

# INDIA, WTO AND TRADE ISSUES

Bi-monthly Newsletter of Centre for WTO Studies

Vol. 1

No. 3

November-December 2008

## Research Papers

### Coping with SPS challenges: Missed opportunity In Doha Round?

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*The Agreement on the Application of Sanitary and Phyto-sanitary measures (SPSA) of the World Trade Organisation (WTO) was negotiated during the Uruguay Round of multilateral trade negotiations with the dual objective of recognizing the legitimate right of Members to adopt SPS measures necessary to protect human, animal, or plant life or health, while at the same time, setting in place certain checks and balances to cope with the possibility of these measures emerging as non-tariff barriers (NTBs) to trade. However, the experiences of India and other developing countries show that SPS agreement has by far proved to be rather ineffective in living up to the latter objective. This is largely due to the fact that, its dual objective notwithstanding, SPSA has left ample space for Member governments to use these measures for protectionist purposes under the guise of addressing their 'legitimate' concerns. This 'space' has been further reinforced by the WTO Dispute Settlement Bodies, which in various rulings have demonstrated a clear tendency to bestow upon Member countries a large measure of autonomy and flexibility in imposing SPS measures, according to a **research paper titled "Coping with SPS Challenges in India: WTO and Beyond", by Kasturi Das, Fellow, Centre for WTO Studies.***

*Unfortunately, the current Doha Round of trade talks has turned out to be a missed opportunity for taming the SPS-related NTBs. Although SPS measures were identified by developing countries at large as the third most important category of NTBs under the notification mechanism established under the Doha Round, these NTBs did not form part of the negotiating mandate of this Round. This, notwithstanding the fact that enhanced market access for developing countries was identified by the Doha Ministerial Declaration as one of the fundamental objectives of the current round. Unless such NTBs are effectively disciplined, they would continue to elude the real market access for the developing countries to a great extent. Hence, it is imperative for the developing countries, including India, to press for disciplining of SPS-related NTBs under the aegis of the WTO. They must also continue to focus on addressing some of the major lacunae in SPSA, including the S&DT (Special and Differential Treatment) provisions. Some of the key points of the research paper that was published in the Journal of International Economic Law are reproduced below:*

## Background

In recent years, an increasing attention is being paid to sanitary and phytosanitary (SPS) issues. Enhanced scientific understanding in this area, coupled with growing public awareness and concern about food and health-safety, has resulted in an increasing preference for safe and hygienic food, particularly in the North. In tandem with these developments, SPS issues have assumed enhanced significance in the context of international trade, as well. The WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPSA) came into being (with effect from 1 January 1995) against this backdrop.

## What is the SPS Agreement?

The Agreement obligates WTO Members to apply SPS measures only to the extent necessary to protect human, animal, or plant life or health. Such measures are in general, required to be based on scientific principles and are not to be maintained without sufficient scientific evidence (**Article 2.2**). Moreover, WTO Members are obliged to base their SPS measures on risk assessment, taking into account risk assessment techniques developed by the relevant international organizations (**Article 5.1**). Other provisions under **Article 5** of SPSA contain the requirements that WTO Members are to comply with for assessment of risk and for determination of the appropriate level of protection (ALOP) for themselves. **Article 5.6** requires WTO Members to ensure that their SPS measures are not more trade restrictive than necessary to achieve their ALOP, taking into account technical and economic feasibility. While 'sufficient scientific evidence' (**Article 2.2**) is a general requirement of SPSA, in case, relevant scientific evidence is insufficient, SPSA allows a Member to 'provisionally' adopt SPS measures on the basis of available pertinent information. However, since such measures may be applied on a provisional basis only, Members must seek to obtain the additional information necessary for a more objective assessment of risk and review the SPS measure accordingly, within a reasonable period of time. Members are required to ensure that their SPS measures do not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail, and are not applied in a manner, which would constitute a disguised

restriction on international trade (**Article 2.3**). To achieve harmonization, the Agreement urges WTO Members to base their SPS measures on international standards, wherever they exist (**Article 3.1**) and to participate (subject to their resource constraints) in the standardization processes of relevant international organizations, such as the Codex Alimentarius Commission (CAC), the International Office of Epizootics (OIE), and International Plant Protection Convention (IPPC) (**Article 3.4**). Members, however, are allowed to introduce or maintain SPS measures, which result in a higher level of SPS protection than would be achieved by measures based on the relevant international standards, guidelines, or recommendations, if there is a scientific justification, or if it is determined to be appropriate by the Member in accordance with the relevant provisions of Article 5. Such higher level of SPS measures, however, must not be inconsistent with any other provision of this Agreement (**Article 3.3**). The Agreement (**Article 4**) encourages Members to enter into 'equivalence' agreements. It also urges them to recognize the concepts of pest- or disease-free areas or regions and accordingly adapt their SPS requirements for products originating from such areas or regions (**Article 6**). SPSA acknowledges the need to provide technical assistance to the developing countries (**Article 9**) and also includes certain special and differential treatment (S& DT) provisions for them (**Article 10**).

## SPS Measures into Non-Tariff Barriers ?

Notwithstanding the existence of this WTO Agreement, SPS measures have continued to act as a major form of NTBs, particularly for the developing countries, who have often found it difficult to comply with the ever-stricter SPS requirements, imposed predominantly by the developed countries. This was clearly revealed by the submissions made by the developing countries under the notification process established by the Negotiating Group on Market Access (NGMA) as a part of the Non-agricultural Market Access (NAMA) negotiations of the ongoing Doha Round of trade talks.

**As per the incidence of notifications, SPS measures (with 137 entries) turned out to be the third most frequently reported barriers for developing countries, after technical barriers to trade (TBT) (with 530 entries) and customs and administrative**

**procedures (380 entries).** As for India, in its notification, the country exemplified in some detail how various restrictive standards; and burdensome regulations and procedures in the areas of both SPS and TBT were acting as barriers significantly affecting its capacity to trade with several countries. In fact, these formed the first entry in India's notification, clearly reflecting their importance vis-à-vis other NTBs.

