

By Shashank Priya Professor Centre for WTO Studies

Definition

• Rules of Origin are laws, regulations and administrative determination of general application to determine the country of origin of goods (that is, where made, grown, etc.).

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• Exception: Such rules of origin would not apply to preferential trading agreements.

Application

• Such rules of origin are to be used for various nonpreferential commercial policy instruments. Illustrative examples are:

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- Extending MFN treatment under various GATT Articles (I, II, III, XI and XIII).
- Anti-dumping and countervailing duties.
- Safeguard measures.
- Origin marking requirements.
- Application of QRs or TRQs.
- Government Procurement.
- Trade statistics.

Scope

• Rules of Origin would apply equally for all purposes as set out in the Agreement.

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- Such Rules should be administered in a consistent, uniform and impartial manner.
- Transparency requirements-laws be published, advance ruling, no retrospective changes.
- Provision for judicial review and confidentiality clause.

Harmonisation Work Programme (HWP)

- Certain WTO Members already have their own non-preferential ROO
- India does not have such non-preferential ROO
- The Agreement seeks to harmonize, that is, have common rules of origin for all WTO Members.
- The expected benefit is to provide more certainty in the conduct of world trade.

Principles of HWP

- Rules of Origin should be objective, understandable and predictable.
- They should not be used as instruments to pursue trade objectives.

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- They should be coherent.
- They should be based on a positive standard.

Disciplines during transition period

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- ROO, including specifications relating to ST, be clearly defined
- ROO be not used as a trade policy instrument
- ROO by itself should not create restrictive, distorting, or disruptive effects on international trade
- ROO should not require fulfillment of conditions not related to mfg. or processing of product in question
- ROO applied to trade be not more stringent than those applied to determine whether a good is domestic
- ROO should not discriminate between Members

Criteria for HWP

• Origin of a good would either be the country where it is wholly produced and in case of multicountry production of goods, the country where the last substantial transformation took place.

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- The basis for HWP is the Harmonised System (HS) tariff classification developed by WCO (total HS subheadings-5113).
- Discussion on product sector basis represented by various Chapters or Sections (15 product sectors).

Criteria for HWP (contd.)

• Wholly obtained and minimal operations or processes that do not confer origin (examples: milk, eggs, crops, fruits obtained in one country; packaging, preservation operations).

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• Substantial transformation for multi-country production-CC, CTH, CTSH, CTHS, CTSHS.

Criteria for HWP (contd.)

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- CC-Change of Chapter
- CTH- Change of Tariff Heading
- CTSH- Change of Tariff Sub-heading
- CTHS- Change of Tariff Heading Split
- CTSHS- Change of Tariff Sub Heading Split
- HS 9.01-Coffee, whether or not roasted or decaffeinated; coffee substitutes containing coffee in any proportion.
- -coffee not roasted
- -coffee roasted

Criteria of HWP (Contd.)

• Ch. 19.05- Bread, Pastry, Cakes and Similar Products

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- 190590- Others
- 190590 (a)- Pizzas- CTSHS
- 190590 (b)- Cooked Pizza base- CTH
- Supplementary criteria for substantial transformation-value addition, manufacturing or processing operations.

Progress of HWP

- Work initiated in July 1995.
- Initial deadline for completion was July 1998.

- Due to technical and voluminous nature of work and trade policy considerations for several issues, deadline had to be extended repeatedly.
- Negotiations for first three years was conducted in TCRO in Brussels in 17 formal sessions.

Progress of HWP (contd.)

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- Results of discussions in TCRO presented to CRO in June 1999-agreed Rules (Basket 1) for endorsement and unresolved issues (486) for decision.
- As on date, 350 issues resolved and 136 issues are outstanding.

Remaining Work of HWP

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- The remaining outstanding issues are some of the most complex and sensitive.
- Sectors with largest number of unresolved issues are agricultural products, textiles and machinery.
- Machinery sector has another large number of outstanding issues linked to the resolution of the Assembly Rule.

Remaining Work of HWP (contd.)

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- Architecture of the rules of origin to be finalised-one contentious issue is origin of products of sea fishing.
- Implications of rules of origin for other WTO Agreements.

Ways to complete HWP

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- A new working methodology adopted since April 2001 Meeting of CRO.
- Chairman's recommendation for each issue is the basis for further negotiation
- 276 issues resolved after adopting this approach (in 4 CRO Sessions) compared to 54 issues resolved between September 1997 to March 2001 (in 25 Sessions).
- Progress slowed in 2002. 300 Issues resolved in 4 CRO Sessions in 2001 but only 18 resolved in 2 CRO Sessions in 2002. Work is even slower since then.

Ways to complete HWP (contd.)

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- Countries to give reasoned explanation where Chairman's recommendation not acceptable and suggest compromise solutions.
- 92 Issues identified as core policy level issues in CRO meeting of June 2002.
- These referred to the General Council for decision.

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Important Resolved Issues in Textile Sector

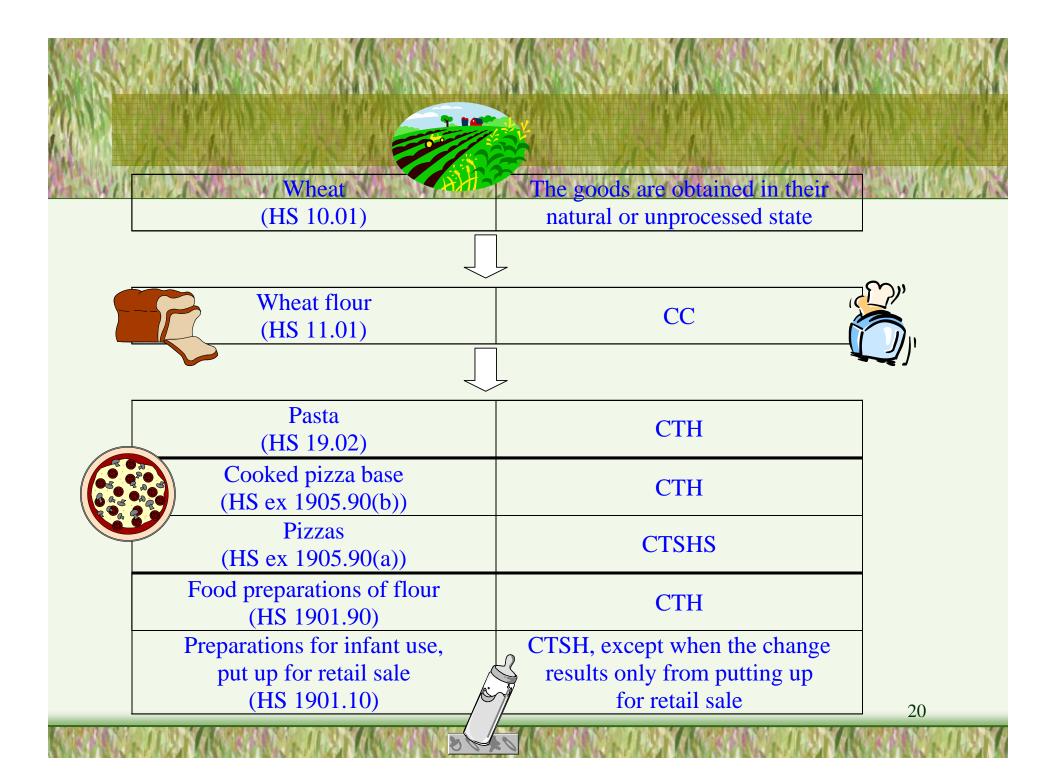
- Cotton (HS 52.02): Country in which cotton is obtained in its natural or unprocessed state (WO).
- Carded or Combed Cotton (HS 52.03): CC
- Cotton Sewing Thread (HS 52.04): CTH by core spinning from yarn or fibres
- Cotton Yarn (HS 52.05): CTH, except from HS 52.04
- Cotton Fabrics (HS 52.08): CTH

Important Resolved Issues in Textile Sector (Contd.)

- Sewing thread of man made filament (HS 54.01): CTH, except from HS 54.02-54.06
- Man made filament yarn (HS 54.02-54.05): CTH, except from HS 54.01 or 54.06
- Filament yarn; put up for retail sale (HS 54.06): CTH, except from HS 54.01-54.05

Fabrics of filament yarn (HS 54.07): CTH

Similar rules agreed for silk (Ch 50) and wool (Ch 51)



Core Unresolved Issues

- Out of 92 core issues, 24 relate to textiles which is the 2nd largest after agriculture (45 Issues).
- Some important unresolved issues for textile sector relate to dyeing, printing, coating, embroidery, assembly and making of flat products.
- India favours liberal rules i.e. favours origin for all these processes.

Important Unresolved Issues in Textile Sector

1. <u>Printing or Dyeing of Yarn or Fabric</u> (Including dyeing white):

Yes:

- Permanent printing or dyeing from unbleached or pre-bleached yarn/fabric with at least two preparatory or finishing operations (EC, AUS, IND, TUR-50% VA, KOR, NZ, PHL+Chairman's recommendation)
- Dyeing or printing plus at least one other preparatory or finishing operation (HKC, MYS)

Important Unresolved Issues in Textile Sector (Contd.)

- Dyeing and printing plus two or more of specified finishing operations: bleaching, shrinking, fulling, napping, decating, permanent, stiffening, weighting, permanent embossing or moireing. (USA)
- No: Neither printing nor dyeing confers origin (ARG, BRA, CAN, MEX, THA).

Important Unresolved Issues in Textile Sector (Contd.)

Making of flat products (bed sheets, pillow covers, etc. from fabrics)

Yes (CTH) (COL, IND, MYS, PHL, VEN).

- Yes, provided both cut or knitted to shape and assembled in the same country (otherwise, origin is the country of fabric) (HKC, EEC, TUR); for goods of knitted or crocheted material; CTHS, provided the change is attained by complete making-up) (EC, TUR).
- No, origin should be the country of fabric (ARG, BRA, CAN, JPN, MEX, THA, USA)
- Chairman's compromise proposal: CTH, provided the starting material is pre-bleached or unbleached fabric) (supported by AUS, IND, NOR, NZ, PAK).

Some important issues for India

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- Agriculture- mixture issue, roasting or toasting of coffee, making curry by mixing spices, etc.
- Textiles- Dyeing, printing, making of flat products, etc.
- Footwear- manufacture of shoes from formed uppers to which an inner sole has been attached permanently
- Wholly obtained goods- origin of fish caught in EEZ of a country should go to that country and not the flag/country of registration of the vessel.

Disciplines for Preferential ROO

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- Annex II of Agreement on ROO contains Common Declaration With Regard To Preferential Rules of Origin (PROs)
- Preferential rules of origin are used to determine whether goods qualify for preferential treatment under contractual or autonomous trade regimes leading to the granting of tariff preferences going beyond the application of paragraph 1 of GATT 1994

Disciplines for PROs

• Where criteria is CTH, subheadings or headings be clearly specified

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- Where criteria is *ad valorem*, method of calculating the percentage shall be specified
- Where criteria is a prescribed manufacturing or processing operation, it will be precisely specified
- PRO be normally based on positive standard
- PROs be published

Disciplines for PROs (contd.)

• Advance ruling within 150 days of a request for assessment of a PRO- normally valid for 3 years

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- Changes will not be retrospective
- There should be a provision for prompt review by judicial, arbitral or administrative tribunals
- Confidentiality of information which are by nature confidential or which are provided on a confidential basis



Thank You.

REGIONAL TRADE AGREEMENTS

LEGAL FRAMEWORK

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IIFT 26.9.2008

Presentation structure

- GATT Rules
- **WTO Rules**
- **Doha negotiation transparency**
- Some facts on RTAs
- India's RTAs overview

BASIC GATT PRINCIPLES

- Image: MFN (Most Favoured Nation Treatment)
- TRADE TO BE REGULATED BY CUSTOMS DUTY ONLY
- DUTIES TO BE BOUND
- NATIONAL TREATMENT

MFN

- Non discriminating clause
- All WTO members to be treated at par for:
 - Export control/policy
 - Import control/policy
- If give any preference to non-WTO member it should be extended automatically and unconditionally to all members of WTO.

GATT RULES

- Permitted under Article XXIV of GATT 1994.
- Exception to MFN treatment within the Rules subject to fulfillment of conditions:
 - items on which there is substantial trade to be covered
 - the phase out of duties should be within a reasonable length of time
 - it should not have trade distorting effect to non-RTA Parties.
- Enabling Clause Decision flexibility.

WTO RULES

- The text of Article XXIV became part of WTO Agreement.
- During Uruguay Round an understanding was reached on duties & other regulations of commerce, reasonable length of time, and procedure for RTA notification to WTO.

SAT – Test

- □ Para 8(a) of Article XXIV of GATT.
- Trade value?
- Tariff lines?
- Both?
- Being discussed and debated in WTO but no clarity – no decision – neither in Uruguay Round nor in Doha Round.

Reasonable Length

- The reasonable length of time [para 5 (c)] should exceed 10 years only in exceptional cases.
- In cases where members believe that 10 years is insufficient, they shall provide a full explanation to the Commission for Trade in Goods of the need for a longer period.

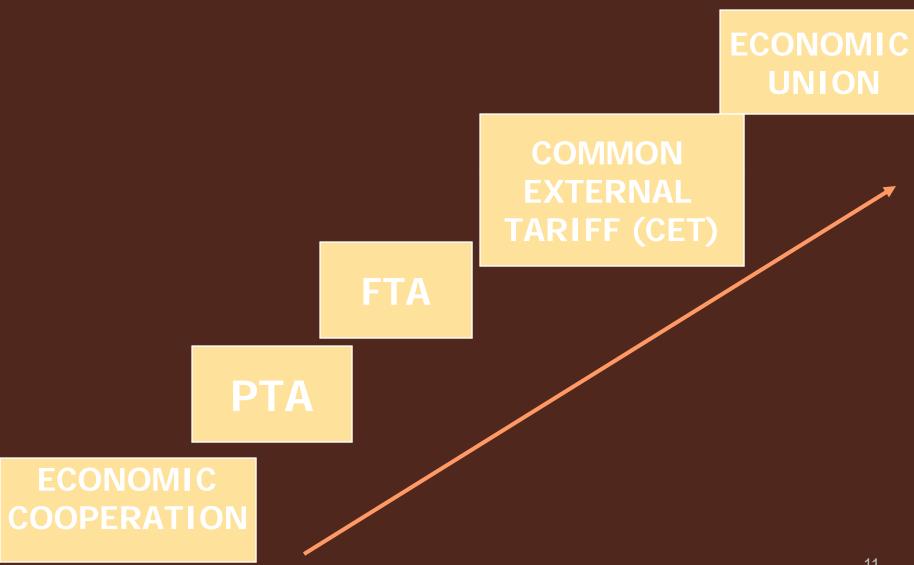
Doha Round - Rules negotiations

- RTA transparency part of Doha Round negotiations.
- A decision was taken on 14th December 2006 on Transparency mechanism for RTAs which was adopted by the General Council. It involved issues relating to:
 - Early announcement
 - Notification
 - Procedures to enhance transparency, etc.

Terminology

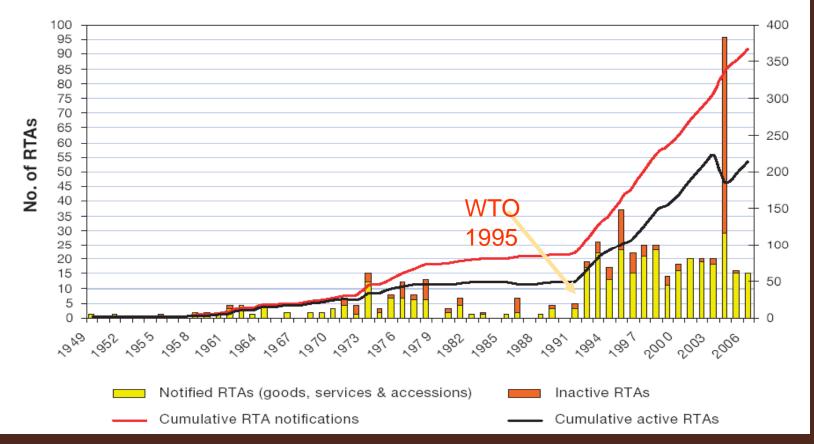
- PTA Grant of partial preference on reciprocal basis (Preferential Trade Area) or one-way concessions (P.T. Arrangements). No coverage of substantial trade, no time-frame to eliminate tariffs. Concessions enlarged through different Rounds of negotiations.
- FTA Eliminate all tariffs, QRs on SAT and within fixed time-frame. Varying levels of tariffs and other barriers are maintained against non-members.
- Customs Union or CER Setting up a common level of trade barriers vis-à-vis non-members/outsiders.
- Common Market Deeper integration where free movements of factors of production: labour and capital are allowed, beyond free exchange of goods and services.
- Economic Union Goes beyond Common Market. Involves harmonizing national economic policies, including typically taxes and a common currency.

STAGES OF ECONOMIC DEVELOPMENT



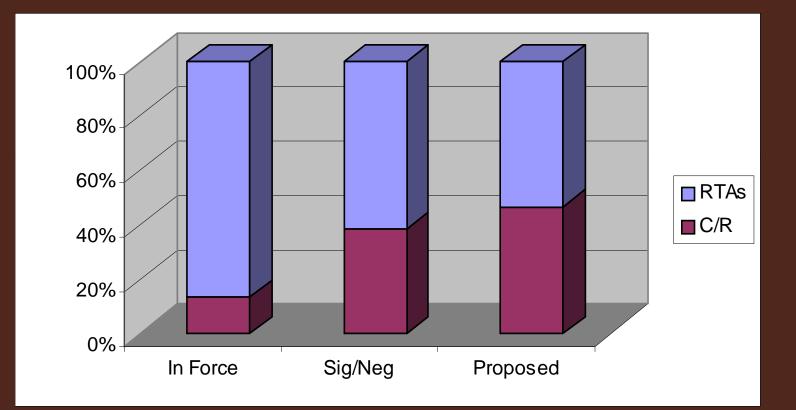
Trends in RTAs RTAs on rise

All RTAs notified to the GATT/WTO (1948-2006), by year of entry into force

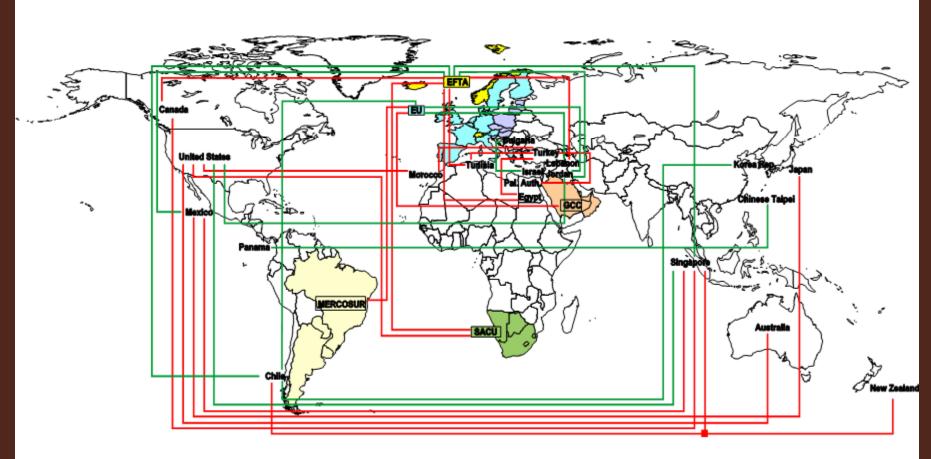


Source: WTO 2007

Cross Regional RTAs are a growing phenomenon (Source: WTO)



GLOBAL PICTURE (2003) (Source: WTO)



RTAs recently concluded (entered into force in 2001 or after)

RTAs under negotiation & signed

Regional Trading Arrangements : Economic rationale

- A desire to obtain more secure, quick and preferential access to major markets.
- The pressures of globalisation, forcing firms and countries to seek efficiency through larger markets, increased competition, and access to foreign technologies and investment.
- Material management
- Cheaper imports domestic prices in control
- Better quality products at competitive price
- Investments flow JVs
- Coverage of Services
- Mutual recognition of standards & laboratories
- Trade facilitation, Harmonisation of Customs procedures etc.

Other Reasons

- Governments' desire to maintain sovereignty by pooling it with others in areas of economic management where most nation-states are too small to act alone.
- Governments' wish to bind themselves to better policies and to signal such bindings to domestic and foreign investors.
- A desire to jog the multilateral system into faster and deeper action in selected areas by showing that the GATT/WTO was not the only game in town and by creating more powerful blocs that would operate within the GATT/WTO system.
- A desire to help neighbouring countries stabilizes and prospers, both for altruistic reasons and to avoid spillovers of unrest and population growth.
- The fear of being left out while the rest of the world swept into regionalism, either because this would be actually harmful to the excluded countries or just because "if everyone else is doing it, shouldn't we?

