Biswajit Dhar of the Centre for WTO Studies, and K.M.Gopakumar of Centad, showed that leading generic firms of the Indian pharmaceutical industry have demonstrated considerable dynamism since 1995 and especially noteworthy has been the increase in R & D spending in the sector**. The increase in patenting activities of Indian firms coupled with the increased efforts by the government to promote R & D in industry with a view to strengthening the technological sinews of the generic manufacturers should stand the industry in good stead as it evolves strategies to meet the challenges posed by the post-TRIPS patent regime, the study says, adding also that **one area where the industry has got its act in place is the market for anti-retroviral (ARV) drugs and that these successful forays have to be assessed in the context of accessing medicines at affordable prices. An important policy lesson for developing countries, the study points out, is the need to provide sufficient flexibilities in the patent laws so that domestic pharmaceutical industries get a chance to develop**. "These countries can provide an enabling environment for the domestic industries by carefully designing provisions that relate to patentable subject matter and compulsory licensing", the study concludes. It also analyses the **implications of introducing a data exclusivity regime in India** (i.e., protection of test and other data submitted to the authorities for obtaining market approval) while implementing Article 39.3 of the TRIPS Agreement, and cautions that ramifications of a data exclusivity regime of the kind prevailing in the US and the European Union can be quite considerable on the Indian generic industry.

Excerpts from the Study

(The full study is available on the Centre's website http://wtocentre.iift.ac.in)

TRIPS Agreement : The key features

The Agreement on TRIPS provides only the minimum standards of protection. In other words, WTO Members can adopt higher standards of protection if they deem fit. The second set of obligations stipulates that the Members are free to determine the 'appropriate method' for implementing the Agreement within 'their own legal system and practice'.

Two key Articles of the Agreement on TRIPS are Articles 7 and 8. While Article 7 lays down the objectives of the Agreement, Article 8 presents the principles underlying the Agreement. Article 7 states: "The protection and enforcement of IPRs should contribute to the promotion of technological innovation and to the transfer and dissemination of technology to the mutual advantage of the producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to the balance of rights and obligations".

Article 8 complements the provisions of Article 7 and provides that while formulating their IP laws, the Member States can adopt 'measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development…" Further it is provided that "[a]ppropriate measures…. may be needed to prevent the abuse of IPRs by right holders or the resort to practices which unreasonably restrain trade or adversely affect the international transfer of technology".

Amendments introduced in the Indian Patents Act to make it TRIPS-compatible

India's commitment to fully implement the Agreement on TRIPS required three sets of amendments to the country's Patents Act. While developing countries, in general, were allowed to make their patent laws TRIPS compliant through an amendment to be introduced by January 1, 2000, countries like India which had process patent regime covering pharmaceuticals and agricultural chemicals,

enjoyed a longer transition period before they were required to introduce product patents from January 1, 2005. The longer transition period, however, came with a set of conditions elaborated in Articles 70.8 and 70.9 of the TRIPS Agreement (as "Transitional Arrangements"). Article 70.8 of the TRIPS Agreement required India to provide 'a means' by which product patent applications can be filed from January 1, 1995. If the product figuring in these applications were granted a patent in any of the WTO member countries and the products had obtained marketing approval in any of the WTO Member countries, then, according to Article 70.9, five years exclusive marketing rights (EMRs) had to be granted by India before the patent on the product was either granted or rejected in India. The first amendment of the Patents Act 1970 introduced the requirements under the transitional arrangements through Section 5(2). On January 1, 2000, a Second Amendment was introduced to bring the Patents Act in conformity with all the substantive provisions of the TRIPS Agreement, barring those related to the introduction of product patents. The key issues included in the Second Amendment were, redefining patentable subject matter, extension of the term of patent protection to 20 years and amending the compulsory licensing system. A third amendment was introduced in January 1, 2005 to introduce product patent regime in areas, including pharmaceuticals that were hitherto covered by process patents. Although the Third Amendment had a narrow remit, the government used the opportunity to undertake yet another review of the Patents Act. Among the major issues included in the third Amendment were provisions relating to opposition to the grant of patents.

Doha Declaration

The Doha Declaration unequivocally stated at the outset "that TRIPS Agreement does not and should not prevent Members from taking measures to protect public health". Thus, Article 7 and 8 of the TRIPS Agreement require that WTO Members must ensure that the laws relating to all forms of IPRs covered by the Agreement give due consideration to issues like protection of public health and nutrition and do not merely serve the interests of the owners of intellectual property.

The second area of focus of the Doha Declaration was compulsory licences, the instrument that has a vital role to play in determining the future prospects of the Indian pharmaceutical industry. Over the past few decades, India witnessed the development of a strong pharmaceutical industry largely because of the absence of the product patent regime. However, with the product patent regime establishing itself following the adoption of a TRIPS-consistent patent regime by India, the future of the pharmaceutical industry in India would critically hinge on the ability of the producers to obtain licences from the owners of proprietary technologies. For obtaining the licences, these producers would have to depend on compulsory licences, an instrument that has been embedded in the patent system for preventing abuse of patent monopoly.

