

India. Wto and trade issues

Bi-monthly Newsletter of Centre for WTO Studies

VOL.3, 4 & 5

2011

May-June, July-August & September-October

WTO Regional Trade Policy Course launched

The Centre for WTO Studies (CWS) hosted the three-month World Trade Organisation (WTO)'s Regional Trade Policy Course (RTPC) from 5 September to 25 November 2011. RTPCs are three-month courses for government officials from developing countries/separate customs territories, LDCs, economies in transition, and countries in the process of accession to the WTO. The course was attended by 25 officials from 19 countries/economies from the Asia-Pacific region. The countries/economies represented in the RTPC for the Asia- Pacific Region included Bangladesh, Bhutan, Cambodia, China, Fiji, India, Indonesia, Laos, Macao China, Malaysia, Myanmar, Pakistan, Philippines, Samoa, Singapore, Sri Lanka, Chinese Taipei, Thailand, and Vietnam.



Mr. Anand Sharma, Union Minister for Commerce & Industry and Textiles, Mr. Pascal Lamy, Director General of WTO and Dr. Rahul Khullar, Commerce Secretary, participated in the inaugural function on 5 September 2011 in the presence of Mr. KT Chacko, Director IIFT and Mr. SN Menon, former Commerce Secretary to the Government of India, and the Patron of the Course.

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Lead Article

Anti-Counterfeiting and Developing Countries (including LDCs)

History leading to ACTA

The governing international trade law in the case of Intellectual Property Rights since 1995 has been the TRIPS Agreement under the auspices of the WTO. This agreement has been the subject of continuous debate since its inception especially about the impact it has on the development aspirations of developing countries. (Continued on page 2...).

Editor's Note:

This edition of the newsletter of the Centre for WTO Studies is a larger addition covering three volumes and a period of six months i.e. May—October 2011.

This period saw a remarkable degree of inaction in the World Multilateral Trading System at the WTO. However, plurilateral and bilateral trade negotiations continued apace. Voices have been heard both for and against the Multilateral System of trade. While, those who speak in favour of this system points to the overall benefits that multilateralism has now started yielding for the comparatively weaker economies. Any shift away from this system would severely hamper the gains made by these economies and subject them to coercive tactics on part of their developed trading partners. The main argument against the multilateral system as it exists today has been the near paralysis in the onward movement towards further liberalisation. The overall mood appears to be more pessimistic than optimistic.

The Centre, during this period, has continued with its activities at ever greater pace than in the first four months of the year 2011. A major achievement of the Centre was hosting of the Regional Trade Policy Course for Government Officials of the countries of Asia Pacific region, organised under the auspices of the World Trade Organisation. The high-powered inauguration of the programme included the presence of Shri Anand Sharma, Minister for Commerce and Industry, Mr. Pascal Lamy, Director General of the WTO and Dr. Rahul Khullar, Commerce Secretary to the Government of India.

Anti-Counterfeiting... (Contd. from page 1)

That the agreement is not perfect is borne out by the fact that the Doha Development Agenda and the Doha Declaration on TRIPS and Public Health had to seek major changes and reinterpretations in the agreement. This process is not yet complete. Generally speaking, the agreement has not been seen to be particularly friendly to developing countries and also has not been accompanied by transfer of technology that was promised as part of the negotiating deal in the Uruguay Round. Yet, there has been a school of thought that not enough progress has been made to move beyond TRIPS at the multilateral level.

This school of thought sees the resistance of the developing country bloc to enhancing IP protection in the WIPO as evidence that this bloc wants to lock



Centre welcomes new faculty member: Sajal Mathur

The Centre welcomes its new faculty member, Professor Sajal Mathur who joined the Centre for WTO Studies at the Indian Institute of Foreign Trade in July 2011. He is on special leave from the WTO Secretariat headquartered in Geneva, Switzerland.

Sajal Mathur has worked at the WTO from 1997/1998 after completing his studies in Economics from Delhi University (St. Stephens' College), Jawaharlal Nehru University and the London School of Economics (specialization in Environment and Development Economics).

international discourse in IP protection to the TRIPS level even though the TRIPS only prescribed minimum standards and did not bar subsequent upward revision of standards of IP protection. This school of thought naturally emanates from developed countries which generate the maximum amount of what is defined as Intellectual Property today. It finds the multilateral processes too slow and conservative and thus not in tune with the present requirements in the field of IP. This line of thinking draws substantial strength from the perceived slowness of all multilateral forums in taking the debate on enhancing IP standards forward. This is evidenced by the complete stalemate in the proposed Substantive Patent Law Treaty (SPLT) discussions at the WIPO, the removal of the International Medical Products Anti-Counterfeiting Taskforce (IMPACT) from the WHO Agenda, the stalled discussions on TRIPS amendments, etc. While higher IP standards can be adopted in Regional Trade Agreements (RTAs) especially between a developed party and a developing one owing to the severe imbalance between the negotiating strengths of the parties and where such higher standards can be set-off against promises of market access, the slowness of negotiating individual bilateral or plurilateral RTAs further exacerbates this impatience.

In light of this situation, the so-called IP rich countries, which not surprisingly are also the OECD countries, started negotiations on a new instrument directed at controlling 'counterfeiting' and trade in counterfeit goods - an unexceptionable cause. The starting point of the negotiations in June 2008 was an inflated demand for enhanced standards which resulted in the first drafts of an Anti-Counterfeiting Trade Agreement or ACTA in 2009. However, these negotiations were kept secret and only some 'leaked' documents were available to the rest of the world. These documents were cause for extreme concern since the definition of counterfeit itself was sought to be changed to cover all IP infringing goods, much beyond the TRIPS definition limited to only trademarks. The issues of secrecy and overly enhanced standards were heavily criticized by not only civil society but also many developing country delegations, including India, at all forums including the TRIPS Council. The final draft of the ACTA was considerably toned down on account of three factors: one, the stringent drafts would not have passed internal parliamentary scrutiny in the negotiating parties; two, there were many provisions which were inconsistent with the domestic laws in the US; and third, there were many provisions which were TRIPS incompatible making the agreement vulnerable to WTO dispute settlement rules.

However, even the 'weaker' final text of the ACTA is a major agreement with ramifications on the way the

(Contd. on page 4)

WTO Regional Trade Policy Course launched

(Contd from page 1)





The three month course covered the entire gamut of disciplines on WTO. It also had practical training through negotiation simulation, projects and exercises which provided in depth exposure to WTO and international trade issues. It was not only study all the time. Cultural visits to Jaipur, Agra and other places in Delhi were organised which the participants found very interesting.



The RTPC team of the Centre comprised Professor Shashank Priya, Mrs. Anusha Lall, Assistant Professor, Mr. Animesh Kumar, Ms. Nasreen Khan and Mr. Bhanu.

The first RTPC for the Asia-Pacific region was held by the WTO in 2004 in partnership with the University of Hong Kong, a partnership which lasted until 2006. This was succeeded by a partnership with the National University of Singapore from 2007 to 2010. Since its inception, a total of 209 Government officials have successfully completed the Asia-Pacific RTPC. Over 40 regional academic/trade specialists from numerous universities and institutions have been involved in the delivery of the course since 2004.

Anti-Counterfeiting... (Contd. from page 2)

international discourse on IP is conducted, since it introduces another institutional framework outside the WIPO, WTO and other multilateral institutions dealing with IP matters. It needs to be recognized that the negotiating parties in this agreement have invested substantial political and economic capital in the agreement and as such are likely to be steadfast in its implementation. They are also likely to use the standards developed in the agreement as a benchmark for their RTA negotiations with non-members. Thus, this plurilateral standard would always be a potent threat to the multilateral standards that are themselves under review currently. In this manner, a plurilateral process seems to have been introduced not as means of enhanced cooperation alone but more as a means of bypassing the existing multilateral processes which have seen advanced debates on the subject of IP protection.

Provisions in ACTA

There are certain provisions in ACTA despite the ostensible removal of 'patents' from the ambit of border measures which may be worrisome for the developing world.

Use of the term 'Counterfeiting' in the name

The ACTA is not just against 'counterfeiting', as it is understood in the context of the TRIPS agreement as well as in the definition given in the text of the agreement. Even while admitting that the term 'counterfeit' applies to trademarks, the agreement in fact extends to all forms of IPRs as covered under the TRIPS Agreement¹, including data, copyrights, patents, etc.

Reliance on unreliable estimates of counterfeiting and piracy

As yet no reliable estimates of the extent of counterfeiting and piracy exist nor is the exact impact of such activities on domestic industry reliably known. There are various industry estimates which have been seen to be based on downright incorrect data² and at best dubious methodology to the extent that some estimates rely on failure to meet targeted sales as evidence of piracy and counterfeiting³.

Coverage

It would be inappropriate to state that patents are not the subject matter of the Agreement. In fact, on the

exclusion of patents from the scope of the agreement, the following needs attention:

 Parties are permitted (on option) to keep patents (and undisclosed information) outside the scope of Civil Enforcement⁴.

Thus, despite agreeing to keep patents (and undisclosed information) outside the scope of Border Measures⁵ the option on civil enforcement on patents remains in the agreement. This has reduced the threat to in-transit trade substantially from the use of 'manufacturing fiction' used by the Dutch courts in the case of application of the EC directive 1383/2003. This set of provisions is still a marked increase over the TRIPS Agreement which limited itself to counterfeit trademark and pirated copyright goods only. Admittedly, it is less troublesome as compared the earlier drafts, it still retains a measure of threat against legitimate trade.

It also appears that threat to in-transit generic drugs is not entirely mitigated under the ACTA. This is so because it is possible to read the provisions of Article 16.2 as establishing an optional mechanism which would not debar seizure of goods in transit on the basis of assertion of rights other than patent and regulatory data protection. If a complaint is made on any other form of IPR infringement, the provisions of ACTA are likely to go severely against GATT Article V. Needless to mention that this provision of GATT has been the mainstay of Indian case against seizure of in-transit drugs in EU. There is a possibility that this provision may still be in contravention of the recent judgment of the CJEU in the Nokia and Phillips cases which held that seizure of IP infringing goods in-transit was correct only if there was a likelihood of their being diverted to the local market. However, with the extension of ACTA to 'exports' even in-transit goods under 'entrepot' trade would be subject to the threat of seizure.

Greater role for Customs

The powers of 'ex officio' enforcement sought to be granted to Customs officials significantly shifts the focus of enforcement away from Courts and the judicial process to a more administrative domain. The mechanism of judicial oversight against misuse of these provisions has been left to the domestic regulations that the respective competent authorities

¹ARTICLE 6: GENERAL OBLIGATIONS WITH RESPECT TO ENFORCEMENT

^{1.} Each Party shall ensure that enforcement procedures are available under its law so as to permit effective action against any act of infringement of intellectual property rights covered by this Agreement, including expeditious remedies to prevent infringements and remedies which constitute a deterrent to further infringements. These procedures shall be applied in such a manner as to avoid the creation of barriers to legitimate trade and to provide for safeguards against their abuse.

²U.S. GAO, Intellectual Property: Observations on Efforts to Quantify the Economic Effects of Counterfeit and Pirated Goods, GAO-10-423, April 2010 found unreliable data on the extent of counterfeiting which was usually cited not just by the US industry but also by Government Agencies such as the Customs and Border Patrol, the FBI and the Federal Trade Commission.

³The Business Software Alliance uses this measure to estimate the extent of piracy of software in many countries including China and India.

⁴Footnote 2 w.r.t Section 2 − Civil Enforcement

[&]quot;A Party may exclude patents and protection of undisclosed information from the scope of this Section."

⁵Footnote 6 w.r.t Article 13 – Scope of Border Measures

[&]quot;The Parties agree that patents and protection of undisclosed information do not fall within the scope of this Section."

of the parties may develop. Thus, unlike the exhortation of providing extensive protection at the border against IP violations, the mechanism of redress has not been detailed in a commensurate manner.

Impact on parallel importation

Article 23.2 of the ACTA clearly militates against parallel importation even though the relevant domestic law may not expressly forbid it. This it does by criminalising wilful use of trade labels or packaging without the authority of the rightholder, which is exactly what parallel importers do.

Definition of 'commercial scale' regarding trade in infringing goods

The definition of 'commercial scale' has been subject of dispute in the China enforcement case (DS 362). In that case the evolved jurisprudence did not accept activity for commercial advantage as being on commercial scale. The ACTA removes the scope for any ambiguity on what constitutes commercial scale. It puts this issue at rest by clearly defining the term commercial scale in a manner to cover all activities carried out for the purpose of gaining commercial advantage in trade⁶. To this extent the provision is clearly TRIPS plus. Whether it is in contravention of TRIPS is not clear at this stage especially since the ACTA is meant to be applied within the domestic laws of the member countries.

At the same time, the ACTA requires the coverage of border measures to include even "goods of a commercial nature sent in small consignments", and allows exclusion only of "small quantities of goods of a non-commercial nature contained in travellers' personal luggage". This may be directed at cross-border trade emanating from Internet based orders.

Release related provision favourable to the rightholder

The defendant in a seizure case does not have easy access to release of infringing goods by posting a bond or a security. Thus, in the event of a long judicial procedure, a security is not to be accepted as an article of faith from the side of the defendant. This would mean that even in the event of the defendant gaining reprieve, his business might be irrevocably affected by the delay in reaching the client. On the other hand, the complainant rightholder is allowed to post a security against false or inappropriate complain and such a bond or security can be on continuing basis, i.e. it is not required to be furnished separately for each

complaint. This adds a cost to a potential defendant.

There is no limit on the period within which procedures against any good can be initiated post-seizure. This is a substantial departure from the TRIPS provision of release of goods after 10 days if no proceedings have been initiated.

Extending provisions to export

The provisions of ACTA extend to exports as well, especially in the context of border measures. Thus, it makes it incumbent upon the parties to take action against export of IP infringing goods and not just against imports. This is clearly TRIPS-plus.

Extent of damages

The extent of damages payable to the rightholder is to be benchmarked against the suggested retail price⁷ of the good. The provisions of ACTA⁸ are substantially more than what the TRIPS prescribes⁹.

Information

There are specific provisions¹⁰ which require the accused infringers to provide information on third parties regarding "the means of production or the channels of distribution of the infringing or allegedly infringing goods or services, including the identification of third persons alleged to be involved in the production and distribution of such goods or services and of their channels of distribution." It means that this provision can be applied even before infringement has been establishment.