## Select sector-specific SPS concerns of India

### *Marine products*

SPS-related problems have always remained a major cause of concern for Indian marine exports to the European Union (EU), which has very stringent regulations in the field of marine products. In August 1997, the EU banned fisheries exports from India on SPS grounds. Although the ban was subsequently lifted, the compliance with the stringent EU requirements involved substantial investment in infrastructure and equipments, apart from higher running costs. As per some rough estimation, the upgradation of production facilities involved an expenditure of about US\$ 250,000 to US \$500,000 (per production unit) as fixed cost. The Seafood Exporters Association of India claimed to have spent US\$25 million on upgradation of facilities to meet the EU requirements. More recently, Indian marine exports have faced several detentions/rejections in the EU, on grounds of use of antibiotics and bacterial inhibitors. India's shrimp exports have also encountered SPS problems in Japan.

### *Meat and meat products*

India's exports of meat and meat products have encountered diverse SPS problems, particularly in the EU. The EU does not allow import of Indian buffalo meat on grounds of prevalence of foot and mouth disease (FMD) in Indian cattle. India is of the view that the EU, in this case, is adopting more stringent standards than the international standards and has urged the EU to be guided by the OIE stipulations for trade in livestock products.

### *Various food products (aflatoxin problem)*

Indian exports of spices, peanuts, groundnuts, cereals, and various other processed foods, among other items, have long since been facing severe

problems on grounds of presence of aflatoxin beyond the maximum residue levels (MRLs) permitted by the EU. However, it has been widely argued that the EU MRLs are often more stringent than the international standards.

### *Mango and mango pulp*

Indian exports of mango and mango pulp have been affected by SPS-related problems in various export destinations including the United States, Japan, the EU, Australia, and New Zealand. Even though India is the largest mango producer in the world, accounting for roughly 50% of the global mango production, with the highest number of varieties, exports of mango and mango pulp from India have not really been significant, and issues related to pesticides in Indian mangoes and other SPS requirements are some of the key reasons underlying such poor performance on the mango export front. Until April 2007, India was not allowed to export mango to the US on SPS grounds. Subsequent to the United States, Japan also opened its door to Indian mango in May 2007. Way back in the late 1980s, Japan banned imports of Indian mango on health grounds. The process of vapour heat treatment had to be put in place to comply with Japan's SPS requirements.

### *Rice*

India's exports of rice face SPS-related problems in countries, such as the EU, the United States, Japan, the Middle-East, and Russia. In June 2007, Russia banned imports of rice (along with sesame and groundnuts) from India on grounds of detection of pests in rice consignments. The problems in the EU and Japan largely relate to pesticide residues, frequent changes in standards, and lack of clarity on the scientific justification of the standards, while the difficulties of exporting to the Middle-East arise primarily from a lack of clarity in the specification of standards and the extensive documentation required by their embassies.

### *Red chilli powder (Sudan Red)*

On grounds that Sudan Red is potentially carcinogenic, the EU banned its use in processed foods. In October 2003, the EU specified the requirement of Sudan-free certificates for all spices, including red chilli powder and notified the appropriate agencies in India after finding traces of

Sudan Red in some export consignments of red chilli powder from India.

### **Milk products**

India is the world's largest producer of milk accounting for around 14% of the world milk production, but presently, Indian milk products are not allowed to be exported to the EU.

### **Tea**

India is the world's largest producer and consumer of tea. However, pesticide residue in Indian tea has been a major cause of concern for India with respect to market access in various export destinations, particularly in the EU. For example, Germany complained about high residue levels of ethion in Darjeeling tea; and high levels of bicofol in Assam, Terai, and Dooars tea. The justifications of some of these complaints, however, had been questioned by major tea exporting countries like India and China.

### **Flowers**

Indian floriculture consignments have faced various market access problems in the EU, particularly in the Netherlands. Indian floricultural products were subjected to 50% checks at entry points in the Netherlands. This, despite the fact that most farms involved in floriculture exports from India had stringent pest control management systems in place, which adhered to international standards. Most of them had also adopted Good Agricultural Practices (GAPs).

## **SPS requirements and WTO *acquis*: legitimizing protectionism?**

The SPSA was negotiated with the aim of recognizing the legitimate right of WTO Members to adopt SPS measures that they might deem necessary for the protection of human, animal, or plant life or health, while at the same time setting in place certain checks and balances to cope with the possibility of these measures emerging as NTBs. However, the experience of India and other developing countries bear testimony to the fact that SPSA has by far proved to be rather ineffective in preventing these measures from emerging as NTBs. This is largely attributable to the fact that, its dual objective notwithstanding, SPSA has left ample room for Member governments to use

these measures for protectionist purposes under the guise of addressing their 'legitimate' concerns on health or safety. Moreover, in our view, the WTO dispute settlement system (DSS) may also be held responsible, to a large extent, for emergence of SPS measures as a protectionist tool. The significance of the interpretations put forward by the DSS may be judged in the light of the fact that WTO dispute settlement bodies can alter the balance of rights and obligations contained in adopted agreements by creating new obligations through the process of interpretation. Indeed, a close look at the mode of interpretation of some of the key provisions of SPSA put forward by the WTO panels and the Appellate Body (AB) in various SPS-related disputes reveals a clear tendency to bestow upon WTO Members a large measure of autonomy and flexibility in imposing SPS requirements, in the process creating sufficient space for such measures being used for protectionist intents.

Consider for instance, the requirement of SPS measures to be *generally* based on sufficient scientific evidence (Article 2.2) and risk assessment (Article 5.1). The AB observed (in *EC-Hormones*) that these two requirements are essential for the maintenance of the delicate and carefully negotiated balance in the SPSA between the shared, but sometimes competing, interests of promoting international trade and of protecting the life and health of human beings. Nevertheless, the interpretations of these two provisions (Articles 2.2 and 5.1) alongside other related provisions of SPSA seem to have tilted the 'balance' in favour of the latter 'interest' to a great extent. For instance, the lack of requirements to undertake a 'quantitative' evaluation of risk and to establish a minimum magnitude or threshold level of degree of risk, as per several WTO rulings, dilutes the stringency of the obligation under Article 5.1 to a large extent. A WTO Member is not even required to carry out a 'risk assessment' by itself before adopting an SPS measure and may instead base it on a risk assessment carried out by another Member or an international organization (AB in *EC-Hormones*). Moreover, according to the AB (in *EC-Hormones*), Article 5.1 does not require that the risk assessment must necessarily embody only the view of a majority of the relevant scientific community. This interpretation, by allowing reliance on a non-majority opinion in the scientific community, definitely provides enormous

leeway for the countries imposing SPS measures. As for the factors to be taken into account in assessment of risk, the AB (in *EC-Hormones*) demonstrated significant sensitivity to public anxieties regarding ecological risks, and adopted a broad concept of risk. It thus created a legal link between the level of public anxiety and conformity to WTO rules, endowing the civil society with the power to confer legitimacy on governmental regulatory measures. According to some commentators, this legal link between the democratic sentiment and trade measures can be mobilized in future by the forces of protection to curtail free trade.