Compulsory Licensing holds the key: Developing countries garner better support

Compulsory licensing system is one of the essential pillars of the patent system. It is expected to play an important role in preventing abuse of patent rights that may arise when the patent holder tries to pre-empt entry of competitors using his statutory rights. Viewed from a more functional perspective, compulsory licences can provide opportunities to the prospective users of technology, in particular the developing countries, to gain access to proprietary technologies. The compulsory licensing system could be immensely useful for the generic firms in the Indian pharmaceutical industry for they can no longer meet their technology-requirements by taking recourse to reverse engineering.

Attempts to implement the compulsory licensing system may end up in widely differing outcomes, primarily because patent owners and potential users of patented technologies that are mostly in the developing countries, have given widely contradicting interpretations of how a TRIPs-consistent compulsory licensing system should function. Developments over the past few years indicate that the point of view of developing countries has been getting better support from the global community. In 2001, legal uncertainties in respect of the use of compulsory licensing provisions for public health concerns were effectively addressed by the Doha Declaration on TRIPS Agreement and Public Health. The Declaration stated

unequivocally that "[E]ach Member has the right to grant compulsory licences and the freedom to determine the grounds upon which such licences are granted".

The Indian Patents Act provides that an application for the grant of compulsory licence can be made after three years from the date of grant of the patent unless exceptional circumstances like national emergency or extreme emergency can be used to justify the grant of a licence on an earlier date. Three broad grounds for the grant of the compulsory licences have been spelt out: (a) reasonable requirements of the public with respect to the patented invention have not been satisfied, (b) the patented invention is not available to the public at a reasonably affordable price, and (c) the patented invention is not worked in the territory of India. The Patents Act sets out the circumstances under which 'reasonable requirements of the public' would not have been met. Such circumstances would arise if the patent holder refuses to grant a licence on reasonable terms, and which, in turn, affects: (i) development of new trade or industry in the country and (ii) establishment or development of commercial activities in India and (iii) development of the export market for a patented article manufactured in India. The last mentioned provision is aimed at ensuring that India has the option to export the products that have been produced using the licences from the patent holders. The major impact of this provision could be felt in the pharmaceutical sector, where India could well emerge as a major supplier of generic pharmaceuticals to the developing countries that do not have sufficient domestic manufacturing facilities.

But while the above mentioned conditions for the grant of compulsory licences can be seen to be facilitating the grant of the licences, the Act also stipulates that the relevant authority have to take into consideration four additional factors before the licences can be granted. These include: (a) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensees to make full use of the invention; (b) the ability of the applicant to work the invention to the public advantage; (c) the capacity of the applicant to undertake the risk in providing capital and working the invention, and (d) the efforts made by the applicant to obtain a licence from patentee on reasonable terms and conditions and that such efforts were not successful within a reasonable period.

The Two Exemptions

Section 107 A of the Patents Act, 1970, as amended contains two notable exemptions. The first relates to what is better known as the 'Bolar exemptions' and the second exemption seeks to define the contours of parallel imports.

Bolar Exemption

One of the less focused areas of the Indian Patents Act as amended, is the provision for the so-called 'Bolar exemption'. The basic idea behind it is to create conditions so that the generic drug manufacturers can introduce their products immediately after the patent on a drug lapses.

Parallel imports

The Agreement on TRIPS allows for the parallel imports, although the specific circumstances under which such imports can take place have not been defined. The Indian patents Act, 1970 has taken the initiative to include the provisions of parallel imports under Section 107A(b) as follows: "Importation of patented products by any person from a person who is duly authorized under the law to produce and sell or distribute the product".

As has been explained by the government, this provision of parallel import of patented product was introduced for 'ensuring availability of patented products at cheaper price to the consumers'. In particular, reference to a person 'duly authorized under the law' to produce and sell or distribute the product seems to indicate that parallel imports may exclude such possibility, limiting parallel imports to products marketed abroad with the consent of the patent holder. The TRIPS Agreement is silent on this issue.

Why flexibilities are important ?

The three amendments to the Indian Patents Act, which have introduced a TRIPS-consistent patent regime in the country, were brought about in the backdrop of intense debates that were focused on the need to establish a balance between the rights of the patent holders and the interests of the public at large. **Holding the key to the realization of the objective of access to medicines was the existence of a viable pharmaceutical industry in the country. It was therefore, imperative that all available flexibilities in the framework provided by the Agreement on TRIPs were exploited fully so as to provide the space for the Indian pharmaceutical industry to expand.**

It may be argued however, while the flexibilities are in the nature of necessary conditions for the future prospects of the pharmaceutical industry in the post-TRIPs patent regime, they are not sufficient conditions. The determining factor, in our view, would be the manner in which domestic firms would be able to evolve strategies for meeting the challenges posed by the introduction of the TRIPS-consistent patent regime. The following Section analyses the performance of the Indian pharmaceutical industry for making an assessment of how the domestic firms are meet the post-TRIPS challenges.