Ex parte judicial proceedings

In interest of prompt and effective measures, the judicial authorities are to be given the ability to decide cases without giving the right to the alleged infringers to be heard. This provision may be against the basic principle of natural justice.

Overall change in philosophy of enforcement

The first change is that unlike the established principle in the enforcement of IPRs, which are private rights, that the rightholder is the first mover in the course of enforcement of his rights, the onus under ACTA seems to have shifted to the public authorities to enforce the IPRs effective. This is unlike TRIPS which allowed such shifting only against counterfeit trademark goods and pirated copyright goods. This would mean that the element of balance between rights of the IP owners and those of the users may now tilt in favour of the former since the accuser does not have to be as vigilant or as persuasive to enforce his rights. Further, it also

⁶ARTICLE 23: CRIMINAL OFFENCES

^{1.} Each Party shall provide for criminal procedures and penalties to be applied at least in cases of wilful trademark counterfeiting or copyright or related rights piracy on a commercial scale. 9 For the purposes of this Section, acts carried out on a commercial scale include at least those carried out as commercial activities for direct or indirect economic or commercial advantage. (Emphasis added)

Akin to the MRP in India.

⁸ARTICLE 9: DAMAGES

⁹Article 45 - Damages

¹⁰Article 11 of ACTA - INFORMATION RELATED TO INFRINGEMENT

would require the Governments of the parties concerned to deploy more resources in enforcing private commercial rights.

Despite the assertion in the ACTA that it does not derogate from the obligations of the members in other agreements, there is a risk that it might do exactly that. It has been held by Courts in various jurisdictions that International laws do not constitute a case for their domestic application without a commensurate domestic law. As such, the ECJ as well as certain Indian courts have held that TRIPS does not have any applicability on domestic disputes. Thus, if a member applies ACTA provisions in the domestic laws it may not derogate in any manner from its obligations under TRIPS.

Impact of ACTA on public welfare and trade

The application of these provisions can severely inhibit access to markets as well as access to a variety of essential and crucial goods, including medicines. Some of these are listed below:

Threat against trade in generics

Without doubt, the first and foremost threat is against trade in generic versions of drugs. Despite the recent pronouncement of the CJEU in the Nokia and Phillips cases, the use of ACTA against generics is more likely simply because the threat these drugs pose to established monopolies of the pharma majors. As seen above, removal of patents from the scope of border measures while still retaining the option of civil enforcement allows for recourse to extended litigations. Further, without clearly laid down timeframes and strict judicial oversight on ex officio customs action, in-transit drugs still remain under threat of trade disrupting delays caused by detentions. In addition, extending the scope of ACTA to beyond mere counterfeiting means that rightholders would be able to use these provisions to prevent movement of such goods which can be subject to scrutiny of courts under any of the IP laws other than that of trademarks and patents.

Upward harmonisation of enforcement provisions in developing countries including LDCs

The ACTA establishes new benchmarks in international standards on IP enforcement. These standards are likely to become the bedrock of future negotiations between the developed and developing countries in the various RTA negotiations currently under way. As the lure of immediate market access is a potent one, many of the latter countries may end up accepting these standards as their own. This would severely inhibit South—South trade since it would impose obligations on the importing countries to follow the new standards of enforcement. As it is, even without

ACTA, there have been cases of advanced protection of IPRs being provided in domestic laws of certain African countries vide which the definition of counterfeit was extended to goods infringing any IP anywhere. The ACTA standards are much lower and as such more easy to accept under bilateral pressure.

This means that the risk to the poor in many a country of the South who depend on generics from other developing countries is likely to increase if in-transit goods as well as landed products are subject to enhanced IP enforcement laid down in ACTA.

This would apply equally to information goods which come under the scope of copyright protection which is one of the core focus areas of ACTA. This is likely to have a severely impact the effort towards literacy and access to knowledge and information that has been at the core of the aspirations of the developing world to convert themselves into information societies and knowledge economies.

Alternatives available before developing countries

Form coalition against upward harmonisation of IP standards

The present international regime of IPRs works incessantly at consolidation of the advantages of the rightowners. This has been seen to be case in the negotiations at the WIPO in respect of the now cold SPLT as well as the reforms proposed to the Patent Cooperation Treaty (PCT) which had sought to have a global patent regime in place removing the role of national patent authorities in grant of patents. Similarly, the effort of the IMPACT, which was located at the WHO (which does not have IP in its charter at all), to equate substandard with counterfeit and thus mix two differing concepts together had to be resisted by developing countries. That both these efforts were effectively stymied is testimony to the combined power that the developing countries can wield in this sphere. The problem for the rightowners, and which can be used to the advantage of the developing country bloc, is that they need the large markets that the countries of the South especially the emerging economies provide. Just as the carrot of market access used in bilateral negotiations by the developed countries to get IP related concessions, the reverse can also be attempted.

All this requires a sustained effort to create and maintain a coalition on IP and related issues. Coalitions which have multiple common interests are more likely to survive and have fewer desertions.

As such, there is a need to develop coalition building strategies starting with long-standing political and economic partners from the developing country bloc as the first step. Some concessions also need to be made to the LDCs like the DFTP scheme of India which is now gaining acceptance in those countries.

Use of multiple forums to prevent adoption of discriminatory standards

Forum shopping and shifting by the developed country bloc has been witnessed in the past as creating tremendous pressure on the rest of the world in matters related to IP. The recent effort of this group to create a new forum of Global Congress against Counterfeiting and Piracy using the WIPO, WCO and the Interpol is the latest example. Many unsubstantiated statements have been made at this forum which seeks to link counterfeiting and piracy to organised crime. What was surprising was the Interpol furnishing thin evidence of this link as the proof against such activities. While it is no one's case that

counterfeiting and piracy may be allowed, the effort to create a much bigger case against these activities than they actually merit is essentially directed towards getting market protection for the right holders.

As such, the option that may be exercised in this case is to use all available forums to talk of minimum acceptable IP standards and link adoption of higher standards to transfer of technology as being attempted in the climate change negotiations.

Use of TRIPS Council as a forum against other such plurilateral efforts

The Trans-Pacific Partnership (TPP) envisages very high standards of IP protection. It is quite likely that such efforts are likely to multiply.

The strategy of using the TRIPS Council against such efforts can be effective as proved in the case of ACTA.

Events

Seminar on WTO Doha Negotiations: An Update

In a Seminar jointly organized by the Centre for WTO Studies (CWS) and Federation of Indian Chambers of Commerce and Industry (FICCI) in New Delhi on 10 May, 2011, Mr. Rajeev Kher, Additional Secretary, Department of Commerce, provided an update on Doha negotiations. Government officers, trade policy experts, representatives of industry and trade and academicians participated in this Seminar. Mr Ramu S Deora, Chairman, FICCI Foreign Trade & Trade Facilitation Committee and Mr Abhijit Das, Head & Professor, Centre for WTO Studies, also made observations and interacted with the participants. The Seminar was organized in the backdrop of the revised draft negotiating texts on the Doha Round issued by the WTO Secretariat on 21 April 2011 for the first time since December 2008. The objective of the Seminar was to update the trade, industry and other stakeholders on the latest state-of-play on WTO Doha Negotiations and the possible way forward.



From left to right: Mr Rajeev Kher, Additional Secretary, Ministry of Commerce & Industry; Mr Abhijit Das, Head & Professor, Centre for WTO Studies; Mr Ramu S Deora, Chairman, FICCI Foreign Trade & Trade Facilitation Committee

Stakeholder Consultations on NAMA sectoral negotiations

During May-June, 2011, the Centre for WTO Studies and FICCI jointly organized a series of stakeholder consultations on NAMA (Non Agricultural Market Access) sectoral negotiations. These meetings were held at 20 May 2011 – Pune; 27 May 2011 – Mumbai; 28 May 2011 – Ahmedabad; 31 May 2011 - New Delhi and 8 June 2011 – Bangalore. The stakeholders were informed about the state of play of WTO's NAMA sectoral negotiations and their views were sought on the likely impact of the outcome of these negotiations on them.

Under the sectoral tariff initiatives ("Sectorals" for short) in WTO, a number of countries have been persistently demanding for bringing down India's import duty (customs tariff) to zero (or very low rate close to zero) for specific product groups namely, "engineering goods, machine tools, machinery and appliances"; "electronics & electrical products and equipment" and "chemicals, pharmaceuticals, dyestuff & plastics which include polymers and articles, dyes & dyeing extracts, fertilizers, pharma, essential oils, soap & organic surface-active agents, and miscellaneous chemical products".

Given the backdrop, the consultation workshops particularly focused on obtaining feedback and inputs from trade and industry on the issues regarding elimination and reduction of India's import duty (customs tariff) under WTO's Sectoral Tariff

Negotiations. Officials and experts from Ministry of Commerce & Industry and Centre for WTO Studies made presentations and interacted with the participants.







Ahmedabad

Bangalore

Mumbai





New Delhi

Pune

Seminar on Prospects of India's Agricultural Exports

A Seminar on Prospects of India's Agriculture Export In 2025: Opportunities, Challenges and Roadmap, was organised by Centre for WTO Studies, at the Indian Institute of Foreign Trade (IIFT), New Delhi, on 6-8 July, 2011. The Seminar covered various issues related to Indian Agriculture such as food security, climate change, crop diversification, problems related to small holding agriculture etc. In particular, the Seminar focused its attention on some of the significant

challenges confronting India's agriculture, including regional and sectoral disparities, inefficiency, poor infrastructure, inefficient agricultural markets, agrarian distress, low income, food and nutrition security, viability and livelihood of smallholders, and employment. The Seminar suggested a roadmap in order to make India not only self-sufficient in agriculture production, but also generate export surplus.

Round Table on Dispute Settlement Reforms

The Department of Commerce and the Centre for WTO Studies, Indian Institute of Foreign Trade, jointly organised a Round Table on: "WTO Dispute Settlement Understanding (DSU) Reforms" on 9 July 2011.



In the background of ten years of DSU negotiations, the Round Table discussed the Chair's negotiation text and the state of play of negotiations on various issues including sequencing, remand, special and



differential treatment to developing countries, member's control over DSU procedures, amicus curiae briefs etc. Experts in WTO and international trade law participated in the Round Table and provided detailed

technical inputs for informing India's negotiating approach on different issues related to DSU negotiations.

Workshop on Trade, FTA, Regional Integration & WTO Issues

The Centre for WTO Studies, International Trade Centre, Geneva and FICCI jointly organized a capacity building Workshop on Trade, FTA, Regional Integration and WTO Issues in Mumbai on 17-18 October 2011.



The Workshop highlighted practical aspects of WTO agreements and issues of regional integration that are relevant for industry and trade. The main objective of this programme was to promote awareness of industry about trade related issues pertaining to World Trade Organization (WTO), Regional Integration, Free Trade Agreements (FTAs) etc. Seven Business Sessions spread over two days covered various topics such as: Market Access and Entry for Developing Countries; Global Production Network — Opportunities for Business; Trade Remedial Measures; SPS & TBT Database and Related Issues; India's Engagement with

Free Trade Agreements; Business Voice in Trade Policy Making; Issues in Intellectual Property. The Workshop witnessed participation from most of the top industrial houses in Mumbai.

Mr Ramu S Deora, Chairman, FICCI Foreign Trade & Trade Facilitation Committee; Mr Abhijit Das, Head & Professor, Centre for WTO Studies and Mr Rajesh Aggarwal, Chief-Business & Trade Policy, International Trade Centre (ITC), Geneva, welcomed the delegates and gave a brief introduction of the Workshop.

Other key speakers included:

- Mr T C A Ranganathan, Chairman-cum-Mg Director, Export-Import Bank of India
- Mr Prema-chandra Athukorala, Professor, Australian National University
- Mr Suhail Nathani, Partner, Economic Laws Practice
- Dr Murali Kallumal, Centre for WTO Studies
- Mr Ajay Srivastava, Director, Ministry of Commerce & Industry, Government of India
- Dr S Roy, Economic Adviser, Tata Group of Industries
- Mr Prabuddha Ganguli, CEO, VISION-IPR
- Mr D G Shah, Secretary General, Indian Pharmaceutical Alliance

Other programmes:

Training on International Trade for FTD
Officers on 23 -25 May 2011 and 6 – 8 June 2011



Capacity Building Programme on WTO Issues (With Special Emphasis on Least Developed Countries) for Middle and Senior Level Officials of the Ministries of Trade and Commerce organised by the Centre for WTO Studies at the Indian Institute of Foreign Trade in Collaboration with the Indian Technical and Economic Cooperation Programme, Ministry of External Affairs and Department of Commerce, Government of India, 1-12 August 2011

The Centre held a capacity building programme over the period 1-12 August 2011 under the auspices of the Indian Technical and Economic Cooperation Programme of the Ministry of External Affairs on WTO Issues. The focus of the programme was on Least

Developed Countries. There were 28 participants from governments of 19 countries in the programme. The participants were introduced to the working of the WTO and all its agreements.





Inset: Prof Abhijit Das making opening remarks. Seated Shri KT Chacko, Director IIFT and Prof Shashank Priya



Inset: Participants in the programme

"Fighting Irrelevance: The Role of Regional Trade Agreements in International Production Networks in Asia" and "Asia-Pacific Trade and Investment Report 2011: Post-crisis Trade and Investment Opportunities" (ESCAP, 2011), 11 August, 2011



Update

Public Procurement, the WTO Agreement on Government Procurement and India

Background

Public procurement relates to procurement of goods and services by the Government of the territory at any level — Federal, State or local level. Since this kind of procurement actually entails use of taxpayers' monies and is either to directly provide services to the general public or to enhance the ability of the Government to render the services to public, it stands to reason that the monies are spent judiciously and best value for money is obtained from the process.

Many countries have actually legislated special laws to govern public procurement. The main purpose of these laws has been to remove arbitrariness in decision-making which is achieved through transparency in the process of procurement. At the same time, most such laws also seek to allow the Government to retain some policy space especially to take actions in the nature of positive discrimination to stimulate identified types of economic activity.

Indian law on public procurement

India has recently taken certain preliminary steps in the direction of enacting a special law on public procurement. In January 2011, the Government of India constituted a Committee on Public Procurement under the chairmanship of Shri Vinod Dhall, former Chairman of the Competition Commission of India. The mandate before the Committee was:

"to suggest measures necessary to ensure full transparency in Public Procurement and Contracts including enunciation of Public Procurement Standards and Public Procurement Policy keeping in view the existing legal and regulatory framework and rules and procedures for Public Procurement and recent initiatives taken in this regard;

to suggest legal, institutional and systemic measures necessary to strengthen Public Procurement practices so as clearly demarcate the powers and responsibilities of various authorities;

to suggest domestic and international practices which can be adopted to promote transparency and enhance efficiency and economy in procurement including

The Committee submitted its report in June 2011¹. The main set of recommendations made in the Report called for greater transparency, more rule –based procedures with the intent of removing discretionary powers in contracting for public procurement.