India's Current Engagement in PTA/FTA/CECA

Agreements signed and implemented:

Preferential Trade Agreements:

- Asia Pacific Trade Agreement (1975, revised in 2005)
- SAPTA (1993)
- GSTP (1998)
- India-Afghanistan (2003)
- India Chile (2007)

Free Trade Agreements:

- India-Sri Lanka (1998)
- India-Nepal-One way FTA (1991/2002)
- India-Bhutan (1995/2006)
- India-Singapore CECA implemented 1.8.2005.
- SAFTA (FTA in Goods-2004 implemented from 1.1.2006)

India's Current Engagement in PTA/FTA/ CECA(2)

Negotiations going on:

India-ASEAN (2003)
India-Thailand (2003-Except EHP)
BIMSTEC (2004)
India-GCC (2004)
India - Mercosur (PTA signed 2005 - yet to start)
India - Mauritius
India - Korea
India - Korea
India - Japan
India - EU
India - Malaysia
GSTP (developing countries - UNCTAD)
APTA (India, China, South Korea, Bangladesh, Sri Lanka, Lao PDR)
India - SACU

Joint Study Groups

- India Indonesia
- India China
- India IBSA
- India Australia
- India New Zealand

CURRENT STATUS

- □ The negotiations are continuing for:
- > FTA in Goods
- > FTA in Services
- > Investment Agreement
- > Economic Cooperation
- > Custom cooperation
- > MRAs
- » Bilateral Safeguard Mechanism
- Concessions started in 2004 and FTA to be achieved by 2010 2016.

Structure

- Initially Traditional Goods Agreement
- Second Generation Services & Economic Cooperation included.
- Latest Comprehensive :
 - Goods
 - Services
 - Investments
 - Competition Policy
 - IPR
 - GP
 - MRAs
 - Commitments go beyond market access domestic regulations are being changed lose the policy space.

INDIA'S RoO

PTA

- BANGKOK AGREEMENT 45%
- □ GSTP
- SAPTA 4
- MERCOSUR

40%

50%

- 60%

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INDIA'S RoO

FTA

- INDIA NEPAL
- INDIA SRI LANKA
- INDIA SINGAPORE
- INDIA THAILAND
- SAFTA
- INDIA ASEAN
- **BIMST-EC**
- KOREA
- 🗉 Japan
- EU

- 30% + CTH
- 35% + CTH
 - 40%+CTH+PSR
- 35%+CTSH+PSR
- 40/30%+CTH+PSR
- 35%+CTH+PSR
- 30/35% + CTSH
- 35% + CTSH + PSR
- To be decided
- To be decided

ILLUSTRATION

Ethylene (<u>2901</u>21), Hydrogen (<u>2845</u>90, <u>2804</u>10), Carbon Oxide (<u>2811</u>29)



Propyl alcohol <u>2905</u> 12 10

Electrical capacitors (8532) Electrical resistors (8533) Printed circuits (8534)



Microprocessors <u>8473</u> 30 10

Ethylene (2901 21) Benzene (<u>2902</u> 20)



Ethyl benzene HS <u>2902</u> 60

The calculation of value addition is done in the following manner:-

- Value of nonparticipating imported imports
- + Value of Undetermined Origin inputs (nonoriginating inputs)

x 100 % = X%

FOB Price

Value added = 100 - X%.

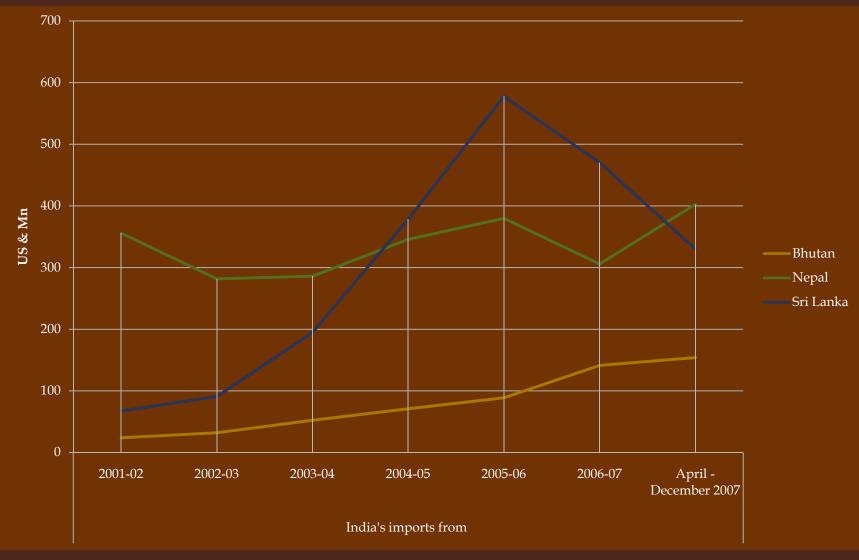
Calculation can be done by both Direct or Indirect method.

Local profits, transportation, handling charges etc. are included in the value addition.

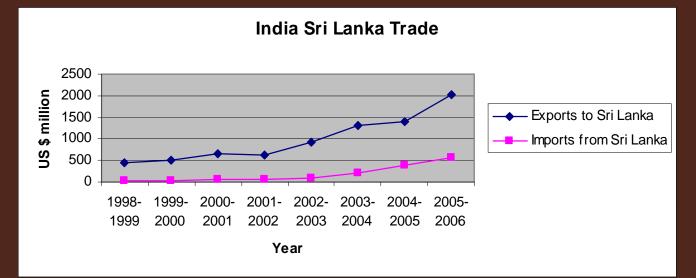
Legal remedies and actions

- □ Pre-export verification necessary.
- Ensure random checks/verification.
- Maintain proper records and data.
- Denial of preferences possible.
- Be careful as actions are subject to Dispute Settlement Agreement, may need to grant compensation.

India's imports from SAARC



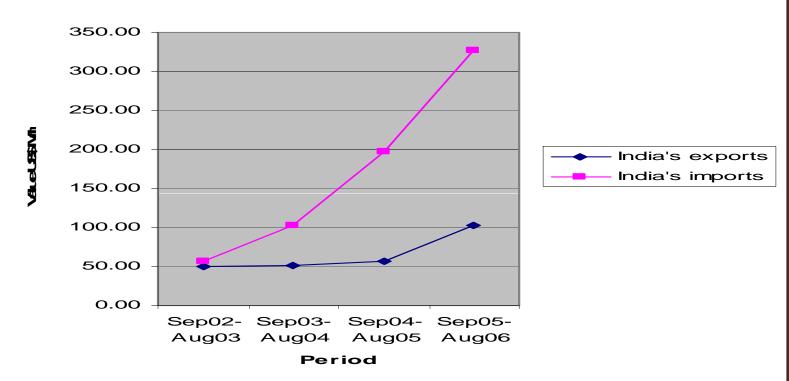
SRI LANKA FTA



US \$ Mn	1998- 1999	1999- 2000	2000- 2001	2001-2002	2002- 2003	2003- 2004	2004- 2005	2005- 2006
Exports to Sri Lanka	437.13	499.27	640.14	630.89	920.98	1,319.20	1,413.18	2,024.67
Imports from Sri Lanka	37.68	44.23	45.01	67.38	90.83	194.74	378.4	577.7
вот	399.45	455.04	595.13	563.51	830.15	1124.46	1034.78	1446.97

Thailand EHS

Trade on EHS items

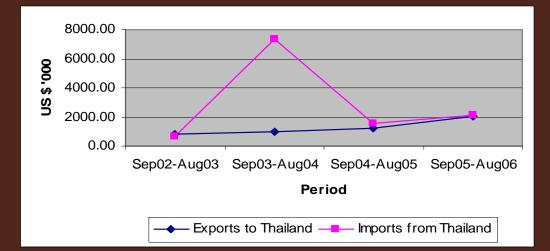


Value in US\$ million	Sep02-Aug03 (MFN)	Sep03-Aug04 (MFN)	Sep04-Aug05 (50% MoP)	Sep05-Aug06 (75% MoP)
India's exports	50.49	51.09	57.33	103.15
India's imports	56.44	102.56	197.52	327.02

Thai EHS: Auto items

HS Code	Description	GROWTH 2003-2004 TO 2005-2006				
		India's imports from Thailand	Global imports	India's exports to Thailand	Global exports	
840991	Suitable for use solely or principally with spark-ignition internal combustion piston engines	-35.68%	7.79%	55.97%	55.29%	
842549	Other	-43.93%	198.69%	NA	-33.67%	
848350	- Flywheels and pulleys, including pulley blocks	-32.48%	39.04%	4.36%	185.55%	
870840	- Gear boxes	14599.44%	145.07%	8629.28%	1106.29%	

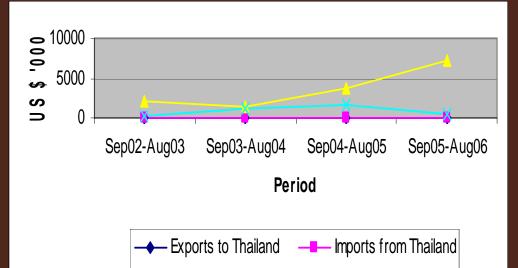
- - Suitable for use solely or principally with sparkignition internal combustion piston engines



840991

	Sep02- Aug03	Sep03- Aug04	Sep04- Aug05	Sep05- Aug06
Exports to Thailand	850.22	971.53	1209.87	2059.14
Imports from Thailand	629.19	7341.72	1567.13	2102.69
Global imports	41243.55	65701.25	63994.24	75939.04
Global Exports	59802.45	72998.72	131516.58	153718.73

842549 - - Other

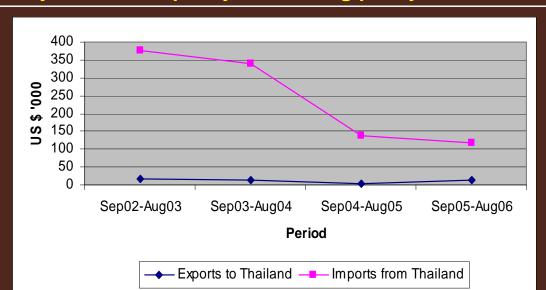


→ Global imports → Global Exports

	Sep02-Aug03	Sep03-Aug04	Sep04-Aug05	Sep05-Aug06
Exports to Thailand	0	0	0	0
Imports from Thailand	71.98	60.66	73.02	7.36
Global imports	2076.2	1430.69	3723.83	7116.07
Global Exports	146.04	1191.62	1712.35	389.1

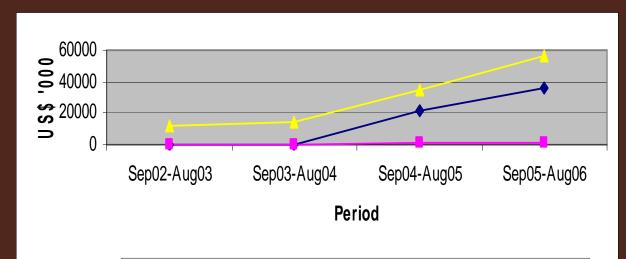
848350

- Flywheels and pulleys, including pulley blocks



	Sep02-Aug03	Sep03-Aug04	Sep04-Aug05	Sep05-Aug06
Exports to Thailand	17.86	13.88	1.7	15.09
Imports from Thailand	377.33	339.17	137.29	118.85
Global imports	8259.21	10895.1	23834.19	19401.40
Global Exports	3085.13	5450.46	18366.68	25676.87

870840 - Gear boxes



	Sep02-Aug03	Sep03-Aug04	Sep04-Aug05	Sep05-Aug06
Exports to Thailand	585.31	205.87	21194.49	35736.08
Imports from Thailand	5.93	3.58	809.21	1048.90
Global imports	11917.8	14505.6	34292.5	56591.70
Global Exports	6658.94	4381.43	53601.34	101324.51

Case study : Thailand EHP

- Total volume on these 4 items (USD'000): <u>Sep.2003-Aug.2004 (MFN duty)</u>
- Imports from Thailand: 7745.13 (7.54%)*
- Exports to Thailand: 3277.80 (6.41%)*

<u>Sep.2005-Aug.2006 (75% MoP)</u>

- Imports from Thailand:1191.28 (0.36%)*
- Exports to Thailand:37810.31 (36.65%)*
- * as a percentage of total trade on 82 items

DGFT's ROLE

- FTA Cell was created long ago needs to be revitalised.
- Only organisation interacting with trade and industry on continuous basis.
- Could help in cases of:
 - Safeguard
 - Circumvention
 - Monitoring of imports
- Export Certificate of Origin
 - Non-preferential
 - Preferential.

Thank You

WTO AGRICULTURE ON AGRICULTURE

Dr Biswajit Dhar Professor and Head Centre for WTO Studies Indian Institute of Foreign Trade New Delhi

Uruguay Round Mandate

- Need to bring more discipline and predictability to world agricultural trade
- Correcting and preventing restrictions and distortions including those related to structural surpluses
- Reducing uncertainties, imbalances and instability in world agricultural markets.
- Negotiations aimed at achieving greater liberalization of trade in agriculture by:
 - improving market access through, inter alia, the reduction of import barriers
 - improving the competitive environment by increasing discipline on the use of **all direct and indirect subsidies** and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;
 - minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture, taking into account the relevant international agreements

Structure of Agreement on Agriculture

• Disciplines in Three Areas (The Three Pillars)

- Domestic Support
 - Production Related Subsidies
- Export Competition
 - Export subsidies
 - Export credit
 - International Food Aid
- Market Access
 - Tariffs and quotas

Domestic Support Discipline

• Three sets of subsidies

- Amber Box measures (Article 6.1, Annex 3)
- Green Box measures (Annex 2)
- Blue Box measures (Article 6.5)

Amber Box Measures

 All forms of domestic support that are deemed market distorting

- Product specific price support
- Non-product specific Input subsidies

Green Box Measures

• Criteria

- Measures that have **no, or at most minimal**, tradedistorting effects or effects on production
- Support would have to be provided through a publicly-funded government programme (including government revenue foregone) not involving transfers from consumers
- Support should not be in the nature of price support to producers
- Exempt from reduction commitments since they are considered to be de-linked from <u>current production</u>

Major Components of Green Box

- Programmes which provide services or benefits to agriculture or the rural community, including:
 - Investment on rural infrastructure
 - Research and Extension services
 - Marketing and promotion services
- Domestic Food Aid based on clearly-defined criteria related to nutritional objectives
- Public stockholding for food security purposes, subject to the condition that the stocks are acquired and distributed at market prices
- Assistance to resource poor farmers
- Decoupled Income Support
- Income insurance and income safety-net programmes
- Payments for relief from natural disaster
- Assistance provided through producer or resource retirement programmes
- Assistance provided through investment aids
- Payments under environmental or regional assistance programmes

Blue Box Measures

- Direct payments under production-limiting programmes that satisfy the following criteria
 - Payments based on fixed area and yields
 - Payments made on 85 % or less of the base level of production
 - Livestock payments made on a fixed number of heads
- They are deemed at least partially decoupled from production and not directly responsible for trade distortion and hence exempt from reduction commitments

Domestic support discipline

- Aggregate Measure of Support (AMS) granted by WTO Members are subjected to disciplines
 - AMS includes
 - Product and Non-product specific support (i.e. "Amber Box"), but excludes
 - Payments that are below the *de minimis* level (below 5 % of the value of production for developed countries and below 10 % for developing countries)
 - Payments made by developing country members to lowincome or resource-poor producers (Special and differential (S&D) treatment)

Domestic support discipline (cont...)

- Developed countries had to reduce AMS by 20% over the base period (1986-88) in six years from 1995
- Developing countries had to reduce AMS by 13.3% over the base period (1986-88) in ten years from 1995
- Developed countries not required to reduce their AMS if it was 5% below the total value of agricultural production
- Developing countries not required to reduce AMS if it was below 10% of their value of agricultural production
- Developing countries allowed to exclude "agricultural input subsidies generally available to low-income or resource-poor producers" from AMS (Article 6.2)

Export Subsidies Discipline

- Reduction of all export subsidies over the base period : 1986-90
 - 36 % by value over six years from the beginning of the implementation period, 1995 (24 % for developing countries)
 - 21 % by volume over six years from the beginning of the implementation period, 1995 (14 % for developing countries)
- Countries not using export subsidies between 1986-90 not allowed to use them
- Developing countries can grant subsidies for internal transport and for reducing the costs of marketing exports (Article 9.4)

The Peace Clause (Article 13)

- During implementation period, all forms of domestic support measures that were not subjected to reduction commitments were exempted from the use of
 - Countervailing measures as provided under the Agreement on Subsidies and Countervailing Measures
 - Dispute resolution provisions

 "Due restraint" was to be shown in initiating any countervailing duty investigations involving export subsidies

Market Access Discipline

- Reducing "bound" tariffs
 - By 36 % over a period of six years beginning in 1995 with a minimum reduction for each tariff line of 15 % for developed countries
 - By 24 % over 10 years beginning in 1995 with a minimum reduction for each tariff line of 10 % for developing countries
- Establishment of Tariff Rate Quotas (TRQs)
 - 3 % of the domestic consumption in the base period (1986-88) to be imported at lower tariff rates, increasing to 5 % at the end of the implementation period (6 or 10 years for developed and developing countries respectively)

Market Access Discipline (cont..)

• Special Safeguards

 Right to increase tariffs arising out of sudden or unanticipated increase in imports volumes or fall in international prices – this right is currently available with a limited number of countries

India's commitments in agriculture

Domestic Support commitments

- AMS as a % of Agricultural GDP
 - 2.2% in 1996-97 (permitted level 10%)
 - 2.4% in 1997-98 (permitted level 10%)

Market access commitments

- Tariffs
 - India's average bound duties: 114.5 %
 - Edible oils: 300%, except soybean: 45%
 - Processed products: 55-150%
 - Cereals: Wheat 80-100%; Rice 70-80%; Maize 60-70%

• TRQ

• Skimmed milk powder; Sunflower-seed oil; Maize; processed rape/mustard oil

Issues for Developing Countries

• Imbalance in the Structure of the Agreement

Tardy Implementation by developed countries

Why domestic support discipline does not favour developing countries

- Structure of the discipline on domestic support designed to favour developed countries
 - Supply management measures are WTO compatible while production enhancing measures are not
- Developed countries need to reduce their high levels of Amber Box domestic support by 20% over six years while developing countries can grant subsidies amounting to only 10% of their total value of agricultural production
- Developing country Members do not have resources to provide domestic support
 - Till date 57 developing country members have not used this instrument

Other imbalances in the structure of the Agreement on Agriculture

- Most developing countries cannot use direct export subsidies since they were not using these subsides during 1986-90
- Most developing countries did not secure the rights to use Special Safeguards

High level of domestic support granted by US and EU

• Increase in domestic support by the US

- US \$ 12 billion increase between 1995 and 2001
- US \$ 180 billion likely was to have been provided through the Farm Security and Rural Investment Act of 2002 in 10 years
- No evidence of decrease in subsidies in the recently unveiled Farm Bill proposals
- Omestic support granted by EC remains high
 - EUR 85 billion in 2001/2002
 - Impact of enlargement of the Union

Change in the form of domestic support from Amber Box to Green Box

- Nearly 80% of the US subsidies are spent on "Green Box" measures (2005)
- Increase in share of exempt subsides in EC's spending on domestic support measures
 - Further increase in "Green Box" planned as a part of reform of the Common Agricultural Policy (CAP) of the EU

Targeting of subsidies

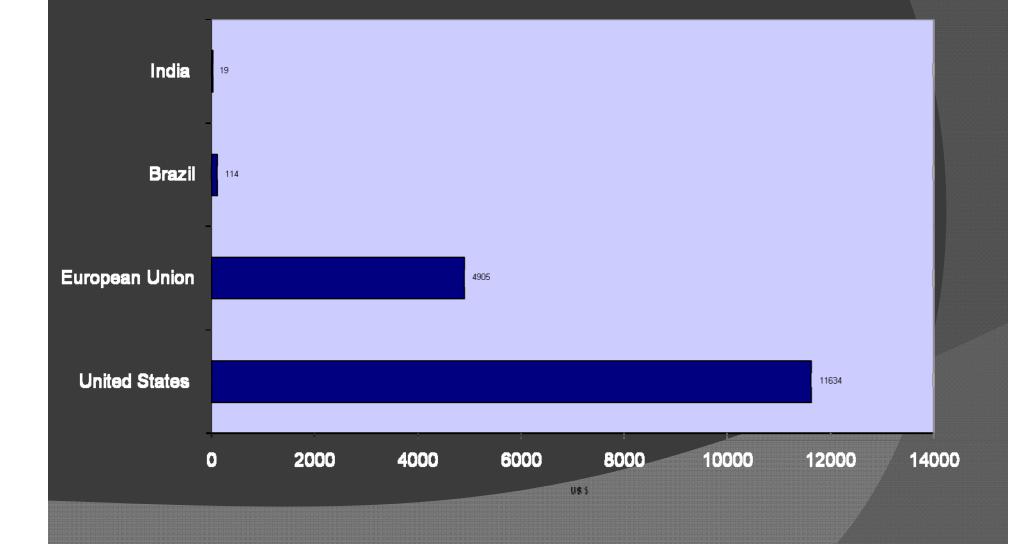
 Sharp increase in support for commodities that are of export interest to the US