Recent performance of the Indian Pharmaceutical industry

The Indian pharmaceutical industry has evolved over three phases. The first was the period prior to 1970, when the industry was dominated by a small set of foreign owned and controlled firms. The second phase, spanning the second half of 1970s to the early 1990s, was a period when the industry experienced structural transformation through the growth of the Indian generic industry. This development was a result of the adoption of the Patents Act of 1970, which introduced two changes in the country's patent regime viz., introduction of a process patent regime and shortening the term of pharmaceutical patents, both of which had considerable impact on the shaping of the pharmaceutical industry in India. The Indian pharmaceutical industry that thus developed has a three-tier structure, consisting of a large private sector, which can be further divided into two categories viz., firms that are affiliates of foreign firms in India and those that have Indian promoters and producer generic drugs, and small scale units.

The decade of the 1990s was singularly important for it saw the Indian pharmaceutical industry perform strongly on all fronts. Total production of the industry (large firms and the small scale units taken together) expanded more than four-fold in value terms (in domestic currency). But it was in the post 1995 phase that the large firms in the industry have performed strongly on all fronts. During this phase, it was the set of leading generic producers that were relatively more active as compared to the leading firms that are affiliates of foreign firms. This is evidenced by the fact that while in 1995, five of the top ten pharmaceutical firms (in terms of sales turnover) were foreign affiliates, in 2004 Glaxo Smith Kline was the only foreign affiliate in the top ten list. What appears most striking is that this robust performance by the Indian pharmaceutical firms, and in particular, the generic segment of the industry, has come during a phase when they were facing an uncertain future, with the process patent regime being dismantled following India's accession to the WTO.

(The following are firms with foreign affiliations currently operating in India: Glaxo Smith Kline Pharmaceuticals Ltd., Aventis Pharma Ltd., Pfizer Ltd., Merck Ltd., Novartis Ltd., Abbott India Ltd., Wyeth Ltd., Astra Zeneca Pharma India Ltd. The ten major firms of Indian origin are: Ranbaxy Laboratories Ltd., Dr. Reddy's Laboratories Ltd., Cipla Ltd., Sun Pharmaceuticals Indus. Ltd., Aurobindo Pharma Ltd., Wockhardt Ltd., Cadila Healthcare Ltd., Lupin Ltd., Nicholas Piramal India Ltd., Orchid Chemicals & Pharmaceuticals Ltd).

The global integration of the Indian economy, which many sectors of the economy considered as a threat, was a wide window of opportunities for the generic pharmaceutical industry. This was essentially because the leading firms of this segment of the industry were considerably more outward oriented as compared to those belonging to other industries. For the three largest firms of this segment, viz., Ranbaxy, Dr. Reddy's and Cipla, exports in terms of value were more than one-half of their sales turnovers. This strong performance of the generic

industry in the global market resulted from a number of its inherent advantages: Indian firms have lower costs estimated to be one-eighth in R&D activities and one-fifth in manufacturing as compared to the Western firms. The cost advantages are most pronounced in respect of lower fixed asset costs and labour costs, where the costs in India can be one-eighth of the cost in the US.

The Technology Dimension Manifold rise in R & D spend

A major factor driving the progress of the leading firms in the Indian pharmaceutical industry was their emphases on the technology. The pharmaceutical industry can be divided into three product groupings viz., bulk drugs, intermediates and formulations. While bulk drug production can be sustained over a long period only through sustained involvement in research and development activities, formulations production can be carried out at relatively low levels of technological sophistication.

During the past decade, however, the R&D profile of the Indian pharmaceutical industry has undergone major changes. The most obvious of these is the manifold increase in the spending on R&D that was witnessed. In 2004, R&D spending of the organized pharmaceutical industry as a whole was nearly US $ 340 million, which was an increase of more than 300% from the level existing in 2000. The two largest among the Indian pharmaceutical firms viz., Ranbaxy and Dr. Reddy's Laboratories showed the most impressive increase in their R&D intensities, with the latter spending more than 17% of their sales on R&D in 2005. Perhaps, the most important dimension here is that some of the medium sized enterprises, like Glenmark Pharmaceutical and Torrent Pharmaceuticals are among the highest spenders on R&D. This indicates that the increase in R&D propensity of the generic industry is having a spread-effect.

Increased patent filings by Indian firms

The propensity of the leading firms in the generic industry to increase their R&D intensity is possibly best reflected in their drive to obtain patents not only in India, but in several developed countries as well. As with other activities, patenting activities of top 10 spenders on R&D have improved consistently since 1999-2000. The best among the performers is the top spender on R&D, viz., Ranbaxy. Global patent filings of the firm increased from a mere 14 during 1999 to more than 250 during 2005. Besides Ranbaxy, Cipla and Dr. Reddy's have also contributed to the increase in the patent applications filed by the leading Indian firms, which in 2005 had increased to nearly 500.