As a first tentative step towards the achievement of such transparency, the Government of India have made it mandatory that all tender enquiries be placed on a Central Public Procurement portals which is managed by the National Informatics Centre.

Further, signalling a serious intent to bring more openness and transparency along with uniformity in the process the Department of Expenditure of the Ministry of Finance of the Government of India has placed a Draft Procurement Bill on its website (http://finmin.nic.in/the_ministry/dept_expenditure/ppcell/Draft_PP_Bill_2011.pdf) for open consultations with members of the public This Draft Bill seeks to open up all public procurement under Government of India and the Central Public Sector Undertakings to specific norms of transparency as to extricate public procurement out of the current morass of opacity it seems to be wallowing in currently.

Government Procurement in the context of trade

Both General Agreement on Tariffs and Trade (GATT) and General Agreement on Trade in Services (GATS) of the WTO have specific exceptions regarding procurement of goods² and services³ respectively carried out in exercise of Government Authority. These exceptions applied to National Treatment as well as Most Favoured Nation clauses. However, it was realised by many countries that leaving this form of procurement out of the ambit of an international trade law would effectively exclude a sector which constitutes between 8 - 20% of the Gross National Expenditure in most countries. As such these countries sought to have an agreement under the chapeau of the WTO. A large majority of the countries involved in the negotiations leading to a creation of the WTO were not ready to subject public procurement to market access disciplines under a multilateral framework. As such, finally, the Government Procurement Agreement of the WTO was included in the overall set of WTO agreements as a voluntary plurilateral agreement not covered under the single undertaking of the WTO Agreement. There were three other such plurilateral agreements out of which two have lapsed⁴.

Features of the Agreement on Government Procurement

The WTO states, "The GPA is based on the principles of openness, transparency and non-discrimination, which apply to Parties' procurement covered by the Agreement, to the benefit of Parties and their suppliers, goods and services."

This makes the Agreement essentially a market access agreement. The main intent of the Agreement is to provide national treatment to persons of the parties in each other's territories on procurement carried out by their respective Government entities. Towards this end, the GPA seeks to establish the norms of transparency in the public procurement system among the Members States. The transparency norms include the way the notices for procurement are to be displayed, pre-determination of norms of evaluations of bids, adequacy of response time for bidding, reasonable opportunity to potential bidders, clarifications before the end of the bidding period, etc. In addition, GPA also lays down disciplines on post evaluation activities by the procuring agency. These disciplines relate to publication of awards, notices, information to unsuccessful bidders on how the chosen bid was superior as well as the opportunities to unsuccessful bidders to appeal against the decision of the awarding authorities.

There are two broad categories of exceptions in the General Procurement Agreement:

Rules of origins exceptions to the National treatment clause whereby the Members could determine which persons would not qualify under the National Treatment provisions on account of extent of ownership by non-Members;

Carve-outs based upon the judgement of the Members to keep public procurement agencies out of the purview of the GPA at the federal as well as sub federal levels. Members would also be able to determine the threshold levels below which the provisions of the GPA were not to be applied.

India and the Government Procurement Agreement

India is not the member of the GPA which currently includes 15 members. However, Indian became an observer at the Agreement in February 2010 which currently has 22 observers. While this does not confer

¹ One interesting feature of the Report was that seven out of the eleven members appended their dissents to the Report, one dissent being with reference to the manner in which dissent was allowed to be expressed.

²Article III

³Article XII

⁴Agreement on Trade in Civil Aircraft, International Dairy Agreement and International Bovine Meat Agreement the last two ended in 1997.

on India any rights to participate in the negotiations related to the Agreement, it also does not place the country under any obligation to join GPA as well. An advantage does accrue by becoming an observer in that India is now able to have a ringside view of the negotiations that are being conducted under the Agreement.

In the recent Trade Agreement with Japan, a short provision on GPA has been included whereby India

would extend to Japan all such benefits that it might extend to any other countries regarding Government Procurement by way of any bilateral trade agreement. It is learnt that in the ongoing negotiations with the European Union on a bilateral trade and investment Agreement some discussion regarding Government Procurements is also on.

W70 Briefs



• Indonesia, Ukraine lead safeguard notifications to the WTO

The Committee on Safeguards on 2 May 2011 considered 23 notifications of safeguard action led by Indonesia with seven and Ukraine with five. Indonesia said the increase in its safeguard notifications was the result of recent awareness in the domestic availability of trade remedies like safeguards to counter the negative effects of trade liberalization. India thanked Indonesia for replies to its questions, which it said were being reviewed in New Delhi.

Lamy hails new book on procurement as major step in analysis of governance

A leading British academic Prof. Sue Arrowsmith of the Nottingham School of Law and Rob Anderson of the WTO Secretariat have edited a book on government procurement, published by the WTO and Cambridge University Press. At the launch on 23 May 2011, Director-General Pascal Lamy said the book is relevant to economic recovery through infrastructure investment, good governance through transparency, countries' increasing

interest in signing the WTO procurement agreement, and the negotiations on expanding the agreement's coverage.

• Protectionist pressures on the rise, latest G 20 monitoring report says

G 20 governments have introduced more trade barriers, including export restrictions, in the past six months than in previous periods since the financial crisis began, according to the monitoring report by the WTO, the Organisation for Economic Cooperation and Development (OECD), and the UN Conference on Trade and Development (UNCTAD) released on 24 May 2011. Although measures to lower trade barriers are also accelerating, new import restrictive measures taken by G20 economies over the period October 2010 to April 2011 cover around 0.6 % of total G 20 imports which is also an increase over the previous six months (0.3 %).

WTO, WIPO hold course on intellectual property for government officials

23 government officials participated in the third joint WIPO-WTO Advanced Course on Intellectual Property held on 16-27 May 2011. Director-General Pascal Lamy, in opening the course, said that "the cooperation between WIPO and WTO exemplifies how intellectual property has moved to the centre of cross-cutting debates that defy traditional boundaries between separate policy domains, and between distinct areas of technical expertise". Participants were from : Argentina, Armenia, Azerbaijan, Bahrain, Bangladesh, Brazil, China, Costa Rica, Croatia, the Czech Republic, Egypt, Ethiopia, India, Jordan, Maldives, Mexico, Peru, Senegal, Tanzania, Turkey, Vietnam and Zambia.

Members support Lamy's proposed three-speed search for Doha outcome in December

A package for least developed countries is the most urgent and feasible priority for a first-step Doha Round outcome at the December 2011 Ministerial Conference, with another group of issues – a "plus" currently being discussed – having the next level of priority, WTO members acknowledged on 31 May 2011. Speaking in an informal meeting of the Trade Negotiations Committee, which oversees the negotiations in all topics, WTO members accepted that agreements on agriculture, non-agricultural market access, services, trade remedies, and intellectual property are unlikely to be achieved by then. They endorsed Director-General Pascal Lamy's proposal for these three issues to be approached at different speeds - in fast, medium and slow "lanes". They stressed that producing a partial outcome in December should not mean the remaining issues should be ditched, and some added that the WTO's routine work remains valuable even without agreement in the Doha Round. Lamy highlighted the principles of his three-speed proposal: 1. Sticking to the mandate of the round, also known as the Doha Development Agenda; 2. Sticking to the "Single Undertaking" (all subjects negotiated and agreed as a single package); 3. Producing some results at the next ministerial conference in December as an "early harvest", in anticipation of the full package; 4. Agreeing on a work programme for the remaining subjects after the ministerial conference so that the negotiations continue; and 5. Recognising that the most feasible and desirable issues for agreement by December are those with a strong development content, and in particular for least developed countries.

• WTO course on technical barriers to trade

The WTO organized the 2011 Advanced Course on the WTO Agreement on Technical Barriers to Trade ("TBT Agreement") which took place at WTO headquarters in Geneva from 6 to 17 June 2011.

Trade Policy Review: European Union - Concluding remarks by the Chairperson

Delegations congratulated the EU for having confirmed that the WTO remains the focus of its trade policy. They also highlighted the fact that

there remain a number of areas where reforms would both be beneficial for the EU and help to strengthen international trade. They suggested in particular improvements in the following areas -Tariffs: while it was recognized that import tariffs have remained relatively low, delegations encouraged the EU to eliminate remaining tariff peaks, including on motor vehicles, fish and agriculture, and to simplify its overly complex tariff structure. Regulatory barriers to trade: Many delegations repeated concerns about the burdensome impact of certain regulatory measures on market access in areas such as technical barriers to trade and sanitary and phytosanitary measures. Support to agriculture: Delegations remained concerned about the high level of support to EU agriculture and the large share of market price support in total transfers to EU farmers. Crisis-related government support: The EU was urged to persevere with ongoing initiatives to phase out crisis support in order to minimise any distortions to international trade and investment. And, Single EU market: The delegations commended the EU for its recent initiatives to deepen the internal market for goods and services.

World Trade Report 2011: Changing face of trade pacts requires coherence with WTO

Burgeoning bilateral and regional trade agreements meet the need to regulate global production and can benefit non-members, but the WTO's multilateral system also has a role in reducing the resulting complexity, according to the WTO's flagship publication World Trade Report 2011 released on 20 July 2011 in Geneva. The Report describes the historical development of preferential trade agreements (PTAs) and their current landscape. Director-General Pascal Lamy says in his foreword:"I believe that to the extent that PTAs are motivated by a desire for deeper integration rather than market fragmentation, there could be a role for the WTO to promote greater coherence among non-competing but divergent regulatory regimesthat in practice cause geographical fragmentation and raise trade costs. There is no doubt that we need to build towards a more stable and healthier trading environment, where alternative trade policy approaches are mutually supportive and balance equitably the needs of all nations".

Asia is at the leading edge of new trade pacts, says WTO Report

The World Trade Report 2011, which was presented to United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) members on 27 July 2011 in Bangkok, observes that Asian countries have become some of the most active in signing PTAs. They have been party to almost half the PTAs concluded in the last 10 years. This has contributed to increased concentration of trade within the region – second only to Europe in 2009. But more significantly, preferential agreements are evolving towards deeper integration that goes beyond tariffs and other measures at national borders – they increasingly include domestic policies such as regulations on services and investment, intellectual property protection and competition policy, which the report calls "deep PTAs". "These trends raise vital questions about the focus and reach of the WTO, and the value assigned by governments to globally-based trade relations", Mr. Lamy said.

Lamy opens first training course in partnership with Indian institute

An Asia-Pacific regional trade policy course for officials began on 5 September 2011, with the Indian Institute of Foreign Trade (IIFT)'s WTO Studies Centre as a partner. Opening it in Delhi, Pascal Lamy said:

"An old proverb says "Give a man a fish and you feed him for a day. Teach a man to fish and you feed him for a lifetime". It is this ancient proverb that best illustrates what the WTO technical assistance and capacity building stands for: helping developing countries in mainstreaming trade into their national plans for development and for poverty reduction. We are extremely proud to have 'The Centre for WTO Studies' at the Indian Institute of Foreign Trade as our new partner for the Asia-Pacific region. Taking on the mantle from our previous successful partnerships with the University of Hong Kong from 2004 to 2006 and the National University of Singapore from 2007 to 2010, I have no doubt that the Centre for WTO Studies will further enrich the value of the Regional Trade Policy Course project. The Centre is an important source of WTO expertise as evidenced by its broad body

of research and publications, as well as by its extensive technical assistance programme in India, but also in the region and further afield. We are fortunate to have the participation of faculty members from the Centre and from the Indian Institute of Foreign Trade as regional experts in this course. These strengths, along with the Centre's strong international networking and administrative capabilities, will prove invaluable. I thank Mr. K.T.Chacko, Director of IIFT, for his personal support and commitment towards this project; Professor Das, Head of the Centre for WTO Studies, for his support as well as the members of the Faculty for their outstanding work in preparing for the RTPC. This Regional Trade Policy Course is also greatly honoured to have the patronage of MR. S.N. Menon, former Commerce Secretary, and we are vey grateful for his invaluable contribution to this project".

Trade Policy Review: India (14 & 16 September 2011)

Members congratulated India for the solid economic performance achieved during the period under review, which had allowed GDP to grow at an impressive rate. India was continuing to reap the benefits of the trade liberalization process and of the structural reforms begun in the 1990's. It deserves praise for dealing satisfactorily with the economic crisis, without adopting any protectionist trade measures. Members also recommended that the authorities of India consider introducing further improvements in the following 10 areas:

- 1. Tariffs and other import duties: While they recognized that there had been a reduction in the average MFN tariff, members encouraged India to make its tariff regime simpler and more transparent and to narrow the gap between bound and applied rates.
- Non-tariff measures: Some members noted that imports could be subject to prohibitions, restrictions and licensing. In general, members suggested that India adopt a less complex import regime.
- 3. Anti-dumping: Members noted that India was one of WTO's most active users of anti-dumping measures , and that it had also imposed a number of safeguard measures.

- 4. SPS and TBT: A number of members questioned the scientific basis for certain sanitary and phytosanitary measures adopted by India, and pointed out that certain technical standards could constitute a barrier to trade.
- 5. Government procurement: While recognizing the progress made by India on certain aspects of its government procurement regime, members said it was still possible to enhance the openness and transparency of the system. India was urged to reconsider the costs to its economy of using preferences and set-asides, and to join the WTO Plurilateral Agreement on Government Procurement as soon as possible.
- 6. Incentives: Members pointed out that India had a series of incentive schemes to attract investment, promote exports, and protect agriculture and other less advantaged sectors such as MSMEs. Some members asked if India had assessed the impact of these programmes, and determined whether they were WTO-consistent, while others urged India to notify the programmes to the WTO.
- 7. Intellectual property: Noting the actions taken to strengthen enforcement of intellectual property rights, members urged India to continue stepping up efforts in this area, which remained a source of particular concern.
- 8. Agriculture: While recognizing the importance of agriculture for India, members also noted the support and protection received by the sector. They encouraged India to liberalise the agriculture sector by reducing tariffs, and by eliminating superfluous sanitary and phytosanitary measures and export restrictions on raw materials, as it had done for cotton last year.
- 9. Services: Members urged India to open the services market and bind any liberalization under GATS, noting that it stood to benefit from further liberalization of financial and transport services
- 10. Investment: Members observed that most sectors were at least partly open to foreign direct investment (FDI), and urged India to eliminate remaining investment barriers, such as permits and requirements, which reduced transparency and could end up being more restrictive than an investment cap.