Regarding the obligation to base SPS measures on international standards, as enshrined in Article 3.1, the AB (in *EC-Hormones*) ruled that a measure based on an international standard may adopt some and not necessarily all of the elements of that standard, thereby leaving adequate room for WTO Members to deviate from the international standard in question. Moreover, Article 3.3 explicitly allows WTO Members to diverge from international standards if there is a scientific justification or to achieve a Member's 'appropriate level of protection' (ALOP). In fact, the AB (in *Australia-Salmon*) has even stated that the determination of the ALOP is a *prerogative* of the Member concerned and not of a WTO panel or of the AB and that a WTO Member is allowed to determine its own ALOP to be 'zero risk'. Evidently, WTO Members have been bestowed by the DSS with enormous leeway to define their own appropriate levels of SPS protection as per their respective preferences and priorities. This leeway seems to have been effectively exploited by the developed countries like the EU. Developing countries at large have been severely affected due to the non-acceptance of established international standards by the EU and the application of its own higher standards on grounds of observance of higher safety norms. It is widely believed that often there is not enough justification for such higher standards. More so because very often it is found that lower standards exist in several other developed countries. The EU does not always provide sufficient evidence to justify those stricter requirements also. In many cases, the scientific justification of the EU requirements has been called into question too.

While the EU as a whole has often deviated from international standards in defiance of the

harmonization principle of the SPSA, lack of harmonization among the member countries of this customs union with regard to SPS requirements and their implementation has turned out to be another major cause of concern for developing countries. A special characteristic of EU integration is that even member countries are allowed to maintain their own internal regulations and standards on a range of subjects, including SPS. It has been observed that often food products entering into the EU are subject to inspections under the common EU standards at the first point of entry to the EU, and once again at the point of entry into the final destination country, which may have a higher standard for the same product. Due to the independent jurisdiction of member countries, there is no uniformity in EU standards for risk management, detentions, and disposal at the point of entry. This causes enormous uncertainty in the resolution of issues relating to SPS matters. The absence of a common and harmonized regulatory environment in the EU is the underlying cause for a majority of rejections encountered by many exporters, including those from India. Other key issues include the absence of clearly laid out procedures for detention and disposal of consignments, and inadequate coordination among member countries' agencies in the notification and de-notification of suppliers placed under alerts, following detentions. The EU system of 'rapid alert' is a perfect case in point in this context. Another damaging procedure followed by the EU is the system of destruction of rejected food consignments on account of lack of conformity with standards, without even intimating the consignors, let alone returning them.

The EU, however, is not alone in the league. As revealed by India's experiences, SPS measures have been a cause of concern *vis-à-vis* several other trading partners as well. As for the United States, the foremost problems relate to the 'Public Health Security and Bioterrorism Preparedness and Response Act of 2002', or the Bioterrorism Act, which came into being after the September 11 terrorist attacks. Title III of this Act, which deals with 'Protecting Safety and Security of Food and Drug Supply', requires, among other things, that: domestic and foreign facilities that manufacture, process, pack, and hold food for consumption in the US register with the US FDA (Food and Drug Administration). Despite a general recognition that greater bioterrorism

protection is needed, concerns have widely been raised about the potential trade-restrictive implications of Title III, as it discriminates between domestic and foreign food manufacturers by imposing increased transaction costs and procedural burdens solely on foreign facilities, thereby creating NTBs. The US government, however, has expressed the view that it recognizes the potential of the Bioterrorism Act for trade disruption and has taken every possible step to ensure that legitimate trade is not disrupted. It may be noted here that Article 5.4 of SPSA states that while determining the appropriate level of SPS protection, Members 'should' take into account the objective of minimizing negative trade effects. However, the mode of interpretation of this and other provisions of SPSA pertaining to trade effects of SPS measures (e.g. Articles 5.5 and 5.6), as put forward by the WTO DSS, seems to make it quite difficult to effectively address this issue.

The problems of the developing countries have been further exacerbated by the lack of 'teeth' in many special and differential treatment (S&DT) provisions of the SPSA and their interpretations by the WTO DSS. In *EC-Biotech*, for instance, the panel gave a very weak interpretation of the S&DT provision enshrined in Article 10 of SPSA.

In a nutshell, the SPSA and the mode of interpretation of its provisions by the WTO DSS has provided significant leeway for WTO Member countries to impose SPS measures as per their own preferences and priorities, in the process increasing to a large extent the risk of these measures being used for protectionist purposes.

### **Coping with SPS challenges in India: Some ways and means**

It is evident that SPS requirements have acted as a major market access barrier for India, particularly in the developed country markets. India has also suffered significant export losses from time-to-time on account of its inability to respond to such SPS requirements adequately. Even where it has succeeded in complying with stringent SPS requirements, compliance has always involved substantial investments. Moreover, there is no guarantee that once suitable changes in the production processes are made, the goods will get

continued or enhanced market access, as buyers do not give any such guarantee upfront. A concomitant problem is that of shifting standards. The worst affected in the whole process are the small players, who are often technically ill equipped and financially hard pressed to be able to comply with SPS requirements. Therefore, SPS requirements often have the effect of pushing small players out of business, thereby putting their livelihoods at stake. Hence, coping with SPS challenges has assumed enormous significance for the Indian economy as well as for the livelihoods of the people concerned.

A significant point on India's experiences with SPS requirements is that there is often a substantial overlap between issues that come under the purview of SPSA and those that may very well be covered under the ongoing negotiations on Trade Facilitation, which forms part of the single undertaking of the Doha Round. Interestingly, India has been trying to make use of this new window of opportunity to address some such overlapping issues. These include: (i) lack of harmonized rules and regulations among the EU member countries; (ii) destruction of rejected consignments by the EU; (iii) the EU system of 'rapid alert'; and (iv) information on detained consignments, among others. India has also submitted textual proposals for this purpose. The country must try and ensure that these proposals form part of the final outcome of the negotiations on trade facilitation.