- Corn –\$ 32 million in 1995 to \$ 4.5 billion in 2005
- Cotton \$ 32 million in 1995 to \$ 1.6 billion in 2005
- Wheat \$ 5 million in 1995 to \$ 974 million in 1999
- Soybeans \$ 16 million in 1995 to \$ 3.6 billion in 2001
- High levels of support for products of export interest to the EU
 - Sugar \$ 5.2 billion in 2000/2001
 - Butter \$ 4.0 billion in 2000/2001
 - Beef \$ 10.0 billion in 1999/2000

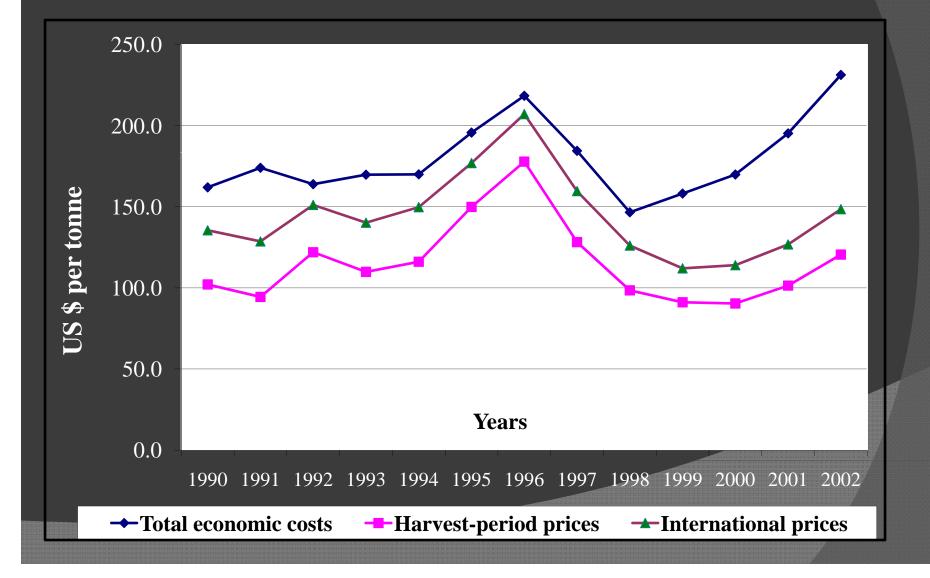
Implementation concerns in the area of export competition

Use of Food Aid for surplus disposal Lack of Effective Discipline on the use of Export Credits

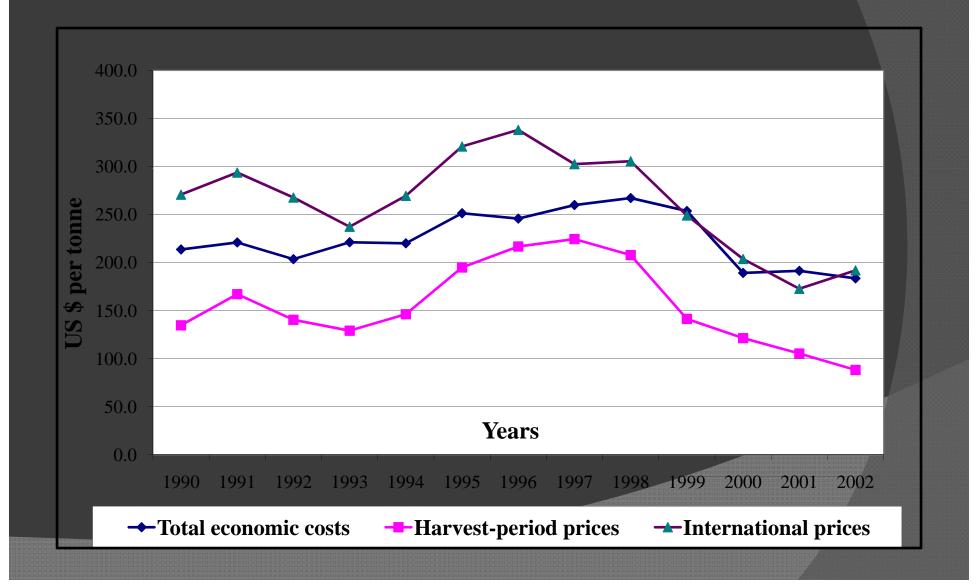
Total Subsidies/ Agricultural Population (\$ per person)



Implications of US Wheat subsidies



Implications of US Rice Subsidies



Problems in obtaining effective market access

- Tariff peaks
 - Average applied peak tariffs
 - For OECD Countries 239 % (2001-02)
 - For advanced developing countries 112 % (2001)
- Tariff escalations
 - Product groups affected: oils, fruits and vegetables, meat products
- Significant presence of non-ad valorem tariffs
 - Lack of transparency associated with the rates
 - Conceal the level of protection being provided

The Problem of Non Ad Valorem Tariffs

- Percentage share of non-ad valorem (NAV) tariffs in total bound tariff lines in developed countries – US: 43%; EU: 45.8; Switzerland: 89%
- Average bound tariffs of the EC
 - Ad valorem 8 %
 - Ad valorem equivalents of NAVs 40 %
- High ad valorem equivalents of NAVs in the EC
 - Bovine meat 408 %
 - Grape juice 169%
 - Rice in husk 94 %

Key Concerns for Developing Countries

- Meeting the Objectives of Food Security and Livelihoods
- How to ensure that effective market access is available in the larger markets
- How to reduce ensure that market prices reflect efficiency costs

Post-Doha Work Programme on Agriculture

• Negotiations aimed at:

- Substantial improvements in market access
- Reductions of, with a view to phasing out, all forms of export subsidies
- Substantial reductions in trade distorting domestic support
- Special and differential treatment for developing countries to enable these countries to effectively take account of their development needs, including food security and rural development

Issues for India in Agriculture Negotiations

- Trade-off between high subsidies granted by the developed countries and the high tariffs maintained by India
- Agreement to factor in concerns relating to food security and livelihoods

Negotiating dynamics

- Three groups of countries: <u>G-20</u>, <u>G-33</u> and <u>G-10</u>, and the US and EC Members are the major players in the negotiations
- Broadly thrust of the positions
 - G-20: Reduction of subsidies by developed countries and articulation of problems faced developing countries relating to food security and livelihoods
 - G-33: Developing countries must have the flexibility to meet their food security and livelihoods concerns – Special Products and Special Safeguard Mechanism to be the principal tools for so doing
 - G-10: Developed countries having defensive interests who have argued in favour of adequate levels of protection for "sensitive products"
 - EC: Low levels of ambition in respect of tariff and subsidy removal
 - US: Seeking substantial reductions in tariffs; reluctant to reduce subsidies

The G-20 Position

Omestic Support

- Reduction of all trade distorting domestic support on a product specific basis
- Eliminating of support for products in which exports are substantial
- Elimination of "Blue Box" support
- Capping of certain categories of "Green Box" support, including the decoupled payments
- Providing support to resource poor farmers without being subjected to WTO disciplines

The G-20 Position (cont..)

• Market Access

- For developing countries
 - Average cut with a minimum cut per tariff line (the Uruguay Round approach)
 - Establishment of Special Products and Special Safeguard Mechanism

The G-20 Proposal (cont..)

• Export Subsidies

- Elimination of export subsidies
- Disciplines on officially supported export credits, guarantee and insurance programmes
- Additional disciplines in order to prevent commercial displacement through food aid operations
- Existing flexibilities to use indirect export subsidies for developing countries to continue

The G-33 position

- Addressed developing countries' food and livelihood security and rural development problems
 - Developing countries to have the flexibility to selfdesignate certain products as Special Products (SP)
 - SPs should not be subjected to tariff reductions, and no new commitment regarding Tariff Rate Quota (TRQ)
 - Special Safeguard Mechanism (SSM) to be established for use by developing countries
 - Products designated as SPs to have access to a special agricultural safeguard (SSM)
 - Tariffs can be increased when international prices fell below a pre-determined level or imports increased beyond a pre-determined level

EC-US Joint Approach to Agricultural Negotiations

Market Access

- Ambitious reductions in tariffs by reducing tariffs below a pre-determined threshold (the so-called "Swiss formula")
- Introduction of TRQs as additional commitment for increasing market access
- Lower tariff cuts and longer implementation period for developing countries
- Recognition of special safeguard mechanism to protect sensitive products for developing countries

EC-US Joint Approach to Agricultural Negotiations (cont..)

Omestic Support

- Strengthening of the "Blue Box"
- No discipline on the "trade distorting" elements of the "Green Box" – the decoupled payments

• Export Subsidies and export credits

- Reduction of export subsidies
- Partial elimination of export subsidies on some products of export interest to developing countries
- Discipline covering export credit and food aid programmes

Decision on the Framework for Negotiations (agreed to in July '04)

- Key elements of the proposed domestic support discipline
 - Reduction of spending on Amber Box measures (final bound AMS) using a "Tiered Formula"
 - 20% reduction in the spending on Amber and Blue Box measures (overall trade distorting domestic support or "OTDS")
 - Limiting spending on Blue Box measures to 5% of the value of agricultural production
 - Cap on "product specific support" at their respective average levels according to a methodology to be agreed

Decision on the Framework for Negotiations (agreed to in July '04)

- Key elements of the proposed domestic support discipline for developing countries (the "S&D" provisions)
 - Continued access to the provisions for granting subsidies to low income and resource poor farmers

Decision on the Framework for Negotiations (agreed to in July '04)

- Key elements of the proposed export competition discipline
 - Elimination by an end date to be decided in the negotiations
 - Export subsidies
 - Export credits, export credit guarantees or insurance programmes having repayment period of over 180 days
 - Trade distorting practices with respect to exporting State Trading Enterprises
 - International Food Aid that is not in conformity with operationally effective disciplines to be agreed
 - Continued use of "indirect export subsidies" by developing countries

Decision on the Framework for Negotiations (agreed to in July '04)

- Key elements of the proposed market access discipline
 - Tariff reductions from bound rates using a "Tiered Formula"
 - Deeper cuts in higher tariffs
 - Appropriate number of tariff lines to be treated as sensitive
 - Special and Differential Treatment
 - Lesser tariff reduction commitments as compared to the developed countries
 - Can designate "appropriate number" of special products to meet concerns of food security, livelihoods and rural development needs
 - Special safeguard mechanism for coping with import surges

Major Agreements in Hong Kong on Domestic Support

- Three bands for reductions in Final Bound Total AMS and in the overall cut in trade-distorting domestic support with higher linear cuts in higher bands
- Developing country Members with no AMS commitments will be exempt from reductions in de minimis
- Green Box criteria will be reviewed
- Trade distorting domestic subsidies for cotton production to be reduced more ambitiously

Major Agreements in Hong Kong on Market Access

- Need to agree on sensitive products (applicable to all WTO Members)
- Output Developing countries
 - To have flexibility to self-designate an appropriate number of tariff lines as Special Products based on the criteria of food security, livelihood security and rural development
 - To have the right to use Special Safeguard Mechanism based on import quantity and price triggers

Major Agreements in Hong Kong on Export Subsidies

- Parallel elimination of all forms of export subsidies and disciplines on export credits, export credit guarantees or insurance programmes to be completed by the end of 2013
- All forms of export subsidies for cotton to be eliminated by developed countries in 2006
- Disciplines on food aid
 - Elimination of commercial displacement
 - Creation of a "safe box" for bona fide food aid to ensure that there is no unintended impediment to dealing with emergency situations

The Latest Position – End of July 2008

Strong Agreement between countries on

- Reduction in bound tariffs
 - Developed countries would reduce their tariffs by an average of 54 %, developing countries by 36%
- Reduction in trade distorting support
- Elimination of export subsidies by developed countries by 2013
- Disagreements on
 - Number of special products
 - Structure of Special Safeguard Mechanism

Future prospects of free and fair agricultural trade

- Developed countries, in particular, the US would continue to support their domestic agriculture for food, fibre and fuel
 - "We're a blessed nation we can grow are own food and, therefore we're secure. A nation that can feed its people is a nation more secure" President George W Bush in 2002
- Developing countries having large farm population are wary of embracing free trade fearing the likely adverse impact on small farmers

Useful websites

- <u>www.ictsd.org</u>
- www.iatp.org
- <u>www.twnside.org.sg</u>
- <u>www.usda.gov</u>
- <u>www.wto.org</u>

Thank You

Anti Dumping Agreement

Government of India Ministry of Commerce & Industry Department of Commerce http://commerce.nic.in

LEGAL FRAMEWORK

Anti-dumping

 Customs Tariff Act, 1975 - Section 9A, 9AA, 9B & 9C (as amended in 1995 and thereafter)

 Anti-dumping Duty Rules [Customs Tariff (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995] (as amended).

INVESTIGATION & IMPOSITION OF DUTIES

- Initiation, Investigations & Recommendations by Designated Authority, DGAD, Department of Commerce.
- Designated Authority in India is a Single member authority
 - Independent in nature
 - Imposition & collection of anti-dumping duty and countervailing duty by Department of Revenue, Ministry of Finance
 - A separate Directorate to deal with Safeguard measures in the Ministry of Finance.

Key concepts

Dumping

Injury

Causal link

Article -2.1 ADA / Sec 9A (1)

- When dumping?
- Export price less than the normal value.
- Normal Value- comparable price, in ordinary course of trade, for like product in exporting country.
- Home market sales in country of export-Default option.

Article -2.2 ADA/ Rules Annexure 1

If home market sales not in ordinary course of trade or insufficient, then other two options for Normal Value.
Sufficiency test- home market sales 5% or more of export from exporting country of the product under consideration. (Footnote 2 of ADA)

Article -2.2 ADA/ Rules annexure-1

Normal Value- other two options
 Comparable price of like product when exported to an appropriate third country, provided that this price is representative, or

 Cost of production in country of origin plus reasonable amount for SGA and profits.

Article -2.2.1 ADA/ Rules annexure 1

Ordinary course of trade test- by reason of price

- 80/20 test-
- Representative sales in home market-
- Recovery of Cost
- to exclude sales at below cost if more than 20%

Arms length transactions: Association/Affiliation of buyers and sellers

 As a general practice to examine shareholding patterns in the transacting parties to determine affiliation if any;

Article -2.4 ADA

Fair Comparison of normal value and export price for dumping margin determination.

- Model Matching / Grouping
 - Closely resembling or similar models/types for model matching
 - At same level: Generally at Ex-factory level
 - Adjustments and apple to apple comparison
 - Physical characteristics
 - Level of trade
 - Quantities
 - Taxation
 - Conditions and terms of sale

Article -2.4.2 ADA

Determination of Dumping Margin

- Normally to be established on Weighted Average to Weighted Average comparison of NV with EP
- Transaction to transaction comparison of NV and EP
- Weighted average normal value with individual export transactions in certain situations- export prices differing in regions, purchasers or time periods.
 Zeroing of negative dumping margin?

What is zeroing

 Not to offset negative dumping margins at the stage of model comparison

Article -2.6 of ADA/Rule 2(b)-Like Article

- Identification of 'like product' in the exporting country market;
 Identical Product
 - In the absence of identical product closely resembling product
 - Follows the criteria of similarity of physical and chemical characteristics, production process, and technical and commercial substitutability with the product under consideration

Article -3 ADA/ Annexure -II - Injury

- Injury determination based on positive evidence.
- Material Injury
 - "harm which is not inconsequential, immaterial, or unimportant"
 - Threat of Material Injury
 - "clearly foreseen and imminent"
 - Lesser used provision. Used along with Material Injury claim
- Material Retardation
 - A situation generally not used- criteria not very clear.

Article - 3.2 ADA - Injury

- Determination of 'volume effect' and 'price effect' of the dumped imports on the domestic industry
 - Volume effect:
 - Significant rise in imports in absolute terms or relative to total imports and demand in the country
 - Price effect
 - Consequent impact on prices
 - Significant Price undercutting, underselling, price suppression and/or price depression

Article -3.4 ADA - Injury

- Mandatory examination Article 3.4 Economic Parameters
- Relevant economic factors that are considered when determining material injury include:
 - Actual or potential decline in output, sales, market share, profits, productivity, return on investment, and capacity utilization;
 - Factors affecting domestic prices;
 - Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment;
 - Actual and potential negative effects on the existing development and production efforts of domestic industry; and the margin of dumping.

Article -3.5 ADA Causal Link

- Causal link between dumped imports and injury caused to the domestic industry must be demonstrated.
- Establishment of causal link based on all relevant evidence.
- Non-attribution analysis and examination of other known factors.
 - Following mandatory examination to be invariably done:
 - Volume and prices of un-dumped imports
 - Demand situation and its effect
 - Changes in pattern of uses of the product under consideration
 - Trade restrictive practices and conditions of competition between foreign and domestic producers
 - Developments in technology
 - Export performance of the domestic industry
 - Any other factor brought before the Authority

Article –4/ Rule 2 (b) Definition of Domestic Industry

 Domestic producers as a whole of the like product or those whose collective output constitutes a major proportion of the total domestic production of the product.

Producers related to the exporters and importers, or who are themselves importers to be excluded from the domestic industry for the purpose of definition of domestic industry.

Article 5.2 ADA / Rule 5 (2)- Application for AD investigation

To include evidence of dumping, injury and causal link. All relevant particulars.
Simple assertion, unsubstantiated by relevant evidence not considered sufficient for initiation of investigation.
Application to contain information as is reasonably available to the applicant.

Article 5 ADA - Application for AD investigation

Pre-initiation procedure

- Application for investigation -
 - (a) by the domestic industry; or
 - (b) suo moto initiation
- Single Investigation Team for both dumping and injury
 - A two member team
 - **Pre-initiation examination**
 - Determination of domestic like product
 - Examination and collection of data on domestic industry
 - Standing of domestic industry
 - Accuracy/adequacy of evidence on both dumping and injury

Article 5 ADA/ Rule 5 (3) - Application for AD investigation

Obligation on Investigating authority to examine the 'adequacy' and 'accuracy' of evidence in application before initiation-Art. 5.3

- Standing requirement for making application-Art. 5.4
 - Test of 50% support.
 - Test of 25%-domestic producers making application to account for 25% production of the product.

Article 5 ADA / Rule 5(5)- Application for AD investigation

- Mandatory requirement to inform government of the exporting country before initiation- Art. 5.5
- Article 5.8- De Minimis provisions:
 - De Minimis margin of dumping <2%</p>
 - Negligible volume of imports-De minimis <3% of total imports in importing country.
 - Individually <3% but together with other countries >7%- not treated as De Minimis or negligible.

Article 6 ADA Rule 6- Evidence/ Principles Governing Investigations

- 6.1 -exporters are generally given 30 days time to furnish questionnaire response.
 Extensions allowed on cause shown.
- 6.2- All interested parties full rights to defend their interests.
 - 6.3 oral hearings.
- 6.4- Obligation on Authority to provide timely opportunity to all to see the information- maintenance of Public file.
- 6.5- Confidential information- to be treated confidential on good cause shown²²

Article 6 ADA- Evidence- Rule 7

• 6.5 Confidentiality-

- 6.5.1-Non-confidential summariessufficient details and meaningful.
- 6.5.2- If confidentiality not warranted/parties not willing to make information in sufficient non confidential form, Authority may disregard such information BUT cannot make such information public.

Article 6 ADA- Evidence

6.7- Exporter's verification.Annex I • 6.8-Use of 'Facts Available' in case of noncooperation by interested parties. – Annex II gives guidance. Rule 6 (8) • 6.9- Disclosures of 'essential facts' an important mile stone of the investigation. probably last chance to offer comments. Rule 16 6.10-Limited Examination or 'sampling'. Rule 17 3

– Exporters, producers, importers or types of products so large.

- Statistically valid sample or selection of exporters which can reasonably be investigated but to cover largest volume of exports from the country.

Article 6 ADA- Evidence

- 6.11- Interested Parties- Rule 2 (c)
 - exporter, foreign producer, importer, trade or business association, governments of the exporting country, producers in the importing country.
 - 6.12 Industrial Users of the product- Rule 6 (5)
 - right limited to give information relevant to the investigation.

Article 7 Provisional Measures – Rule 12 & 13

- 7.3- Not before 60 days from the date of initiation.
- Where preliminary affirmative determination of dumping, injury & causal link. Such measures necessary to prevent injury being caused during investigation. Provisional measures in force for 4 to 6 months or in case of members following Lesser Duty, these periods are 6 to nine months.

Article 8- Price Undertakings/ Rule 15

- 8.1 Proceedings can be suspended or terminated on voluntary price undertakings.
- 8.2 Acceptance after preliminary affirmative findings of dumping & injury.
- 8.3-Refusal, if impractical or as a general policy-Reasons to be given.

