

INDIA, WTO AND TRADE ISSUES

Bi-monthly Newsletter of Centre for WTO Studies

Vol. 1

No. 4

January-February 2009

Lead Article

Trade Facilitation : A win-win for all Emerging Contours of TF in Multilateral and Bilateral negotiations

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Evolution of disciplines on Non-Tariff Measures (NTMs)

The disciplines under the WTO are largely aimed at securing barrier free environment for international trade in goods and services. The successive rounds of negotiations under the General Agreement on Tariffs

and Trade (GATT) since 1948 first attempted to address barriers of trade in goods arising out of high duties of customs. This exercise was largely carried out amongst the developed countries, as the share of developing

countries' trade in the world trade was small, and some products of high interest to them, like agriculture and textile products, were kept out of the disciplines of GATT. From the Tokyo Round negotiations (1973-79), serious efforts were made to address trade barriers beyond the realm of tariffs, i.e. those that are more popularly called Non-Tariff Measures or NTMs. As a result, disciplines were developed on several NTMs. These included disciplines on customs value of goods which are used as the basis for calculating customs duties, the so-called Customs Valuation Code; disciplines on simplifying procedures for issuing licences for imports, or Import Licensing Procedures Code; disciplines on initiation of anti-dumping action, or Anti-Dumping Code; and disciplines on use of standards for import of goods, or Code on Technical Barriers to Trade.

The disciplines arising out of the Tokyo Round

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Trade Facilitation in WTO

WTO member countries at the 1996 Singapore Ministerial Conference instructed the WTO Goods Council to look at possible ways of simplifying trade procedures – an issue sometimes known as “trade facilitation”.

negotiations were called Codes because they were not binding on all GATT Contracting Parties. Only the countries which chose to sign these Codes became bound by it. A large number of developing countries did not take commitment on these disciplines.

In the Uruguay Round of negotiation leading to the formation of the WTO, a new concept of 'single undertaking' emerged. Under this, all WTO Members were obliged to undertake commitments on all these NTMs. The process of evolving disciplines on NTMs was taken forward during the Uruguay Round and a new agreement was established on harmonisation of non-preferential Rules of Origin. Another discipline related to safety of human, animal and plant life and health, more popularly known as Sanitary and Phytosanitary measures.

Trade Facilitation (TF) has been on the agenda of several multilateral organizations like the World Customs Organisation, International Civil Aviation Organisation, UNCTAD, UN ECE, etc. for a long time. However, it featured in WTO for the first time during the WTO Ministerial Conference held in Singapore in 1996. It formed a part of the basket of four issues, collectively called the Singapore Issues. The other subjects in the basket were Trade and Investment, Trade and Competition Policy and Transparency in Government Procurement.

On TF, the Ministerial Declaration at the conclusion of the Singapore Ministerial Conference directed the Council for Trade in Goods in WTO to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area.

The work undertaken as a result of this Declaration culminated in a negotiating mandate on TF during the Doha Ministerial Conference of 2001. The Declaration outlined the specific areas where rule making on TF could be undertaken. It was agreed that the work programme under TF would involve clarification and improvement of three existing GATT Articles, namely, articles V, VIII & X. The declaration also laid special emphasis on extending technical assistance and capacity building support for developing countries. The only issue that remained to be decided during the subsequent Ministerial Conference in 2003 was to arrive at an "explicit consensus" on modalities of negotiations. However, during the 5th Ministerial Conference at Cancun (Mexico) in 2003, no consensus

could emerge regarding the negotiating modalities. In fact, Singapore issues in general, and Trade Facilitation in particular, proved to be the immediate cause of the collapse of the Cancun Ministerial Conference.

The discussions at Cancun had indicated that TF was the only subject amongst the four Singapore Issues on which an explicit consensus was possible, provided major concerns of developing countries were addressed. These concerns related to resource availability, non-burdensome nature of commitments, balance between compliance and facilitation etc. The Framework Agreement signed in Geneva on 1st August, 2004 struck a delicate balance between such concerns and the ambitions of the demandeurs for negotiation on TF. The agreed modality for negotiations constituted Annex-D of the July Framework Agreement. It identified three aims of negotiations, namely, to clarify and improve relevant aspects of Articles V, VIII & X of the GATT 1994 in order to further expedite the movement, release and clearance of goods, including goods in transit; to enhance technical assistance and support for capacity building in this area; and to aim at provisions for effective cooperation between customs and any other appropriate authorities on Trade Facilitation and customs compliance issues.

State of Play of TF negotiations and Developing Country concerns

In the ongoing negotiations, the effort is to establish a wide ranging discipline on border clearance of goods under the rubric of TF. *The negotiations are aimed at establishing a fair, transparent and predictable system with respect to procedures for clearance of goods at the borders so that transaction cost associated with border crossing of goods during import, export and transit can be reduced.* A very broad range of issues are being discussed, which include disciplines on fees, charges, formalities and documentation relating to border clearance of goods. Transparency of laws, rules, regulations etc is another focus area of negotiations.

There is considerable convergence of views amongst the WTO Members regarding the desirability of having simple trade facilitative procedures at the borders. However, a lingering concern of developing countries is that new disciplines should not create unsustainable financial burden on them. Some of the proposals on the

table having strong linkage with Information Technology make some countries wary, on account of their resource implications. Some proposals of this nature include evolving a system of risk management for goods clearance; an internet based publication system for laws, regulations, including a process flowchart; a single window system for lodging declaration of goods, etc.