Notwithstanding the difficulties faced by India on the SPS front, it may be noted that on several instances, questions have also been raised against some of the SPS requirements imposed by India.

Several concerns were raised against India in the SPS committee meetings between 1995 and 2006, all by developed countries. India also had to confront several SPS-related questions from countries, such as the EU, Canada, the United States, Australia, New Zealand, among others, during its latest Trade Policy Review carried out by the WTO in 2007.

### **Needed: A more proactive approach to SPS management**

In our view, India needs to traverse a long distance both at the domestic as well as international fronts

before the country can address the multi-pronged SPS challenges confronting it in an effective manner. Rather than merely reacting to problems that may accrue from time to time, India needs to undertake a more proactive approach to SPS management, focusing on development of a well-knit and comprehensive strategy for medium to long term to cope with its SPS challenges in a more effective manner both at the domestic and international levels.

### Key Policy Recommendations for India

There are many areas at domestic as well as international levels where India needs to focus on for improving its ability to better cope with SPS challenges.

These include:

- Adoption of a proactive rather than defensive approach to SPS management on the basis of an all-encompassing strategy;
- Effective functioning of National Enquiry Points and National Notification Authorities relating to SPS;
- Lobbying at the WTO, in association with other like-minded developing countries, for adequate time period for comments on SPS notifications; and sufficient interval between publication of an SPS measure by a WTO member and its coming into force;
- Development of an appropriate mechanism to ensure effective and timely comments on SPS notifications made by other WTO Members;
- Joining hands with other developing countries to vouch for addressing the major lacunas in the SPSA, in particular the special and differential treatment (S&DT) provisions;
- Ensuring that the textual proposals submitted by India under the negotiations on Trade Facilitation at the WTO are incorporated in the final outcome of these negotiations as part of the single undertaking of the Doha Round;
- Lobbying for securing as much technical assistance as possible to better tackle various capacity constraints, including financial, infrastructural and technical;
- Concentration of technical assistance in select areas of export interests, identified in a systematic manner;

- More frequent and effective participation in the standard-setting exercises of key global agencies, like the Codex Alimentarius Commission (CAC), the International Office of Epizootics (IOE), and International Plant Protection Convention (IPPC);
- In association with other like-minded developing countries, lobbying for technical and funding support from developed countries and donor agencies towards ensuring better participation in the standard-setting process;
- Evolving national SPS standards in more and more areas in line with international standards and strengthening accreditation and certification systems;
- Investment in physical infrastructure for building capacity for compliance, including testing activities, risk analysis and assessment, among others;
- Awareness building among the domestic stakeholders, including small and medium enterprises and consumers about SPS matters;
- Adequate and timely dissemination of information among the domestic stakeholders; and if required, provision of SPS-related consultancy services on a payment basis by government and semi-government agencies for the exporters;
- Bringing in appropriate institutional reforms with a view to tackling the SPS challenges more effectively;
- Enhanced coordination among various relevant government bodies/ agencies at the central and sub-national levels;
- Increasing collaboration and coordination among government bodies including standard-setting agencies, research organizations and industry;
- Provision for supporting small and medium enterprises to better cope with SPS challenges, given their capacity constraint;
- Opting for more and more mutual recognition agreements (MRAs) and/or equivalence agreements with major developed countries; and
- Using the bilateral trade and investment negotiations to address the SPS concerns.

## Training on WTO Agreement on Sanitary and Phytosanitary Measures

The WTO Agreement on the Application of Sanitary and Phytosanitary measures sets out the basic rules for food safety and animal and plant health standards. Developing countries have often complained that such measure have been used by developed countries for protectionist purposes as well. The Centre for WTO Studies, in collaboration with the Department of Commerce and the WTO Secretariat, Geneva, organised a four day intensive seminar on this important subject. The chief resource person for the training was Ms. Gretchen H. Stanton, senior counsellor of the WTO Secretariat. The programme covered important topics like an overview of the legal provisions of the SPS agreement; interface between WTO and standard setting bodies like Codex, OIE and IPPC; harmonisation, equivalence and regionalisation; scientific justification and precautionary actions; special and differential treatment and technical assistance. 52 participants attended the course and they represented various Departments of the



*Valedictory function of the training programme on SPS Agreement. (L to R) Prof. R. S. Ratna, Ms. Gretchen H. Stanton, Mr. R. S. Gujral, Mr. Himanshu Gupta, Dr. Biswajit Dhar*

Government of India as well as industry representatives and non-governmental organisations. The programme was inaugurated by Mr. R. Gopalan, Additional Secretary, Department of Commerce. During the valediction function, Mr. R. S. Gujral, DGFT handed over the certificates to the participants.



*Mr. R. Gopalan, Additional Secretary, Deptt. Of Commerce, addressing the participants during the inaugural function. Others from Left to right: Prof. R. S. Ratna, Mr. K. T. Chacko, Ms. Gretchen H. Stanton and Dr. Biswajit Dhar*



*Ms. Gretchen Stanton, Senior Counsellor, WTO Secretariat, addressing the participants*



## Stakeholder Consultations

### India-EU FTANegotiations

In collaboration with the Federation of Indian Chambers of Commerce and Industry (FICCI), the Centre for WTO Studies organised a consultation with industry on 28<sup>th</sup> November 2008 regarding market access in services sector under the ongoing negotiations for an India-EU Free Trade Agreement (FTA). The consultation was significant as India-EU High Level Trade Group (HLTG) highlighted the importance of services sector for both EU and India. Commerce Ministry officers and other experts made presentations and interacted with participants during the consultation meeting. From the Centre for WTO Studies, the meeting was attended by Mr. K. T. Chacko, Director, IIFT and Professor R. S. Ratna.