Access to HIV/AIDS Drugs and the Indian Generic Industry

Universal access to drugs is a well-recognized strategy to counter the spread of HIV/AIDS. The generic firms in India have brought three path breaking contribution to the availability and accessibility of ARV drugs. Firstly, Indian firms started the production and marketing of the generic version of first line tipple combination drugs at an affordable price. This triggered the price war in ARV drugs segment. Cipla was the first to announce the introduction of generic ARVs in February 2001. Secondly, Indian firms introduced fixed dose combinations (FDCs) of ARV drugs. As a result, the dosage had been reduced from six pills per day to two per day. FDCs not only improved the adherence but also reduced the price of ARV drugs. Thirdly, Indian firms also introduced the pediatric formulation of ARV drugs.

Producers of ARV drugs in India benefited from the fact that the Indian patents Act did not allow patenting of pharmaceutical products until the Act was amended in 2005. However, obligations to implement the Agreement on TRIPS changed the conditions that had seen the Indian pharmaceutical industry take roots. The critical issue was the reintroduction of the product patent regime and the limitations that this change has imposed on its ability to produce technologies through reverse engineering. It was widely held that the future prospects of the industry hinged critically on the ability of the policy makers to exploit the flexibilities that existed in the framework provided by the Agreement on TRIPS.

Data Exclusivity and Access to Medicines

The most recent affronts on the rights of the developing countries like India to provide access to medicines at affordable prices to its citizens, has come through pressures brought by the US and the EU for the introduction of data exclusivity. This demand is linked to the implementation of Article 39.3 of the TRIPS Agreement, which requires WTO Members to protect undisclosed test or other data, developed with 'considerable effort', against 'unfair commercial use' when such data are submitted for seeking marketing approval for products using 'new chemical entities'. In addition, members are required to protect such data against 'disclosure, except where necessary to protect the public or unless steps are taken to ensure that the data are protected against unfair commercial use."

While Article 39.3 is clearly intended to ensure that 'undisclosed test data' was not misappropriated, the pharmaceutical industry associations in the US and the EU, representing the larger firms, have argued that Article 39.3 should be interpreted in a manner that provides statutory protection spanning a period of time to data submitted for obtaining marketing approval among others.

Recent Developments

Currently, many developing countries including Argentina, Brazil, India and South Africa do not provide data exclusivity. India's submission to the TRIPS Council on 29 June 2001, states: "*Article 39.3 of the TRIPS Agreement leaves considerable room for member countries to implement the obligation to protect test data against unfair competition practices. The Agreement provides that 'undisclosed information' is regulated under the discipline of unfair competition, as contained in Article 10 bis of the Paris Convention. With this provision, the Agreement clearly avoids the treatment of undisclosed information as a 'property' and does not require that the granting 'exclusive' rights should be taken to imply 'that a third party could be prevented from using the results of the test undertaken by another company as background for an independent submission for marketing approval, if the data had been acquired through dishonest commercial practices*". *More importantly, it was added, "Article 39.3 does permit a national competent authority to rely on data in its possession to assess a second and further applications, relating to the same drug, since this would not imply any 'unfair commercial use'*. It is our view that there has not been any fundamental change in the circumstances during the past few years that can be used to justify a complete turnaround from the position that the country had taken in 2001.

EVENTS

WTO Centre Organizes Training Courses

The Centre for WTO Studies organized three training courses during September- October 2008.

Training Indian Trade Service Officers

A training was organised for officers of the Indian Trade Service of the rank of Joint DGFT on WTO and RTAs from 22nd September to 1st October, 2008. Altogether 17 Delhi-based officers participated in the Training. The training covered a wide spectrum of subjects relating to WTO like Agriculture, NAMA, Services, TRIPS, Trade Defense Measures, Rules of Origin, Customs Valuation, Trade Facilitation, SPS, TBT, Import Licensing and Dispute Settlement Mechanism. The Training also covered a gamut of issues relating to RTAs like an overview of Legal and Theoretical Framework of RTAs and India's engagement in different RTAs such as with Mercosur, Chile, ASEAN, Thailand, Singapore, SAFTA, EC, Korea and Japan.

In the Valedictory Session held on 1st October 2008, the Commerce Secretary, Mr. G. K. Pillai emphasized the importance of such training to acquire a holistic view on trade-related issues. Mr. R. S. Gujral, DG, DGFT pointed

Inaugural function of the training course for officers of the Indian Trade Service on WTO and RTAs from 22nd September to 1st October, 2008 L to R: Dr. Biswajit Dhar, Mr. K.T. Chacko, Mr. R.S. Gujral and Professor R.S. Ratna.

out that while officers might have been familiar with some areas of WTO and RTAs, it is important that they should have knowledge of all trade related issues so that they are well-prepared to take on higher responsibilities. Director, IIFT, Mr. K.T.Chacko echoed these sentiments and informed that more such training was on the anvil. The Commerce Secretary also unveiled the new logo of the Centre for WTO Studies during the valedictory function.

ITS Officers and faculty members of the Centre for WTO Studies during the training course.