Another set of proposals where developing countries' concerns have been highlighted are those which involve fundamental changes in the system of goods clearance or fundamental changes in the law of the land. It is feared that such changes can weaken the system of border control relating to clearance of goods. One such proposal is to delink the goods assessment from its release at the borders. Some developed countries want that goods should be released from customs control under a surety or a bank guarantee and the authorities can subsequently confirm compliance with legal requirements followed by payment of custom duty. As developing countries still depend considerably on customs duties for raising fiscal resources, they do not favourably look upon such postponement of duty collection. This can also adversely impact duty collection as some importers may not be readily traceable subsequent to imports or there can be slip-ups in the monitoring system for goods cleared and duty paid. Another proposal of concern to some countries is to accept copies of documents instead of original ones. Latin American countries like Brazil have objected to it on the ground that this will need an amendment to their constitution.

A significant feature of the proposals on the table is that a large number of them will be binding on several departments of the government which deal with clearance of goods at the borders. This includes Departments of Revenue, Agriculture, Health, Environment, Commerce, etc. As a result, inter-departmental cooperation and coordination is very important to carry out an effective and informed negotiation on this subject. Certain proposals made by India on trade facilitation to address problems of its exporters also have strong inter-departmental linkages. These include:

- lack of harmonised rules and regulations among the EU member countries;
- destruction of rejected consignments by the EU;
- Lessening the onerous requirements of 'rapid alert' system.

Compliance as a facet of facilitation

Based on their experience of implementation of Agreement on Custom Valuation, India and some other developing countries have argued that negotiation on trade facilitation should not be looked upon only from the prism of facilitation. The negotiation presents a window of opportunity to improve cooperation between customs administrations of the WTO Members to improve the climate of compliance with laws and regulations. On India's insistence, the negotiating mandate on Trade Facilitation also provides for evolving an effective mechanism for customs cooperation on compliance related issues where transborder cooperation can nail a wrongdoer more effectively. India's proposal on the table is to evolve a mechanism of customs cooperation where countries can exchange information in cases of suspected misdeclaration of description, origin, quantity, classification and valuation of goods. While India has been the driving force behind this aspect of the negotiation, it has also built useful coalitions with other developing countries and has found co-sponsors to its proposals such as Sri Lanka and South Africa.

Technical Assistance Issues

A controversial aspect of the negotiations relates to the kind of assistance that the Developing and Least Developed Countries require to implement the commitments they would take at the conclusion of the negotiations. *There has been persistent demand from the developing countries that there should be firm commitment from the developed countries to extend technical and financial assistance to implement the commitments concerning modernisation of infrastructure or setting up new institutions. Developed countries have been treading this issue carefully.* They have proposed a cooperative effort between donor and recipient countries within the parameters of commitments that emerge from the negotiations. It has been suggested that the recipient country should first do its own internal analysis of areas where capacity building is required and then donors can be identified on the basis of expertise available. This process of capacity building could be overseen by the donor, the recipient and the agency carrying out the capacity building effort under the overall supervision of a Committee to be formed in the WTO dealing with trade facilitation.

India's approach to TF

India has been participating positively and actively in trade facilitation negotiations. It has constructively responded to the proposals on the table and has also presented its own proposals. India's autonomous effort in modernising trade procedures by large scale use of information technology has given it a good measure of comfort to engage in the negotiations. The Directorate of System in the Department of Revenue has already introduced systems like risk management and an accredited client programme to reward traders with good track record by extending them a facility of faster clearance of goods. However, proposals which require creation of new institutions or expansion of the scope of existing institutions such as for advance ruling authority or single enquiry point or establishment of a single window system are being dealt with a great degree of circumspection. The other government departments also need to be on board with respect to several proposals on the table like banning *ad valorem* fees and charges for agency functions related to import and export, adoption of risk management methods for quarantine and health related controls, establishment of a single window system, etc.

As trade facilitation is an ongoing process, it is important to be engaged in this exercise irrespective of the negotiation's outcome in the WTO. **The Centre for WTO Studies has launched a study to carry out a domestic gap analysis of trade facilitation needs through survey of users of the border crossing facilities. The study is attempting to capture the existing trade facilitation environment within the country, the satisfaction level with the changes introduced and the expectations of traders for further changes. The study will also attempt to analyse the dwell time of goods at the borders to identify the areas of persistent bottlenecks. It is expected that such a study will help in furthering dialogue on trade facilitation on an autonomous basis.**

Trade Facilitation and RTAs

It is interesting to note that Trade facilitation is no longer limited to negotiations in multilateral forums like the WTO or the World Customs Organization. *It is also increasingly featuring in the commitments under Regional Trading Arrangements (RTAs). It is common to see commitments relating to introduction of risk management, transparency of laws and regulation, appeal mechanism etc. to be a part of the chapter on*

customs in RTAs. For instance, India-Singapore FTA contains commitments like adoption of risk management, promotion of paperless trading environment, provision for Advance Ruling and sharing of best customs practice. The FTAs that the US has concluded with countries like Australia and Singapore have provisions for Advance Ruling, risk assessment, Express Shipments, and customs cooperation in cases of reasonable suspicion of unlawful activity.

The Asia Pacific Economic Cooperation (APEC) has published a comprehensive set of model measures for Trade Facilitation in RTAs. Its suggested measures include transparency in accessing trade laws and regulations; provisions to release goods on payment of security; simplified procedures for low-value or low-risk goods; use of automated systems and electronic documentation; adoption of risk management system; limiting fees and charges to approximate cost of services rendered; adoption of express shipment procedures; advance ruling; etc. The suggested model shows a remarkable concordance between proposed Trade Facilitation elements in an FTA and commitments under negotiation in WTO. This shows that one of the spin offs of adoption of multilateral disciplines in WTO will be creation of a credible template for negotiating commitments under FTAs. This will also give a unified approach for extending technical assistance and capacity building support to resource deficient countries.