### Trade and Environment negotiations in WTO

A stakeholder consultation was organised by the Centre for WTO Studies on 11<sup>th</sup> December 2008 to discuss proposals on Trade and Environment in the ongoing Doha Round negotiations in WTO. The meeting took stock of the state of play of the negotiations relating to market access for environmental goods. The Centre presented its analysis of 43 items that were identified by the World Bank as “Climate Friendly Goods”. Shri Abhijit Das, Project Coordinator (in charge) UNCTAD, made a presentation on their analysis of the list of 53 items of “Climate Friendly Goods” earlier prepared by the

WTO. He also informed that they had identified certain items which were of export interest to India. A major theme emerging during the discussion was the challenge to define environmental goods and the risk of misuse on account of dual/multiple use of products. Another important concern that emerged was lack of transfer of latest technology to the developing countries. Further consultations on this subject are proposed.

### Faculty Interaction with UNCTAD, Geneva

On 3<sup>rd</sup> November 2008, an interaction took place between faculty and researchers of the Centre for WTO Studies and IIFT with Dr. Sudip Ranjan Basu, Economic Affairs Officer, UNCTAD, Geneva and his team on UNCTAD's draft study titled “Building Trade Related Institutions and WTO Accession” written by Dr. Sudip Ranjan Basu, Mr. Victor Ognivtsev and Mr. Miho Shisotor. On the basis of analysis of WTO accession cases, the paper concludes that, under certain conditions, this process can induce countries to establish or improve trade related institutions. The paper also points out that the accession process lacks mechanisms which take account of acceding countries' differing levels of economic development and institutional capacity, and thus places a heavier burden of implementation policy and institutional reform and related costs on countries with limited human, administrative and financial resources such as Least Developed Countries (LDCs).

## Faculty Participation in Outreach Programmes (Nov-Dec 08)

S.No.	Participating Faculty	Date	Topic	Location
1.	Dr. Biswajit Dhar	October 30 to November 1, 2008	Resource Person for the International Business Conference organised by Dhaka Chamber of Commerce and Industry	Dhaka
		26 November, 2008	Chaired the session on “Access and Benefit Sharing: Legal and Policy Framework”, organised by National Institute of Science Communication and Information Resources (NISCAIR)	Delhi

S.No.	Participating Faculty	Date	Topic	Location
		19 December, 2008	Resource Person for the Indian Council of Agricultural Research "Training-cum-Workshop on IP and Technology Management in the ICAR System"	Lucknow
2.	Prof. Madhukar Sinha	December 19, 2008	Overview of Copyright Law in India and Enforcement of Copyrights in India: Civil and Criminal Remedies	National Judicial Academy, Bhopal
3.	Prof. R. S. Ratna	November 5, 2008	Presentation on "APTA: Market access; result of Third Round negotiations" in the Sub regional Seminar on "Prospective benefits of APTA membership for Central Asia Economies" organised by UNESCAP, Bangkok	Kyrgyzstan
		November 7, 2008	Lectures on "Overview of WTO Agreement" and "India's current engagements in Regional Trade Agreements" for the Government Officials.	Indian Institute of Public Administration, Delhi
		November 19, 2008	Lectures on "WTO NAMA negotiation" and "India's current engagements in Regional Trade Agreements" in the Advanced Course on WTO for IAS Officers.	Administrative Staff College of India, Hyderabad
		November 21, 2008	Lecture on "SMEs and Global Trade Regime" for the ITEC training programme for the government and non-government officers from developing countries.	Centre for Global Agreements, Leg. & Trade, TERI, Delhi
		November 24-26, 2008	Presentation of paper on "South-South Tariff Preference Schemes: Rationale and Recent Developments" in the Regional Conference on Promoting human development in trade regionalism: Scope for South-South cooperation in the Asia Pacific organised by UNDP Regional Centre, Colombo	Bali, Indonesia
		December 17, 2008	Presentation on "Time to Move Beyond SAFTA" in the IVth South Asian Conference on Trade & Development 2008 "Trading in Development? Emerging Issues in South Asia" organised by CENTAD	Delhi
4.	Prof. Shashank Priya	December 17, 2008	Presentation on Trade Facilitation negotiations during the Plenary Session titled "Changing Globalization Scenario and WTO's role in International Trade" at Amity International Business School	Noida, UP
5.	Dr. Murali Kallummal	November 27, 2008	Lecture in the Technical Session during WTO Sensitisation Workshop on the topic "The Non Agricultural Draft Text (July 2008) and its Implications on Micro, Small & Medium Enterprises in India" organised by Micro Small & Medium Enterprises (MSME) Development Institute	Bengaluru

## Publications of the Faculty Members (Nov-Dec 2008)

S.No.	Faculty	Topic	Published in
1.	Ms. Kasturi Das	'Coping with SPS Challenges in India: WTO and Beyond'	<i>Journal of International Economic Law</i> [edited by John H. Jackson], Oxford University Press, UK, Vol.11(4), pp. 971-1019.
		'Coping with SPS Challenges in South Asia'	Chapter 4, in Chimni, B. S. et al. (eds.) <i>South Asian Yearbook of Trade and Development - Harnessing Gains from Trade: Domestic Challenges and Beyond</i> , Academic Foundation, New Delhi, India, pp.105-70.

## WHO SAID WHAT?

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

(November-December, 2008)

**1. India supports Lamy's bid to retain WTO job** India has decided to back WTO DG Pascal Lamy's bid for a second term in office when his present term expires in August next year. "Yes, we will be back Mr. Lamy for a second term and he is likely to get it", Commerce Secretary Gopal K Pillai told ET. India had played a key role in Mr. Lamy's selection as the DG three years ago. Interestingly, India's decision to back Mr. Lamy comes even while there is still time for other candidates to contest for the post. Sources said that India's strong support for Mr. Lamy is largely due to the fact that he had almost managed to work out a compromise between the developed and developing countries on the Doha round of talks in July this year.

*(Economic Times dated 6/11/08)*

**2. Australia, US differ with India on bio-piracy issues at WTO** Negotiations on framing multilateral rules to check bio-piracy an issue being pushed by India at the WTO has not yet gained the legitimate place India is seeking to provide it in the TRIPs negotiations. While India and the EU have managed to garner support from more than 100 countries on the need to negotiate all TRIPs issues together in the ongoing Doha round, a number of countries, including the US and Australia continue to oppose the suggestions. At present, only the issue of working on a multilateral register for

Geographical Indications (a name that identifies a good as originating from a particular place with which its reputation gets associated like Champagne) is in the mandate of the TRIPs Council special sessions and accepted by consensus as a full negotiation in the Doha round. India, EU, China, Brazil and a number of other countries have called for the negotiations on the multilateral register to be formally expanded to cover the issue of extension of GIs beyond wines and spirits and compulsory disclosure by patent applicants of origin of genetic material or traditional knowledge used in their inventions.