 8.6-periodical information of export prices. In case of violation of undertakings, investigation recommences and provisional measures come into effect.

Article 9 Imposition & Collection of Duties

 9.1 Duty less than dumping marginoptional. Some members including India, EC, NZ Land, Australia follow Lesser Duty Rule. *Rule 4 (1) (d).*

9.3.1- Retrospective assessment system.
 Determination of final liability on actual export transactions.

 9.3.2-Prospective assessment systemrefund applications in cases of duty paid in excess of actual dumping margin.

Duty assessment systems

Prospective assessment

 India, the EC, Canada, Brazil, Australia

Retrospective assessment followed only by the US.

- Anti Dumping order
- Administrative review

Article 9.5 New Shippers Review/ Rule 22

- Asked by new exporters or those who did not ship during original investigation period.
- provided the exporter has not exported during original investigation and not related to any of the exporters or producers who are subject to antidumping duty on the product
- New Dumping Margin determined for such new shippers.
- Provisional assessment of imports during the pendency of such reviews.
- Generally conducted on accelerated basis.

Article 11-Reviews

 Article 11.2 – (Rule 23)– Changed circumstances or revocation review

Article 11.3 – [Section 9A(5)] - Expiry or sunset review

Article 11- Reviews

 Article 11.1 provides that an AD duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury;

11.2- If there is a changed circumstance in which either dumping or injury to the domestic industry ceased or changed any interested party can request for an interim review

Article 11.2 - Reviews

- Could be suo moto, by the authorities
- Or upon a substantiated request from any interested party
- After a reasonable period has passed from the date of its imposition: generally one year
- Follows same procedure as in the original investigation except interim findings.
 May lead to termination or modification of the definitive duty

Article 11.3 - Expiry or Sunset Reviews

- Article 11.3 of ADA and Section 9A(5) of Customs Tariff Act 1975 provides that
 - Any definitive AD Duty shall be terminated on a date not later than five years from its imposition, or from a most recent review if that covered both dumping and injury;
 - Unless the authorities conduct a review before this date, suo moto or on a substantiated request from the domestic industry, and find continuation or likely recurrence of dumping and injury

Article 11.3 - Expiry or Sunset Reviews

• Objective

 To determine whether the expiry of ADD is likely to lead to the continuation or recurrence of dumping and injury.

Initiation

- Own initiative or duly substantiated request made by the domestic industry. However, seldom self initiated. Usually, an alert letter is issued to the DI which may substantiate the need for continuation of ADD.
- Agreement does not give much guidance on the standards to be followed for the review to lead to conclusion whether expiry will lead to continuation or recurrence.

Article 13- Judicial Review

 Independent Judicial review system mandatory.

In India CESTAT is the appellate authority.
Section 9C of the Customs Tariff Act contains the enabling provision.
Notification of the Dept. of Revenue on the Final Findings of the Designated Authority can be challenged.

 Appeal can be filed within 90 days of the date of order under appeal.

Circumvention of Anti Dumping Duty

- By slight modification of product
 NZ Land case of Paint Brush
- By shifting the location of supply – MNCs supplying from different location
 Members' views differ on on what constitutes 'circumvention'.
 - Can be a denuine commercial activ
- Can be a genuine commercial activity.
- EC and US has laws to deal with circumvention.
- Speedy Circumvention enquiry

Imposition and Forms of Duty

Fixed Duty
Variable Duty
Ad Valorem Duty

Major users of AD Agreement from 1.1.1995 to 31.12.2007

S.No	Country	Number of cases initiated	Number of AD measures imposed
1	Argentina	222	161
2	Australia	191	72
3	Brazil	147	75
4	Canada	142	87
5	China PR	138	104
6	EC	372	244
7	India	508	355
8	Korea	103	54
9	Mexico	94	81
10	New Zealand	53	22
11	South Africa	205	121
12	USA	402	245

Rules Negotiations in NGR

Chair's draft text of 30 November 2007
Major imbalances in the text:

Accommodating use of zeroing
Deletion of lesser duty provision even on voluntary basis
Public interest examination

Chair's working Document of 28 May 2008

India's submissions in NGR

Mandatory application of the Lesser Duty

Prohibition on back to back investigations

 Higher threshold of de minimis volume of imports for developing countries.

Thank You

Subsidies & Countervailing Measures under WTO

What is a Subsidy ?

A subsidy is deemed to exist if there is a financial contribution by:

a Government or a public body

or

 there is any form or income or price support and

• a benefit is thereby conferred

More specifically.....

- Direct transfer from the Government of funds: grants, loans, equity or guarantees of payment of loans
- The Government foregoing the revenue that should otherwise have been collected
- The Government providing goods or services, or purchasing goods

Types of Subsidies

- Prohibited subsidies
 - Export Subsidies
 - Subsidies that are contingent upon the use of domestic over imported goods
- Permissible Subsidies
 - Actionable
 - Non-actionable

India's Export Incentive Schemes

- Issue of compatibility with WTO obligations
- Article 27 and Scope of Annex VII
- Criteria of "Export Competitiveness"
- Countervailability vs. Compatibility

Actionable Subsidies

All 'specific' subsidies are actionable if they cause 'adverse effects to the interests of other Members'
Specificity means:

Any subsidy that is limited to:
An enterprise or group of enterprises
An industrial sector or group of industries;or,

A designated geographical region within the jurisdiction of the granting authority

Adverse Effects:

- Serious prejudice to the interest of another country
- Injury to the domestic industry in the importing country
- Nullification and impairment of the benefits of bound tariff rates

Non-actionable Subsidies

n All non-specific subsidies n Subsidies provided for w R&D activities conducted by firms w To adapt existing production facilities to new environmental requirements w Assistance to disadvantaged regions n All the above permissible subsidies are subject to certain conditions

Transition Periods

	Developed Countries	Developing Countries
Export Subsidies*	Non- maintainable	8 years extendible by another 2 years Annex VII countries: No time limit
Local Content Subsidies	Immediate	5 years LDCs: 8 years

• Condition of 'Export Competitiveness' applies

Countervailing Duties: Essential Features

n Existence of subsidies in export prices
n Injury to Domestic Industry
n Causal link

Countervailing Duties

- To deal with the problem of direct and indirect Government subsidies
- Action is primarily oriented against the policies and programmes of the Government of the Exporting country
 Injury and Causal link must necessarily be proved

De minimis limits

	Developed Countries	Developing Countries
Amount of Subsidies	1%	3%
Volume of Subsidised imports	1% & 3% of market share	4% & 9% of total imports from these countries

Indian Schemes

- Income tax exemptions (80HHC, 10A, 10B etc.)
- 100% EOU
- DEPB
- Duty Drawback schemes
- Export Promotion Capital Goods (EPCG Scheme) Advance Licenses
- Sales Tax exemptions
- Preferential Credit schemes
- Star Houses & Target Plus schemes

Income Tax Exemption

- Benefit linked to export performance
- Neutralization of State level taxes
- Indirect compensation of inherent infrastructure costs
- Was notified by the Indian government to WTO

EOUs

- No customs duty on capital goods
- Raw material can be imported without payment of customs duties
- Clearances permitted in the Domestic Tariff Area (DTA)

DEPB

- Neutralizes customs duties
- Based on the Standard Input-Output Norms (SION)
- Calculations on an aggregate level
- In-built concept of "deemed" imports
- Discussion on the new incarnation of DEPB

Duty Drawback Schemes

- All Industry Rate
- Brand Rate
- Issue of compatibility with ASCM
- Elements of a fully WTO-compatible scheme

Rules for Investigations

- Transparency and Certainty
- Initiation by Government itself or at the instance of the industry
- Public Notice and Public Hearing
- Public Interest concerns
- Publication of all reports and conclusions

Indian submissions in NGR

- Export competitiveness under Article 27.5 and 27.6
- Verification system of inputs consumed in production of exported product
- SION to be treated as a reasonable verification system
- Only the excess amount of exempt material can be treated as a subsidy

Fisheries subsidies

- New proposed draft text in Annex VIII of Chair's draft text of 30 November 2007
- Very important for India due to large number of our artisanal fishermen
- Effective S&D provisions should be provided in the new disciplines

Fisheries subsidies

• India's submissions:

- TN/RL/W/203 dated 6 March 2006-small scale artisanal fisheries
- TN/RL/GEN/155 dated 22 April 2008-effective
 S&D provisions
- TN/RL/GEN/155/Rev.1 dated 19 May 2008jointly with Indonesia and China

Subsidies Agreement- NGR

- Chair's draft proposal:
 - Specifity to be clarified regarding exclusion of certain enterprises from inputs at regulated prices
 - Export credit
 - Item (k) of illustrative list
- Chair's Working Document of 28 May 2008



Understanding Preferential Rules of Origin Some Conceptual and Policy Issues

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Introduction

- Overview of ROO
- Modalities
- Economic Effects
- Trade Deflection Ratio
- Substantial Transformation
- Change of Tariff Classification: Some Implications
- India's Negotiating Concerns

Overview of ROO

Rules of Origin:Trade and Development

- Economic Effects of ROO:Positive and Negative
- Trade Creation/Trade Diversion/Trade
 Deflection
- Nuances of different modalities of origin determination

Modalities

Change in Tariff Classification
Percentage Test
Specific Process Test
Merits and Demerits
A Combined Approach

Economic Effects

- Checking Trade Deflection
- Encouraging development through value Addition
- Intra-regional/bilateral Trade Expansion
 - Effect of Trade in Different categories of Goods
 - Trade Balance Effect
 - Trade Creation
- Negative Effects
 - Constraints on Trade
 - Cost Effect

FIGURE 1: RESTRICTIVE USE OF RULES OF ORIGIN INCREASE AS MFN TARIFF REDUCTIONS ARE IMPLEMENTED AND THE MARGIN OF PREFERENCE OFFERED WITHIN A REGIONAL TRADING ARRANGEMENT DECLINES

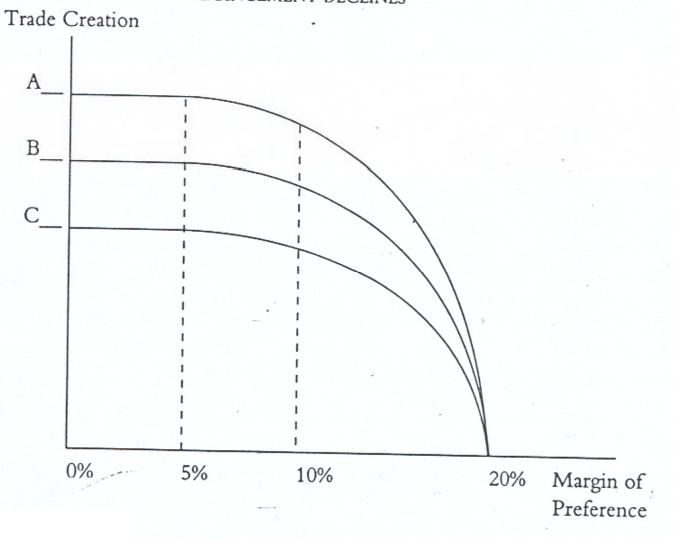
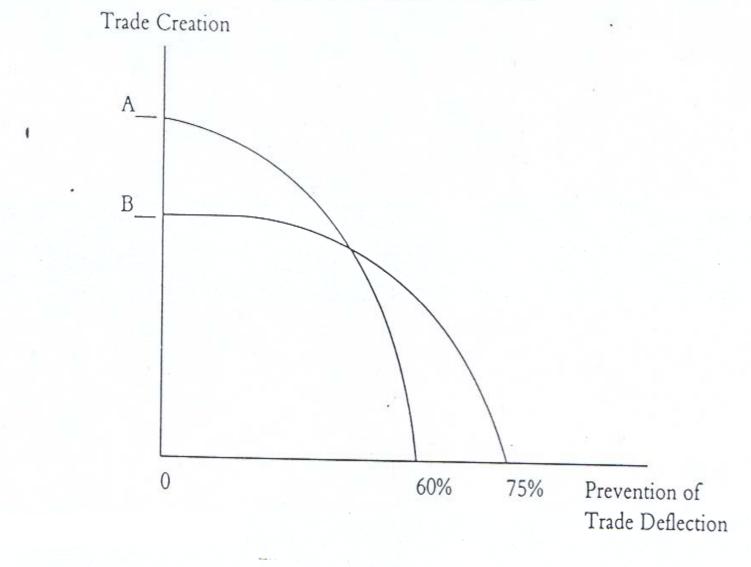
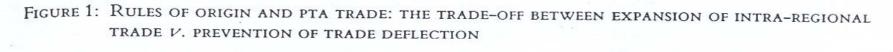
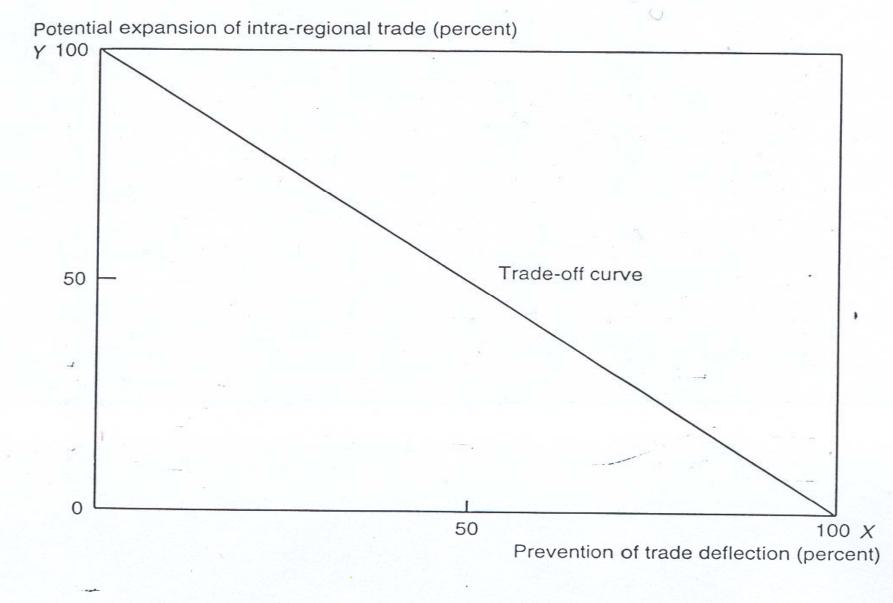
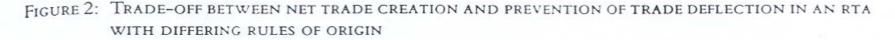


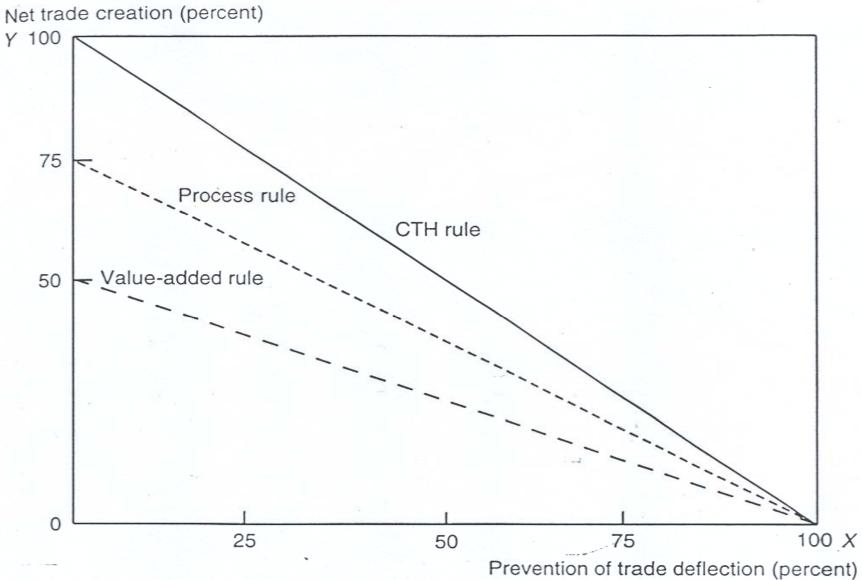
FIGURE 2: TRADE-OFF BETWEEN PREVENTION OF TRADE DEFLECTION AND TRADE CREATION UNDER ALTERNATIVE RULES OF ORIGIN











Trade deflection ratio

At HS 4-digit level an index of trade deflection can be calculated, on an illustrative basis, say between India and Sri Lanka by considering the difference in their respective customs regimes. The trade deflection ratio is defined as the following:

$TR = (1+t_I)/(1+t_{SL})$

where t_I is India's external tariff and t_{SL} is Sri Lanka's external tariff. Higher the TR greater is the possibility of trade deflection. The trade deflection ratio has been derived as below.

Any product of a third country would be prone to trade deflection say, for instance, from Sri Lanka into India if the cost of importing from Sri Lanka is less than the cost of importing the same product directly from the third country source into India. If the FoB price of the product X is P_X and CIF factor between a third country and Sri Lanka is R1 and it is subjected to Sri Lanka's tariff rate tsl the price would become $P_X R1(1+t_{sl})$. If the product faces another factor R2 of CIF while reaching the point of entry into India and it is further subjected to the SAFTA preferential tariff rate; its price would become $P_XR1(1+t_{sl})$ R2(1+t_{SAFTAI}), where India's tariff rate under SAFTA to non-LDCs is given as t_{SAFTAI} . Similarly, the price of the same product imported directly into India would be subjected to a CIF factor R3 and the Indian tariff rate t_I. The price would then be $P_{x}R3(1+t_{i})$.

Therefore, the price of a product being imported into Sri Lanka from a third country source and further imported into India under SAFTA from Sri Lanka is P1=P_xR1(1+t_{sl})R2(1+t_{SAFTAI}), and the price of the same product imported directly into India from the same third country source is P2=P_xR3(1+t_l).

Under the scenario of no trade deflection P1=P2. or, P2/P1= $P_XR3(1+t_I)/P_XR1(1+t_{sI})R2(1+t_{SAFTAI}) = 1$ or, R3 (1+t_I)

R1R2 $(1+t_{sl})(1+t_{SAFTAI})$

Assuming that the CIF factors R1, R2 and R3 are constant at a given point of time since they are structural variables and tariff rates under SAFTA would tend to be zero or near-zero in the immediate future, the trade deflection ratio would be:

$TR = (1+t_I)/(1+t_{sI}) = 1$

 If TR is greater than one it would suggest possibilities of trade deflection and vice versa.

- The trade deflection ratio for different products (covered under India's SAFTA schedule) at HS 4-digit level, could be analyzed vis-à-vis products' shares in India's imports as well as in Sri Lanka's imports. With the help of these three vectors of information, one could arrive at three groups of 4-digit HS products.
- Firstly, items that would be characterised by high trade deflection ratio and associated with high share in India's imports as well as high share in Sri Lanka's imports would form the category in which rules of origin *need not be relaxed*.
- Secondly, items that are characterised by low trade deflection ratio and are associated with low share in India's imports as well as Sri Lanka's imports would represent the category in which rules of origin *could be relaxed*. And finally, rest of the items studied together with the three vectors of information could be chosen for relaxation or no relaxation in rules of origin on a case- by -case basis. Such an analysis would be especially relevant for the SAFTA regime with zero or near-zero tariffs.

Substantial Transformation

WTO

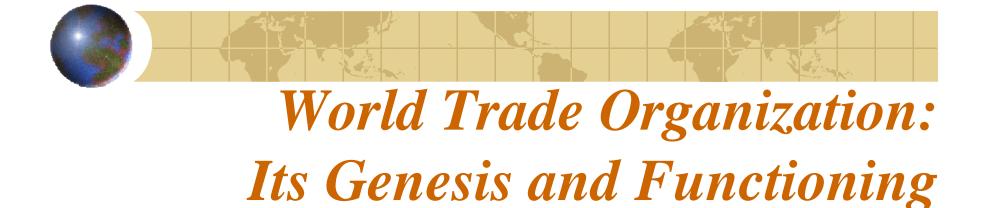
- All three Modalities
- NAFTA
 - All three Modalities
 - Regional Value Content
 - Stringent
- EU
 - All three Modalities
 - Cumulation
- Crucial Issues:
 - Point of Valuation of non-originating materials
 - Domestic Content Valuation: Numerator and Denominator

Change in Tariff Classification: Some Implications Level of Change CC (2-digit) CTH (4-digit) CTSH (6-digit) Problems: Change in heading but no VA (add modality) Value Addition but no change in heading (need for CTSH)

India's Negotiating Concerns

- Critical Role of ROO as a Trade Policy Instrument
- Development Policy Instrument
- Need for Policy-Consistency
 - Wholly Obtained
 - Not Wholly Obtained
 - Non-qualifying Operations
- Different Modalities of Determining origin
 - Conflicting objectives:exporters vs. importers
 - Raw material/intermediate imports vs. final goods imports
 - Consumer vs. producer
 - CTH:4 digit vs. CTSH: 6 digit (input-output linkage: Issues of Technology Differences)
 - VA: extent of percentage
 - Valuation: point of sale
 - General Rule vs. Product-specific Rule
- Preventing Circumvention: E-implementation

Thank You



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- In 1944, Bretton Woods Conference (United Nations Monetary and Financial Conference) was convened to discuss
 - Post-war recovery of Europe
 - Solution Note: Solution State And State And State And State And State And State And Andreas And Andreas And
- Delegates from 44 countries discussed the establishment of
 - International Trade Organization (ITO)
 - International Bank for Reconstruction and Development
 - International Monetary Fund

Motivations for Establishing Multilateral Trading System

- Phased opening of markets by reducing/removing all forms of trade barriers
- Rules-based system to curb tendencies of unilateral action by larger trading countries
- Transparency in the making of global trading rules
- Predictability in the setting of trade rules provides ideal environment for business to operate

Establishment of the GATT

▶ 1945

The US and the UK mooted the idea of a World Conference on Trade and Employment

▶ 1946

- The UN Economic and Social Council of the United Nations adopted a US resolution
 - ✓ Convene an International Conference on Trade and Employment to promote expansion of the production, exchange and consumption of goods

➢ October 1947

 23 countries (accounting for 70 per cent of world trade) signed an ad hoc agreement, the General Agreement on Tariffs and Trade (GATT)

 \checkmark India was a founder member of the GATT

Establishment of the GATT (cont...)