Social protection, investment in public goods and well-functioning markets are vital to make globalization socially sustainable, according to a co-publication by International Labour Organisation (ILO) and WTO Secretariat titled "Making globalization socially sustainable", launched on 20 September 2011.

WTO scales back its trade forecast to 5.8 % as downside risks build

WTO economists announced on 23 September 2011 that they are revising their 2011 trade forecast to 5.8%, down from their earlier conservative estimate of 6.5%, since trade has grown more slowly than expected in recent months and the outlook for the global economy is increasingly uncertain.

• Investment measures questioned

At a meeting of the Committee on Trade-Related Investment Measures (TRIMs) on 3 October 2011, some members raised questions about certain investment measures by India, Indonesia and Nigeria. It also carried out its final annual review of China's implementation of its commitments under the TRIMs Agreement. The United States expressed concerns about what it said were mandatory local content requirements of India's Jawaharlal Nehru National Solar Mission. It said the guidelines require that all projects use modules manufactured in India. The European Union shared these concerns. India maintained that the guidelines in question did not violate the TRIMS Agreement.

• WTO releases trade and tariff data for 2010

The WTO released on 21 October 2011 its annual package of trade and tariff data, giving the full picture of trade developments in 2010. This package includes the 2011 editions of its annual publications – International Trade Statistics, Trade Profiles and World Tariff Profiles – plus an update of the WTO Statistics Database and other data sources. All the data can be downloaded free of charge from the WTO web site's statistical page: www.wto.org/statistics.

Trade Negotiations Committee :
 Informal Meeting - Members eye
 path of 'smaller steps' as a way out of
 Doha impasse

Ambassadors from WTO member governments confirmed on 21 October 2011 that the upcoming 15-17 December Ministerial Conference in Geneva should set a deadlock-breaking path for the Doha Round perhaps by starting on issues where an early agreement might be possible.

WTO G-20 report: Weak growth and imbalances 'testing' government resolve against protectionism

WTO's report on G-20 trade measures, issued on 26 October 2011, said that "disappointingly weak growth in some G-20 countries and continuing macroeconomic imbalances globally are testing the political resolve of many governments to abide by the G-20 commitment to resist protectionism".

• WTO welcomes Vanuatu as a new member

The General Council on 26 October 2011 paved the way for Vanuatu's membership in the WTO by approving its accession package. Vanuatu would have to ratify the deal by 31 December 2011 and would then become WTO's 154th member.

• World services exports rise 16 % according to new WTO figures

The WTO is releasing for the first time quarterly and monthly statistics on international trade in commercial services. According to these latest statistics, world exports in commercial services increased by 16 % in the second quarter of 2011 compared to the same quarter of 2010.

Who said what

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

May-June, 2011

- India for middle path to reach trade deal in Doha **Round --** Sensing another failure in concluding the Doha Round of trade talks, India has advocated finding a middle ground for reaching a deal on the World trade Organization (WTO) sponsored talks. WTO chief Pascal Lamy had recently expressed disappointment over the poor progress of the trade talks and had warned of failure to conclude the talks by the end of 2011. The trade ministers of key WTO member countries, including India, would meet on the sidelines of the OECD (Organisation for Economic Co-operation and Development) meeting in Paris in the last week of May. Mr. Lamy along with the heads of the three negotiating groups — on agriculture, industrial goods and services — would be present, Commerce and Industry Minister Anand Sharma told reporters. He said a middle path had to be found for clinching a deal in trade talks to avoid any kind of failure that would hurt world trade. (The Hindu dated 1/5/2011).
- 2. Is the Doha Round dead? Should anyone care? The failure of the Round will raise questions about the G 20's legitimacy and conversely, the group's efforts to ensure a successful conclusion will symbolise a global resolve to address such challenges: Ujal Singh Bhatia -- Director General of the World Trade Organisation, Pascal Lamy is its chief cheerleader, pushing, cajoling, coaxing members to show just that extra flexibility to melt the frozen impasse around the Doha Round negotiation. Behind the dichotomy between the platitudes of the leaders and their negotiating

positions lies the reality of a changed global economy. Earlier negotiations in GATT were propelled by business interests in developed countries, in search of new market access. With their market positions in their home turfs secure, they sought new horizons, especially in emerging markets. The rapid economic liberalisation across the world over the last two decades has changed many things. Market access is no longer the constraint it was in the past. But apart from the unprecedented opening of markets, the period has also witnessed the emergence of highly competitive manufacturing centres in several emerging economies. As a result, businesses in developed countries are increasingly feeling the heat of competition in their home markets. Therefore, their support for further liberalisation through the WTO process is more equivocal than in the past. On the other hand, while businesses in emerging markets need open global markets, many of them are still in the process of consolidating their positions in their home markets. In short, unlike in the past, there are few demandeurs among business interests, pushing for the early completion of the Doha Round. As a result, the onus of support for completing the Round has shifted to governments and they must do so not only for systemic reasons but also with the recognition that the Round will make a positive contribution in addressing global challenges. Despite the hype to the contrary, there is much more on the table in this Round than in any previous Round. Industrial tariffs in developing countries will go down sharply for most products; tariff peaks on such products in developed countries will disappear; agricultural tariffs will also be reduced substantially, though not as sharply as for industrial

goods; export subsidies for agricultural products will be eliminated; permissible limits on trade distorting domestic subsidies on agriculture will also come down sharply; a large number of new sectors and subsectors in services will come under binding commitments for market access, especially in developing countries; disciplines will be introduced, for the first time, on fisheries subsidies to address the global problem of overfishing; disciplines on anti-dumping and subsidies will be tightened to prevent their abuse; a new agreement on Trade Facilitation will make it easier for trade to flow. The special dispensations being provided for smaller developing countries and LDCs (least developed countries) will facilitate their greater participation in the global trading system. These outcomes add up to a very substantial result for the global trading system. They will enhance global trade flows and make them more predictable and robust. Despite this impressive list of outcomes, the Round remains hostage to bickering by a few to garner additional gains to appease their constituencies. Sadly, there is little in the present situation to suggest that the wisdom and leadership of statesmen will trump the narrow mercantilism which has led to the impasse. The failure of the Doha Round is no longer the theme of habitual doomsayers, but a real possibility. The continuing differences require the balm of a political settlement, not the slow poison of negotiating attrition. The Doha Round is therefore a major litmus test for the leadership credentials of the G20. The failure of the Round will raise troubling questions about the G20's legitimacy. Conversely, the G20's intervention to ensure a successful conclusion will symbolise a strong global resolve to address global challenges in a cooperative manner. (Article by Ujal Singh Bhatia, India's Ambassador to the WTO, Geneva between 2004 and 2010 - in Economic Times dated 1/5/2011).

- obligations beyond domestic laws: Manmohan--The Prime Minister's Trade and Economic Relations Committee (TERC) on 30/4/2011 gave its nod for launching free trade agreement (FTA) negotiations with Australia. It also decided that India will not take Intellectual Property Rights (IPR) obligations beyond the domestic laws or mandated by WTO. The committee also took up the proposal for a new economic engagement through the mechanism of free trade agreement with Common Market of Eastern and Southern Africa (COMESA). (The Hindu dated 1/5/2011).
- 4. 'Unless political attitudes change, we can't conclude Doha Round': Lamy -- For the first time since the release of new negotiating texts on April 21, World Trade Organization director general

- Pascal lamy speaks on the state of play in the negotiations and whether 2011 would mark the end of road for the Doha round of trade talks. In an interview with Nayanima Basu over email, he said the aim of concluding the negotiations by 2011 was at serious risk and the ministerial meet in December would be the defining moment. Edited excerpts: I'd said we are at an impasse and prospects for a successful conclusion are at serious risk. I still detect a willingness among members to reach agreement. An agreement is still technically possible. What is clear, though, is that we cannot proceed with the attitude that it is business as usual. We need to look for new approaches to finding compromise. Some of these are already emerging but we will need political attitudes to change if we are to conclude. (Business Standard dated 2/5/2011).
- Lamy strives to keep Doha trade talks alive--Despite warnings by World Trade Organisation director-general Pascal Lamy that the Doha Round of trade talks are "on the brink of failure", no member country wants to waste ten years of negotiations. This was what came out of the trade negotiations committee (TNC) meeting after the reports of the chairs of the negotiating committees presented their reports on April 21. At the TNC meeting last week, it was decided that "WTO ambassadors endorsed on April 29, 2011" Lamy's plan to consult delegations in Geneva and ministers around the world in the search for "a different way of achieving a breakthrough in the Doha Development Agenda negotiations". Lamy will report back at another TNC meeting convened for May 31. The EU presented a non-paper proposing a compromise in the non-agricultural market access (Nama) negotiations that delegations will study, in particular the US, which is insistent on the emerging countries bringing their tariffs to zero in some sectors. India's ambassador Jayant Dasgupta said that documents of April 12 also point to the wide gaps still existing not only in Nama but in many other areas of the negotiations, and commended the fact that the documents helped preserve the progress made in negotiations since 2001, but added that some positions have not been reflected adequately in certain documents. India agreed with Lamy that it is not feasible to let negotiations gradually drift or renegotiate the mandate at this late stage. Dasgupta reminded the WTO that members have set July 2011 for the conclusion of the text-based negotiations and mid-December for the next ministerial meeting. (Financial Express dated 3/5/2011).
- 6. India-EU FTA likely by end of June, says commerce secy -- Having discussed the fine prints of the India-European Union free trade agreement (FTA) with

- Prime Minister Manmohan Singh, the government is poised to seal the pact by the end of June. "Next week there are meetings (on the India-EU FTA) in Delhi ... we are working to close the deal by the end of June," commerce secretary Rahul Khullar told The Indian Express. He however refused to comment on issues which are yet to receive the consent of both the negotiating sides. (Indian Express dated 5/5/2011).
- Chinese tech giants in rate patent battle -- Two of China's biggest technology companies have launched a court battle in Europe over mobile phone patents in a rare public clash between firms Beijing is promoting as national champions. The fight between Huawei Technologies and ZTE highlights the challenge for communist leaders who need to manage Chinese corporate ambitions as they try to create global competitors in telecoms, energy and other fields. It is the first case of its kind between major Chinese companies, which usually settle disputes in private. The dispute centers on fourth-generation mobile technology, which companies that are developing it say will deliver more stable connections, wireless broadband and other advances. It is in limited use in the US and being tested elsewhere. Control of key patents could help decide which equipment suppliers are positioned to reap billions of dollars in sales once it is rolled out in other markets. Huawei and ZTE make network gear, the core of phone systems. (Economic Times dated 6/5/2011).
- Patents expiry paves way for mega drug deals --Faced with the threat of a big price competition from the generics industry for a clutch of their blockbuster drugs whose patents are slated to expire over the next four years, multinational innovator drug companies are rushing to clinch deals with Indian active pharma ingredient (API) suppliers to cut costs. The enhanced strength of Indian bulk drug industry to make core APIs is expected to buttress the trend. Innovator drug firms have historically relied on Indian suppliers for early stage intermediates, but shied away from sourcing API from India. But the impending patent expirations imply prices of their branded drugs would erode in the range of 50-90%, due to onset of generic competition. To remain competitive in that environment, innovator companies are increasingly looking to partner with low cost API suppliers in India either through outsourcing contracts or longterm alliances. (Financial Express dated 6/5/2011).
- 9. FTAs gainers and losers -- A recent monograph by the NBER on Terms of Trade and Global Efficiency Effects of Free Trade Agreements, 1990-2002 has concluded that regionalism delivered benefits while

- negligibly harming outsiders. Recent developments in the empirical literature demonstrate that trading blocs and FTAs have large direct effects on aggregate bilateral trade between member countries relative to non-members. On average, a FTA induces roughly a 100-per cent increase in bilateral trade between members within ten years from their start. Interestingly, the study reckons that for producers' losses, five of the six biggest losers are the regions that did not enter any FTAs during the 1990s, albeit their losses are relatively small. Another nugget from the study shows the biggest winners from the integration of the 1990s are producers from relatively small European and Latin American economies that signed FTAs with large trading partners. From the European economies, Poland and Hungary are leaders with producer gains of 7.3 per cent and 5.5 per cent respectively, followed by Bulgaria with 5.3 per cent increase and Romania with 3.9 per cent. The biggest FTA winners are relatively small countries that are geographically close to their major markets. As India is on a spree to conclude FTAs/CECAs or preferential trading arrangement (PTA) to exchange tariff concessions on a range of limited number of goods, it is better that mandarins in the Udyog Bhawan press the pause button to take stock of what these FTAs had achieved up till now. If under FTAs, 'early harvest' results do not show much of gains but only pains to domestic producers not being able to compete with cheaper imports from the FTA partners, it is time India did an introspection and focussed on making foray into new markets and manufacturing new products that markets elsewhere need. (Hindu Business Line dated 16/5/2011).
- 10. WTO ruling on airbus subsidies upheld on appeal -- A World Trade Organization appeals panel has upheld a ruling that Boeing lost market share to its European rival, Airbus, as a result of billions of dollars in low-cost government loans, according to European and American officials. But the panel rejected claims by the United States that state financing for the Airbus A380 superjumbo jet was automatically prohibited under global trade rules, officials said. (Financial Express dated 20/5/2011).
- 11. India talks tough ahead of WTO ministerial meet:
 Will oppose attempts to shift goal posts -Adopting a tough stand a day ahead of the WTO informal ministerial meeting in Paris, India issued a veiled warning against the attempts by the developed nations to re-open issues on which substantial progress has been made stating it would be counterproductive. Speaking ahead of the crucial meeting, Union Commerce and Industry Minister Anand Sharma said India would not accept attempts by developed countries to shift goal posts