*(Economic Times dated 7/11/08).*

**3. RTAs eat away at free trade: Bibek Debroy reviews Jagdish Bhagwati's new book "Termites in the Trading System"** When GATT was established in 1947-48, all regional trading agreements (RTAs) should have been prohibited, since they violate MFN. However, there were several of these floating around and, realistically, they couldn't have been scrapped. They were, therefore, factored into the multilateral system, through Article XXIV and a separate 1979 clause for developing countries. If one includes all RTAs (those implemented, notified and being negotiated), there are almost 400 of them and have led to the world trading system being compared to a spaghetti (an expression

that originates with Bhagwati) bowl. There are gradations within RTAs from classic FTAs (free trade agreements) to customs unions (FTA plus common external tariff), common markets (customs union plus free cross-border capital and labour flows) and economic unions. However, rarely do RTAs transcend the first two categories. Bhagwati's prose, with its wit, humour and sarcasm, is a delight, particularly when he produces a popular book, as this one is. Bhagwati uses the expression PTA (preferential trade agreement) rather than RTA, since several agreements are no longer regional. This is a slim book in four chapters, documenting the literature and Bhagwati's views on these termites that are eating away at the multilateral trading system. And it's an extremely good book, almost like a four-lecture series delivered by Bhagwati the teacher. The first two chapters document how deeply ingrained the termites are. India has figured in several RTAs now. Not long ago, there was nothing beyond the Bangkok agreement to show. RTAs interpreted as classic FTAs in manufactured products are irrelevant now. Such duties are low and once Doha revives, they will be reduced further. Most new RTAs are WTO-plus in the sense of including services. Bhagwati has strong reservations about incorporating WTO-plus elements in labour or environmental standards or intellectual property. However, looking beyond the book, what future does WTO have, beyond administering the Uruguay Round agreements? We are stuck in an impossible situation, with 150-odd countries, each with the right to block an agreement through a veto, but with several countries absolved of responsibilities (though they have rights). While this book isn't meant to address that issue, without that being resolved termites won't go away. Bhagwati's book only prescribes part of the medicine. But on the prescription given, there is no better popular book I can think of.

*(HT Mint dated 9/11/08)*

**4. Studies predict modest benefits under India-Europe FTA** Studies by two different international organizations on the impact of India-Europe FTA have said the trade pact will lead to modest benefits for the country and that too in a scenario of big-ticket liberalization in trade of goods, services and investment norms. A study by the US-based Carnegie Endowment for International Peace on India's trade policies found that the FTA, which would lead to elimination of duties on at least 90% of the trade goods, would force the government to either reduce spending or increase taxes. This study assesses the impact of a successful Doha deal and possible FTAs with EU, China and US on

India. According to the study, the proposed FTA would reduce India's import tariff collections by nearly one-third. The other study, conducted by Netherlands-based economic think-tank Ecorys said that the benefits for both the sides in the economic, social and environmental spheres would be most when the FTA leads to elimination of tariff in 97% of the goods that are traded, as well as liberalization of the three-fourths of the services sector in the country.

*(Business Standard dated 18/11/08).*

**5. Nath reiterates India's stand in WTO talks** Commerce Minister Kamal Nath told WTO chief Pascal Lamy on December 01, 2008 that India had no intention of showing any flexibility in the ministerial meeting beginning December 12. The meeting has been convened to conclude modalities in the Doha Development Agenda for Agriculture and Market Access for Industrial Goods.”

*(Business Standard dated 2/12/08)*

**6. Plan for big-bang FTAs bites dust** -- India's plan to boost its global trade ties with a slew of free trade agreements (FTA) is losing momentum, either due to major differences or political volatility. The India-Asean FTA, to be inked by Prime Minister Manmohan Singh and his counterparts on December 17 in Bangkok, is stalled as the Asean Summit has been postponed to March 2009 due to the stand-off between government and protesters in Thailand. Asean comprises Indonesia, Malaysia, Singapore, Thailand, Vietnam, Brunei, Philippines, Cambodia, Laos and Myanmar. The India-Korea Comprehensive Economic Partnership Agreement (CEPA) which was also to be signed on the sidelines of the ASEAN Summit would now be delayed indefinitely due to differences between India and Korea over clauses regarding Rules Of Origin (ROO). Talks for the India-Japan Ceta have stretched to the 11th round beginning this week but with Japan yet to yield on market access for Indian pharma products, little headway is expected. Meanwhile, India-European Union FTA talks that were to be concluded by this year, have only taken off in services with India Inc holding stakeholder consultation on services recently. Differences of opinion on industrial goods and agriculture mean talks haven't progressed on those fronts.

*(Financial express dated 3/12/08).*

**7. India says no new offers at WTO till US softens stand** Even as WTO Director General Pascal Lamy is reported

to have fixed December 13-15 for a ministerial meeting to help successfully conclude the seven-year-old Doha Round negotiations, India has said that it will not make any new offers till the US formally softens its highly ambitious demand on increased market access for its industrial goods in developed countries. Official sources said India has also made it clear to the WTO that unless the final negotiation texts on agriculture and industrial goods have only a few square brackets (indicating that there are only a few points of differences among the members), there was no point in convening a ministerial meeting in the middle of this month at WTO headquarters in Geneva. India not only wants the US to drastically reduce its overall trade distorting farm subsidies (OTDS) and in particular the cotton subsidies, but also has said that it would not take part in 'sectoral' negotiations as demanded by the US, they added. Sectoral negotiations are aimed at drastically cutting or altogether eliminating duties on certain sectors like industrial machinery, electrical electronics, and chemicals that are of interest to the US. China has also made it clear that it would not take part in sectoral talks.

*(Financial Express dated 4/12/08)*

**8. WTO issues new draft texts to advance trade negotiations** WTO issued revised draft texts aimed at overcoming differences that have blocked an agreement to free up global trade in agricultural and manufactured products. The new texts, released in Geneva by Crawford Falconer, chairman of the farm negotiating group, and Luzius Wasescha, his counterpart on industrial goods, will serve as the basis for a possible meeting of trade ministers later this week, the WTO said in a statement on its website. The documents include tentative agreements that were reached in July before talks broke down.