Conclusion

The trade facilitation agenda is a win-win agenda for all stakeholders, be it the government, the economic operators such as the customs house agents, steamer agents, or the traders themselves. The cost incurred on time delays at the border clearance or the manpower employed in filling out long and cumbersome forms is a dead loss for the economy. With the deepening economic slowdown, the need to reduce the transaction cost is even more urgent. Therefore, the agenda of trade facilitation has acquired even greater relevance. As can be seen from the developments in the international and bilateral forums, the reach and depth of measures relating to trade facilitation is increasing over a period of time. It is important that developing countries, in particular, are fully geared to reap the benefit of this development by not only autonomously adopting what is good for them but also to drive the agenda in multilateral forum. This should involve bringing on the table trade facilitation needs and aspirations of developing countries. A

balanced outcome from the negotiations can be reached only where needs and priorities of both the developed and developing world are reflected in the final outcome. This would also create the right comfort level for Members to come forward to implement the

commitments speedily and also use them as a benchmark in RTA negotiations. A generous provision on technical assistance and support for capacity building is also a *sine qua non* for a successful outcome of TF negotiations.

EVENTS

Training on WTO and RTAs

The Centre for WTO Studies organised a 5-day training programme for officers of the Indian Trade Service (ITS) and of a few state governments, namely, Madhya Pradesh, Orissa, Maharashtra and Karnataka on WTO and Regional Trading Arrangements (RTAs) from 9-13 February 2009. The training covered a wide range of topics relating to WTO and RTAs. The training was conducted mostly by officers involved in the negotiations and hence the participants got an insight into the current state of play in the WTO and RTA negotiations. The topics covered during the training included negotiations on agriculture, non - agricultural market access (NAMA), services, trade defence measures, sanitary and phytosanitary measures (SPS) & technical barriers to trade (TBT),



Mr. R. S. Gujral, DGFT addressing the participants at the inaugural function. Others from Left to right: Prof. R. S. Ratna, Mr. K. T. Chacko, Dr. Biswajit Dhar and Prof. Shashank Priya

trade facilitation, dispute settlement, non-preferential and preferential rules of origin and India's engagement in FTAs with neighbouring countries.



Mr. K.T. Chacko, Director, IIFT addressing the participants during the valedictory function of the training programme on WTO & RTAs. Others (L-R): Prof. R. S. Ratna, Mr. Ajay Shrivastava and Prof. Shashank Priya



A view of the ITS participants

Training on SEZs

Special Economic Zones (SEZs) have been a subject matter of interest as well as controversy. During the series of training courses organised by the CWS for ITS officers on WTO and RTAs, a feedback was received regarding the desirability of holding a training course on SEZs. The Directorate General of Foreign Trade subsequently requested to organize this training course for senior ITS officers who are in near future likely to be entrusted with the responsibility of Development Commissioners of SEZs. Accordingly, the Centre for WTO Studies organised a 3-day training on SEZs from 16-18 February 2009. The programme was inaugurated by Mr. R. Gopalan, Additional Secretary, Department of Commerce.

The training covered theoretical as well as practical aspects of SEZ. It gave an overview of the Government perspective on SEZ; the role and responsibility of Development Commissioners; the



Mr. R. Gopalan, Additional Secretary, Department of Commerce addressing the participants during the inauguration of the training on SEZs



Participants at the training programme on SEZs



Mr. Mukesh Bhatnagar, a participant receiving certificate from Mr. K.T. Chacko, Director, IIFT

provisions of SEZ Acts and Rules; and concerns regarding revenue and safeguards to be undertaken for the same. The participants were also taken for a full day visit to the Noida Special Economic Zone (NSEZ). The Additional Development Commissioner, Mr. C.P.S. Bakshi, welcomed the officials and made a presentation on the present status of activities in Noida SEZ. This was followed by a visit to some of the units located in NSEZ.

Faculty Participation in Outreach Programmes (Jan-Feb 09)

S.No.	Participating Faculty	Date	Topic	Location
1.	Dr. Biswajit Dhar	January 1, 2009	"Agriculture in Doha: Present status & Prospects" organized by ICRIER	New Delhi
		February 11-15, 2009	International Symposium on the Doha Development Agenda	Yokohama National University, Japan
		February 24, 2009	National Workshop on CBD Report by Ministry of Environment & Forests	New Delhi
		February 27, 2009	Privatisation, Public Opinion & Civil Society by Jagannath International Management School	New Delhi
2.	Prof. R. S. Ratna	February 1-2, 2009	Presentation on " In search of Common South Asian Positions on Institutional Reforms in Global Trade Regime" in the Regional Conference on "A Southern Agenda on Global Trade Governance"	SANEM & CUTS, Dhaka
		February 20, 2009	India New Zealand JSG, New Delhi	Department of Commerce, Government of India
		February 24, 2009	Presentations on: I. APTA: Market Access, results of Third Round. II. Common preferential Rules of Origin: Is Harmonization Possible	Regional Seminar on expansion of membership of APTA, ESCAP Secretariat, Bangkok.
3.	Prof. Shashank Priya	February 19, 2009	Presentation on Anti -Dumping and Subsidies and Countervailing Measures to senior officers of Indian Statistical Service	Administrative Staff College of India, Hyderabad
4.	Ms. Kasturi Das	January 19, 2009	Lecture on Geographical Indications in the "PG Diploma Course in International Trade and Business Law"	Indian Society of International Law (ISIL), New Delhi
5.	Mr. Reji K. Joseph	January 12-13, 2009	Presented a paper on 'India's Trade in Drugs and Pharmaceutical Products' during the National Seminar - Global Financial Crisis: Implication for India	Mahatma Gandhi University Kottayam, Kerala
6.	Dr. Murali Kallumall	February 12, 2009	Lecture on "WTO and its Various Agreements: Impact on India"	Institute for Secretarial Training and Management, New Delhi