- of the Doha mandate that called for an equitable global trade deal. "We are also opposed to any kind of rush to complete the Doha multilateral negotiating round. The progress already made must be protected. India views such an attempt to shift goal posts as unacceptable and as a violation of the mandate," Mr. Sharma said in a statement. (The Hindu dated 26/5/2011).
- differences between India and European Union over their proposed free trade agreement, commerce and industry minister Anand Sharma said even the "best of astrologers would not know" about the timeline. He only expressed hope that it would be concluded "very soon". India is in talks with the EU, its biggest trading partner, since 2007 for liberalising their commerce in goods, services and investment through an FTA. The FTA would involve slashing of duties on over 90% cent of the trade and opening of the mutual markets for services and investment. The two sides with trade of \$75 billion (2009-10), had earlier vowed to conclude the negotiations within 2011. (Financial Express dated 16/5/2011).
- 13. Pascal Lamy favours partial Doha deal -- WTO director general Pascal Lamy urged to the member countries to agree on a step-by-step deal to open the global trade even if the full scale agreement under the Doha Round is not achievable. "If not the full Round, at least an early harvest of it as a credible signal of the rest to come at a later stage, when the politics of the Round would have aligned," Lamy said in Paris after an informal meeting of the trade ministers of key WTO member countries. Ministers from countries like Australia, India, China, and Brazil participated in the meeting, held on the sidelines of an OECD meet. Lamy said the Doha talks remain stuck because of "an unbridgeable gap in the level of ambition in industrial tariff cuts between major economies, which prevents progress," claiming the differences are "political" and not technical. He pleaded with the ministers to explore options that would deliver results before the 8th WTO Conference in December. (Financial Express dated 28/5/2011)
- 14. India against new texts for WTO talks: Developing nations refuse to accept April 21 texts that call for mandatory sectoral tariff cuts as basis of negotiations -- Even as the debate around whether the Doha Round of global trade talks would be concluded by the year-end or not gain momentum, a cohort of developing countries, specifically India, has refused to accept the April 21 texts which call for mandatory sectoral tariff cuts as the basis of negotiations, despite US pressure. While India has not made its reaction on the texts officially, it has already expressed its displeasure over the new

- negotiating texts to all the chairs of the WTO, under the aegis of which the negotiations have been going for almost a decade. "The texts are only a reflection of the progress made so far since the talks broke down. These are not negotiating texts. We will continue to negotiate on the basis of December 2008 drafts. The new texts have deviated from the development agenda, which is the core issue," a senior commerce department official told Business Standard. The new texts were issued in April on agriculture, non-agricultural market access (Nama), Nama sectorals, services and rules. Sectorals have become one of the main hurdles amongst countries such as the US, EU members, Canada, India, China and Brazil. Sectoral negotiations relate to tariff cuts for an entire sector such as auto, gems and jewellery. The US has been pressurising emerging countries like China, India and Brazil to participate in the sectoral negotiations. However, developing countries have said participation in sectorals is voluntary and have so far not shown any interest to sign up for the talks in order to save their domestic industry. (Business Standard dated 31/5/2011).
- Life without Doha: Jagdish Bhagwati -- If the Doha Round fails, trade liberalization would shift from the WTO to preferential trade agreements (PTAs), which are already spreading like an epidemic. But, if PTAs were the only game in town, the implicit constraint on trade barriers against third countries provided by the WTO's Article 24, which is weak but real, would disappear altogether. The WTO stands on two legs: non-discriminatory trade liberalization and uniform rule-making and enforcement. With the former eliminated, the most important institution of global free trade would be crippled. This would also affect the leg that survived, because the PTAs would increasingly take over the functions of rule-making as well. This already can be seen in PTAs whose rules on conventional issues like anti-dumping are often discriminatory in favor of members. It is also reflected in the increasing number of non-traderelated provisions being inserted into the PTA treaties proposed by the US and EU, a result of selfserving lobbies that seek concessions by weaker trading partners, without which free trade supposedly would amount to "unfair trade." These rules are then advertised as "avant garde," implying that the PTAs are the "vanguard" of new rules. As a result, the willingness of WTO members to invoke the Dispute Settlement Mechanism, the pride of the WTO - and, indeed, of international governance would also be sapped. Tribunals established within PTAs would take over the business, leading to the atrophy, and eventual irrelevance, of the DSM. We can live without the Doha Round, but for many people it would not be much of a life. Now is no time

- for cynical complacency. (Economic Times dated 3/6/2011 and Times of India dated 5/6/2011).
- 16. India to raise H1B visa issue with US again: Anand Sharma -- The US has to adhere to the WTO commitments and recognise India's talent, as there is shortage of highly skilled work force, said the Union Commerce and Industry Minister, Mr Anand Sharma. "H1B visa issue with the US has been raised more than one occasion. I have written to the US Trade Representative twice," he said while addressing reporters in Bangalore on 4th June. (Hindu Business Line dated 5/6/2011).
- 17. Plan B for saving Doha Development Round doesn't mean ditching WTO's other issues -- Pascal Lamy, the Director General of WTO, put forward a three track proposal, called Plan-B, to push the Doha Development Round (DDR) towards a partial outcome by December this year. The cautious welcome to the proposal from delegates of some of the WTO member countries masks a general apathy of businesses to concluding the DDR negotiations. Essentially, Lamy wants LDC-specific issues such as duty-free and quota-free access for goods produced in LDC in the developed and developing countries' markets, waiver of certain disciplines relating to agreements on Trade in Services and Rules of Origin and issues relating to ending subsidies for cotton producers in rich countries to be put on a Fast Track and agreed to immediately. Secondly, he proposes LDC-plus outcomes with a significant development component by December 2011, which he calls the Middle Lane. Contentious issues like agriculture, non-agricultural market access, services, trade remedies and intellectual property can move into a Slow Lane for conclusion after 2011, says his Plan-B. Lamy stressed that producing a partial outcome in December should not mean the remaining issues should be ditched and that the WTO's routine work remains valuable even without agreement in the Doha Round. He said that he will continue to consult members on the issues, and report back at the next meeting on 9th June. He expected significant progress before the eighth Conference of WTO Trade Ministers due in December this year at Geneva. (T N C Rajagopalan in Business Standard dated 6/6/2011).
- 18. Save Doha Round, save the WTO -- It is clear that even with the best political will, the Doha Round cannot be concluded this year. It cannot be deferred to next year either because, in 2012, the US will be busy with presidential elections and China with the leadership transition after the 18th Party Congress. The only realistic strategy is to identify less controversial issues for closure this year, keeping the more contentious ones, such as market access

- issues, aside for continuing consultations. Selecting the less difficult issues for early completion would not be easy but, given the necessary political commitment, this can be achieved. The next few months will be a defining period for Doha Round and for the WTO. Unless it can find a way out of the hole it has pushed itself into, the WTO faces a deeply uncertain future. It is also unrealistic to expect the tired, crisis-ridden economies of the US, Europe and Japan to provide the leadership to steer the WTO in this difficult phase. Emerging economies of Brazil, China, India, Indonesia, Mexico and South Africa acting in concert with other like-minded countries will have to step in with a vision of what kind of organisation the WTO should be in future in order for it to be able to address the challenges of the 21st century. (U S Bhatia, India's former Ambassador to WTO in Economic Times dated 11/6/2011).
- 19. India to track USFDA drug recall disclosures Every week, the US Food and Drugs Administration comes out with an enforcement report that discloses details of firm-initiated product recalls that are happening due to technical or manufacturing defects in the world's largest medicine market. The typical disclosure format indicates the number of faulty units that need to be recalled and the number of countries where they are in circulation. These disclosures may come handy to India's drug regulatory agency - Central Drugs Standard Control Organisation (CDSCO) — which does not have a similar system to track the status of faulty or mislabeled drugs and medical devices that are available in the domestic trade channels. CDSCO is planning to track all such disclosures made by companies and regulatory agencies world over to see if the same batch of products mentioned in such disclosures are also being marketed in India. (Business Standard dated 12/6/2011).
- 20. NPPA: Central agency must decide patented drug prices -- Medicine price regulator National Pharmaceutical Pricing Authority (NPPA) has proposed the formation of a centralised agency to negotiate the prices of patented medicines. The NPPA said the agency should estimate the market potential of the patented products and negotiate the prices on the basis of a reference pricing system. The NPPA's suggestion is being considered by an official committee assigned with the task of recommending a system of price negotiation for patented medicines to make the prices reasonable for Indian patients. (Business Standard dated 12/6/2011).
- Shorter sensitive list, pros top SAFTA meet agenda
 South Asian countries will seek to fast-track action on liberalisation of trade in services and free

- movement of professionals within the region at the meeting of trade ministers of SAFTA countries in Maldives. The ministers will also discuss tariff reduction on a larger number of goods that will be taken off the list of sensitive items, which are insulated from commitments on duty reduction. India is keen on expediting the negotiations on services, as there is scope for expanding presence in all sectors, be it IT, telecom, education, financial services, health or architecture, a government official told ET. The SAARC agreement on trade in services has so far been ratified by India, Bangladesh, Pakistan and Sri Lanka. The sixth ministerial meeting is expected to ask the four remaining members Afghanistan, Maldives, Bhutan and Nepal to ratify the agreement and start work on identifying services to be opened up. (Economic Times dated 13/6/2011).
- 22. FTA talks signal cars from EU may get cheaper --More Indians may be seen rolling down the streets in fancy cars if the government decides to slash import duty on European luxury vehicles. The German made rupee 85 lakh (ex-showroom Delhi) BMW 7Series could be cheaper by about rupee 16.15 lakh and the recently launched Audi A8, which costs rupee 89 lakh, could take a rupee 17 lakh trimming, as the government looks at customs duty cuts under the Free Trade Agreement with the European Union in return for deals in the farm and services sectors. Import duty on luxury European cars and SUVs, which are mostly imported directly, is proposed to be lowered in a phased manner. If it is lowered from the current 60% to the next slab of 30%, it will translate into about 19% lower prices. (Economic Times dated 20/6/2011).
- 23. Improve services beyond WTO promises: India to **ASEAN --** India will negotiate for better offers from Asean countries in the services sector in return for the substantial market access it gave the 10member grouping last year. "We are not happy with the offers made, as they do not go beyond what has been proposed by the Association of South-East Asian Nations (Asean) in their revised offers at the WTO in most areas," a commerce department official said. Indian officials, led by commerce secretary Rahul Khullar, and the Asean nations are to meet in Kuala Lumpur for talks on services and investments, aiming for a year-end deal. India had offered greater market access to Asean in the free trade agreement (FTA) in goods last year. It now expects Asean's offer in sectors such as management consultancy, computer-related services, telecom and other professional services to be on a par with what exists between Asean member countries. (Economic Times dated 24/6/2011).
- Why free trade matters: J Bhagwati -- Contrary to what skeptics often assert, the case for free trade is robust. It extends not just to overall prosperity (or "aggregate GNP"), but also to distributional outcomes, which makes the free-trade argument morally compelling as well. The link between trade openness and economic prosperity is strong and suggestive. For example, Arvind Panagariya of Columbia University divided developing countries into two groups: "miracle" countries that had annual per capita GDP growth rates of 3% or higher, and "debacle" countries that had negative or zero growth rates. Panagariya found commensurate corresponding growth rates of trade for both groups in the period 1961-1999. More compelling is the dramatic upturn in GDP growth rates in India and China after they turned strongly towards dismantling trade barriers in the late 1980's and early 1990's. In both countries, the decision to reverse protectionist policies was not the only reform undertaken, but it was an important component. Nor should free traders worry that trade openness resulted in no additional growth for some developing countries, as critics contend. Trade is only a facilitating device. For instance, if your infrastructure is bad, or you have domestic policies that prevent investors from responding to market opportunities (such as South Asia's stifling licensing restrictions), you will see no results. To gain from trade openness, you have to ensure that complementary policies are in place. But then critics shift ground and argue that trade-driven growth benefits only the elites and not the poor; it is not "inclusive." In India, however, the shift to accelerated growth after reforms that included trade liberalization has pulled nearly 200 million people out of poverty. In China, which grew faster, it is estimated that more than 300 million people have moved above the poverty line since the start of reforms. As the historian Frank Trentmann has demonstrated, the case for free trade was made in nineteenth-century Britain in moral terms: it was held to promote not just economic prosperity, but also peace. It is also worth recalling that US Secretary of State Cordell Hull was awarded the Nobel Peace Prize in 1945 for policies that included his tireless efforts on behalf of multilateral free trade. It is time for the Norwegian Nobel committee to step up again. (Jagdish Bhagwati, University Professor of Economics and Law at Columbia University and Senior Fellow in International Economics at the Council on Foreign Relations, in Economic Times dated 28/6/2011).

July-August 2011

1. US threatens to drag India to WTO over cotton

export restrictions - In a recent meeting of the WTO's committee on agriculture, the US said the cap on cotton exports imposed by India since last year had an impact on the global cotton market, contributing to unnecessary price volatility and affecting all cotton producers, and thus would be appropriate for discussion in the committee. Pakistan and Canada, too, expressed their concerns about the export caps. India, however, is confident that the export restrictions are justified. "Our export restrictions on cotton fall under GATT Article XI and thus are outside the purview of the agriculture committee," an Indian government official told ET. The government had banned export of cotton in April last year following spiralling domestic prices taking a toll on cotton textile producers. "Export restrictions can be imposed by India without flouting WTO rules if it has been done to meet domestic shortages r maintain price stability in the domestic market", Abhijit Das, Head, Centre for WTO Studies, IIFT. (Economic Times dated 2/7/11).