*(Financial Express dated 8/12/08)*

**9. India approaches WTO against EU over PET exports -**  
- India has raised a fresh trade dispute against the European Union at the WTO over Brussels' decision to continue with final anti-dumping duties as well as anti-subsidy (countervailing) measures on the Indian exports of polyethylene terephthalate (PET), trade diplomats said. Last week, India lodged a complaint against the EU's measures on PET at the WTO, saying Brussels allegedly violated core provisions of the Agreement on Anti-Dumping as well as Subsidies and Countervailing measures.

*(Business Standard dated 9/12/08).*

**10. How useful are North-South RTAs?** RTAs represent an important exception to the WTO's principle of non-discrimination through its Most Favoured Nation (MFN) rule. Though improving market access is one of the prime motives of getting into an RTA, signing of RTA with a country does not guarantee increased market access in that country. This is particularly true for RTAs between a developed and developing country. This is because tariff rates in most developed countries are fairly low. For example, average MFN tariff of the US is 4.9% and average applied tariff rate is even lower at 3.7%. Therefore, average preference margins available to its RTA partners are not very high. Secondly, for tariff lines which are already zero duty, signing of an RTA does not give any additional advantage. It is notable that about 38% and 26% of tariff lines are zero duty in the US and EU respectively. Secondly, RTAs or even Free Trade Agreements (FTAs) do not necessarily allow zero duty access for all sectors. These agreements contain a large number of exclusions (the so called 'negative list') and sensitive sectors are almost always kept out of FTAs. For example, agriculture has been kept out of most RTAs involving EU. Finally, Non Tariff Measures (NTMs) actually prevent market access more than tariff measures. Unless these issues are taken care of, only tariff concessions through RTAs may not guarantee improved market access in developed countries. But signing of RTAs with developed countries carries its own costs. Study of most North-South trade agreements show that developed countries manage to push much more stringent conditions through RTAs than it is possible to do under the WTO.

*(Article by Parthapratim Pal, faculty member, IIM/ Calcutta in Financial Express dated 10/12/08)*

**11. WTO mini-ministerial in December 08 cancelled** WTO chief Pascal Lamy, who has abandoned the much-publicised ministerial meeting proposed for the second week of December due to its expected failure, says he will commence work this week to chalk out the way forward for the beleaguered Doha trade negotiations. Trade diplomats said that at an informal trade negotiations committee meeting, Lamy said he was forced to cancel the meeting due to lack of right political signals. Lamy failed to convince the United States to give up its entrenched positions that India, China and Brazil join zero-for-zero tariff elimination talks on the chemicals, industrial products, and electricals and electronics sectors.

*(Business Standard dated 15/12/08)*

**12. First big loss: China loses auto case at WTO** China on 15/12/08 lost its first major trade dispute at the World Trade Organization's highest appeals court, the Appellate Body (AB), over its additional duty of 25 per cent on imported auto parts. In a comprehensive ruling, the AB dismissed China's challenge on several counts, pronouncing that Beijing's measures violated global trade rules. The United States, the European Union and Canada had challenged Beijing's decision to impose 25 per cent charge on imported auto parts, or what are called semi-knocked down (SKD) and completely-knocked down (CKD) sets.

*(Business Standard dated 16/12/08).*

**13. Auto part firms to gain from WTO China ruling** The recent ruling by the WTO highest appeals court, the Appellate Body, against the imposition of 25 per cent import duty on auto parts by China has come as a boost to Indian auto component manufacturers. These companies' exports to China have been declining steadily. Indian automakers stand to benefit from the move as any cut in the duty will make their products cheaper in the Chinese market.

*(Business Standard dated 18/12/08)*

**14. WTO will report protectionist moves** WTO will start reporting tariff rises and similar moves by its members that limit trade, WTO Director General Pascal Lamy has said. The WTO already monitors such trade measures, and hopes that reporting them will help prevent protectionism widely blamed for the ferocity of the 1930s Great Depression from taking hold in the current economic crisis. The initiative also reflects a determined effort by the body that referees world trade to move beyond trade negotiations after the latest setback to the Doha Round decision last week not to call a meeting of ministers.

*(HT Mint dated 19/12/08)*

**15. Trade deals must protect workers, planet: Obama** The US will insist on strong protections for workers and the environment in future trade deals, President-elect Barack Obama said on 20/12/08 as he introduced his nominee to be chief US trade negotiator. Former Dallas Mayor Ron Kirk "will help make sure that any agreement I sign as President protects the rights of all workers, promotes the interests of all Americans, strengthens

American businesses, and preserves the planet we all share," Obama said at a news conference in Chicago. The focus on what Kirk described as a "values-driven" trade agenda is a nod to labour groups who helped elect Obama and have fought many losing battles against trade deals that they believe encourage US companies to move jobs overseas. Obama has promised one of his first acts as President would be to call the President of Mexico and Prime Minister of Canada to begin negotiations to "fix NAFTA" by adding stronger labor and environmental provisions. But Obama's stance could complicate efforts to complete the seven-year-old Doha round of world trade talks if it means the United States will be adding new demands to those already difficult negotiations. Many developing countries are suspicious of efforts to include binding labour and environmental provisions in trade pacts because they believe they could be used by rich countries as an excuse to block imports. Although Kirk is little known in global trade circles, Obama said the 54-year-old lawyer's experience as a big city mayor from 1994 to 2001 prepared him to be US trade representative.