▶ 1948

- Adoption of the Final Act of the UN Conference on Trade and Employment in Havana in March 1948
 - ✓ "Havana Charter" for an International Trade Organization (ITO)
- ▶ 1950
 - ITO became a non-starter as the US Congress did not ratify the Havana Charter
 - President Truman never submitted the Havana Charter to the Congress in the face of weakening US business support

Objectives of the GATT (Havana Charter)

- To assure a large and steadily growing volume of real income and effective demand,
- > To increase the production, consumption and exchange of goods
 - ... and thus to contribute to a balanced and expanding world economy
- To foster and assist industrial and general economic development, particularly of those countries which are still in the early stages of industrial development
- To encourage the international flow of capital for productive investment
- > To promote on a reciprocal and mutually advantageous basis
 - Reduction of tariffs and other barriers to trade
 - Elimination of discriminatory treatment in international commerce
- To facilitate through the promotion of mutual understanding, consultation and co-operation the solution of problems relating to international trade in the fields of employment, economic development, commercial policy, business practices and commodity policy

Scope of the GATT

- \succ Trade liberalisation involving the goods sector
 - Reduction of tariffs on industrial products
 - Elimination of quantitative restrictions and other non-tariff barriers
 - Development and strengthening of clear rules for the administration of trade policy measures



- Agricultural sector: effectively excluded on account of a waiver granted to the US in 1955, allowing it to use import controls
- Textiles and Clothing exports from the developing to the developed countries managed by quotas due to perceived threat to latter's industries
 - 1961: Short-term Agreement on Cotton Textiles
 - 1962: Long-term Agreement on Cotton Textiles
 - 1973: Multi Fibre Arrangement

GATT and the Developing Countries

- Article XVIII authorised a *less-developed contracting party* to impose non-discriminatory quantitative restrictions in order to assist economic development or reconstruction
- Tariff reductions under GATT addressed the needs of lessdeveloped contracting parties for a more flexible use of tariff protection to assist their economic development and the special needs of these countries to maintain tariffs for revenue purposes (Article XXVIII *bis*)
- Part IV of the GATT, introduced in 1965, included the nonreciprocity provision favouring developing countries
 - The developed contracting parties *do not expect reciprocity* for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties



- ▶ 1948-1995: Eight Rounds of Multilateral Trade Negotiations
 - ✤ Geneva Round, 1948 tariff reduction
 - Annecy Round, France, 1949 tariff reduction
 - Torquay Round, England, 1951 tariff reduction
 - Geneva Round, 1956 tariff reduction
 - Dillon Round, 1960-62 tariff reduction

Functioning of the GATT (cont...)

➢ Kennedy Round: 1964-67

- Reducing tariffs by one-half on an average
- Disciplining non-tariff barriers
- Strengthening of the GATT rules
- Adoption of measures to help developing economies to strengthen their production potential and export capacity in order that the expansion of international trade may contribute to their economic development

Functioning of the GATT (cont...)

➢ Tokyo Round: 1973-79

- Overall reduction of tariffs by an average level of 35 per cent
- Codes on non-tariff barriers
- Government procurement
- Rules governing customs valuation
- Subsidies and countervailing measures
- Anti-dumping measures
- Agreement on Technical Barriers to Trade
- Import licensing

Functioning of the GATT (cont...)

> 1986-94: Uruguay Round

- ♦ Widening the negotiating mandate of the GATT
 ✓ Services
 - ✓Intellectual Property rights
 - ✓Investment issues
- Inclusion of agriculture
- Integration of textiles and clothing sector
- Tightening the rules
- All contracting parties expected to take commitments for liberalisation of trade
- Stablishment of the World Trade Organization

Agreement)

Recognises that relations in the field of trade and economic endeavour should be conducted with a view to

Objectives of the WTO (Marrakesh

- * Raising standards of living,
- Ensuring full employment and a large and steadily growing volume of real income and effective demand
- Expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development
- Enhance the means for doing realising the aforementioned in a manner consistent with their respective needs and concerns at different levels of economic development

Objectives of the WTO (cont...)

- Reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade
- Elimination of discriminatory treatment in international trade relations
- Recognizes the need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development

➢ Final Act of the Uruguay Round Negotiations

Structure of the WTO

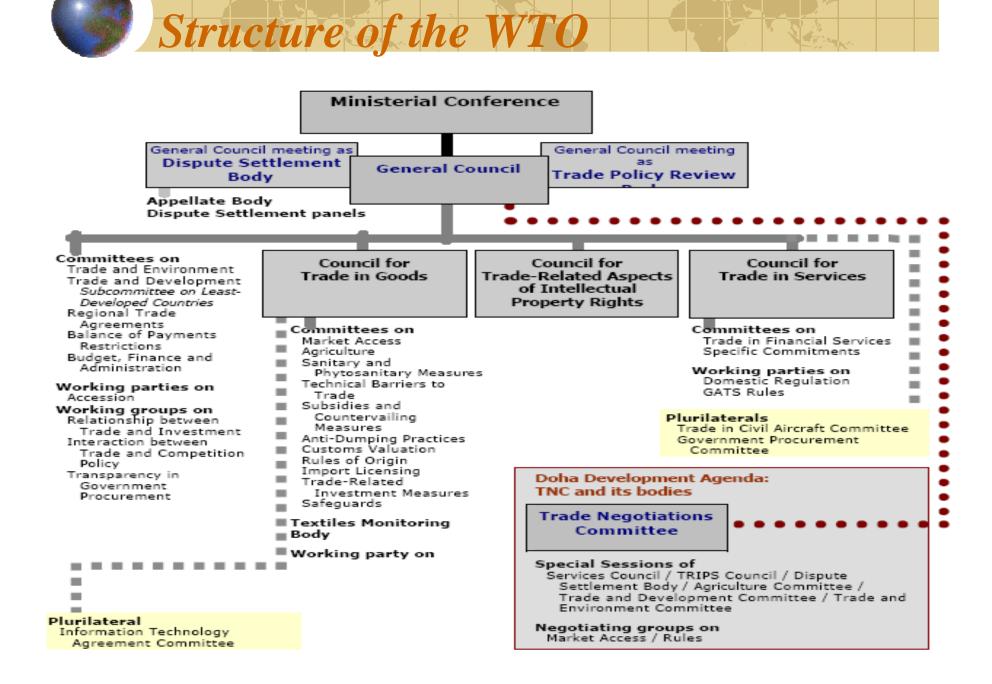
- > Marrakesh Agreement establishing the WTO
 - Multilateral Agreements on Trade in Goods
 - General Agreement on Trade in Services (GATS)
 - Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)
 - Trade Policy Review Mechanism
 - Plurilateral Agreements (Optional)
 - Dispute Settlement Mechanism

Organization of the WTO

Ministerial Conference (held at least once in two years)

General Council

- ✓ Council for Trade in Goods
 - Committees on covered Agreements
- ✓ Council for Trade in Services
- ✓ Council for Trade Related Aspects of Intellectual Property Rights
- ✓ Committees/Working Groups on New Issues
- ✓ Working Parties on Accession of New Members
- Dispute Settlement Mechanism



Present Status of the WTO

- 153 Members Cape Verde, the most recent member (joined on 23 July 2008)
 - Russian Federation is the only major country that is not a WTO Member
 - * 32 of the 50 least developed countries recognised by the UN are WTO Members
- ➤ 30 countries are observers, of which 29 have initiated process of accession



➢ Non-discrimination

Most-favoured nation

National Treatment

➢ Predictability

➤ Transparency

Major Issues

- ➢ Market Access Issues
 - Reduction of tariffs and non-tariff barriers in industrial and agricultural sectors
- Rules for the orderly conduct of trade based on economic efficiency
- Harmonisation of standards: food safety and technical standards
- Liberalisation of Trade in Services
- Harmonisation of norms and standards governing intellectual property protection
- Environment-related issues having "trade implications"

Coverage of the Goods Sector

> Agreements having sectoral focus

- Agreement on Agriculture
- Agreement Textiles and Clothing
- Procedural Issues
 - Agreement on Preshipment Inspection
 - Agreement on Rules of Origin
 - Agreement on Import Licensing Procedures
 - Agreement in Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation)
 - Agreement on Preshipment Inspection

Coverage of the Goods Sector (cont.)

- ➤ Harmonisation of standards
 - Agreement on the Application of Sanitary and Phytosanitary Measures
 - Agreement on Technical Barriers to Trade
- ➢ Trade defense measures
 - Agreement on Subsidies and Countervailing Measures
 - Agreement on Safeguards
 - Agreement in Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping Measures)



- Agreement on Trade-Related Investment Measures
 - Prohibits imposition of performance requirements on foreign investors
 - No foreign exchange balancing
- > Market Access for Non-agricultural products
 - Tariffs
 - Non-tariff barriers

on Trade in Services (GATS)

Coverage of the General Agreement

- Business services
- Communication services
- Construction and related engineering services
- Distribution services
- Education services
- Environmental services
- Financial services
- > Health related and social services
- Tourism and travel related services
- Recreation culture and sporting services
- Transportation services
- Other services not included elsewhere

Four Modes of Supply of Services

- ≻ Mode 1: Cross-border trade
 - Corresponds with the normal form of trade in goods and maintains a clear geographical separation between seller and buyer
- ➢ Mode 2: Consumption abroad
 - Refers to situations where a service consumer moves into another Member's territory to obtain a service
- ➢ Mode 3: Commercial Presence
 - Establishment of an enterprise for providing services
- Mode 4: Temporary movement of "natural persons"

Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS)

- Effective Protection to the following forms of Intellectual Property Rights
 - Patents
 - Plant Breeders Rights
 - Copyright and Related Rights
 - Trademarks
 - Industrial Designs
 - Layout-Designs of Integrated Circuits
 - Geographical Indications
 - Trade Secrets

Dispute Settlement: The Basic Facts

- One of the key features of the WTO which sets this organisation apart from the other multilateral organisations
 - Dispute settlement procedures of the WTO have "teeth"
- Dispute can be initiated if a Member feels that its trading partner is not fulfilling its not adhering to its commitments
- WTO seeks to provide a time-bound resolution of disputes



Agreement on Trade in Civil Aircraft
 Agreement on Government Procurement
 International Diary Agreement
 International Bovine Meat Agreement



- ≻ Singapore: 1996
- ≻ Geneva: 1998
- ≻ Seattle: 1999
- ≻ Doha: 2001
- ≻ Cancun: September 2003
- ≻ Hong Kong: 2005

Singapore Ministerial Conference: The Main Issues

- Implementation of Uruguay Round Agreement
- ➤ Trade and Environment
- ➤ Services
- Information Technology Agreement
- ➤ "Singapore Issues"
 - Trade and Investment
 - Trade and Competition Policy
 - Transparency in Government Procurement
 - Trade Facilitation



➤ Implementation

Declaration on global electronic commerce
 To examine all trade-related issues relating to global electronic commerce



Millennium Round of Trade Negotiations

➢ Review of implementation

> Expansion of WTO's mandate

- Inclusion of "Core Labour Standards" US initiative
- Inclusion of the four "Singapore Issues"



- Comprehensive negotiations covering all the Agreements for deepening the process of trade liberalisation
- Expansion of the mandate of the WTO
- Review of implementation of the covered Agreements
- Ministerial Declaration on TRIPS Agreement and Public Health aimed at facilitating access to medicines

Post-Doha Work Programme

- Implementation-Related Issues and Concerns
- > Agriculture
 - Review of the Agreement on Agriculture with a view to liberalising trade and removing distortions
 - Special and differential treatment for developing countries so that they can take account of their development needs, including food security and rural development

➢ Services

- Negotiations aimed at
 - ✓ Progressive liberalisation giving due respect to national policy objectives, the level of development and the size of economies of individual Members

 \checkmark Increasing participation of developing countries

- Market Access for Non-agricultural Products
 - Substitution of the reduction of the tariff start of the tariff the tari

- Trade-Related Aspects of Intellectual Property Rights
 - Review of Article 27.3(b) relating to patentable subject matter
 - Review of the implementation of the TRIPS Agreement under Article 71.1
 - To examine the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge and folklore
 - Implementation and interpretation of the TRIPS Agreement in a manner supportive of public health, by promoting both access to existing medicines and research and development into new medicines
 - Negotiations for the establishment of a multilateral system of notification and registration of geographical indications for wines and spirits

- ➢ Singapore Issues
 - Trade and Investment
 - Trade and Competition Policy
 - Trade Facilitation
 - Transparency in Government Procurement
- Negotiations to take place after the Fifth Session of the Ministerial Conference (Cancun Ministerial Conference) on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations

≻ WTO Rules

- Negotiations aimed at clarifying and improving disciplines under the Agreements on Implementation of Article VI of the GATT 1994 and on Subsidies and Countervailing Measures
- Section Sec
- Dispute Settlement Understanding
 - Segotiations on improvements and clarifications of the Dispute Settlement Understanding

➤ Trade and Environment

- Negotiations on
 - ✓ Relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements
 - ✓ Reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services

- ➢ Working Groups
 - Trade, Debt and Finance
 - Trade and Transfer of Technology
- Electronic Commerce
- Special and Differential Treatment for Developing Countries
 - Provisions to be re viewed for strengthening them and making them more precise, effective and operational
- Work programme on issues relating to small economies, with a view to making small, vulnerable economies fully integrated into the multilateral trading system

Time Table for Doha Round

- Agriculture: Modalities for further commitments to be established no later than 31 March 2003
- Services: Initial requests to be made by 30 June 2003 and initial offers by 31 March 2003
- TRIPS Agreement: Establishment of a multilateral system of notification and registration of geographical indications for wines and spirits by the Fifth Ministerial Conference (Cancun Ministerial Conference)
- Singapore Issues: Decision on negotiations in the Fifth Ministerial Conference

Time Table for Doha Round (cont.)

- Dispute Settlement Understanding: Additional proposals by Members and an agreement on improvements and clarifications not later than May 2003
- The Fifth Session of the Ministerial Conference "to take stock of progress in the negotiations, provide any necessary political guidance, and take decisions as necessary"
- The negotiations shall be concluded not later than 1 January 2005



- ➢ Agriculture
 - Substantial progress has been made on the key issues

✓ High subsidies in US/EU

- \checkmark Food security and livelihood concerns in developing countries
- > Non-agricultural market access
 - Some differences remain between the US and a few advanced developing countries

> Services

 Positive signals have been received from the developed countries on issues of interest to developing countries



Thank you

WTO State of Play

September, 2008

Process

Core Group of 7 Members known as the G-7

- 4 developed (Australia, EC, Japan and US)
- 3 developing (Brazil, China and India)
- Broader Group of around 30 Ministers to reflect the larger Membership

 Meeting of the coalition/ grouping partners such as

- G-33 & G-20 in Agriculture
- NAMA 11
- SAARC

 Other coalition groupings such as Africa Group, ACP LDCs, SVEs etc.



Agriculture draft modalities of 10 July, 2008

NAMA draft modalities of 10 July, 2008

Signalling in Services

- AgricultureOTDS
 - 70% cut for US (66-73% in Ag text)
 - 80% cut for EC (75-85% in Ag text)
 - Market Access tariff cut
 - Top band cut of 70% (66-73% in Ag text)
 - Special Products
 - 12% of Ag lines with 11% average cut (10-18% lines with 10-14% average cuts in Ag text)
 - 5% Ag lines with no cuts (0-6% in Ag text)

Agriculture

Special Safeguard Mechanism (SSM)

- 140% volume trigger to exceed UR bound with price dips and s.t. limit of 2.5% lines. Remedy of higher of
 - 15% of bound rates or
 - 15% AV
- Tariff capping
 - 4-6% sensitive products to exceed 100% tariff caps for developed countries

Cotton

No proposal on the 82.5% OTDS cut by US

NAMA

- Formula and Flexibilities
 - Swiss 20 with following flexibilities
 - 14% lines s.t. 16% trade with atleast half formula cuts or
 - 6.5% lines s.t. 7.5% trade with no cuts or bindings
 - Swiss 22 with following flexibilities
 - 10% lines with atleast half the formula cuts or
 - 5% lines with no cuts or bindings
 - Swiss 25 with no cuts

NAMA Anti concentration Full formula cuts on minimum of either 20% national tariff lines in an HS Chapter 9% imports volume in an HS Chapter Sectorals Countries in Annex Z (includes China and India) commit to participate in negotiating the terms of 2 sectorals likely to achieve critical mass Developing countries permitted to take higher coefficients for participation in sectorals.

Non Agricultural Market Access (NAMA)

Why NAMA?

 Covers Non Agricultural goods which under the Agreement

Includes

- Fish and fish products
- Rubber & its products
- Wood products

– Excludes

- raw silk, wool, cotton, flax, hemp,
- furskins, hides & skins,
- albuminoidal substances, modified starches, glues.