- Trade pacts: Progress, of a sort coupling trade with worker aid - Barak Obama is a late and reluctant convert to free trade. As a senator he opposed many trade agreements negotiated by George Bush—among them deals with Korea, Colombia and, for a time, Panama. As president he has given his backing to those deals, provided Korea did more to admit American cars, Colombia made greater efforts to prevent the murder of union activists, and Panama tried harder to crack down on tax cheats. Satisfied on those fronts, he then insisted that Congress should also reauthorise Trade Adjustment Assistance, or TAA, which provides American workers who lose their jobs to foreign competition with training, income support and subsidised health insurance. He appears to have won that as well. On June 28th the White House said it had a deal with Max Baucus and Dave Camp, the Democratic and Republican chairmen of the trade committees in the Senate and House respectively, to bundle reauthorisation of TAA in with the Korean deal. Mr Obama would then submit all three pacts to Congress for ratification, along with renewal of preferential tariffs for poor countries. If Republicans strip TAA from the deal, Mr Obama may abandon the trade deals altogether. That might destroy the prospect of any trade liberalisation during his presidency. But many Americans won't care. Pew, a pollster, finds that 44% of them, a plurality, think trade agreements are bad for America, the highest percentage in 13 years. (The Economist dated 2/7/11).
- 3. Globalisation's discontents: will the liberal ideal of a borderless, interconnected world come to be

increasingly resisted? -- What unites Europe's extreme-right parties is antipathy to immigrants (many received as workers or refugees) and a rejection of Europe and the EU, as embodied in such commitments as free movement of people across Europe. Why, they object, should these rich, settled societies have to pay for the train wrecks and basket cases of elsewhere? The Great Pacification that the European Union was designed to effect is today in some crisis. Two of its cornerstones, a common currency, and unrestricted movement of people across the 27-country Schengen zone, are the object of populist anger from both extreme right and left. In poorer or austerity-hit parts of Europe, protesters in Athens's Syntagma Square, in Spain, and in London and Paris are also anti-EU. But their gripe is that it favours the bankers and financiers in the rich states of the Union. It's the unevenness of European social and economic development that flares this street anger. Eurozone and Schengen were creations of an era when the ideology of globalisation dominated, which believed in convergence, in a flattening effect produced by economic markets and technological interconnection. This is the most delusive of recent globalisation myths: that it can bring rich and poor, developed and developing regions, onto an equal footing. Globalisation's exigencies are quite the opposite: it is a perpetually destabilising process that keeps the world atilt, and requires continual competitive adjustment. Globalisation changes economic geography not only between countries, but also within nation-states and large unions. So, some parts of a country rise, others fall behind, giving incentives to people to move. Yet, while international movement is controlled at borders, within them - at least in liberal democracies citizenship has also meant the right to free movement. Even as globalisation changes the life conditions of many millions, it raises a basic philosophical question: There are three types of answer. The first, oldest, and in some ways most powerful, is the conservative belief that people should remain essentially where they were born: that culture, language and tradition describe the natural boundaries of their rightful domain. The second is the liberal conviction in markets - people should be at liberty to move to wherever the market decides it needs them, wherever capital is willing to employ them. The third, radical view, is set in the language of justice and ethics: people should be entitled to choose to be where they believe they can lead the best lives - and be free to escape conditions which (whether due to war, oppression, poverty or social calamities) hinder that possibility. In the years ahead, clashes between such arguments will

intensify: as the requirements of capital, the claims of belonging, and the demands of justice all collide. Intellectual arguments will not themselves determine such a vexed, emotive issue. But in the absence of intellectual efforts to grapple with the question, we will be left to the ministrations of bureaucratic regulations and visa regimes (the arbitrary mysteries of H1-Bs and Tier 2 permits), and to the instinctual anger of populist right-wing and nativist movements — everywhere. (Mr. Sunil Khilnani, Director, Indian Institute, King's College, London in Times of India dated 2/7/11).

- WTO ruling to hit Beijing's raw material export limits -- The World Trade Organisation ruled against China's practice of limiting its exports of raw materials, handing a victory to the US and the European Union in a closely watched trade dispute. The edict from a WTO judicial panel, responding to a complaint from the EU, US and Mexico, said China's imposition of export duties and quotas on a variety of metal ores and other materials were illegal under WTO rules. By setting a precedent, the decision also strengthens the hand of the EU and US in their related campaign to prevent Beijing restricting the exports of rare earth materials, which are vital components in a number of high-tech products and are produced almost exclusively in China. (Financial Express dated 7/7/11)
- The WTO and China: Hands slapped: A ruling with ramifications -- When China joined the World Trade Organisation in late 2001, its share of world exports stood at 4.3%. By last year that share had soared to 10.6%, and the country had become the world's biggest exporter. In addition to awe and envy, its rise has spawned a rapidly growing list of trade quarrels. China was a party to only two of the 93 trade disputes that were taken to the WTO between its accession and the end of 2005. But in the five years to the end of 2010, it was involved in 26 of the 84 cases filed at the forum. On July 5 the WTO's dispute-settlement body found against China on three linked complaints. The cases were brought by America, the European Union and Mexico in 2009 and took issue with China's policy of restricting the exports of certain industrial raw materials, including bauxite, magnesium, zinc and silica, of which it is a leading producer. The plaintiffs argued that China's policies gave domestic firms that use these commodities an unfair competitive advantage, while also restricting world supply of these inputs and causing their prices to soar. China says its restrictions were motivated by its desire to conserve the world's limited supply of these materials and to protect the environment from the pollution caused by their extraction. But the significance of this

- judgment goes beyond China. Many countries banned some food exports during the food-price spike of 2008. A renewed period of buoyant commodity prices and demand could easily tempt more governments to emulate China's restrictions on exports of raw materials. The WTO's judgment may dissuade at least some countries from doing so. And given the rotten state of the Doha round of trade talks, a show of teeth in defence of a rules-based trading system is more useful than ever. (The Economist dated 9/7/11).
- The end of multilateralism? -- The World Trade Organisation upheld complaints by US, the European Union and Mexico against restrictions of one kind or another, export duties, quotas and licence agreements imposed by China on exports of key raw materials. The WTO ruling, as and indeed the complaint by the EU and the US, raises some important questions of consistency of trade conduct among members of a multilateral body. By implication, it also evokes doubt about WTO's own standards and its capacity or willingness to goad dominant trading members into practicing what they preach. Export restrictions or outright bans are not new; both America and the EU have used quotas and restrictions for various purposes; the Americans have made no bones about selling technology to "friendly" countries, thereby constituting a trade practice that is even more restrictive than Chinese quotas. Leave alone military hardware or software exports, even the sale of civilian technology has been long forbidden without the Commerce or State Departments giving their nod. The EU has not fared better. For years, it has had an export quota for sugar; when ministers asked the European Commission last year to raise the quota to allow a million tonnes of the sweetener for export because world prices were favourable, some associations voiced opposition on the grounds that more sugar was needed for consumption within the 27member bloc. At the heart of the WTO ruling on China lies a perfectly acceptable concern for a trading system free of impediments that favours an exporting country to the detriment of the larger number of global buyers. The history of post-War world trade, however, shows the accusers to have been the biggest violators of this perfectly reasonable assumption, that countries blessed by nature or their own efforts with tradable resources should not engage in practices that distort the free flow of goods and services. The decade-old Doha Round has consistently floundered on the persistent refusal of the EU and the US to discuss, leave alone alter, their restrictive practices on agriculture trade. In an age marked by the paradox of uncertain

- economic prosperity in the biggest markets and a trading system that has more exporters than importers, multilateralism and its rules are hard to live by. Swearing by the Doha Round, every country is busy pushing bilateral treaties most favourable to it; the US wants 'pre-investment guarantees' embedded in its bilateral treaty with India, the EU wants a litigation clause in its own version while India has baulked at one and rejected the second. Sunil Khilnani once wrote that India flirts multilateral and dates bilateral. With the exception of the WTO, so does everyone else. (Article by A Upadhyay in Hindu Business Line dated 11/7/11).
- 7. Auto, wine duties hold up EU FTA -- India's free trade agreement (FTA) with the European Union is held up over the issue of lowering import duty on automobiles and wines and spirits with New Delhi insisting that it is unable to reduce tariffs for both products that have a strong domestic lobby. "We have told them (EU) that we are unable to offer any concessions since we have not included these two sectors in our FTAs," said a government official. Besides, fears of similar demands from other trading partners such as Japan and South Korea, with which India has already signed agreements without cutting customs duty on these products, is holding back any concessions from New Delhi. (Times of India dated 18/7/11).
- Zoellick urges US drive for Doha deal -- U.S. leadership could be the vital spark needed to revive moribund world trade talks, World Bank President Robert Zoellick said, decrying as defeatist the mindset of those prepared to see the deal fail. Expanding on a speech in which he said World Trade Organization members should "double down on Doha", Zoellick, who was U.S. Trade Representative for four years, said the Obama Administration should take the initiative and champion a deal. "The world needs a global growth strategy, and opening trade drives growth," he told a news conference. "We've seen it with proven effectiveness all throughout the past 60 or 70 years, so why not revive Doha?" Zoellick dismissed the idea of chasing a mini-trade deal by the end of 2011, a second-best option now in the sights of WTO Director General Pascal Lamy. "In the conversations that I've had, people are finding that the mini deal will probably be about as hard as the big deal, and people predict they won't be able to close that, for a lot of detailed reasons. So I urge a turnaround." (Indian Express dated 19/7/11).
- 9. Trade accord to help fight global slowdown:
 Zoellick -- World Bank president Robert Zoellick, in remarks released on 18/7, said it was time for countries to get out of their defensive positions on

- trade and push for a broad agreement that could help the struggling global economy. In a speech to the World Trade Organisation in Geneva, Switzerland, Zoellick said he was disappointed the global round of trade negotiations, which he helped launch in 2001, might only deliver a deal much smaller than originally envisaged. "A mini-deal won't do much for global growth, which is my primary concern," he said. A copy of his prepared remarks was released in Washington. He asked WTO members to think big" and double-down on a far reaching global trade deal. Trade negotiators agreed earlier this year that a deal to... significantly open agricultural, manufacturing and services markets around the world was still out of reach. World Trade Organisation director general Pascal Lamy has urged members to focus this year on a smaller package that would first and foremost help least developed countries. But even that may be difficult to achieve because two major elements of a proposed smaller deal that could be produced in December are politically difficult for the US because of opposition from farm and textile groups. Those elements involve significant cuts in cotton subsidies and dutyfree, quota-free treatment for all goods coming out of the least developed countries. (Reuters report in Financial Express dated 19/7/11).
- 10. India regaining status as trading powerhouse: 10th largest exporter of services, among top 20 in goods exports in 2010:WTO -- India broke into the club of top 20 exporters of goods and reclaimed its position among top 10 services exporters in 2010, moving up two notches in both categories from 2009 in a display of resilience to the economic downturn that continues to cast its shadow on the US and the EU. The 'World Trade Report 2011' of the WTO, said trade in goods rebounded to grow by 14.5% in volume terms in 2010 after shrinking 12% in 2009. However, it projected the growth to moderate to 6.5% in 2011. India's goods exports rose at a much sharper 31% in 2010, helping the country not only improve its world ranking to 20 from 22 in 2009 but also expand its market share to 1.4% from 1.2% a year ago. Interestingly, while exports shrunk by 20% in 2009 owing to contraction in demand, India's share in world trade increased from 1.1% in 2008 and ranking improved from 26 the year before. Experts attribute the robust growth to a change in the composition of exports and addition of new markets. "Our basket has shifted from raw materials to manufactured goods, such as processed agri commodities and engineering items. Our exports have become relatively wide based in manufacturing," pointed out Rajesh Chadha, senior fellow, NCAER. Engineering and petroleum exports now account for 42% of exports as compared to 14%

in 2000. Indian Institute of Foreign Trade (IIFT) director K T Chacko also said the government's attempt to help exporters diversify markets beyond traditional regions like the EU and the US has stood India in good stead. "Greater interaction between business communities with newer countries opens up various opportunities. Various free trade agreements (FTAs) and consolidation of special economic zones (SEZs) have also contributed to the rise in exports." The Middle East, Asia and other emerging markets are the big growth areas now. (Economic Times dated 21/7/11).

- 11. China WTO row spotlights nations clamping down on resources -- Countries from India and Indonesia to Russia are tightening their grip on natural resources as they limit exports to build up domestic industry in a trend that will spawn many challenges to World Trade Organisation rules. Export barriers are tightening on commodities ranging from food and coal to iron ore and coveted rare earths that have critical roles in high-tech devices as countries harden positions on what they see as a sovereign right to development. (Financial Express dated 21/7/11).
- 12. EU under WTO fire over trade barriers -- The European Union (EU) came in for much criticism in its recent Trade Policy Review (TPR) by the World Trade Organization (WTO). Even as a WTO secretariat report stated that "long-standing barriers to market access and other measures that distort international competition remain in place", over 40 countries expressed their frustration at the trade barriers and submitted over 1,000 written questions to the EU on its practices. At the review, while most delegations were hard-hitting in their statements, India was unusually low-key. Its ambassador, Jayant Dasgupta, however highlighted some of the country's concerns to the EU. India took up with EU customs officials the incidents of seizure of Indian pharmaceutical consignments for Latin American and African countries during their transit through Europe in 2008 and 2009. India stated that its small and medium exporters have been affected by the EU's Traditional Herbal Medicinal Products Directive (THMPD) effective May 1, 2011, which imposes several requirements for the import of herbal medicines, including submission of onerous and burdensome test reports. These reports are costly, and the registration conditions difficult to meet for small and medium exporters. India attacked the EU on its harmonisation of its pesticide residue level framework under its rule 396 of 2005 on Maximum Residue Level (MRL). (Financial Express dated 22/7/11).
- 13. Doha round is best aid-for-trade tool: The biggest

- challenge for WTO chief Pascal Lamy is to mobilize members to come back to the negotiations table --One of the critical issues in the international trading system is the Aid-for-Trade (AFT) programme . This aid programme is to help poor countries to enable them to access gains from trade liberalisation through financial and technical assistance as a standalone programme without mixing it with other aid programmes . The elaborate third review conference on AFT was organised at Geneva last week. The event was impressive and attended by a large number of countries, intergovernmental and non-governmental organisations. Thanks to WTO head Pascal Lamy's enthusiasm, vision and determination. Alas, the Doha calculus continues to boggle minds about its non-progress, but one never knows what lies in future. The main reason behind the non-progress of the Doha Round of negotiations by WTO members is that there is no clear, committed constituency behind it in most countries. Neither the political leadership nor the business is interested in concluding the DDA. On the other hand, there is a committed constituency in favour of the multilateral trading system, i.e., the WTO. Unfortunately, the latter has not strengthened the former . Now, there is a danger that the lack of commitment on the former seeps into the latter. It is not necessary to equate the DDA and its positive outcomes with the vitality of the WTO. The success of the Plan B or even Plan A will depend on decoupling of these two issues. While an early and positive outcome of the Doha Round would have strengthened the WTO, should the opposite be necessarily true? The Doha Round should be taken off WTO's back by putting it on a track that is not organically linked to WTO's core strengths, i.e., the dispute settlement system, among others. The relevance, vitality and utility of the WTO are not wholly dependent on conducting rounds of negotiations. The challenge for the never say-die Lamy is to cajole governments to bury their apathy and move ahead on Plan A. Only time will tell whether he would succeed. (Article by Pradeep S Mehta, Secretary General of CUTS International in Economic Times dated 25/7/11).
- 14. India, EU ink deal to end drug seizure for now -- India and the European Union have reached an interim settlement to ensure that none of the 27 members of the economic and trading bloc will detain 'Made in India' consignments of generic medicines, which are transiting through Europe. "Finally, EU has come around and we have agreed on an interim settlement... which means EU will not make any detention within its territory of pharmaceutical products coming from India. We will wait for the final settlement but we have not lost