*(Reuters in Washington dated 21/12/08).*

**16. Obama has to lead the way on trade** All through the presidential election campaign, Barack Obama blew hot and cold on trade. In tones reminiscent of Bill Clinton and the New Democrats, he often spoke persuasively about embracing globalisation and welcoming international competition. The US could not prosper by hiding from the world economy, he said. Yet he was second to none among the candidates in questioning specific trade pacts. He attacked the North American Free Trade Agreement and said it should be renegotiated. He threatened companies that invest abroad rather than "keeping jobs at home". This equivocation has carried through to his trade policy appointments. Mr Obama's US trade representative (his chief international negotiator) will be Ron Kirk, a former mayor of Dallas, a leading proponent of NAFTA and a long-time supporter of liberal trade position. With unemployment rising, wages under pressure and no firm countervailing push from the administration, protecting jobs (or claiming to, at any rate) is likely to be a higher priority than liberal trade. The prospects for widening the opportunities for international commerce look grim. Since this is a global recession, the danger of

an upsurge in protectionist sentiment is not confined to the US. The one encouraging point, perhaps, is that the future of liberal trade depends much less than it used to on pressing forward with ambitious trade liberalisation agreements. This is one of the key points in a brilliant short survey of trade policy by Razeen Sally of the London School of Economics and the European Centre for International Political Economy. (In Britain, it is published by the Institute of Economic Affairs, and entitled *Trade Policy, New Century*; in the US, the Cato Institute is the publisher and the title is *New Frontiers in Free Trade*.) Mr Sally argues persuasively that the World Trade Organisation and the multilateral approach to trade liberalisation is mostly a spent force. The failure of the Doha round points up the need for “greater modesty and realism”, he says. New preferential trade agreements of the kind lately favoured by the US are not the answer either. Especially in the prevailing political climate, they will be designed in order to strike political compromises rather than free up commerce. They entrench complex patterns of discrimination among trading partners that are as much a hindrance to liberal trade as a help. Lately, Mr Sally points out, the most successful instances of trade liberalisation in the developing world have been unilateral (as in China, for example). With time, the success of those initiatives will be the best spur to further liberalisation. The logic of multilateralism which sees the lowering of trade barriers by poor countries as a sacrifice for which rich countries must pay compensation has always been economically illiterate, but increasingly it is politically counterproductive as well. Developing countries object to being leaned on and the US and other rich countries lack the political capacity to offer the quid pro quo. The great risk is that the traditional exchange-of-concessions approach might degenerate into its logical near-equivalent an exchange of reprisals. Though one can always hope, the Obama administration is unlikely, whatever happens, to strive very hard to lower remaining US barriers to imports. The harder it pushes for “fair trade” with poorer countries, either bilaterally or through the WTO, the worse is the danger of backsliding all round. Averting a protectionist turn in US policy should be the administration's top priority in trade. “Do no harm” and “set a good example” should be the watchwords.

*(Article by Clive Crook in Financial Times of London dated 22/12/08)*

**17. Patented offering : GI tag soon for Tirupati laddus / J&K Sozani embroidery** The famous Tirupati laddu will soon get a geographical indication (GI) tag, making it arguably the first offering at a place of worship anywhere in the world to be recognised as an intellectual property in this case, of the Tirumala Tirupati Devasthanams (TTD) a trust that manages the temple at Tirupati state. And J&K has won geographical indication (GI) status for its famous Sozani embroidery. At stake is a business worth over Rs 400 crore. The GI status implies that only embroidery made by artisans from J&K would be referred to as Sozani. Entirely handmade, Sozani is done on shawls, dress material, bedsheets et al, and commands a premium in both international and domestic markets.

*(HT Mint dated 19/11/08 and Financial Express dated 30/12/08)*

**Liberalising Indian legal services** Steps undertaken by the ministry of law and justice to pursue liberalisation of the legal services sector are praiseworthy and must be welcomed by one and all in the legal fraternity. Lobbying for a blanket ban on the entry of foreign law firms in India is nothing short of a selfish manoeuvre to safeguard the vested interests of a few individuals. As we understand, foreign law firms are looking to set up offices in India to practice foreign law and not Indian law. They are not interested to do litigation in any way. They feel that Indian companies are now investing in several countries worldwide and if foreign law firms are present in India, they can guide the Indian companies better and quicker, in relation to their investments outside India. Therefore, if a German law firm has office in India, then any Indian firm planning to invest in Germany can visit the German law firm in India itself, instead of going to Germany to seek advice. As more and more Indian companies begin to do business outside India, foreign legal advice is increasingly needed. The availability of foreign lawyers in India would greatly minimise costs to Indian business enterprises. It would also increase the tax revenue: the government would receive tax on the earnings of foreign firms established in India, which they don't earn in the current situation where the same firms do the same work, offshore. Indian lawyers are competent and can deliver quality work. We are positive that Indian lawyers need not be afraid of competition. They should, in fact, facilitate a smoother and more meaningful entry of foreign law firms

*(Article by Managing Partner, Fox Mandal Little, in Economic Times dated 31/12/08).*

# WTO BRIEFS

- **Appellate Body issues report on auto parts dispute:** The Appellate Body on 15 December 2008 issued its report regarding complaints by the European Communities (EC), USA and Canada against “China Measures Affecting Imports of Automobile Parts”.
- **Lamy welcomes revised Agri and NAMA texts:** DG Pascal Lamy on 6 December welcomed revised negotiating documents on agriculture and industrial goods which, he said, should move the Doha round closer to completion. The latest revisions of the two papers including what could become the formulae for cutting tariffs and trade-distorting agricultural subsidies in a final deal were issued on 6 December 2008.
- **Geneva Workshop helps officials use health patent flexibilities:** 24 developing country officials took part in the 4<sup>th</sup> Workshop designed to help their countries make use of the pharmaceutical patents flexibilities in the WTO intellectual property agreement on 24 December 2008.
- **WTO reports decline in safeguard investigations:** The WTO Secretariat on 17 November 2008 reported that the number of safeguard investigations initiated during January-November 2008 was 5. The number of new initiations of safeguard investigations peaked in 2002 at 34, and the figures have since shown a declining trend.
- **Lamy to seek second term:** General Council Chairperson Bruce Gosper informed WTO members on 4 November 2008 that Director-General Pascal Lamy would seek a second term in office when his current term expires in 2009.

## FORTHCOMING EVENTS January-February 2009

- Training of I.T.S. officers on WTO & RTAs at IIFT, New Delhi	9-13 February 2009
- Training of I.T.S. officers on SEZ at IIFT, New Delhi	16-18 February 2009
- Consultations with stakeholders for Services negotiations under the India-EC Bilateral Trade & Investment Agreement at Bengaluru	16 February 2009
- Stakeholder consultation on “Energy Services” for India-EU Bilateral Trade and Investment Agreement at Delhi	27 February 2009

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*Printed and published on behalf of Centre for WTO Studies at Apex Printing House, Baba Gang Nath Market, Munirka, New Delhi - 110067*

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