INDIA'S EXPORT PROFILE (in \$ million)

				Average	% Exports	
Sector	2004	2005	2006	2004-06		
					NAMA	Total
Textiles & Clothing	14,061	16,909	19,048	16,673	18.5%	16.9%
Gems & Jewellery	12,708	16,203	15,915	14,942	16.6%	15.1%
Petroleum Products	6,111	10,480	18,000	11,530	12.8%	11.7%
Machinery & Equipment	4,866	6,703	8,737	6,769	7.5%	6.8%
Drugs & Pharmaceuticals	3,245	4,275	5,150	4,223	4.7%	4.3%
Autos & Components	2,242	3,204	3,666	3,037	3.4%	3.1%
Leather & Footwear	2,542	2,888	3,112	2,847	3.2%	2.9%
Plastic Products	1,902	2,224	2,661	2,262	2.5%	2.3%
Marine Products	1,249	1,532	1,612	1,464	1.6%	1.5%
Paper Products	407	555	599	520	0.6%	0.5%
Agriculture	7,400	8,739	10,709	8,949		9.1%
NAMA	68,231	90,911	1,10,551	89,898		90.9%
Total (Agri + NAMA)	75,631	99,651	1,21,259	98,847		

DOHA MANDATE

- Para 16 of the Doha Ministerial Declaration (DMD):
 - reduce or eliminate tariffs (including tariff peaks, high tariffs, and tariff escalation) as well as non-tariff barriers
 - negotiations shall take fully into account the <u>special</u> <u>needs and interests</u> of developing and leastdeveloped country participants, including through <u>less than full reciprocity (LTFR)</u> in reduction commitments

Framework Agreement

• Annex B:

- a formula approach is key to reducing tariffs, and reducing or eliminating tariff peaks, high tariffs, and tariff escalation
- Negotiating Group should continue its work on a <u>non-linear formula</u> applied on a <u>line-by-</u> <u>line basis</u> which shall take fully into account
 - <u>special needs and interests</u> of developing and LDCs, including through <u>less than full reciprocity</u> in reduction commitments

Hong Kong Ministerial Declaration

- Para 13:
 - Reaffirm commitments in para 16 of the DMD.
 - Reaffirm all elements of Framework Agreement
- Para 14 & 15:
 - Adopt a <u>Swiss formula</u>
 - Reaffirm the importance of <u>special and differential</u> <u>treatment</u> and <u>less than full reciprocity</u> in reduction commitments
- Para 24:
 - Comparably high level of ambition in market access for Agriculture and NAMA to be achieved
 - in a <u>balanced</u> and <u>proportionate manner</u> consistent with the principle of <u>special and differential treatment</u>

MAIN ELEMENTS IN NAMA

1. FORMULA

2. TREATMENT OF UNBOUND LINES

3. FLEXIBILITIES

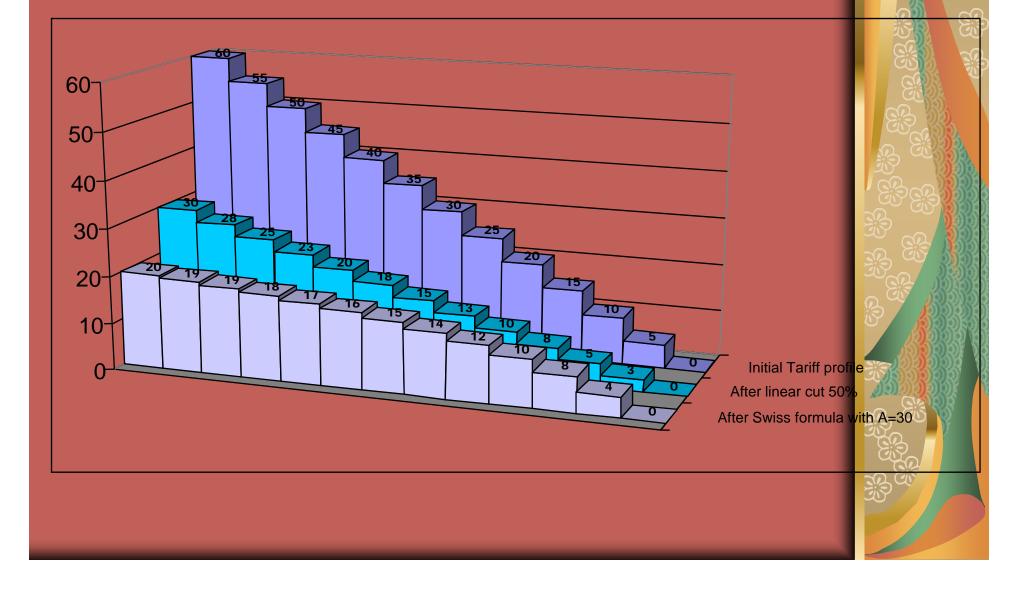
4. SECTORALS

5. NON TARIFF BARRIERS (NTBs)

FORMULA (cont) Simple Swiss Formula: $T_1 = (A \times T_0) / (A + T_0)$ T_1 = Final Bound Tariff, A = Swiss coefficient T_0 = Initial Bound Tariff **Features** All tariffs after formula cut < than 'A'</p> M If Initial Tariff $(T_0) = A'$ cut is 50% \bigotimes If Initial Tariff (T₀) > 'A' cut is > 50% \bigotimes If Initial Tariff (t₀) < 'A' cut is < 50%



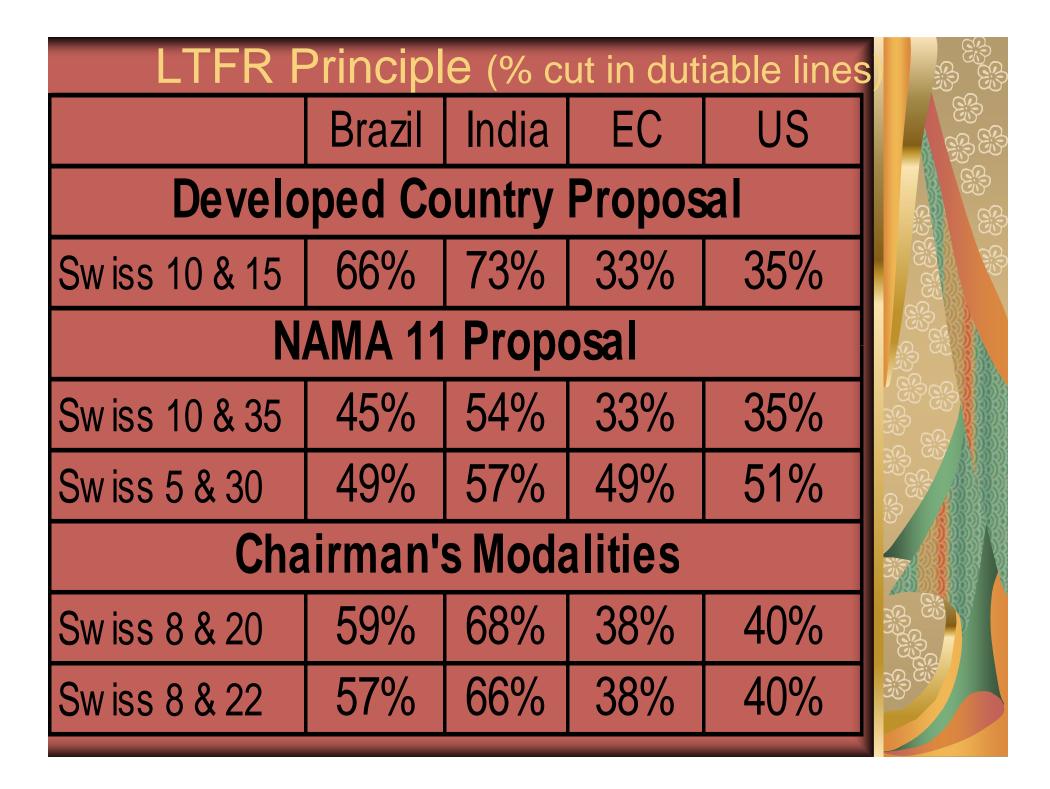
Comparison - Linear cut vs Swiss formu



Simulation of Formula Cuts

Initial Tariff	Swiss Coefficient	Final Tariff	% Cut
10	25	7.14	28.57%
15	25	9.38	37.50%
25	25	12.50	50.00%
40	25	15.38	61.54%
60	25	17.65	70.59%
10	15	6.00	40.00%
15	15	7.50	50.00%
25	15	9.38	62.50%
40	15	10.91	72.73%
60	15	12.00	80.00%





3rd Revision of NAMA Modalities

Formula & Flexibilities: 3 tier

- 1. [19-21] with following flexibilities
 - a. [12-14]% lines with atleast half the formula cuts s.t imports not exceeding [12-19]% of total

or

b. [6-7]% lines with no formula cuts or binding s.t.
 imports not exceeding [6-9]% of total

Formula & Flexibilities

- 2. [21-23] with following flexibilities
 - a. 10% lines with atleast half the formula cuts s.t imports not exceeding 10% of total

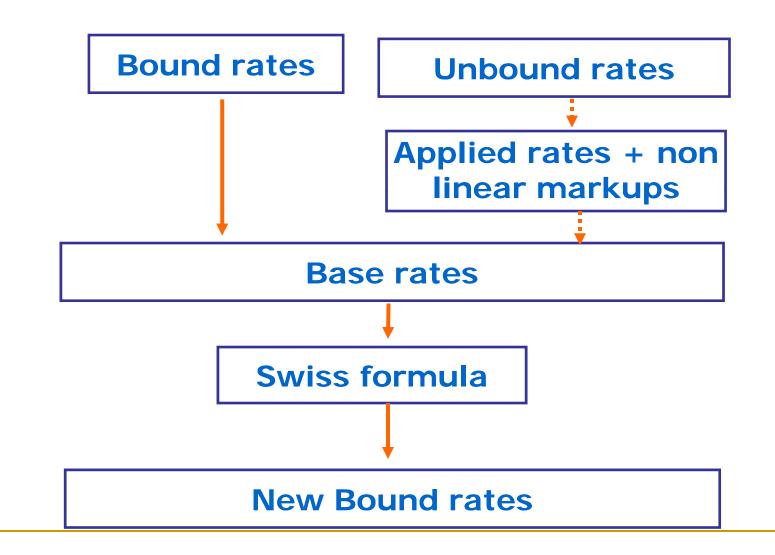
or

- b. 5% lines with no formula cuts or binding s.t. imports not exceeding 5% of total
- 3. [23-26] with no flexibilities

TREATMENT OF UNBOUND HONGKONG MINISTERIAL (HKMD) Adopt a non-linear mark-up approach to establish base rates for commencing tariff reductions Proposals Fair mark up (NAMA 11) 5% markup (Canada, Hongkong, New Zealand, Norway) 30% markup (Pakistan) 25% markup (Chairman's 3rd revision of NAMA modalities)

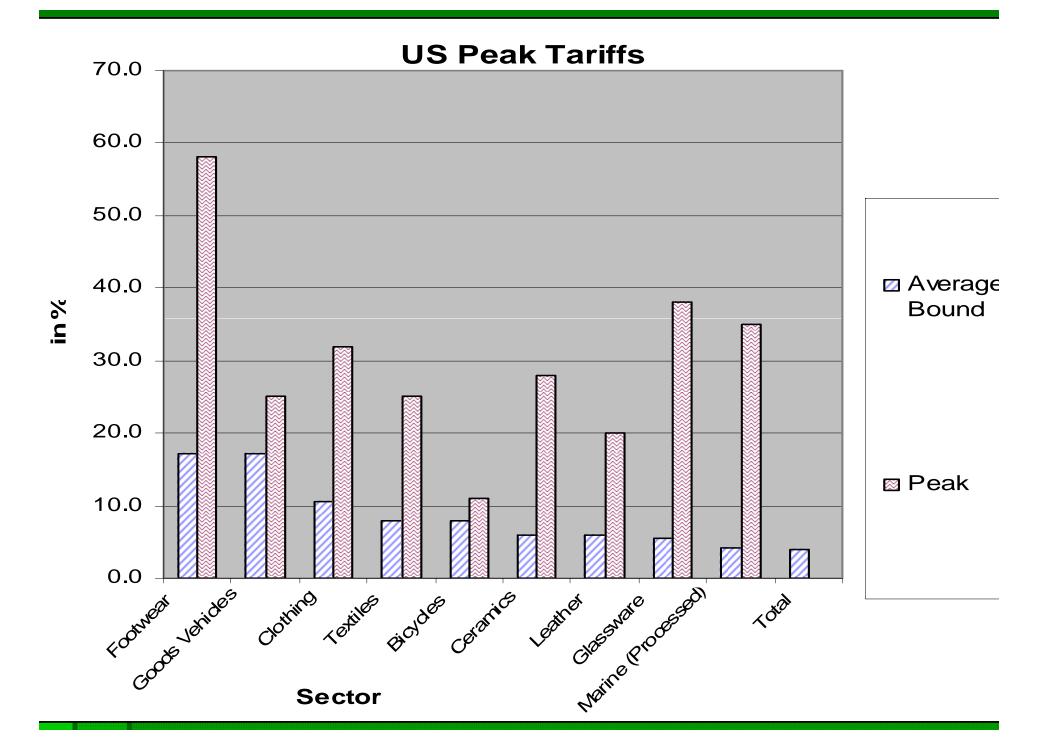
INDIA'S UNBOUND TARIFFS

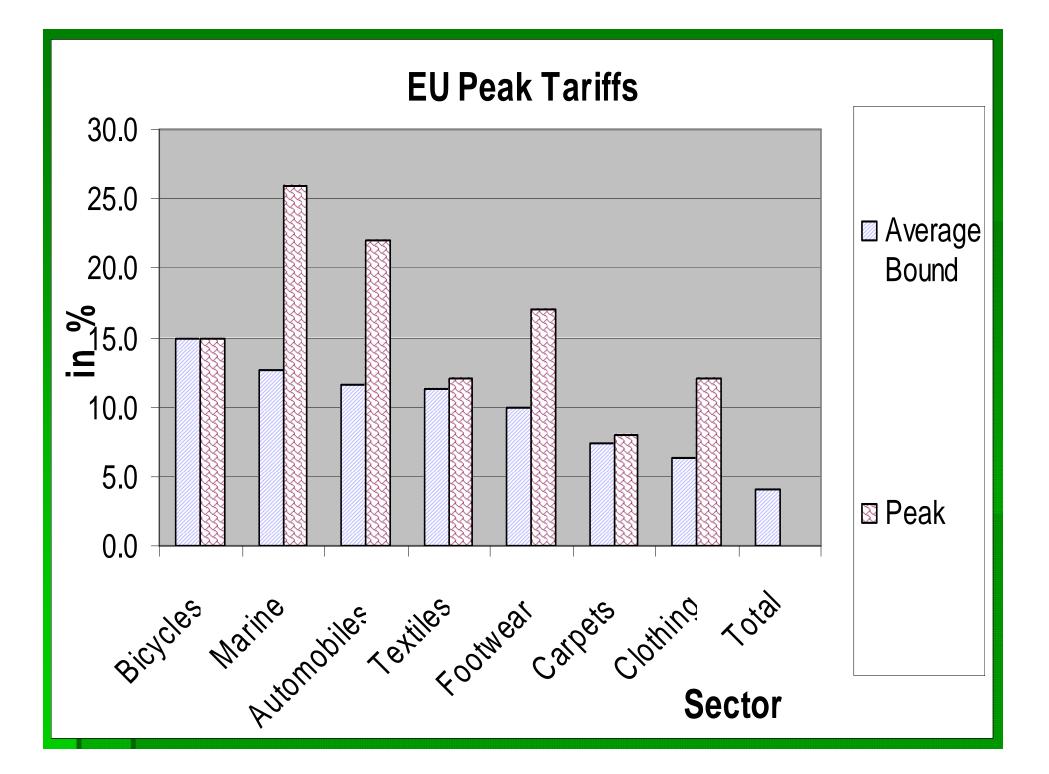
		Swis	ss 19	Swis	ss 20	Swis	ss 21	Swis	ss 22	Swis	ss 23
Applied 2001	No of Tariff Lines	Final Tariff	% cut								
0	8	10.8	57%	11.1	56%	11.4	54%	11.7	53%	12.0	52%
5	9	11.6	61%	12.0	60%	12.4	59%	12.7	58%	13.0	57%
10	9	12.3	65%	12.7	64%	13.1	63%	13.5	61%	13.9	60%
15	9	12.9	68%	13.3	67%	13.8	66%	14.2	65%	14.6	63%
20	8	13.4	70%	13.8	69%	14.3	68%	14.8	67%	15.2	66%
25	80	13.8	72%	14.3	71%	14.8	70%	15.3	69%	15.8	68%
35	1230	14.4	76%	15.0	75%	15.6	74%	16.1	73%	16.6	72%
105	15	16.6	87%	17.3	87%	18.1	86%	18.8	86%	19.5	85%
Total Lines	1368										



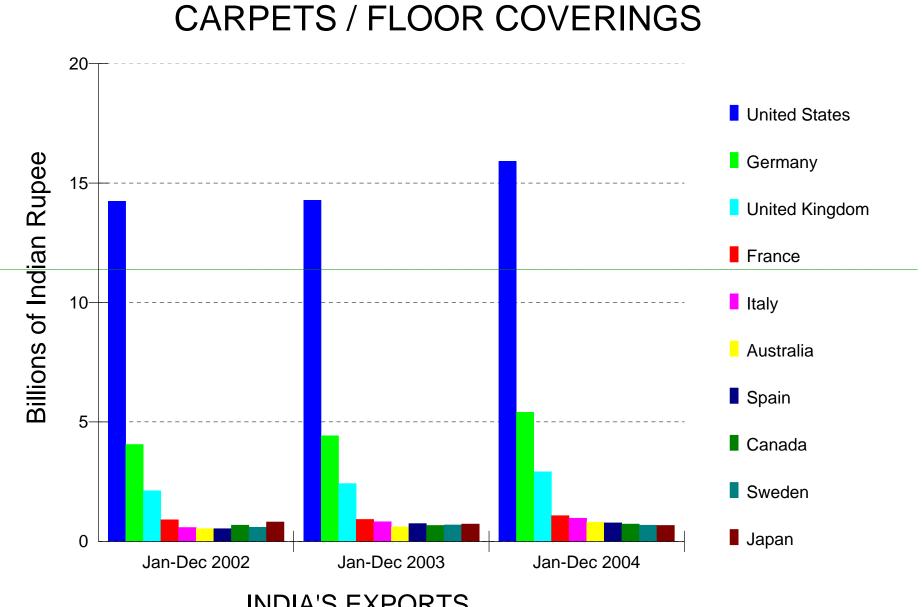
India's Tariff Line Simulation										
				Swis	ss 20	Swiss 22				
Most Frequent Tariff	No of Lines	Bound Lines	Unbound Lines	Final Tariff	% Cut	Final Tariff	% Cut			
0%	219	219	0	0.0	0.0%	0.0	0.0%			
20%	151	151	0	10.0	50.0%	10.5	47.6%			
25%	531	523	8	11.1	55.6%	11.7	53.2%			
35%	85	76	9	12.7	63.6%	13.5	61.4%			
40%	2026	2017	9	13.3	66.7%	14.2	64.5%			
50%*	81	1	80	14.3	71.4%	15.3	69.4%			
60%*	1231	1	1230	15.0	75.0%	16.1	73.2%			
130%*	15	0	15	17.3	86.7%	18.8	85.5%			
	Number	Average								
Total	4712	43.73		12.91	64.5%	13.77	62.6%			
Dutiable	4493	45	5.87	13.54	67.7%	14.44	65.6%			

* For the unbound tariff lines, a uniform mark up of 25% has been applied. Thus unbound lines at a tariff of 25% in 2001 have been shown as 25%+25% =50%. Similarly lines at 35% and 105% in 2001 have been shown as 60% and 130% for tariff reduction purposes.









INDIA'S EXPORTS

CARPETS - SIMULATION

	Country	Average Bound	Swiss 8	% cut
Un	ited States	2.79%	2.07%	25.86%
Eu	ropean Union	8.20%	4.05%	50.62%
Aus	stralia	14.40%	5.14%	64.29%
Ca	nada	11.69%	4.75%	59.37%
Jap	ban	7.54%	3.88%	48.52%

MSME PRODUCTS

Products		Binding/ Applied	Base	Swiss 20		Swiss 22		
		AVE	2008-09	Rate	Final Tariff	% Cut	Final Tariff	% Cut
ayarbatti	ls (colours, ink, , matches, nic articles)	Unbound	10	60	15.0	75%	16.1	73%
	Articles (boxes, cartons, lavatory covers, spools, stoppers, lids, usehold articles)	Unbound	10	60	15.0	75%	16.1	73%
	Articles (gaskets, pharmaceutical , industrial gloves)	Unbound	10	60	15.0	75%	16.1	73%
Paper F boxes, printed la	Products (cartons, exercise books, ibels)	Unbound	10	60	15.0	75%	16.1	73%

MSME PRODUCTS

Products	Binding/ Applied	Base	Swis	s 20	20 Swiss 22		
Products	AVE			Final Tariff	% Cut	Final Tariff	% Cut
Footwear (outer soles o rubber/ plastics/ othe textile materials)	f r Unbound	10	60	15.0	75%	16.1	73%
Iron & Steel products (screws, bolts, washers safety pins, helica springs, knives, cutting blades)	' Unbound	10	60	15.0	75%	16.1	73%
Auto components (engines, pumps transmission shafts bearing housing, gears gaskets)	; 4 0	7.5	40	13.3	67%	14.2	65%
Toys (dolls etc)	Unbound	10	60	15.0	75%	16.1	73%

FLEXIBILITIES

- Available for developing countries to protect their sensitive tariff lines from formula cuts or bindings
- Para 8 of Framework: Developing countries shall be given the following flexibility:
 - a) applying less than formula cuts to up to [10]% of the tariff lines provided that the cuts are no less than <u>half the formula cuts</u> and that these tariff lines do not exceed [10]%of the total value of a Member's imports;

<u>or</u>

 b) keeping, as an exception, tariff lines unbound, or not applying formula cuts for up to [5] % of tariff lines provided they do not exceed [5]% of the total value of a Member's imports.