- our right to agitate on the matter again," Rajiv Kher, additional secretary in the commerce department, told reporters. This means that India will not withdraw its case against the European Union in the World Trade Organization's dispute settlement body. India had moved the WTO after consignments of generic or non-patented medicines shipped to Latin America were seized by European customs authorities on charges of intellectual property rights violations. Subsequently, Brazil joined the discussions. (Times of India dated 29/7/11).
- 15. India-Japan FTA to be operational from August 1 -- India-Japan Free Trade Agreement will come into operation from August 1, giving improved access to Indian medicines in the Japanese market and also provide opportunity to professionals like English teachers to take up short-term assignments in the world's third largest economy. Under the Comprehensive Economic Partnership Agreement (CEPA), which was signed in February, the two major Asian economies will eliminate import duties on 94 per cent of their trade items in 10 years. The agreement will give a boost to the bilateral trade which may touch USD 25 billion by 2015 . (The Hindu dated 30/7/11).
- 16. Pak to give India MFN status -- Pakistan has, in principle, agreed to give India Most Favoured Nation (MFN) status, a basic international trading procedure that has been languishing on the margins for the last two decades, but which will now allow both countries to conduct normal trade with each other. The trade concession is likely to see the day when Pakistan commerce minister Makhdoom Amin Fahim comes to Delhi for talks with his Indian counterpart Anand Sharma in September. (Business Standard dated 3/8/11).
- **17. Sourcing compulsion for FDI in retail may attract WTO action** -- The department of industrial policy and promotion (DIPP), which is pushing the proposal for FDI in multi-brand retail, had suggested that foreign retailers be mandated to source 30% of their requirements from small-scale industry. However, there were fears that such a prescription could attract action at the World Trade Organization. So, secretaries from textiles, MSME and telecom and information technology will suggest how to balance the twin objectives of protecting local electronics and small-scale players and yet get around global trade rules. (*Times of India dated* 3/8/11).
- 18. A contagion of bad ideas: Both Europe and the US have been impacted by misguided economic notions speading across continents: Joseph Stiglitz -- The Great Recession of 2008 has morphed into the North Atlantic Recession: it is mainly Europe and the

- United States, not the major emerging markets, that have become mired in slow growth and high unemployment. And it is Europe and America that are marching, alone and together, to the denouement of a grand debacle. A busted bubble led to a massive Keynesian stimulus that averted a much deeper recession, but that also fueled substantial budget deficits. The response massive spending cuts ensures that unacceptably high levels of unemployment (a vast waste of resources and an oversupply of suffering) will continue, possibly for years. (Article in Economic Times dated 9/8/11).
- 19. 'December talks to look at future course of action': **Lamy --** Trade ministers from 153 member countries will meet for the eighth Ministerial Conference at the World Trade Organisation (WTO) headquarters in Geneva from December 15 to 17. The members are expected to chalk out the future course of action to keep the decade-old Doha round of global trade talks going, said WTO Director General Pascal Lamy in an interview said. (Edited excerpts): "What is going to be the main agenda of the December ministerial? First and foremost, the conference will focus on the regular work of the WTO, including reviewing and giving direction to all the areas which take up the day-to-day work of the organisation. Members believed it was more productive to focus on the preparations for the eighth Ministerial Conference in December and to begin the difficult discussion of how we pick up the Doha round in 2012. The principal focus will be the preparation for the 8th Ministerial Conference and charting the future course of the Doha negotiations. Although it is wrong to suggest Doha and WTO are synonymous, it is an unfortunate reality. So does the failure of Doha talks mean a dent in WTO's credibility? You are right to suggest that the WTO is a great deal more than the Doha negotiations. The WTO oversees trade agreements that constitute the foundation of the global trading system and disputes that are being negotiated for over 60 years. We provide the forum for the settling of disputes among member countries, we monitor developments in the trading system and we interact closely with other organisations in programmes such as Aid-for-Trade. These functions have little connection to the negotiations, and I do not see them being adversely affected by the current lack of agreement on the Doha round. Our problems with the Doha round are of concern, of course, but the overall functioning of the WTO remains very good." (Business Standard dated 9/8/11).
- 20. Cancer drug has right to patent, Novartis tells apex court -- The final hearings have commenced at the Supreme Court regarding Swiss drug-major

Novartis' blood cancer drug Glivec. A landmark case, it will have ramifications on the implementation of the amended Indian Patents Acts, including aspects of interpreting and assessing the efficacy of a medicine seeking a product patent. Novartis had filed a Special Leave Petition in the SC in 2009, challenging the denial of a patent to its cancer drug Glivec (imatinib mesylate) in a beta crystal form. The final now hearing will be on continuously through the next few days, lawyers familiar with the case told Business Line. (Hindu Business Line dated 11/8/11).

21. End of the road for Doha? -- When a high-level Expert Group on Trade, chaired by former head of World Trade Organisation (WTO), Peter Sutherland and eminent trade economist Jagdish Bhagwati, got together to cast their verdicts on the Doha round of trade talks, Bhagwati famously compared it to a parrot in a skit performed by British comedy troupe, Monty Python. In the skit, a customer holds up a dead parrot in a cage while the shopkeeper insists that the parrot is 'resting'. When the parrot drops off its perch and hits the floor of the cage, the customer is convinced that the parrot has died while the shopkeeper still insists that the bird is only 'stunned' by the fall. Bhagwati has happened upon a perfect analogy for the most recent round of trade talks that the world has seen under the aegis of the WTO and the first since the Uruguay round of talks As the negotiations have ended in 1994. progressed, in general, exceptions for developed countries have become more generous, while flexibilities for developing countries have been made more stringent. Not only has the overall number of Special Products (SP) which can be shielded from tariff cuts by developing countries declined, a requirement of an overall average tariff cut for all SPs has been introduced. "Any scramble for seeking market access from the so-called advanced emerging countries, which goes beyond the existing negotiating mandate, can only erode the credibility of the rule-based multilateral trading system of the WTO," said Abhijit Das, head, Centre For WTO Studies, Indian Institute of Foreign Trade. Naturally, many feel doubtful whether the upcoming meeting of the trade ministers from all 153 members at the WTO headquarter in Geneva from December 15 -17 —in effect, Doha's last dance—will be able to achieve anything at all. With the global economy potentially heading into another recession, the Doha round can be sure of commanding very little of the world's attention. "Doha for sure is dead now, at least for few years. Countries might seek to revive the talks again by 2013-14 when hopefully the global economy would be in a better position to negotiate," says Manoj

Pant professor, Centre for International Trade and Development, School of International Studies, JNU. If Doha does die out, the next obvious question is, do we need to spend all this time and money on trade rounds that seemingly go nowhere? Fact is, a multilateral trading regime is always required as it prevents a tariff war from breaking out. There are huge benefits to the opening up of trade. Lamy himself has conservatively estimated that the Doha deal will bring an increase of at least \$130 b to global trade. Other estimates suggest that global income could rise by at least \$3,000 billion a year. This hasn't stopped the US from furthering the state of paralysis by making it clear that it would not negotiate based on the negotiating texts that were issued in 2008 because it believed that those texts did not have sufficient market access provision for themselves. Hence, the US wanted countries such as China, India, Brazil and South Africa to give it more concessions. This led to the issuance of another set of texts during Easter this year, which were not accepted by a large number of countries, especially the developing ones. Earlier this year, while delivering a lecture on Doha round in FICCI, Bhagwati had underscored the fact that failure to conclude Doha would undermine WTO's image as a credible institution. Where multilateralism and Doha seem to be on the retreat, bilateralism has thrived. Since 2008, when the negotiations last broke down in Geneva, India has signed a number of comprehensive bilateral deals with countries like Japan, Korea, Malaysia and the 10-member ASEAN (Association of South East Asian Nations) bloc. In the meantime, all eyes are now on the December talks where the future course of Doha will be decided. (Business Standard dated 10/8/11).

September-October 2011

- IIFT centre chosen for WTO's trade policy course -The Centre for WTO studies at the IIFT, New Delhi has been selected by WTO Secretariat as the regional partner for WTO's prestigious Regional Trade Policy Course (RTPC) for the Asia-Pacific region. Mr. Pascal Lamy, WTO-DG, will be in Delhi on September 5 to participate in the inaugural function of the RTPC along with the commerce, industry and textile minister Mr. Anand Sharma, an official statement said. RTPC is a three-month course offered by the WTO for government officials from developing countries / separate customs territories, LDCs, economies in transition and countries in the process of accession to the WTO. (Hindu Business Line dated 3/9/11).
- 2. WTO meet may put aside Doha for now -- The WTO Ministerial meeting in December is likely to focus on non-Doha Round issues, given the continued

glitches in firming up modalities for further global trade liberalisation. These non-Doha issues. covering unfinished items in the implementation of the previous Uruguay Round, include government assistance for economic development in developing countries. They also include systemic issues like improving the day-to-day functioning of the WTO to make it more member-driven, transparent and effective. The aim will be to give complete effect to the intent of the Uruguay Round, which had resulted in the setting up of the WTO. Officials in the Commerce Ministry say that the shift in attention to non-Doha Round issues follows signals emerging from Washington and the WTO headquarters at Geneva, indicating that fresh initiatives from the US on the Doha Round can only be expected after their new President takes charge in January 2013. (Hindu Business Line dated 3/9/11).

- 3. Multilateral route best way to open trade -- Pascal Lamy, director-general of the WTO, was in India to drum up support for reviving the stalled global trade talks. Lamy, who was reappointed as DG in 2009, believes that opening up trade and reducing trade barriers is essential for growth and development. In an interview to TOI, he talks about the future of the global trade talks, the future of WTO and India's efforts to break the deadlock. Excerpts: What is the future of the Doha Round? We know where we are. Ten years ago we had a mandate for discussions on 20 topics. For the moment there is no short-term prospect for conclusion given the differences between members which they could not bridge so far. So we are deadlocked. Exit possibilities are being considered and I hope that the WTO ministerial conference, which will take place at the end of this year, will provide a framework for "what next" in the negotiations. I haven't heard any of the WTO members suggest that this negotiation should be stopped. The stop and reboot option which some academics are floating and considering doesn't seem to attract any support among WTO members. Probably because devising a new agenda would bump into the same issues which are on agenda today. (Times of India dated 8/9/11).
- 4. The Doha Round now is about trade politics: Lamy Critics of the World Trade Organisation might want an official burial to the protracted global trade talks as the Doha Round has long been dead. However, the WTO Director-General, Mr Pascal Lamy, says the Round, launched in 2001 for further liberalisation of world trade, is only deadlocked. He has been tirelessly touring the world talking to political, business and civil society leaders on the benefits of concluding the Round. In Delhi earlier this week, Mr Lamy spoke to Business Line on matters including

- the Round's future and the global trade forecast and said: "When you look at the WTO commitments from members, we have three regimes — that of the developed, emerging and poorer developing countries. The negotiations are stalemated in the debate between the US and emerging countries (including India). The US says 'since you have now emerged, you should eliminate duties like us on chemicals, industrial machinery and electronics'. The emerging countries say 'we accept we are not like LDCs, but we don't want to be treated like developed countries because of our development challenges'. India still has huge development challenges and it needs to reaffirm this reality. But what an average westerner sees of China or India is their shining side. India and China also want the shining side of their reality projected abroad. If developed countries are convinced that India or China is like them, they will ask for a level playing field in international trade rules. Therefore, people should understand the whole reality rather than the perception they have of the reality. The issue now is not trade policy, but trade politics. It is my duty and that of political leaders to put perceptions in line with reality instead of using their perceptions to antagonise". (Hindu Business Line dated 9/9/11).
- 5. US patent office to train Indian judges on IPR related issues The US patent and Trade Mark office (USPTO) will train Indian law enforcement officials and members of the judiciary on issues related to IPR. The 5-day workshop beginning September 15 will be held in Mumbai in association with the Maharashtra Judicial Academy. It would have a 3-day session on IPR and a 2-day training session on digital piracy, an academy official said. This is the first time the state judicial academy is joining hands with USPTO to conduct refresher and training programmes for members of the judiciary. (Business Standard dated 14/9/11).
- 6. WTO slams India's trade Policy on food items -- The WTO has slammed India for its protective trade policy on food items that prevents exports at a time when world is facing record food prices. In its review of India's trade and economic policies, the WTO observed that India was one of the highest user of anti-dumping and a frequent user of safeguard measures against imports from other countries. "Trade policy seems to be lacking an overall thrust and is being conducted mostly on a sector or product basis," it said. (Economic Times dated 15/9/11).
- 7. Key WTO members praise India for reforms --Several WTO members, including Turkey, Brazil, Mexico, China, Pakistan and the European Union,

have praised India for pursuing bold trade and development-friendly initiatives despite serious economic and social challenges. The US, however took several pot shots at New Delhi by commenting "about lack of transparency in many aspects of India's trade policy" at the WTO. During India's trade policy review meeting at the WTO, which provides a platform for members to review New Delhi's overall trade and macro-economic policies, commerce secretary Rahul Khullar outlined the government's trade and macro-economic reforms in the face of raging global economic crisis. (Indian Express dated 15/9/11).

- 8. Simplify import permit, tariff regime: WTO to India -- India's import regime remains complex, particularly its licensing and permit system and its tariff structure, with the latter having multiple exemption and rates varying according to product, user or specific export promotion programme. This is the nub of the WTO trade policy review (TPR) meeting, which commenced in Geneva. Surveillance of national trade policy is an important activity running throughout the work of the WTO and at the core of this work is the TPR. The Commerce Secretary, Dr Rahul Khulla is taking part with his team in the three-day India trade policy review that covers the period 2007 to April 30, 2011. (Hindu Business Line dated 16/9/11).
- 9. Global trade growth slows sharply -- The expansion in global trade has slowed sharply in recent months, with the WTO warning that a loss of economic confidence harms prospects for export growth worldwide. The WTO revised down its estimate for growth in global goods trade in 2011 to 5.8 per cent from an already cautious forecast of 6.5 per cent and warned that the risks were "firmly rooted on the downside". (Financial Times of London dated 22/9/11).
- 10. Doha round conclusion not possible before 2013: Khullar -- Commerce Secretary Rahul Khullar said the Doha round of talks under the WTO umbrella were 'stuck'. "Doha is stuck. The question arising in everyone's mind is where do we go from here?" Mr. Khullar said . Talking to reporters, Mr. Khullar termed as 'rude' the sharp attack by U.S. Ambassador to WTO Michael Punke on India's restrictive trade policy in the area of farm tariffs in Geneva on September 14. "One thing is clear that it would not be possible to conclude the Doha round by the end of 2011. It is also crystal clear that it will also not be possible to strike a trade deal during 2012 because one country is going to go through a very long, drawn out election at that time," Mr. Khullar said in reference to the Presidential polls in the U.S. next year. (The Hindu dated 24/9/11).