Publications of the Faculty Members (Jan-Feb 2009)

S.No.	Faculty	Topic	Published in
1.	Ms. Kasturi Das	Towards a Smoother Transition to Organic Farming	Chapter 10 in Rao, N. J. and A.S. Sisodiya (eds.) <i>Organic Farming: Perspectives and Experiences</i> , ICFAI University Press, India, 147-52.
2.	Reji K. Joseph	Estimating India's Trade in Drugs and Pharmaceuticals	Economic and Political Weekly Journal Issue: Vol 44, No 2, January 10-16, 2009.
3.	Prof. Rajan Sudesh Ratna	Promoting South-South Trade: Recent Developments and Options	Published as a Policy Brief on Asia-Pacific Research and Training Network on Trade (Artnet) supported by UNESCAP

WTO BRIEFS



✓ Chairpersons of WTO Bodies for 2009

General Council	Mr. Mario Matus (Chile)
Dispute Settlement Body	Mr. John Gero (Canada)
Trade Policy Review Body	Dr. Istvan Major (Hungary)
Council for Trade in Goods	Mrs. Elin Ostebo Johansen (Norway)
Council for Trade in Services	Mr. Yonov Frederick Agah (Nigeria)
Council for TRIPS	Ms. Karen Tan (Singapore)
Committee on Trade & Development	Mr. Shree Baboo Chekitan Servansing (Mauritius)
Committee on Balance-of-Payments Restrictions	Mr. Arsene M. Balihuta (Uganda)
Committee on Budget, Finance & Administration	Mrs. Marie-Claire Sward Capra (Sweden)
Committee on Trade & Environment	Mr. Bozkurt Aran (Turkey)
Committee on Regional Trade Agreements	Mr. Detlev Brauns (Germany)
Working Group on Trade, Debt & Finance	Mr. Martin Glass (Hong Kong, China)
Working Group on Trade & Transfer of Technology	Mr. Kwabena Baah-Duodu (Ghana)

✓ WTO launches new database on regional trade agreements

The WTO has launched a new database on regional trade agreements (RTAs). This contains all the relevant documentation received by the WTO following notification by a WTO member that an RTA has been established. The database also contains more detailed information about the RTAs for which the WTO has prepared a “Factual

Presentation” or “factual abstract”. In these cases, the following information is provided: a) a timetable agreed in the RTA for the reduction of tariffs as well as data on trade in goods and services for the relevant countries at the time that the RTA enters into force (this only applies to RTAs where the WTO has prepared a Factual Presentation); and

b) a list of key provisions contained in the RTAs as well as links to brief descriptions of these provisions in the Factual Presentation or factual abstract prepared by the WTO. The database can be

searched by country, region, legal provision, date of notification or entry into force of the RTA. The database can be accessed at : <http://rtais.wto.org/?lang=1>

✓ **New WTO publication sheds light on trade in services**

This new book titled “Opening Markets for Trade in Services” and co-published by the WTO and Cambridge University Press, focuses on the unilateral action taken by countries across the world as well as the bilateral and multilateral liberalization of trade in services. The publication includes studies on a wide range of sectors such as air transport, distribution, audiovisual services, postal services,

energy, finance and telecommunications, and on a variety of themes such as cross-border trade, government procurement and the movement of natural persons. The book also includes case studies on countries as diverse as Australia, Chile, Columbia, Costa Rica, Dominican Republic, India, Singapore, South Africa, Thailand and Uruguay.

✓ **WTO is working to mitigate the impact of economic crisis on trade: Lamy spells out 4-point policy response against protectionism**

Today the world is experiencing the worst economic recession since World War II. No country is immune from this crisis. Trade is shrinking, growth is declining and unemployment is on the rise. What the international community can do when faced with isolationist tendencies? The first response is to complete the WTO Doha Round negotiations as quickly as possible. The Doha Round is the best insurance against protectionist moves. Tariffs applied on trade today could double if they were raised to existing bound ceilings. With what is currently on the table in the Doha Round, tariff ceilings in the WTO would be halved. The same is true of rich country agriculture subsidies whose ceilings would be reduced between 70 per cent 80 per cent with the current deal on the table... Secondly, governments should resist the temptation to raise barriers to trade. Sometimes it means raising or applying non-tariff barriers, abusing trade remedies such as anti-dumping, doling out subsidy packages or imposing “buy local” conditions. Rejecting these moves is not a matter of ideology. Rejecting isolationist pressure today is a matter of self-interest. The WTO, with its trade policy reviews, can play a useful role in helping WTO members resist isolationist pressures through peer review. WTO has set up a scientific monitoring mechanism to track, review and discuss trade policy developments during the crisis. Thirdly, one needs to ensure the availability and affordability of import

and export finance. Trade has decreased as a result of a drop in demand, but it is also the result of lack of trade finance. At a meeting with providers of trade finance hosted by the WTO last November, the shortfall in credit for trade was estimated at US \$ 25 billion. The WTO is working with the World Bank and with the IMF to try and create a liquidity pool to address this constraint. Finally, the international community should not forget their aid pledges (Aid for Trade) in favour of the poorest countries, especially now that the crisis is also hitting them hard. The world is changing. The world's geopolitics are also changing. The past 30 years have witnessed the rise of Asia, both in economic and political terms. We are also faced with more global issues: whether it is global warming, energy shortages, world food supply, nuclear proliferation or even outer space security. None of these can be solved by one country or a small group of countries. We need collective efforts by all countries. Completing the Doha Round negotiations is a low-hanging fruit within our reach. It is the easiest available stimulus for developing countries who cannot afford expensive bail-outs.