Fle	Flexibilities during Mini Ministerial									
 Lamy's text (25 July, 2008) 										
Coefficient	Flexibilities									
20	At least half the formula cuts on 14% tariff lines s.t. imports not exceeding16% of value									
	Or No cuts or binding on 6.5% tariff lines s.t. imports not exceeding 7.5% of value									
22	At least half the formula cuts on 10% tariff lines s.t. imports not exceeding 10% of value <u>Or</u> No cuts or binding on 5% tariff lines s.t. imports not exceeding 5% of value									
25	No flexibilities									

Anti Concentration Clause (ACC)

- A clause to ensure that developing countries <u>do not</u> concentrate their flexibilities under specific sectors (i.e. Chapters of the HS* Classification)
- Chairman's revised draft modalities (10 July, 2008)
 - Full formula cuts are taken on a minimum of either
 - *[] percent of national tariff lines or
 - **[] percent of the value of imports of the Member in each HS Chapter
 - Some of the sectors likely to be affected by ACC
 - Marine products
 - Silk
 - Automobiles
 - Aircraft

* 20% introduced in the Lamy's text ** 9% introduced in the Lamy's text

Possible Criteria for Sensitive List

- Employment intensive sector
- Sectors in rural, semi-urban and undeveloped regions of India
- Sectors employing vulnerable sections of the population such as women, children

considered

- Low binding tariff lines
- Unbound tariff lines
- Products traditionally agriculture
- Other domestic sensitivities (SSI etc)

Possible Sensitive List for India

• Fish & Fish products Fertilisers Rubber products Textiles (including coir, carpets) Clothing • Autos & auto parts Products of SSI

IMPLICATION OF CUTS ON SENSITIVE LINES

		_	Applie	ed Rates	-	Sv	viss 21			
HS	Description	Bound Rates	2001	2008-09	Base Rate	Final Tariff	% Cut			
	MARINE SECTOR									
030261	SARDINES	Unbound	35	30	65	15.56	74%			
030264	MACKEREL	Unbound	35	30	65	15.56	74%			
030420	FROZEN FILLETS (INCL SEER)	Unbound	35	30	65	15.56	74%			
030613	SHRIMPS & PRAWNS	Unbound	35	30	65	15.56	74%			
160300	EXTRCTS & JUICES OF MARINE PRODUCTS	150	35	30	150	18.42	88%			
160411	SALMON FISH WHOLE /PIECES	55	35	30	55	15.56	74%			
160414	TUNAS WHOLE/PIECES	Unbound	35	30	60	15.56	74%			
160520	SHRIMPS , PRAWNS, LOBSTERS PREPARED OR PRESERVED	150	35	30	150	18.42	88%			
		RUB	BER							
400110	NATURAL RUBBER LATEX	Unbound	35	70	60	15.56	74%			
400121	NATURAL RUBBER IN SMKD SHEETS	25	25	20	25	11.41	54%			
400122	TECHNICALLY SPCFD NATURAL RUBBER(TSNR)	25	25	20	25	11.41	54%			
400129	NATURAL RUBBER IN OTHER FORMS	25	25	20	25	11 41	54%			

IMPLICATION OF CUTS ON SENSITIVE LINES

-		_	Applied Rates			Swiss 21	
HS	Description	Bound Rates	2001	2008-09	Base Rate	Final Tariff	% Cut
		TEXTILES					
500400	SILK YARNS	Unbound	35	10	60	15.56	74%
530810	COIR YARN	40	35	10	40	13.77	66%
611020	JERSEYS ETC OF COTTON	35.1	Specific	10 AVE	35.1	13.14	63%
620443	DRESSES OF SYNTHETIC FIBRES	66.2	Specific	10 AVE	66.2	15.94	76%
620520	MEN'S OR BOYS' COTTON SHIRTS	65.2	Specific	10 AVE	65.2	15.88	76%
	AUT	CO COMPON	IENTS	-725			
830120	VEHICLE LOCKS	Unbound	35	10	60	15.56	74%
848210	BALL BEARINGS	40	35	10	40	13.77	66%
870821	SAFETY SEAT BELTS	40	35	10	40	13.77	66%
870840	GEAR BOXES	40	35	10	40	13.77	66%
870892	SILENCERS & EXHAUST PIPES	40	35	10	40	13.77	66%
870893	CLUTCHES & PRTS THEREOF	40	35	10	40	13.77	66%
	P	UTOMOBIL	.ES				
870210	TRANSPORT VEHICLES (PERSONS)	40	35	10	40	13.77	66%
870310	MOTOR CARS	Unbound	105	10/ 60	130	18.08	86%
870421	TRANSPORT VEHICLES (GOODS)	40	35	10	40	13.77	66%
871110	MOTOR CYCLES	Unbound	105	10 / 60	130	18.08	86%



What is Sectoral Initiative?

- Interested WTO Countries come together and identify a sector on which they either bring tariffs to:
 - 1. Zero; or
 - 2. A mutually agreed low tariff

 The zero or low tariffs are offered to all WTO Members – participating in the initiative or not.

Issues to be Negotiated

- a) Countries that must participate
- b) Critical Mass (trade volume amongst participants)
- c) Tariff line coverage
- d) Whether zero tariff or low tariff?
- e) If low which tariff lines and at what rates?
- f) Implementation period uniform or negotiated
- g) Concessions for developing countries -
 - Zero for x
 - Lesser tariff lines
 - Exempting sensitive tariff lines
 - Longer phasing

Sectorals proposed

Apparel & Footwear Gems and jewellery

Autos and Parts

Bicycles

Handtools



Enhanced Healthcard

Chemicals

Industrial Machinery

Electronics/electrical

Raw materials

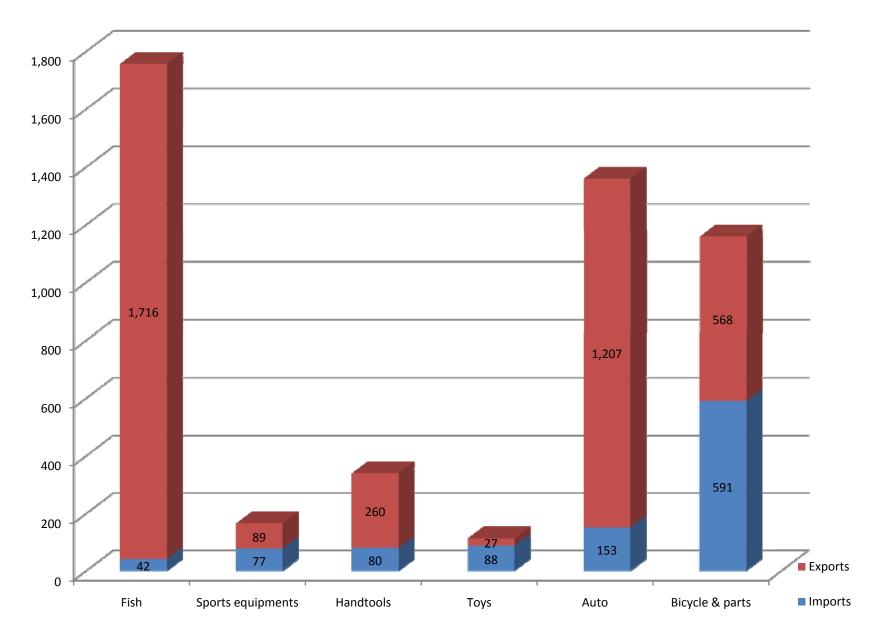
Toys

Sporting goods

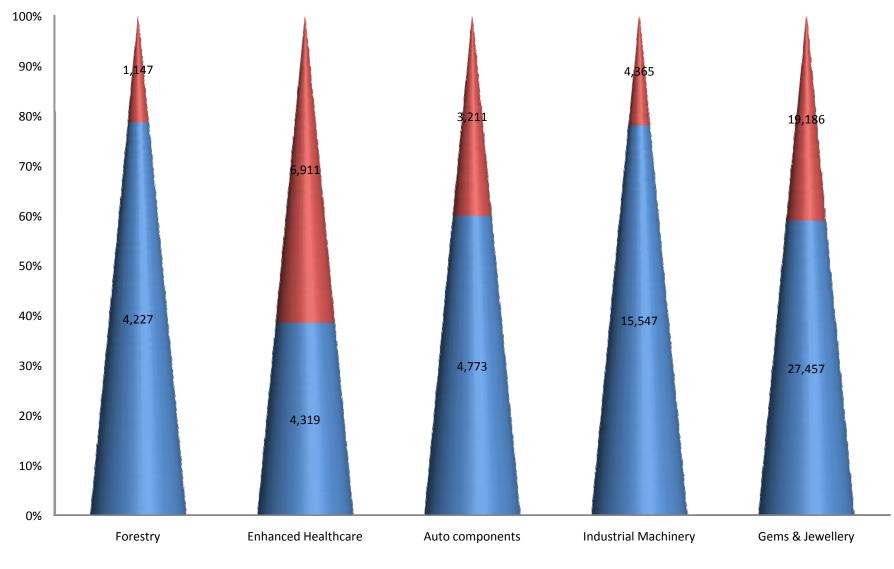
Forest products

Fish

India's Import Intensity in 2007 (\$ million)

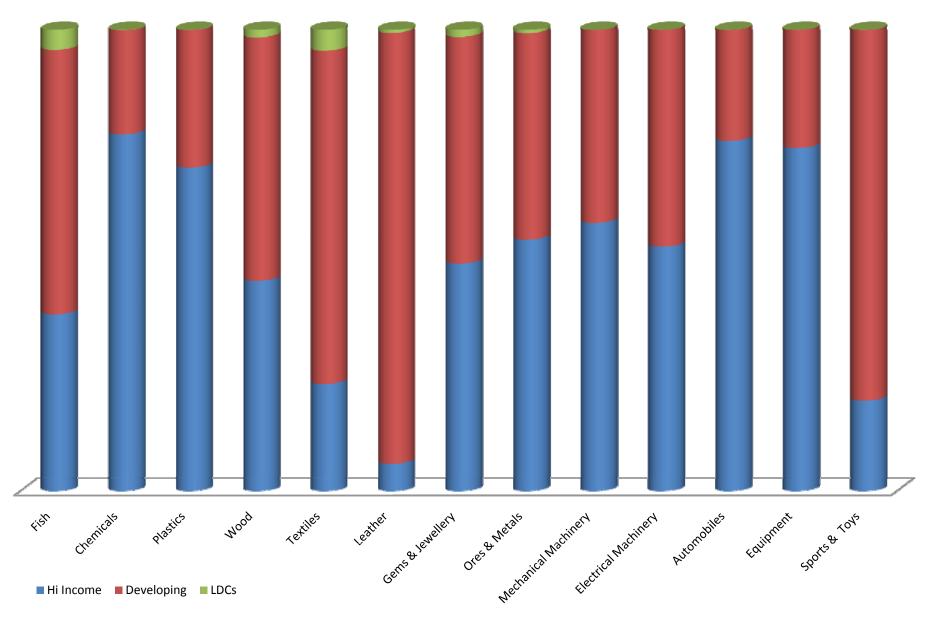


India's Import Intensity in 2007 (\$ million)



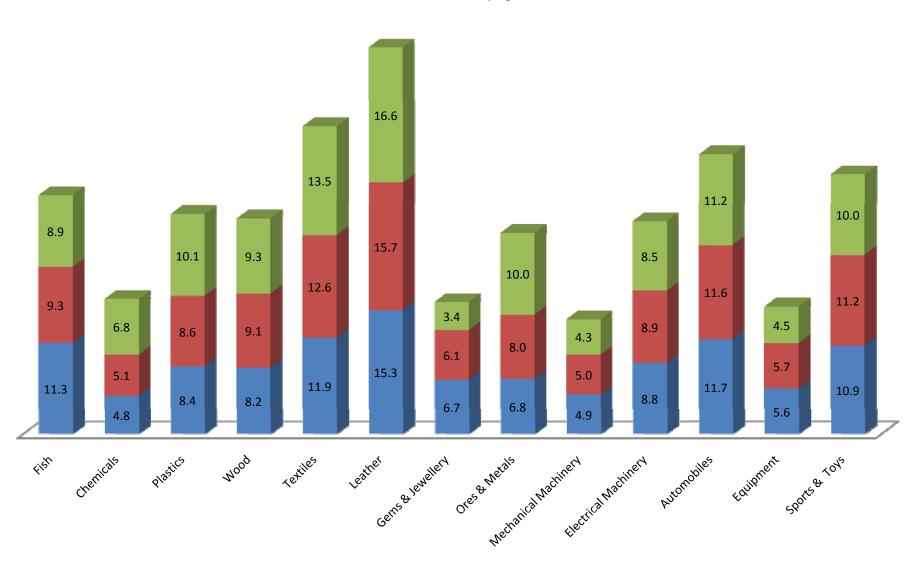
Imports Exports

% Share in Global Exports



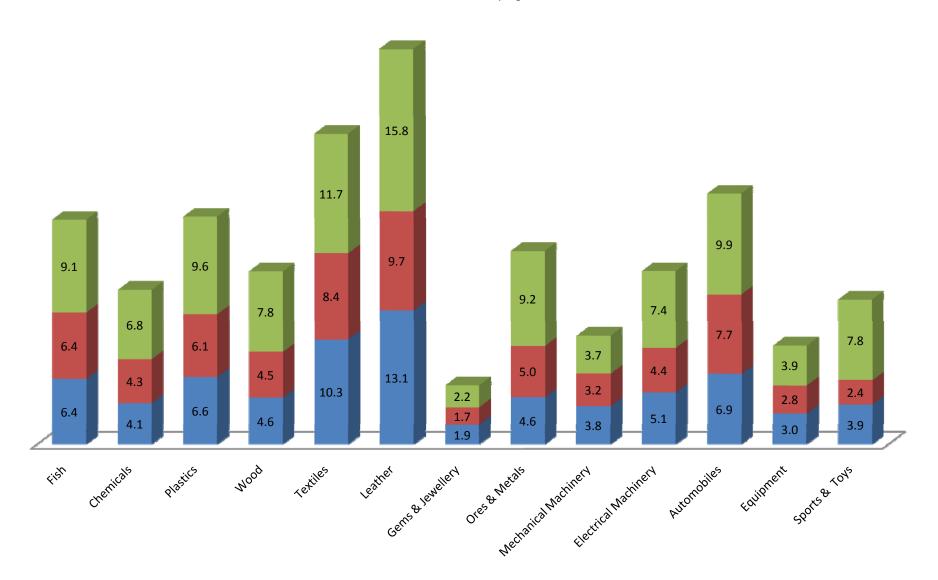
Simple Applied Tariffs on Exports

■ Hi Income ■ Developing ■ LDCs



Trade Weighted Applied Tariffs on Exports

■ Hi Income ■ Developing ■ LDCs



India's Position on Sectorals
Invert the duty structure

 Adversely affect the vulnerable sectors/ sections of the workforce

 Can have revenue implications especially since customs duty are a sizeable component

• Distort the tiered tariff structure

Would undermine the multilateral reductions

 Experience of the ITA has been less than satisfactory

Position during Mini Ministerial

Countries in Annex 7 must
 Agree to participate in negotiating the terms of
 at least 2 sectoral initiatives of their choice
 with a view to making them viable

 Developing countries permitted to increase their coefficients commensurate with the level of participation in sectoral initiatives

Sectoral Zero for zero Zero for 5%

Jectoral	2CTO I			01 370
	Equivalent coefficient	Coefficient points	Equivalent coefficient	Coefficient points
Chemical	Swiss 11.35	8.65	Swiss 13.65	6.35
Electronics	Swiss 17.71	2.29	Swiss 18.53	1.47
Industrial				
Machinery	Swiss 17.22	2.78	Swiss 18.30	1.7

Chemicals Sectoral

 Proponents – Canada, Chinese Taipei, EC, Japan, Norway, Singapore, Switzerland, US

Product Coverage – HS Chapters 28 to 39

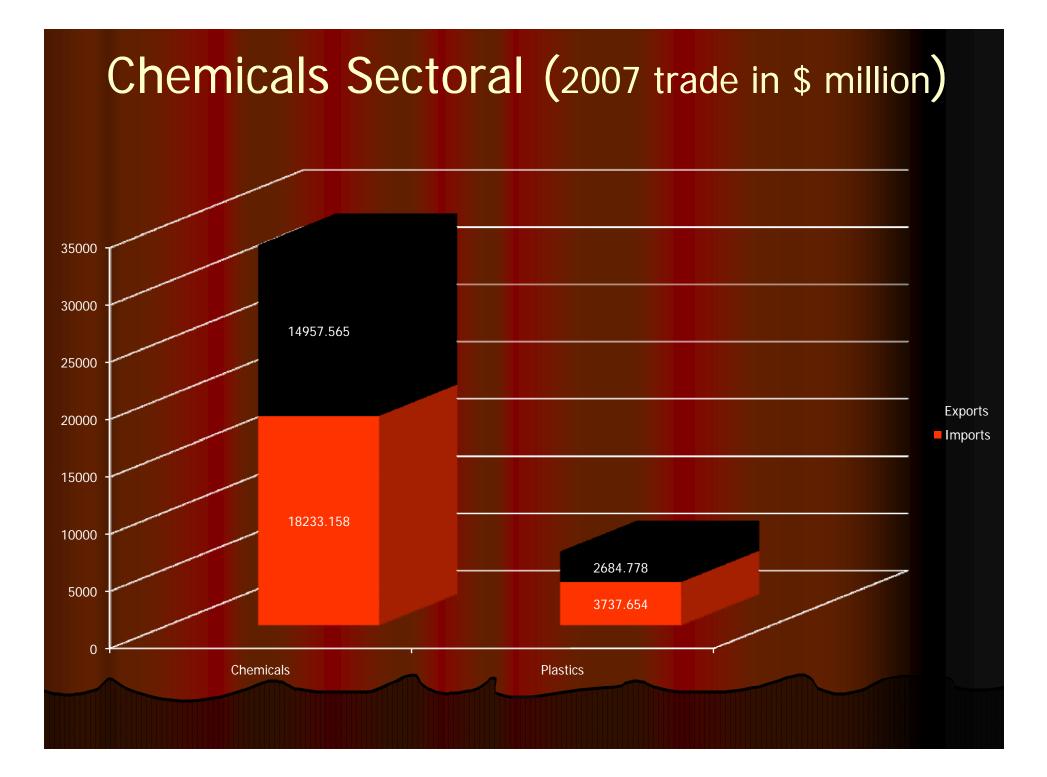
Critical Mass – [90]%

Implementation period –
6 equal cuts for developed countries
11 equal cuts for developing countries

• S&D provisions

• [4]% lines s.t. [4]% trade at [4]% or

Additional [5] cuts on [5]% lines



 Industrial Machinery Sectoral
 Proponents – Canada, Chinese Taipei, EC, Japan, Norway, Singapore, Switzerland, US

 Product Coverage – Specific lines under HS Chapters 82 and 84.

Critical Mass – [90]%

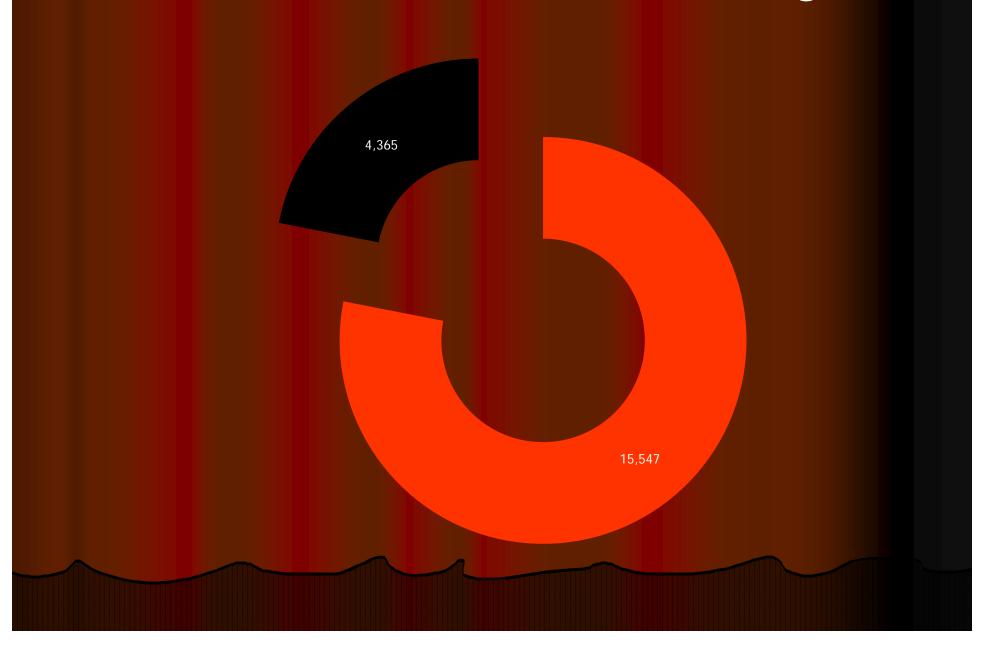
Implementation period –

- [4] equal cuts for developed countries
- [7] equal cuts for developing countries

S&D provisions

- [4]% lines s.t. [4]% trade at [5]% or
- Additional [2] cuts on [5]% lines

Industrial Machinery



Electrical/ Electronics Sectoral

 Proponents – Hong Kong, Japan, Korea, Singapore, Thailand, US

 Product Coverage – Specific lines under HS Chapters 38, 70, 84, 85, 90, 91, 94 & 95