Intensive Course on Trade Negotiation Skills

An intensive course on Trade Negotiation Skills was organized from 13 to 17 October 2008 in collaboration with the WTO Secretariat, Geneva and the Department of Commerce. Dr. Dickson Yeboah, Counsellor, Institute for Training and Technical Cooperation, WTO Secretariat, Geneva, conducted the training. It was attended by 26 officials representing various Ministries of Government of India. The training programme was based on practical exercises to be carried out by the participants themselves and they found the training very interesting and fruitful. The training was inaugurated by Dr. Rahul Khullar, Special Secretary, Department of Commerce. Mr. K. T. Chacko, Director, IIFT, gave away the certificates during the valediction function.

Dr. Rahul Khullar, Special Secretary Dept. of Commerce, addressing the participants during inaugural function of training on Trade Negotiation Skills. Others from L to R are Mr. Amrendra Khatua, Joint Secretary, DoC, Dr. Dickson Yeboah and Prof. R.S.Ratna.

Mr. K.T.Chacko, Director, IIFT giving away the certificate of participation during the valediction programme of the training on Trade Negotiation Skills.

Government officials participating in the training on Trade Negotiation Skills

Training on WTO and RTAs

A training course on 'WTO and Regional Trading Arrangements' was organized from 20 to 24 October 2008 for officers of the Directorate General of Foreign Trade and media persons. Seventeen DGFT officers participated in the training. In view of the growing demand from sections of the media to be given training on WTO issues, as a start, six media persons were also trained during this programme. The training covered a wide range of subjects on WTO, with an emphasis on the current state of play of the negotiations. Participants were also exposed to India's engagement in different Regional Trading Arrangements. Sh. R. S. Gujral, Director General of Foreign Trade, addressed the inaugural as well as the valedictory session. Another highlight was an address by Deputy Director General, WTO Mr. Harshwardhan Singh, on the current state of play of negotiations in the WTO. The participants gave a positive feedback on the training and also identified some additional areas for training, such as on SEZ.

More Training Snapshots

DGFT officials and media persons at the training

Mr. R.S.Gujral, DG, DGFT addressing the valediction session on WTO and RTAs, with L to R: Mr. K.T.Chacko, Director, IIFT, Mr. Harshwardhan Singh, Dy. DG, WTO and Professor R.S.Ratna.

Mr. K.T.Chacko giving away certificates to participants of the training on WTO and RTAs

WHO SAID WHAT?

Bi-monthly Round-up of News and Views on WTO and Related Issues

(September-October, 2008)

1. **Can we afford to miss Doha round?** Political and economic commentaries writing off the Doha round for the time being abound. They cite the unfavourable global scenario as well as the spectre of looming elections. Implicit in this is the assumption that the world economy would rebound by around 2010 when the Doha round could possibly be successfully closed. This argument, however, is beset with a number of ifs and buts. Possibility of a Democratic presidential candidate winning the US election may signal the return of issues like labour to the trade agenda with possible disastrous consequences as witnessed at Seattle apart from a boost to protectionist policies to step up domestic employment and growth. A second argument advocated for intrinsic failure of this round is the perceived lack of substantial benefits to most members particularly the key developed ones. Similarly, the welfare gains from tariff reductions for industrial goods in WTO is likely to be minimal given the autonomous liberalisation in all key emerging markets leading to actual reduction in import prices. This is accentuated by the faster liberalisation through the FTA/PTA route being taken by all key players, both in the magnitude as well as time-frame of such cuts. While these arguments have their strengths, they seem to ignore other vital factors. One of the key areas of gain for developing countries like India, viz., services, is best achieved through multilateral route especially for Modes 1 and 4 of delivery of services. Needless to remind, services constitute more than 50% of GDP for most members and are also the fastest growing component of trade. Mode 4 has statistically been acknowledged as the least liberalised mode amongst the four modes owing largely to the linkages drawn with immigration and unemployment concerns in host countries. However, the demographic truth is that the next decade will necessarily require much greater labour movements given the demand-supply imbalances across the world. For Mode 1, the problem is more of binding regimes largely free from actual restrictions but kept unbound partially due to lack of technological feasibility and jurisdiction control issues. The phenomenal growth of outsourcing has been well documented but has also seen protectionist backlash particularly in the most important markets. The current round is a wonderful opportunity to close such a window by binding the status quo. Another area which has received scant attention is of domestic regulations in services the equivalent broadly to non-tariff barriers in goods with parallel fears of such regulations being used to negate market commitments especially in Modes 1 and 4. The services negotiations have a clear mandate to develop disciplines in qualification and licensing requirements and procedures, technical standards and transparency which do act often as barriers to meaningful market access. The proposed disciplines on the table could have provided the necessary comfort to regulators while disciplining these areas. One vital ingredient missing in this round has been the lukewarm lobbying by the private sector and industry associations. Past trade rounds have seen them taking a far more active role, for example, the Uruguay round owes as much to the pharmaceutical

lobby and the financial and telecom giants as much as to Arthur Dunkel! To conclude, it may indeed be worse to wait for the Doha round. On the contrary, opinion and pressure needs to be built up to salvage the round now before it becomes too late and too difficult to complete.