(Excerpted from the DG-WTO's speech at a conference in Seoul, Republic of Korea, on 23 February 2009).

(Source: WTO, Geneva)

EU hints at strong focus on animal welfare standards in coming months

Animal welfare concerns are being increasingly recognised in food production around the world, but they must be formalised within trade agreements, according to speakers at the Brussels conference on 'Global Trade and Farm Animal Welfare' in January 2009. Czech agriculture minister Petr Gandalovic, the new chair of the EU Farm Council, explained that the next six months will see a strong focus on European animal welfare standards, including new slaughter rules.

Health Commissioner Androulla Vassiliou also highlighted the growing importance of animal welfare issues as live animals and animal produce are traded across the world, arguing for their inclusion as a 'non-trade concern' in WTO agreements. She said: "Animal welfare is gaining rapid momentum, not only in the EU but worldwide". The importance of animal welfare in ensuring the quality and safety of meat was also highlighted, as well as the goal of minimising animal suffering. However, other speakers warned that animal welfare concerns in trade could be seen as veiled protectionism, while it was explained that promoting animal welfare across the world would rely on the practices securing clear human economic benefit. Michael Scannell, Adviser to the Commission's Animal Health and Welfare Director in DG SANCO, explained that animal welfare was of increasing importance for all actors on the European market. The EU does not require exporting countries to replicate its system, he said, but demands respect of the internal market principle of minimising animal suffering. Previous EU efforts to have animal welfare concerns brought into WTO agreements have not been matched by other countries, Scannell said.

Getting formal recognition of animal welfare standards within binding WTO agreements is crucial for unlocking the UN and World Bank resources needed to help the developing world raise its animal welfare levels, he explained.

If animal welfare initiatives are not imminently taken at WTO, regional or national levels, the gap in public legislation is likely to be filled by private standards agreed between retailers and suppliers, leaving public legislators trailing behind, speakers cautioned. Many supermarkets are already responding to public opinion by operating their own animal welfare standards before placing produce on their shelves.

WHO SAID WHAT?

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

(January-February, 2009)

1. WTO rules against India on wine duties: US wins case, but appellate body suggests no action The World Trade Organization (WTO) Appellate Body has ruled in favour of the US in its appeal challenging high customs duties imposed by India on wines and spirits. The ruling will, however, not have any impact on existing duties or prices in India as the country has already brought down duties on imported liquor to levels committed at the WTO last July following

complaints made by the EU and the US. Indian officials claim the ruling could also be seen as a victory for India as the WTO did not find anything inconsistent with India's applied duties and recommended no corrective action. The EU and the US had appealed against additional customs duties imposed by India on wines and spirits above the basic customs duty to offset state taxes imposed on domestic liquor.

(Economic Times dated 1/1/09)

2. Is India's patent system too liberal in practice?

Introduce post-grant audit: Four years of product patent regime for the pharmaceutical industry is noteworthy for its achievements. The Indian Patent Office accomplished during this period most of which should have been completed during the ten-year transition period (1975-2004). Significant among them are creation of modern infrastructure, digitisation of patent applications and recognition by the World Intellectual Property Organisation (WIPO) as a search and examination centre. The key elements were introducing a TRIPS-compliant patent regime that balanced the interests of the right holders and public health and avoiding a regime that encouraged patenting of trivial changes. However, there is still a lot more to be done to instill confidence among the users that the Indian patent system is fair, equitable and just. The minimum that could be done immediately are: Firstly, share more information to bring greater transparency in the patent information system. Currently, the data published furnishes year-wise information relating to number of applications filed, examined and granted. This is not enough for the policymakers, users and researchers. It must disclose by domicile the types of patents granted, particularly with reference to sections 3(d) and 3(e) to demonstrate that the bar is applied equitably, and other such critical information. Secondly, it must introduce a formal system of post-grant audit of the examination and grant process to find out undue haste or delay in the process, compliance with the standard operating procedures, weak spots susceptible to influence, whether adequate effort was made to ascertain prior art, etc. **(D.G. Shah, Secretary-General, Indian Pharmaceutical Alliance).**

Indian cos gain, not just MNCs: It is true that several hundreds of pharmaceutical patents have been granted in India since 2005. It is also true that most of these patents are being granted to MNCs. Critics argue that the number of patents being granted in India far outnumber the NCEs (new chemical entities) being discovered in the world. Further, they say many of the patents granted are for 'marginal' improvements to existing therapies often shortly before the original patent expires. This, they say, could undermine generic competition, lead to limited access to medicines for the poor and divert resources away from real research. In fact, this criticism is not fair. Patent system is required to provide the necessary incentives to achieve these

breakthroughs, especially with regard to pharmaceuticals. The current level and type of R&D innovations by the Indian drug industry are mostly incremental in nature and over 70% of patent filings by Indian research institutes belong to this category. **(Krishna Sarma, Managing Partner, Corporate Law Group).**

(Economic Times 'Debate' column dated 6/1/09)

3. Lack of candidates clears way for Lamy to remain at WTO

The WTO said no challengers had emerged since Mr Lamy announced his intention in December to stand for another four-year term. His reappointment is likely to be agreed in the next couple of months. The WTO director-general has few executive powers, but acts mainly as a convenor of discussions between the organisation's 153 member countries.