- Free trade pact with Asean improves market access for Indian industry: Survey -- The India-Asean Free Trade Agreement (FTA), in effect since January 2010, has ensured greater market access for Indian industry to the Asean region, a FICCI report reveals. The survey on the 'Impact of India-Asean FTA on Indian Industry', conducted during August 2011, drew responses from 78 companies with turnover ranging from Rs 1 crore to Rs 27,000 crore. Eighty per cent of the respondents felt that the import of products belonging to their sector has not increased post-FTA. According to them, the sectors where imports are increasing include engineering products, processed food, textiles, garments, plantation crops and auto parts. (Hindu Business Line dated 26/9/11).
- India disappointed over slow progress in WTO Doha talks -- Expressing disappointment over the slow progress in the Doha Round of talks for opening global trade, India on 24/9 said the WTO members have again missed the opportunity to conclude the deal this year. Leaders of the world's most influential countries, including the US and the European Union, Brazil and India had agreed for concluding WTO talks for a multilateral agreement in 2011. "Earlier this year, there was a window of opportunity. Unfortunately the progress has been less than encouraging," the Commerce and Industry Minister, Mr Anand Sharma, told PTI. However, he said that the member nations would remain engaged and review the talks in the next Ministerial Meeting of the WTO in Geneva in December. (Hindu Business Line dated 26/9/11).
- 13. Patent tribunal's admission places question mark against tribunals -- An admission by the chairperson of the Intellectual Property Appellate Board (IPAB) that the body isn't fully independent of its parent ministry because of the infrastructural and financial backing the latter provides has raised a question about the independence of similar tribunals. The admission by justice Prabha Sridevan was made in a report placed before the Madras high court, which is hearing a case on the workings of IPAB. The appeals body, which rules on intellectual property (IP)-related issues, is vested with the powers and jurisdiction of a high court. (HT Mint dated 27/9/11).
- 14. India shows growth in IP registration -- The figures released by the World Intellectual Property Organization (WIPO) of the United Nations show that the number of international trademark and patent applications rebounded around the world last year after having fallen in 2009, with India recording the highest five-year growth. The WIPO reported that trademark applications, the most

- sought-after form of intellectual property (IP) protection, recuperated some of their losses with an increase from about 36,000 to 37,500, a 4.5 per cent growth, while patent filings rose to 164,300, slightly higher than 2008 levels. China, India, Japan and South Korea accounted for 37 per cent of trademark applications. (Statesman dated 27/9/11).
- 15. Govt buries plan to empower CCI on IPR disclosures -- In a major reprieve for innovation-led firms in India, the government has quietly dropped a controversial plan to empower the competition regulator to make intellectual property rights (IPR) holders share their knowledge with competitors in specific circumstances. Hit by a barrage of representations from corporates and IPR law practitioners slamming the idea, the corporate affairs ministry has dropped two IPR-related clauses included in its draft National Competition Policy put out this July. "Intellectual Property Rights are not at loggerheads with the objective of fostering competition - but are an incentive to innovate," said Amitabh Kumar, senior advisor in charge of competition, regulatory and tax issues at law firm J. Sagar Associates. (Economic Times dated 29/9/11).
- 16. Pakistan mulls MFN status for India -- India and Pakistan have welcomed gradual progress in their economic ties as the neighbours continue to build towards mending their fraught relationship. Commerce minister Anand Sharma told a FICCI conference that his Pakistani counterpart, Makhdoom Mohammad Amin Fahim, had recognised that granting India the status of Most Favoured Nation (MFN) would be a key step in expanding bilateral trade. (Indian Express dated 30/9/11).
- 17. Khadi cloth still not protected by IPR -- Did you know that the popular Darjeeling tea, Tirupathi laddu, Kancheepuram Silk saree, Pochampalli Ikat and basmati rice are all protected under the Geographical Indications (GI), but the Khadi cloth is yet to get protected in India? The Khadi cloth, which was so powerfully made popular by Mahatma Gandhi as a Swadeshi symbol to protest the British's penchant to impose their goods and products in India during the freedom struggle, languishes for want of protection under the Intellectual Properties Rights (IPR) law. Giving this interesting information at a recent seminar on 'Emerging Trends in Business and Industry', Mr V. Natarajan, Deputy Registrar, Trade Mark, Registry and Geographical Indications, Chennai, emphasised the need to recognise the value of Indian products and origin needs to be protected. Interestingly, even the Khadi mark, proposed as a quality benchmark for all types of fabrics sold at more than 7,000 outlets of the Khadi

- and Village Industries Commission (KVIC), still awaits the approval of the Law Ministry. (Hindu Business Line dated 2/10/11).
- 18. Comprehensive economic cooperation agreement with Thailand: India seeks opening up of service sector -- The first round of formal negotiations for having a Comprehensive Economic Cooperation Agreement (CECA) between India and Thailand is going to be held in Bangkok in the end of November or early December. Both sides would be meeting for the first time for a full-fledged round, since there has been a change of government in Thailand. India is seeking greater movement of persons with Thailand in the deal. (Business Standard dated 4/10/11).
- 19. DIPP moves note on making patents office independent -- India's intellectual property office overseeing patents and trademarks should be granted autonomy to make it more responsive and effective, a government department has suggested. In a discussion paper, the department of industrial policy and promotion has favoured several steps for strengthening and restructuring the office of the Controller General of Patents Design Trademarks and Geographical Indications (CGPDTM). The paper comes in the backdrop of demands to make the office independent of DIPP, under the commerce and industry ministry. Justice Prabha Sridevan, chair of the Intellectual Property Appellate Board, had recently admitted that the CGPDTM is not independent of the department. The case, filed by Promoting Public Interest Lawyering, questioned the dismal state of infrastructure at the board and said that its dependence on the ministry was hindering its functioning. The case is now before the Madras High Court. (Economic Times dated 8/10/2011).
- **20.** US drags India, China to WTO over subsidy programmes -- The United States has dragged China and India to the WTO over subsidy programmes implemented by the world's two fastest growing economies, with US Trade Representative Ron Kirk terming the situation as intolerable. Noting that every member of the WTO is required to come clean on their subsidy programmes on a regular basis, Kirk said China has not notified its subsidy programmes in over five years. "India only recently filed its first notification in almost ten years and even then, notified only three of the many subsidy programmes we know to exist," he said. (Indian Express dated 8/10/2011).
- **21.** Turkey to be dragged WTO over yarn duty -- India will soon file a complaint with the WTO against "illegal" duties imposed by Turkey on cotton yarn

imports. The commerce and industry ministry is consulting lawyers to file a case before WTO's Dispute Settlement Body, a senior official said. India says Turkey has randomly extended safeguard, or additional, import duties of 12%-17% on cotton yarn, making Indian textiles uncompetitive in their sixth largest export market. (Economic Times dated 8/10/11).

- 22. India keen to conclude trade pact with ASEAN in services sector -- Seeking to widen the scope of free trade agreement (FTA) in merchandise goods, India will seek fast tracking of the agreement with the ASEAN bloc for opening of trade in services and liberalisation of investment norms. A team of ASEAN officials is scheduled to visit New Delhi by the middle of this month to hold talks on further progress, which have been hanging in fire in the last one and half years due to reluctance of some ASEAN countries including the Philippines on opening the services sector. India and the ten-nation ASEAN bloc already allow each other free market access in merchandise goods. (The Hindu dated 10/10/11).
- 23. Doha development agenda, aka Dodo: The world's focus on plurilateralism and regional trade agreements has ensured its slow death: Bibek **Debroy** -- The Dodo is extinct. Perhaps incorrectly, the Dodo's flesh is believed to have tasted awful. To many commentators, extinction and loathsomeness are acceptable adjectives for DDA too. By DDA, one doesn't mean Delhi Development Authority. One means Doha Development Agenda. There will be a Ministerial Conference (MC) of the WTO in Geneva in December. Consequent to attachment for acronyms, this is called MC-8. On an average, there should be an MC once every two years. This Geneva meeting is 8th. The 4th meet in Doha in 2001 launched DDA. Till the 6th one in Hong Kong in 2005, we were on track for going somewhere. No longer. Issues are systemic. Nittygritty of non-agricultural market access (Nama), agriculture or services is less important. With 153 WTO members, decision-making is certain to be messy, especially if decisions are consensus-driven. On paper, WTO is more democratic than World Bank or IMF — not quite in practice. There is an aristocracy, say US, EU, Japan and Canada, so called Quad countries. Decision-making in any aristocracy is faster than in democracy, not that decisions are necessarily best. During Uruguay Round, aristocracy got what it wanted. They rammed it down the throats of developing countries and LDCs. We have several developing country/LDC groupings now: African, Caribbean, Pacific (ACP), African group, Apec, Mercosur, G-90, G-10, G-20, G-33, Nama-11, LDCs, small and vulnerable economies (SVEs),

Cotton-4 and so on. Compared to Uruguay Round (1986-94), these countries are better equipped and more informed. This doesn't necessarily mean they know what they want. More charitably, they know what to oppose, in reaction to suggestions from developed countries. But there isn't a proactive agenda. However, because of greater awareness and capacity, WTO has become more democratic, and that is the aristocracy's problem. Hence, we have odd suggestions. Uruguay Round was an entire package or single undertaking: take it or leave it. You couldn't unbundle it. But US/EU can't get DDA going with 153 countries. All 153 economies don't matter equally in trade and related negotiations. Therefore, break them up and create hierarchy among countries. As long as you have Brazil, India and China, so-called emerging economies, on board, all is fine. At best, one can add South Africa, Argentina, Indonesia, Malaysia and Mexico. There are several different ways this splintering idea is floating around. First, let's go plurilateral and dilute the single undertaking clause. A multilateral agreement is negotiated under WTO and is mandatory on all WTO members. A plurilateral agreement is negotiated under WTO, but is open for signature to countries that wish to. In this plurilateral idea, we are effectively saying we won't get liberalisation by negotiating among 153 members. Let us limit the canvas, a bit similar to what is being done through regional trade agreements (RTAs). Phrases like early harvest and partial harvest are floating around. With this emphasis on plurilaterals and RTAs, no one is particularly interested in DDA now. US and EU have their own internal economic problems, apart from political electoral cycles and review of Common Agricultural Policy, due in 2013. There are quantifications of welfare, consumption and export gains that might result from DDA liberalisation. That is peanuts compared to numbers involved in fiscal stimulus packages. Before 2013, there is no obvious reason why developed countries should be interested. Ditto for Brazil, India and China. Nama demands, agricultural liberalisation offers and even service sector proposals are not attractive enough. That a change is going on in global sources of economic power is known. However, we are in an interregnum. The former aristocracy expects emerging market economies to don the mantle of leadership — and contribute financial resources without accepting reforms in decision making structures of international institutions. That's non sequitur. Without mentioning names, why haven't we had a Chinese head of IMF and a Brazilian head of WTO so far? DDA is in ICU now. But at MC-8, no minister is likely to publicly proclaim demise of DDA.

That would be PR disaster. DDA should revive after 2013. Some people argue end of multilateralism will be disaster for smaller economies. They are likely to get their arms twisted more in bilateral negotiations. As a proposition, that is unquestionable. (Article in Economic Times dated 17/10/11).

- 24. India plans to move WTO against US -- India plans to approach the WTO over the imposition of 18% to 500% penal duties by United States on imports of hot-rolled steel, a move that has priced Indian producers out of the US market. (Economic Times dated 22/10/11).
- 25. Growth inclusive, poverty fall rate doubles since '05: Study: But research by JNU profs shows 'inequality has increased in both rural & urban areas -- Poverty in India has fallen at twice the rate since 2004-05 as compared with the previous decade, says a study by two professors of Delhi's Jawarharlal Nehru University. The average annual decline in poverty rose to 4.3% in the six years from 2004-05, as against 2.1% between 1993-94 and 2003-04, Sukhadeo Thorat and Amaresh Dubey said in a research paper. While the period after 2004-05 saw poverty alleviation in social groups that had remained out of the growth process, it also saw inequality increase marginally in both rural and urban areas, the study titled "How Inclusive Growth has been During 1993/94 – 2009/10" says. It shows that the current Five Year Plan (2007-12) has delivered on its objective of laying the foundation for inclusive growthinIndia. The research comes a
- month after the Planning Commission, in a joint statement with the rural development ministry, said its state poverty line would not be used for capping benefits to the poor under various government schemes. The Commission plans to use inputs from the study to formulate its strategy for the next plan period (2012-17). The study shows that farm-sector policies from 2004-05 onwards helped reduce poverty among small and marginalised farmers. It suggests that since agricultural growth has the potential to reduce poverty, there is a need to strengthen the current pattern of growth. (Economic Times dated 25/10/11).
- 26. India confronts US, EU at WTO over solar plan --India has stoutly defended its national solar power generation programme at the WTO, where the US and the EU raised objections to its requirement of mandatory use of locally-made equipment. India refuted allegations at a recent meeting of the WTO's committee on trade related investment measures, or Trims, that the Jawaharlal Nehru National Solar Mission violated global trade rules. "The mandatory use of solar modules manufactured in India, in the project, and the 30% local sourcing requirement is to give a boost to the nascent domestic industry and make non-renewable energy more affordable in the long run," an official said. Along with the EU, the US, which has also taken up the issue bilaterally with India, raised the issue at the WTO meeting on Trims saying the mission requirements prevent them from exporting their technology and equipment. (Economic Times dated 26/10/11).

Forthcoming Events

S.No.	Торіс	Venue	Date
1	Twenty Years of India's Liberalisation: Sharing of Experiences		15-16 November 2011
2	Seminar on WTO, Multilateral Trading System and Doha Talks: Where do we stand and the way forward		20 December 2011
3	Workshop on Countervailing Duty Investigations under the WTO		22 December 2011
4	Specialized Course on Select WTO Issues: Agriculture, Services, TRIPS and RTAs		23 January – 1 February, 2012
5	Training programme on Tradesift Software	IIFT	21 – 24 February, 2012

Printed and published on behalf of Centre for WTO Studies at M/s Image Print, Kirti Nagar, New Delhi- 110015.

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