(***Article by Sumanta Chaudhuri in Economic Times dated 5.9.08***).

in the success of bilateral and regional deals, such as those agreed on in Singapore. Since the Doha round was launched almost seven years ago, over 100 such deals have come into force, lowering tariffs for some members of the World Trade Organisation (WTO) but not others. These preferential deals violate the principle of "most-favoured nation" (MFN), which holds that any favour offered to one member must be offered to all. But that principle now has few

Doha Round of Trade Negotiations: Reply in Parliament

A mini-Ministerial meeting of the World Trade Organisation (WTO), attended by about 30 Trade Ministers, was held in Geneva in July 2008. The objective of the meeting was to finalise modalities for Agriculture and Non-Agricultural Market Access (NAMA). Simultaneously, a meeting on Services ("Signalling" conference) was also held. The mini-Ministerial meeting, however, ended without an agreement on any issue.

Some of the issues which either could not be discussed at all during the mini-Ministerial meeting or on which agreement could not be reached were: Cotton subsidies; Tariff capping; Tariff simplification; new Tariff Rate Quota creation etc in agriculture and sectoral initiatives in NAMA. Developing countries also have concerns in other areas of the Doha Round negotiations such as Fisheries subsidies; Anti-dumping; Trade-Related Intellectual Property Rights (TRIPs) and its relationship with the Convention on Bio-Diversity; liberalization of trade in environmental goods and services etc.

The multilateral process of discussions has since resumed at the WTO on agriculture and NAMA issues and efforts are on to resolve the outstanding issues so as to achieve a balanced, positive and development-oriented outcome to the Doha Round at the earliest. The Round can only be completed when WTO Members agree on the modalities for Agriculture and NAMA, and complete negotiations in all the areas covered under the Doha Work Programme.

(Reply given by Mr. Jairam Ramesh, Minister of State in the Ministry of Commerce and Industry, to the following Unstarred Question in the Rajya Sabha by Mr. N.K.Singh, Member of Parliament, on 22 October 2008: a) By when the government expects the conclusion of the Doha round of trade negotiations; b) The critical issues that still remain unresolved and on which negotiations are held up; and c) Whether there is any possibility of these issues being resolved in the near future?)

2. **Should free traders applaud the rise of FTAs** The ten members of the Association of South-East Asian Nations (ASEAN) agreed on a trade deal with India and reached a separate accord with Australia and New Zealand. Together, the agreements cover trade worth about $70 billion in 2006. After the Geneva disappointment, some free traders find consolation

defenders in the world's trade ministries. In his new book, "Termites in the Trading System", Jagdish Bhagwati of Columbia University points out that negotiators see any deal as a "feather in your cap". But economists know better. By playing favourites with its trading partners, a country can dupe itself into paying more for its imports. Its consumers may

switch from a low-cost supplier to a more expensive one, only because the new supplier can sell its goods duty-free and the other cannot. The consumer pays less, but the Treasury is deprived of tariff revenue. Thus discriminatory trade deals do not just hurt those left out. So do such accords help or hinder the cause of full liberalisation? Mr Bhagwati insists that they hinder it. One of the stumbling blocks in the Doha round, for example, was "preference erosion". Some African and Caribbean countries did not want to see the EU open its banana market to all and sundry, because that would erode the value of their privileges. (This issue was reportedly resolved at the Geneva summit in July.) But not all of the evidence is as gloomy. A new study, by Antoni Estevadeordal of the Inter-American Development Bank, Caroline Freund of the World Bank and Emanuel Ornelas of the London School of Economics, reaches a more optimistic conclusion. Looking at ten Latin American countries in the 1990s, they show that preferential cuts in a tariff were often followed by multilateral cuts in the same tariffs. This may be the result of what Mr Baldwin calls the "juggernaut effect". Will India's ASEAN deal get the juggernaut rolling in India? Unfortunately, the agreement protected 489 politically sensitive items, mostly agricultural products. The deal thus gives India's exporters a little of what they want, reducing their incentive to fight for a Doha round. But it still leaves the country's farmers with every reason to resist a return to Geneva. The caravans may be moving as Mr Mandelson predicted. Unfortunately, India's free-trade chariot seems stuck somewhere between Singapore and Switzerland.

(***The Economist dated 6.9.08***).

3. **Dead as Doha. But will come alive in 2010** In July 2008, the agriculture negotiations involved 37 countries. However, the high table in Geneva had the G-7 (US, EU, Japan, Australia, India, Brazil and China). Had G-7 agreed, DDA would have come to a successful conclusion. But G-7 didn't agree and this happened over the SSM clause alone. But let's question India's stance a bit? Did India really expect safeguard duties above bound levels? Are there any agricultural products (dairy, edible oils) where bound duties wouldn't have offered enough protection? Or did India not care about a successful multilateral package? Also, did the US and EU miscalculate about the extent to which India and China would hold out on SSM? Perhaps 2008 was just a bad year for trade negotiations. First, there are US presidential elections. Any trade agreement will have to go to US Congress. This is compounded by possibility of a different trade policy focus under a non-Republican administration. Second, EU will not contemplate serious agricultural liberalisation before 2012. Third, with global food price inflation and agro export curbs in many countries, this is not the best of times to mention agricultural liberalisation either. Fourth, India is in election mode and agriculture is politically sensitive. The only person who was keen to broker consensus was Pascal Lamy, since his term expires in 2009. WTO and the multilateral system should recover around 2010. That will be no fault of Pascal Lamy but it will be after his tenure.