(Financial Times of London dated 6/1/09)

4. Importance of issues that Doha does not address is becoming glaringly evident: Aaditya Mattoo and Arvind Subramanian.

The recent G-20 summit communiqué included a commitment by world leaders not to impose protectionist measures. The ink was barely dry before a number of countries took measures to protect domestic firms. Russia imposed a number of import tariffs. India slapped restrictions on steel. France created a fund to protect French firms. The US and EU are contemplating state aid for the domestic auto industry. Earlier, China had increased its value added tax rebate for exports and is now publicly worrying that the renminbi is, yes, overvalued. Recognizing these dangers, and to head off protectionist pressures, leaders at the G-20 summit called for completion of the Doha Development Agenda of trade negotiations at the World Trade Organization (WTO). But the current Doha agenda cannot adequately deal with all the challenges facing the trading system. First of all, any likely Doha deal would deliver little by way of new market opening. It would also provide only limited insurance against future reversal of trade policies. The recent trade restrictions attest to the fact that the WTO does not bind countries' policies effectively. Moreover, pressures for protection are coming from new areas. Concerns have already been expressed in the US and EU about undervalued currencies which tax imports and

subsidize exports, hurting the profitability of industries in other countries. Capital can relocate to escape these adverse effects, leaving immobile, generally low-skilled labour to bear the brunt of these states' declining competitiveness. New multilateral rules are needed to address genuine trade distortions arising from such exchange rates while precluding unilateral action. As the pace of climate change quickens, there is increasing talk of using trade as an instrument for furthering environmental objectives. The most prominent climate bills in the US Congress envisage some form of trade restrictive action against imports from countries that are not deemed to take "comparable action" to that of the US. Similarly, the industrial countries are going to be under pressure to subsidize declining industries, starting with cars and trucks. Such support, regardless of its merits, will adversely affect competitive conditions and distort trade. A fresh look at multilateral rules will become necessary to discipline the granting of such subsidies. Finally, there are challenges for collective action from agricultural and oil markets. Prices in these markets have dropped sharply recently, but we should not forget that only a few months ago, we witnessed a new and dangerous form of protectionism on the export side in agriculture, and a cartelized oil market interacting with high demand to deliver unprecedentedly high prices. The global trading system does not effectively regulate export restrictions in agriculture and, most strikingly, no mechanisms exist for blocking collusive government action in the most important traded commodity oil. Multilateral rules will have to address these gaps. Is it realistic for the trading system to aim for a broad agenda which includes exchange rates, environment, state aid, and oil and agricultural markets? Ironically, a bigger agenda that addresses the new concerns would improve the prospects of success because there would be greater scope for give-and-take between the major trading countries.

(The authors are, respectively, Lead Economist, Development Economics Research Group of the World Bank, and Senior Fellow, Peterson Institute for International Economics and Center for Global Development. This piece in Business Standard dated 7/1/09 is based on an article, "From Doha to the New Bretton Woods: A New Multilateral Trade Agenda," that appears in the current issue of Foreign Affairs).

5. Debate: Does protectionism add to trade woes? : G 20 should agree on a standstill: Biswajit Dhar Professor & Head, Centre for WTO Studies, IIFT--"Ever since the downturn in the US economy was seen as a contagion affecting the growth prospects of the global economy, analysts have been reminding the policymakers of the ills of adopting measures to protect their domestic industries. Such a strategy had indeed brought most economies to their knees during the grim days of the 1930s. Providing the trigger for the global economy to lapse into a virtual paralysis was the go-ahead given by the US Congress in 1930 to the Smoot-Hawley Act that raised the country's import tariffs to record levels, and which prompted a series of retaliatory tariff hikes around the world. In this context, the \$819-billion economic stimulus package passed last week by the US House of Representatives has been in focus, for it provides fodder for the protectionist sentiments reminiscent of the Smoot Hawley Act. The "Buy American" dimension of the stimulus package proposed by the US is but one of the several measures taken by both the US and EU that could severely restrict trade.... It is therefore imperative that all major economies, in particular the G-20 countries, agree to a standstill on measures, which, by fanning protectionist sentiments, could lead to a deepening of the present crisis." **Let us set our house in order: A. Sakthivel, President, FIEO** We should carefully examine the laws and regulations of the importing nations so as to see whether or not they violate "national treatment clause". The government should also adopt a multi-pronged approach: multilateral trade negotiation, bilateral trade talks and above all setting our own house in order.

(Economic Times dated 3/2/09).

6. Europe warns US of litigation over Buy American provision -- The European Union warned of possible trade litigation against the US if Washington pressed ahead with a Buy American provision in its forthcoming economic stimulus bill. A study by two trade experts at the Peterson Institute, a leading Washington think-tank, concludes that if the measure provokes retaliation it could cost more US jobs than it creates.

(Financial Times of London dated 4/2/09).

7. Japan joins in criticism of Buy American -- A proposed Buy American provision in Washington's

forthcoming economic stimulus bill would breach the principles of the World Trade Organisation, Japan's prime minister asserted in an escalation of international opposition to the US plans. Taro Aso's condemnation in the Japanese Diet highlights widespread concerns among US trading partners about the proposed requirement for US companies to use domestic steel and manufacturing products in infrastructure projects funded by the stimulus bill.

(Financial Times of London 5/2/09).

8. Obama must fight the protectionist virus -- President Barack Obama faces protectionist pressures. These are not just from the labour lobbies that have led Joe Biden, US vice-president, to chide “pure free traders” and to ask for “fair trade”; and which, astonishingly, have also led the US president to use his first meeting with President Felipe Calderón of Mexico overwhelmed by the brutal fight against drug cartels caused by the US failure to legalise drugs to urge on him tougher labour standards, a protectionist demand that is clearly aimed at raising Mexican costs of production. Through all this, the “no-drama” Mr Obama has kept a low, indeed invisible, profile. Fortunately, he has now stepped up to the plate on the Buy American provisions in the **stimulus package**, leaving little doubt as to where his sentiments, and his policy preferences, lie. The **Buy American provisions, which would require that companies use US steel and manufacturing products in projects funded by the bill, seem reasonable. If the US has a stimulus package, why should the benefit of it extend to other countries? But, this is a naive argument, because other nations will not see the US action in this light. Instead, they will respond in kind, as they did after we enacted the Smoot-Hawley tariff in 1930 and as many are already threatening to do.** So, if the Buy American legislation does get enacted, count on trade wars breaking out, so that Americans learn history, which they do not study enough at school, by seeing it repeated in their own lifetime. Yet some do worry about thus undermining the WTO, which has inherited from the General Agreement on Tariffs and Trade the many roadblocks to re-enacting that history of mutually harmful outbreaks of trade barriers. They have argued, therefore, that the US can enact WTO-consistent procurement rules by excluding from US procurement China and India, among other developing countries, which have not signed the optional procurement code. But remember that these nations can also retaliate in

WTO-consistent ways. They often have “bound tariffs” ceilings, which are significantly above the “applied”, that is, actual, tariffs; and it is possible to raise the applied tariffs towards the bound levels without any restraint at all. Nothing would prevent India and China from choosing to raise tariffs thus on items of export interest to the US. Besides, they could shift their own purchases of aircraft away from **Boeing** to Airbus, and of nuclear reactors from American to French companies. The response would, of course, be for the enraged US congressmen to start enacting their own retaliation. The game would become lively.

(Prof. Jagdish Bhagwati, professor, economics and law, at Columbia University and senior fellow at the Council on Foreign Relations, New York, in Financial Times of London dated 5/2/09)

9. ‘The battle against protectionism should begin at home’: FT/London edit. Like charity, the battle against protectionism begins at home. Leaders currently warning about the dangers of protectionism should perhaps look to their own actions first. Barack Obama says that the US should not send a protectionist message with the Buy American provisions inserted into his stimulus bill. But he took two weeks to get round to pronouncing on the matter. Nor did Mr Obama help matters with his sops to economic nationalism while out on the campaign trail. Kamal Nath, the Indian trade minister, rails against the iniquities of subsidies and tariffs in the rich countries. But soon after his prime minister signed the no-protectionism pledge at the Group of 20 meeting in Washington in November, he hiked India's soyabean tariffs. Most competition to Indian agriculture in any case comes from unsubsidised farmers elsewhere in the developing world and has nothing to do with unfair trade rules. Gordon Brown, UK prime minister, warns of the dangers of financial isolationism and styles himself as a champion of an open global economy and the Doha round of trade talks. But his infamous “British jobs for British workers” remark has now fed into anti-foreign worker activism, and he also helped to take whatever wind remained out of the sails of Doha by recalling Peter Mandelson from the EU trade portfolio to the UK cabinet for his own domestic political advantage. The appropriate tactic in the war against protectionism is not a high-level international carpet bombing campaign of warm words and empty communiqués. It

is hand-to-hand, country-by-country, issue-by-issue combat against the domestic interests pushing for special treatment.

(Financial Times of London dated 5/2/09).

10. India, Brazil raise EU drug seizures issue.

Developing countries accused the European Union (EU) at a meeting of the World Trade Organization (WTO) of seeking to use tough intellectual property laws to seize generic drugs, putting lives at risk in emerging nations, where the cheaper medicines are often destined. At the WTO meeting, Brazil and India criticized the EU over an Indian generic drug to treat high blood pressure that was seized late last year while transiting the Netherlands for Brazil.

(Mint dated 5/2/09).

11. Free trade is good, Protectionism is bad. Wildcat strikes at UK oil refineries and the international storm created by Barack Obama's "buy American" clause in his \$800bn reflationary package have brought the cloistered world of trade officials out of the shadows over the past week. The argument in favour of free trade is that it allows countries to specialise in what they are good at. This leads to greater efficiency, lower prices, higher levels of growth and more jobs. **Countries that shut themselves off from the global economy - North Korea, for example - are much poorer than those, such as South Korea, that open their markets. As a result, it is universally accepted in the world of economics that the worst thing that could befall the global economy in its current parlous state would be the sort of tit-for-tat trade war that marked the 1930s.** The historical evidence is conclusive: free trade is good, protectionism is bad. Except that isn't what the evidence actually shows. The Cambridge economist Ha-Joon Chang has demonstrated that no country since the dawn of the modern age has managed to industrialise successfully without protectionism. During the first century of the industrial revolution, Britain was one of the world's most protectionist countries and only converted to free trade in the middle of the 19th century. The US had a 40% manufacturing tariff in its period of rapid expansion at the end of the 19th century. All the postwar Asian tigers - Japan, South Korea, Taiwan and China - have deployed protectionist measures to defend their fledgling industries. Nor is the lesson of the 1930s quite as clear

cut as the free trade camp argues. The US Smoot-Hawley tariff of 1930 is blamed for turning the Wall Street crash of 1929 into capitalism's worst-ever depression - up until now, at least - but the American Paul Krugman has shown that this was a statistical impossibility, and that the immense contraction in the economy between 1929 and 1932 could not have been the result of higher tariffs. Instead, it was the result of a contraction in credit associated with policy errors by the Federal Reserve and the collapse of thousands of banks. The real lesson of the 1930s is that if you think protectionism is in the offing, it makes sense to raise your barriers first. Lord Skidelsky, the biographer of Keynes, says that Britain's economic recovery from the Great Depression was based on three policies - devaluation, cheap money and protectionism.

(Guardian dated 5/2/09).