(***Bibek Debroy in Financial Express dated 6.10.08***).

4. **Beyond Doha: Freer trade is under threat but not for the usual reasons** If the Doha talks continue to flounder, negotiating momentum will shift to (far less desirable) regional and bilateral trade deals, of which there are already some 400 in place or under negotiation. The WTO itself may be weakened. India signed a regional trade deal with the ASEAN group of Asian countries less than a month after the Doha talks failed. If countries lose faith in multilateral negotiations as a means to achieving better market

access, they may turn to litigation to reach their trade goals. Perhaps most worrying, the Doha impasse in part reflects the intellectual shifts. The July summit failed because of China's and India's insistence on maintaining the right to impose "safeguard" tariffs to protect their own farms in case of a sudden surge in food imports. India, which has over 200m farmers, has long been reluctant to expose them to international competition. The irrelevance of the global negotiating agenda to today's trade concerns goes beyond agriculture. In a provocative new paper, Aaditya Mattoo of the World Bank and Arvind Subramanian of the Peterson Institute argue that global talks should concentrate on fears over "security"of food, energy, environment and income. They point out that there are strikingly few rules governing trade in oil, the world's single most important commodity. The WTO prohibits export quotas, but not the production quotas on which the OPEC oil cartel is based. More broadly, the WTO, at least in its present form, is ill-equipped to deal with other potential flashpoints, from "green tariffs" (barriers imposed against countries that do not take action on climate change) to complaints about undervalued currencies or investment protectionism, particularly the backlash against sovereign-wealth funds and other investors owned by the state. The risk of a wholesale retreat into beggar-thy-neighbour tariffs may be remote, but a proliferation of new kinds of barriers is all too plausible. Take green tariffs. The most prominent climate-change bill in America's Congress makes reference to trade restrictions against countries that do not take equivalent actions to control carbon emissions. European leaders, too, have talked of trade sanctions to punish the laggards in the fight against global warming. Both the risks of this new protectionism and the odds of it being countered depend heavily on the relationship between America and the biggest emerging economies. As the Doha malaise has shown, active American leadership, although no longer sufficient, is still necessary for multilateral progress. Yet the politics of trade has become increasingly difficult in America, compromising the country's ability to take the lead. Support for more open markets is weaker than almost anywhere else in the world. According to this year's Pew Global Attitudes Survey, only 53% of Americans think trade is good for their country, down from 78% in 2002. In other countries support is far higher. Some 87% of Chinese and 90% of Indians say trade is good for their country, along with 71% of Japanese, 77% of Britons, 82% of French and 89% of Spaniards. America's popular disillusionment has been accompanied by a growing intellectual one. Several well-known American economists, including Paul Krugman, a professor at Princeton and prominent *New York Times* columnist, Alan Blinder of Princeton and Larry Summers, a Harvard economist and former treasury secretary, have begun to doubt whether increased globalisation is good for the American middle class. Rather than improving typical Americans' living standards, they suggest, global integration may be causing wage stagnation, widening inequality and greater insecurity. Advocates of globalisation are on the defensive, particularly in the Democratic party. That, alas, augurs badly for the new kind of multilateralism that the world economy urgently needs.

(***The Economist dated 11.10.08***).

5. **Economic gap widens in rich nations as the world tilts towards recession, says OECD** Economic inequality is growing in the world's richest countries, particularly in the United States, jeopardising the American Dream of social mobility just as the world tilts toward recession. The gap between rich and poor has widened over the last 20 years in nearly all

the countries studied, even as trade and technological advances have spurred rapid growth in their economies. With job losses and home foreclosures skyrocketing and many of these countries now facing recession, policy makers must act quickly to prevent a surge in populist and protectionist sentiment such as was seen following the Great Depression, said the Paris-based Organization for Economic Cooperation and Development (OECD). In a 20-year study of its member countries, the OECD found inequality had increased in 27 of its 30 members as top earners' incomes soared while others' stagnated.

(***The Hindu dated 24.10.08***).

6. **Making $ 2 a day in a world of billionaires** It says much about our time when we are more worried about billionaires than about the poor. The obsession with those with billions in good times is understandable enough. We hear less about the so-called bottom 1.4 billion. That's the number of people estimated to live in extreme poverty, which since 1990 has generally been defined as $1 a day or less. "What we forget when we look at Asia's rapid growth is those being left behind," Ifzal Ali, chief economist of the Asian Development Bank, said in Manila. "The combination of surging food prices and turmoil in global markets will significantly increase that number." To better understand living standards, Ali oversaw a three- year research project to produce the first Asia-specific benchmark for regional poverty. It redrew the poverty line at $1.35, the median of 16 developing Asian countries in 2005. China didn't participate. The need for internationally comparable poverty estimates has never been more important in Asia. It is home both to the world's fastest-growing economies and the bulk of extreme poor. It's quite a disconnect: The region with the greatest potential also is home to many of the world's weakest economic links. Leaders in Asia need to work harder to make sure high growth rates are shared by all. That means reducing the corruption and economic inefficiencies that benefit the elite. It also means not letting today's global credit crisis distract countries from spreading the advantages of growth.

(***Bloomberg News in Hindu Business Line dated 24.10.08***).

7. India snubs US attempt to change Doha tariff cut talks India, along with other members of the Nama-11, a developing-country coalition, on 29 October, 2008, rebuffed sustained attempts by the United States and its partners to bring a fundamental change in sectoral tariff elimination in the Doha Development Agenda (DDA) negotiations, trade envoys said. The US, along with Canada, Japan, Taiwan, Hong Kong and Singapore, among others, has insisted that key developing countries like China, India, South Africa, Brazil and Argentina must participate in sectoral tariff elimination talks to bring duties on chemicals and other products to zero.

(***Business Standard dated 30.10.08***).

8. **India loses WTO case on wine duties** The World Trade Organization's highest appeals court the Appellate Body on 30/10/08 upheld the United States' challenge against India's imposition of 'additional duty' and 'extra additional duty' on imported alcoholic beverages. It maintained these two duties are inconsistent with the trade body's core scheduled tariff commitment rules as they result in the imposition of duties in excess of those committed by the Indian government in its schedule of tariff concessions.

(***Business Standard dated 31.10.08***).

Faculty Participation in Outreach Programmes (Sept-Oct 08)

S.No.	Participating Faculty	Date	Topic	Location
1.	Dr. Biswajit Dhar	September 24-28th, 2008	Consultative Meeting with Dhaka Chamber of Commerce and Industry on Impact of WTO Agreements on SMEs	Dhaka
		October 21, 2008	WHO Advisory Committee to address the issue of Sharing of Influenza Viruses and Access to Vaccines and Other Benefits	Geneva
		October 27, 2008	CDS-UNCTAD Training Programme on Contemporary Issues in International Trade on "From GATT to WTO and the way Forward"	Trivandrum
2.	Prof. Madhukar Sinha	October 16, 2008	Lecture on Intellectual Property Rights and International Trade Environment in 105th Induction Training Programme.	Lal Bahadur Shastri National Academy of Administration, Mussourie
3.	Prof. R.S. Ratna	October 15, 2008	Participated as Discussant on "Has Trade Enhanced Gender Employment?" in the International Conference on "How are the Poor Affected by Trade" organized by UNCTAD, India, Ministry of Commerce and DFID.	Delhi
4.	Prof. Shashank Priya	October 15, 2008	Participated as a Discussant on "Effects of Trade Liberalization on Oil Seeds & Edible Oil Sector in India" during International Conference on "How are the poor affected by trade" organized by UNCTAD, India, Ministry of Commerce and DFID.	Delhi
5.	Ms. Kasturi Das	September 4-5, 2008	Presentation on "Introduction to Geographical Indications and Select Legal Issues with Particular Reference to India" at the 'Regional Conference on IPR Protection through Geographical Indications (GIs)" organised jointly by the UNCTAD India Programme and the Textiles Committee, Ministry of Textiles, Government of India.	Lucknow

Publications of the Faculty Members (Sept.-Oct. 2008)

S.No.	Faculty	Topic	Published in
1.	Prof. Madhukar Sinha	UNESCO Expert Report on Preferential Treatment for Developing Countries: Article 16 of the Convention On The Protection And Promotion Of The Diversity Of Cultural Expressions – India	http://unesdoc.unesco.org/images/0017/001779/177924E.pdf Pages: 145-231
2.	Ms. Kasturi Das	'Legal Protection of Geographical Indications: An Indian Perspective'	Chapter 11in Gupta, K. R. and P. Maiti (eds.) Rural Development in India: Vol.3, Atlantic Publishers, New Delhi, India, , pp. 190-228.

WTO BRIEFS

EU appoints a new Trade Commissioner

Catherine Margaret Ashton, the 52-year-old British Labour, politician has been confirmed as the new European Commissioner for External Trade on October 6, 2008. Ms Ashton succeeded Peter Mandelson who took up the position of Secretary of State for Business, Enterprise and Regulatory Reform in the United Kingdom. She has held a number of middle-ranking posts in the British government. Since 2007 she was the leader of the House of Lords and she was a key figure in securing the parliamentary passage of the Lisbon Reform Treaty through the upper house of the British Parliament. Ashton was given a life peerage under the previous government of Tony Blair in 1999 and has since then been known as Baroness Ashton of Upholland, taking the title from her native town of Upholland, in the northern county of Lancashire. Ms. Ashton is married to the journalist and pollster Peter Kellner.

FORTHCOMING EVENTS

- Training on the WTO Agreement on Sanitary and Phytosanitary (SPS) Agreement in collaboration with WTO Secretariat, Geneva and the Department of Commerce: 10-14 November 2008
- Stakeholder and Inter-ministerial consultation on WTO negotiations on Trade and Environment: 11 December 2008

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