12. Slump could spiral downwards without Doha trade deal, says new EU Trade Commissioner:

Lady Ashton, the new EU Trade Commissioner who replaced Peter Mandelson when he was made business secretary late last year, has called for a final push to free up world trade, as the cornerstone of efforts to avert protectionism and a possible slide into economic depression. She told the Guardian newspaper: "If we don't do Doha you could see a spiraling economic downturn and countries trying to find stimulus packages for businesses and banks to support their own industry. The lack of confidence in consumers and markets could get worse and it will take longer to overcome the recession". Ashton believes that the Obama administration and its new trade representative, Ron Kirk, whom she will meet next month, are committed to a new deal. The Indian government that emerges from this spring's general election will also push for a deal, she believes.

(Guardian dated 5 /2/2009)

13. At WTO session, India sounds warning on economic nationalism. India on 9/2 warned about 'the dangerous cocktail of financial protectionism and economic nationalism' at the WTO, maintaining it poses a grave threat to the global trading system. This can be extremely insidious in its effect and certainly more dangerous than any other form of protectionism, Ambassador Ujal Singh Bhatia told WTO members

during the first major meeting on how to cope with the rapidly spreading protectionism.

(Business Standard dated 10/2/09).

14. Ban on Chinese toys may not hold at WTO / India says open to talks with China -- India's move to ban import of Chinese toys may not be compatible with the World Trade Organization (WTO) rules. Trade experts and lawyers told Business Standard that if China drags India to the WTO, the country may find it difficult to justify the ban. Meanwhile, India is ready to hold talks with Beijing over its ban on the import of Chinese toys, the trade minister said.

(Business Standard dated 11/2/09).

15. India raps Japan at WTO. India today asked Japan at the World Trade Organization to remove a range of burdensome restrictions on Indian generic drugs, fruits and vegetables, marine products, and short-term movement of professional services' providers. The occasion was the trade policy review of Japan

(Business Standard dated 19/2/09).

16. Kamal Nath wants 2009-end Doha deadline -- Concerned that the sudden wave of protectionism in the developed world emerging due to the economic slowdown may hamper global trade, commerce and industry minister Kamal Nath said a deadline of 2009-end should be set for concluding the world trade deal under WTO.

(PTI in Washington on 20/02/09)

17. US to probe effects of Indian tariff. The US International Trade Commission (USITC) has set up a federal investigation to find out the effects of India's tariff and non-tariff measures on US agricultural exports, following a letter USITC received from the Senate Committee on Finance requesting such a study. Likely to be submitted to the committee in November, the report would include a description of the principal measures affecting Indian agricultural imports, including tariffs, sanitary and phyto-sanitary measures, food regulations, packaging and labeling requirements, pricing policies, intellectual property policies and customs procedures

(PTI in Washington on 20/2/09).

18. 'Buy American' meets world trade rules, says WTO

-- The "Buy American" act of the US stimulus bill is "a mixed bag" that raises protectionist pressure but has been implemented in a way that meets global trade rules, the World Trade Organisation's Director-General Pascal Lamy told reporters on 22/2/09 at a conference in Seoul: "The bad news is that protectionist pressures are there," Lamy said of "Buy American" measures. On a brighter note, he said, "the final compromise is that this provision will be implemented in a way that is consistent with US WTO obligations."

(Reuters in Seoul on 23 February, 2009)

19. India protects remedies from foreign patents: Trend towards 'bio-prospecting' identified; 200,000 treatments licensed for free public use.

In the first step by a developing country to stop multinational companies patenting traditional remedies from local plants and animals, the Indian government has effectively licensed 200,000 local treatments as "public property" free for anyone to use but no one to sell as a "brand". The move comes after scientists in Delhi noticed an alarming trend the "bio-prospecting" of natural remedies by companies abroad. After trawling through the records of the global trademark offices, officials found 5,000 patents had been issued at a cost of at least \$150m for "medical plants and traditional systems." "More than 2,000 of these belong to the Indian systems of medicine," said Dr. Vinod Kumar Gupta, who heads the Traditional Knowledge Digital Library, which lists in encyclopaedic detail the 200,000 treatments. The database, which took 200 researchers eight years to compile by meticulously translating ancient Indian texts, will now be used by the European Patent Office to check against "bio-prospectors."

(The Hindu dated 24/2/09).

20. Apply WTO-approved curbs to ban imports, advises CoS

-- The commerce department, which restricted the import of a number of items from China this fiscal by allowing only actual users to import them through special licences issued by the government, may no longer be able to take the measure on its own. The committee of secretaries (CoS), headed by the Cabinet secretary, is of the view that such restrictions could lead to violation of multilateral trading norms established by the WTO and should be used sparingly.

(Economic Times dated 28/2/09).

FORTHCOMING EVENTS March-April 2009

Date	Subject	Venue
20 March	<i>Seminar on “ Understanding WTO SPS & TBT Agreements and Market Access on Environmental Goods and Services”</i>	Chennai
21 March	<i>Seminar on “ Understanding WTO SPS & TBT Agreements and Market Access on Environmental Goods and Services”</i>	Hyderabad
25 March	<i>Seminar on “Understanding WTO SPS & TBT Agreements and Market Access on Environmental Goods and Services”</i>	Delhi
10 April	<i>Workshop on “Trade Defence Measures”</i>	Ludhiana
11 April	<i>Training Programme on WTO Agreements</i>	Thapar University, Patiala
20 April	<i>Seminar on “WTO & the current Economic Crisis” in collaboration India ASEAN Sri Lanka Chamber of Commerce</i>	Chennai
27 April	<i>Training of trade negotiators on Trade & Gender in collaboration with Commonwealth Secretariat, London</i>	Udyog Bhavan, New Delhi
28-30 April	<i>Capacity Building in Trade & Gender at the national level: Training of Trainers in collaboration with Commonwealth Secretariat, London</i>	IIFT, New Delhi

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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