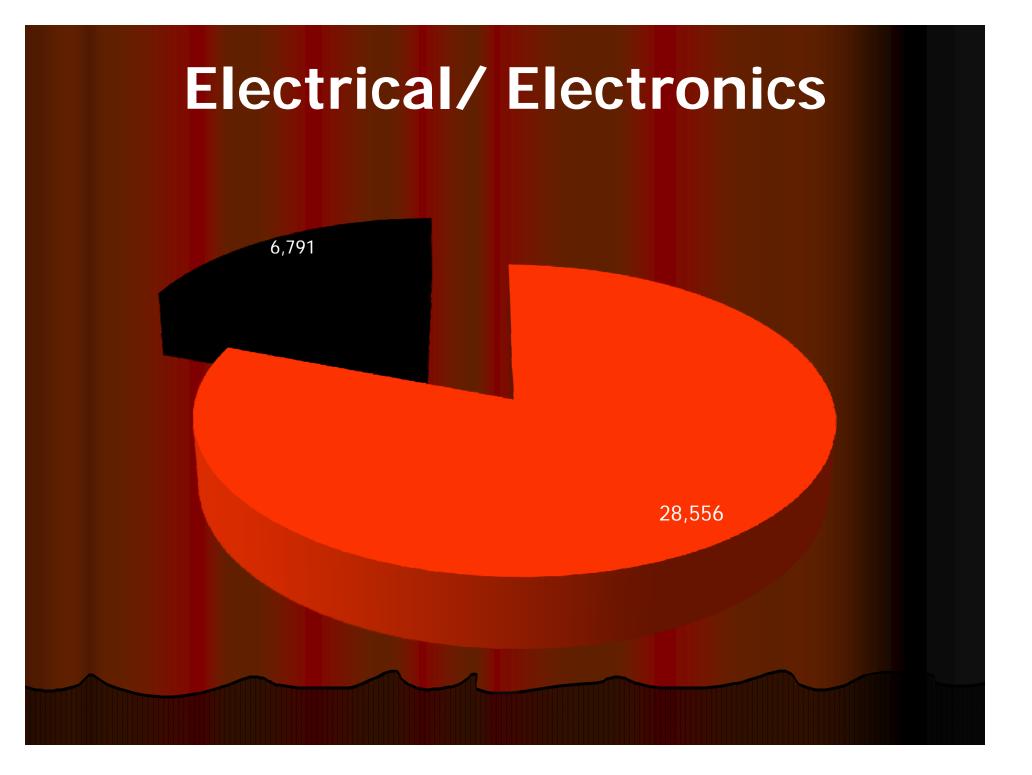
Critical Mass – [90]%

Implementation period –

- 3 equal cuts for developed countries
- 5 equal cuts for developing countries

•S&D provisions

- [5]% lines s.t. [5]% trade at [5]% or
- Additional [4] cuts on [5]% lines





Specific Proposal (by Hong Kong, Japan, Chinese Taipei, Singapore, Switzerland, Thailand, US)

Critical mass of [90]% to total WTO Members trade

Product Coverage under Chapter 71 of HS Objective of immediate tariff elimination Special and Differential Treatment Reduce bound rates to [Y]% or post formula value whichever is lower over $[Z_1]$ years Maintain this for $[Z_2]$ years Eliminate tariffs subsequently

PEAK TARIFFS

13.5%
and a second
4%
10%
35%
30%

U.S Tariffs

Product Description	Bound Duty
Diamonds (7102)	0%
Precious and other semi precious stones (other than diamond, ruby, sapphire, emerald)	10.5%
Gold, Silver, Platinum or other Jewellery (7113)	5- 13.5%
Gold and silver (7106-7109)	0- 6%
Imitation Jewellery (7117)	0-11%
and the second of the second o	a strange de a

E.U. Tariffs

Product Description	Bound Duty
Pearls, diamonds and other precious/ semi precious stones (7101-7105)	0%
Silver, gold, platinum (7106-7111)	0%
Articles of Jewellery, goldsmiths or silversmiths wares (7113-7114)	2%-4%
Articles of precious metals, natural & cultured pearls (7115-7116)	2.5-3.0%
Imitation Jewellery (7117)	4%

Japanese Tariffs

Product Description	Bound Duty
Pearls, diamonds and other precious/ semi precious stones (7101-7105)	0%
Silver, gold, platinum (7106-7111)	0%
Articles of Jewellery, goldsmiths or silversmiths wares (7113-7114)	3.3 -5.4%
Articles of natural & cultured pearls (7116)	2.5 -5.2%
Imitation Jewellery (7117)	2.7 -10%

Israeli Tariffs

Product Description	Bound Duty
Diamonds and other precious/ semi precious stones (7102-7105)	5%
Silver (7106- 7107)	5-15%
Gold (7108), Platinum (7110)	35%
Articles of Jewellery, goldsmiths or silversmiths wares (7113-7114)	0-8%
Articles of precious metals, natural & cultured pearls (7115-7116)	Unbound
Imitation Jewellery (7117)	6 -20%

Thailand Tariffs

Product Description	Bound Duty
Pearls, gold, silver, platinum, silver Jewellery, unworked precious stones	Unbound
Other industrial and non industrial diamonds (710229/ 39)	1%
Otherwise worked ruby, sapphire and emerald ; synthetic and reconstructed precious stones (710391/99, 7104)	5-10%
Gold and Platinum Jewellery (711319)	30%
Imitation Jewellery studded with imitation pearls or synthetic stones(711790)	30%

HS Code	Description	Bound Rates	Applied 2008-09	Formula Cuts
710110	Natural Pearls, Not Mounted Or Set	Unbound	10	15.2
710121	Cultured Pearls, Unworked	Unbound	10	15.2
710122	Cultured Pearls, Worked, Not Set	Unbound	10	15.2
710100 Ex	Raw Pearls	Unbound	5	15.2

HS Code	Description	Bound Rates	Applied 2008-09	Formula Cuts
710210	Diamonds, Unsorted	Unbound	10	15.2
710221	Diamonds, Industrial, Unworked Or Simply Sawn, Cleaved Or Bruted	40	10	13.8
710229	Diamonds, Industrial, Worked	40	10	13.8
710231	Diamonds, Non-industrial, Unworked Or Simply Sawn, Cleaved Or Bruted	40	10	13.8
710239	Diamonds, Non-industrial, Worked, Including Polished Or Drilled	40	10	13.8
710200 Ex	Rough diamonds (Industrial or non industrial)	-	0	
710200 Ex	Non industrial diamonds (other than rough)	_	3	
710200 Ex	Semi processed, half cut or broken diamonds	_	0	

HS Code	Description	Bound Rates	Applied 2008-09	Formula Cuts
711311	Jewelry And Parts Thereof, Of Silver	Unbound	10	15.2
711319	Jewelry And Parts Thereof, Of Precious Metal Other Than Silver	Unbound	10	15.2
711320	Jewelry And Parts Thereof, Of Base Metal Clad With Precious Metal	Unbound	10	15.2
711411	Articles Of Silver (Other Than Jewelry), Whether Or Not Plated Or Clad With Other Precious Metal	Unbound	10	15.2
711419	Articles Of Gold Or Platinum (Other Than Jewelry), Whether Or Not Plated Or Clad With Other Precious Metal	Unbound	10	15.2

Issues for Deliberation

Offensive market access especially in Israel and Thailand

Terms and conditions for safeguarding domestic sensitivities
 Zero for X
 Sensitive tariff lines to be carved out

Implementation period

NTB proposals

- Export related proposals
 - <u>Export taxes</u>
 - Export restrictions
- <u>Horizontal mechanism</u> for informal resolution of NTBs
- <u>Labelling</u> in textiles, clothing, footwear and travel goods
- Trade in <u>remanufactured</u> goods
- Harmonisation of standards & conformity assessment in
 - Electrical and Electronics
 - Fireworks and Lighters
 - Forestry products
 - Chemicals
 - Automobiles

Procedures for Facilitation of Solutions to NTBs

- Fast track dispute resolution
- > Informal low key & less adversial
- Expert facilitator (Chair, Vice Chair or Friend of Chair)
- Mandatory at request/ response stage
- > Voluntary at resolution stage
- Within the existing WTO Committee's
- Confidentiality & no third parties
- Independent of rights under DSU
- Flexible procedures
- Timelines for resolution

WTO Agreement on Export Taxes -EC

Negative effect of export taxes

- Serve as instruments for indirect subsidisation
- Distortive effect on global commodity trade
- Obstruct aspirations to develop new (infant) processing industries
- Displace imports

Provisions of the Agreement

- Confirmation and operationalisation of GATT disciplines to export taxes
- Exceptions in case of financial crisis, infant industry, environment (preservation of natural resources) and local short supply
- WTO members to notify introduction or modification of export taxes
- Scheduling and binding of export taxes with exceptions for LDCs and paragraph 6 countries
- Only for NAMA products

Ministerial Declaration on Remanufactured Goods US

- Rationale in the Chapeau
 - Benefits to environment
 - Benefits to consumers
 - Creation of jobs
 - Expanding economic growth
- Enhance market access opportunities for remanufactured goods (Art 1)
- No prohibitions or restrictions on reman goods proscribed by multilateral agreements (Art 2)
- Art 5: Reman defined as those entirely or partly comprised of
 - Parts obtained from disassembly of used goods
 - Processed, cleaned, inspected or tested for ensuring original working condition
 - Has a warranty

Reservations on Remanufacturing

- No conceptual clarity and interchangeable use of terms like reused, refurbished, repaired, recycled
- Ploy to transfer environmental/safety burden to developing countries
- Issues of customs valuation, misclassification, pricing, IPR, certification of standards
- Adverse effect on sensitive domestic industries
- Unorganised domestic market with little export interest
- Lower investment and employment potential than new goods manufacture
- Lessens chance of technology transfer

Labelling in Textiles, Apparel, Footwear & Travel Goods

- Information on labels not subject to scrutiny:
 - Country of origin, fibre content & care instruction for T&C
 - Country of origin, predom material of core parts for footwear
 - Country of origin and fibre content for travel goods
- Any additional information only if they are not unnecessary obstacles to trade (as per Article 2.2 of TBT)
- Positive consideration to be given on information required on non permanent labels
- Regulations considered more trade restrictive than necessary:
 - Prohibits more than one language
 - Pre-approval/ registration of labels
 - Prohibits information such as brand names
 - Specifies label to be in more than one material

Labelling in Textiles, Apparel, Footwear & Travel Goods

- Transparency provisions for adoption or amendment of technical regulations or conformity assessment procedures in terms of
 - Publication at an early appropriate stage
 - □ Notifying other Members
 - Comments by Members
 - □ Final regulation taking on board these comments
- □ Exceptions in case of
 - □ Safety
 - □ Health
 - Environmental protection
 - □ National security
- □ Review by the Committee on TBT

NTB Agreement on Electronics - EC

- Coverage of electrical and electronics equipment
- Applies to standards, technical regulations, conformity assessment procedures related to safety and EMC
- Override the provisions of Agreement on TBT
- Use international standards as basis (Art 2)
- Suppliers declaration of conformity (SDOC) for all products barring exceptions (Art 3.1)
- Acceptance of suppliers declaration of standards./ technical regulations for other products (Art 3.2)
- Developing countries may accept SDOC but for all other products, they need to accept suppliers statement that product meets prescribed standards, technical regulations.



PARA 6 Countries

Para 6 Countries: Countries (Africa- 8, Asia -2, Latin America- 2) with a binding coverage < 35%</p>

Initial Binding Coverage	Final Binding Coverage	Final Average Bound Rates		
3 rd Revision of NAMA modalities				
Less than or equal to 15%	[70-90]%	28.5%		
More than 15%	[75-90]%	28.5%		
During Mini Ministerial				
Less than or equal to 15%	75%	30%		
More than 15%	80%	30%		

PARA 6 Countries

1 year grace period
Countries:

Cameroun Congo Cote d'Ivoire Cuba Ghana Kenya Macao Mauritius Nigeria Sri Lanka Suriname Zimbabwe

SVE (Small & Vulnerable Economies)

> Definitions:

- Members with less than [0.1%] share of world NAMA trade during 1999-2001
- Banded formula

Initial Bound Rates	NAMA text
>= 50%	[28-32]%
>=30% but < 50%	[24-28]%
>=20% but <30%	18%
<20%	Minimum line by line cut of 5% on 95% lines

- Fiji to fall in highest band with flexibility to keep 10% unbound lines
- > 3 year grace period for SVE RAMs

Least Developed Countries (LDCs)

July Framework:

- > Para 9: We agree that LDCs shall not be required to
 - > Apply the formula nor
 - Participate in sectoral

NAMA text:

- Exempt from formula reductions
- Are expected to substantially increase their binding levels
- All new bindings on AV basis

Duty Free Quota Free (DFQF)

- Annex F of HKMD: Developed-country and developing-countries declaring themselves in a position to do so should provide duty free and quota free (DFQF) access to atleast 97% of products originating from LDCs
- NAMA Text
 - Rules or origin to be simple, transparent and facilitate market access
 - Phasing in of commitments and appropriate flexibility in coverage for developing countries
 - Developed countries to
 - Notify product coverage for at least 97% of LDC lines
 - Notify steps and possible time frames for full compliance

DFTP Scheme for LDCs

Announced by the Prime Minister during the India- Africa Summit on 8 April, 2008

In line with the mandate in Annex F of the Hong Kong Ministerial Declaration to provide duty free quota (DFQF) access for products originating from LDCs

Product Coverage

 Duty free access for 85% of India's total tariff lines

 Preferential market access on 9% of the tariff lines

No tariff preferences on 6% of tariff lines

Product Coverage

- Duty free and preferential market access on products of interest for African LDCs like
 - cotton,
 - cocoa,
 - aluminiums ores,
 - copper ores,
 - cashew nuts,
 - cane sugar,
 - ready-made garments,
 - fish fillets and
 - non-industrial diamonds

Country Coverage

Scheme applicable for exports from all the 49 LDCs

This includes

- 33 LDCs in Africa
- 15 LDCs in Asia Pacific
- 1 LDC in Central America

Rules of Origin

Wholly produced or obtained

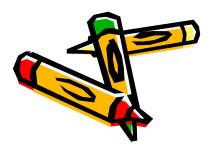
If not wholly produced or obtained then
 Change in Tariff Heading (CTH) + 30% value addition

Recently Acceded Members (RAMs)

No formula application for Albania, Armenia, FYROM, Kyrgyz Republic, Moldova, Saudi Arabia, Tonga, Vietnam and Ukraine

- Formula applying RAMs (China, Chinese Taipei, Croatia, Oman) to have
 - [3-4] extended implementation period for formula reductions





Customs Valuation Rules in WTO

By Shashank Priya Professor, Centre for WTO Studies

GATT Article VII

- Value for customs purposes of imported merchandise should be based on its actual value or of like merchandise;
- Value should not be based on value of merchandise of national origin or on arbitrary or fictitious values;
- "Actual value"-price at which such or like merchandise is sold in the <u>ordinary course of</u> <u>trade under fully competitive condition</u>; it should <u>include any abnormal discount or other reduction</u> <u>from the ordinary competitive price</u>;

GATT Article VII (Contd.)

- The standard of "fully competitive conditions" permits to <u>exclude from consideration prices</u> <u>involving special discounts limited to exclusive</u> <u>agents;</u>
- A contracting party can determine the value for customs purposes uniformly on one of the two basis: (1) on the basis of a particular exporter's price of the imported merchandise, or (2) on the basis of general price level of like merchandise.

Background to Agreement on Customs Valuation

- In 1950, 13 European Govts. Developed BDV-Notional Price Concept
- Not joined by US, Canada, Australia, New Zealand and South Africa-supported 'positive concept' e.g. actual price for exports or price for domestic consumption in exporting country.
- The precursor to the Agreement on Customs Valuation was the Agreement on Implementation of Article VII reached in 1979 during the Tokyo Round of multilateral trade negotiations (1973-79) ('Customs Valuation Code')
- This Agreement was to give effect to the basic principles of customs valuation laid down in GATT Article VII.

Background to Agreement on Customs Valuation (contd.)

- ASP System in USA for certain chemicals (based on price of domestic like products).
- Different methods of valuation were adopted by different countries if transaction price was to be rejected.
- Valuation based on price prevailing in country of export was objected to by developing countries as prices were higher in their countries

Agreement on Customs Valuation

- Concerns regarding different valuation practices addressed in Tokyo Round Valuation Code .
- All developed countries signed the Code.
- India, Brazil and Argentina only developing countries to sign it.
- India accepted the Tokyo Round Agreement on Customs Valuation in July 1980 and implemented it from 16.8.1988

ACV during UR

- ACV is same as the 'Customs Valuation Code' of the Tokyo Round
- Countries were bound to sign it on account of 'Single Undertaking' nature of UR Agreements
- Major features of UR Round: Ministerial Decisions concerning (i) Cases where Customs Administrations Have Reasons to Doubt the Truth or Accuracy of the Declared Value; (ii) Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires.

ACV during UR (Contd.)

- The Agreement on Customs Valuation provides elaborate rules for full and uniform implementation of Article VII of GATT 1994.
- This would apply where Customs duties are levied on ad valorem basis.
- Under this Agreement, it is recognised that to the greatest extent possible, the valuation of goods for Customs purpose should be the transaction value.

Meaning of Transaction Value

- Article 1 defines transaction value as price actually paid or payable for the goods when sold for export to the country of importation (for example, invoice price).
- Transaction value would prevail as the basis of assessment even for sale between related parties if relationship has not influenced the price.

Additions to be made to the TV

- Under Article 8, certain payments would need to be added to the transaction value.
- (a) Costs incurred by buyer, but not included in the price: commission and brokerage, <u>except buying</u> <u>commission</u>; cost of containers; cost of packing.
 (I.I.)
- (b) Goods and services supplied by buyer free or at reduced price: materials, components; tools, dyes, moulds for production of imported goods; consumables; engineering development, art work, design work undertaken <u>elsewhere than in country</u> of importation.(I.I.)

Additions to be made to the TV (Contd.)

- (c) Royalties and license fees related to goods being valued when paid as a condition for sale.
- (d) The value of proceeds of any resale accruing to seller.
- (e) Certain countries including India add the following to TV: costs of transport; insurance; loading, unloading and handling at the port of importation.

When Transaction Value to be rejected

Transaction value would not be acceptable if:

- there are restrictions to disposal or use of goods by buyer

- sale is subject to some condition for which a value cannot be determined

- some part of the subsequent resale by buyer accrues to the seller for which adjustment cannot be made according to Article 8

- related party transaction where price has been influenced by such a relationship

Meaning of Related Person

- As per Article 15 persons deemed to be related are:
- Officers/directors of one other's business;
- Legally recognised partners in business;
- Employer and employee;
- Any person owning, controlling or holding (directly or indirectly) 5% or more of the outstanding voting stock or shares of both;

Meaning of Related Person (Contd.)

- One of them controls the other;
- Both are controlled by a third person;
- Together they control a third person;
- The above controls can be direct or indirect;
- Members of the same family
- Sole agent, sole distributor or sole concessionaire are normally deemed to be not related-relationship only if they fulfill one of the above criteria (I.I)

Five other methods of determining value

- Where the declared transaction value is rejected, five other methods of valuation have to be applied sequentially. They are:
 - Transaction value of identical goods (Article
 2)
 - 2. Transaction value of similar goods (Article 3)
 - 3. Deductive value (Article 5)
 - 4. Computed value (Article 6)
 - 5. Fall-back method (Article 7)

Transaction value of identical goods

- Value should be determined on the basis of already determined transaction value for identical goods
- Identical goods are similar in all respects including physical characteristics, quality and reputation.

Transaction value of similar goods

- Where the test of value of identical goods fails, value should be determined on the basis of transaction value of similar goods.
- Similar goods are those which, although not alike in all respects, have like characteristics and like component materials. They perform the same functions and are commercially interchangeable.

Some common principles for using identical/similar goods valuation method

- The time element- "at or about the same time as the goods being valued"
- "Same commercial level" and "Substantially the same quantity level"
- Adjustment be made for different commercial/quantity level

- If more than one TV available, take the lowest value. (I.I.)
- The goods be produced in the same country as the goods being valued and preferably by the same person.

Deductive Value

- This is to be applied where the test of value of identical or similar goods fails.
- This value is to be determined on the basis of the unit sales price of goods of same class or kind in the domestic market of the imported goods (or of identical or similar goods) sold to unrelated buyers in the greatest aggregate quantity
- Suitable deductions should be made for elements like commissions, profits, duties and taxes, transport and insurance and other general expenses related to sales in the country of importation.

Deductive Value (Contd.)

- Time element-be sold "at or about the time of importation of goods being valued" and failing that earliest date of sale after importation of goods being valued, but before expiry of 90 days after importation
- Goods of same class or kind"-goods imported from the same country as the one being valued or from other countries
- Where goods not sold in the condition as imported, but after further processing-value would be sale price of processed goods after making allowance for value added in such processing

Computed Value

- This is to be applied where the earlier stated methods of valuation fail.
- This value is determined by taking into account cost of production plus usual amount of profit and general expenses incurred in sale of goods of same class or kind.
- Other elements of cost as required in Article 8 (transport, insurance, loading/unloading charges)
- Normally to be used for related party transactions

Fall-back Method

- Value can be determined by using any of the four methods described above in a flexible manner consistent with provisions of this Agreement and GATT Article VII.
- Prohibitions-value cannot be determined on the basis of selling price of domestically produced goods in country of import; price of goods in domestic market of country of export; price of goods for export to a country other than country of importation; minimum customs values; arbitrary or fictitious values (I.I.)

Other Provisions

- Confidentiality of business information (Art. 10)
- Right to appeal (Art. 11)
- Laws be published (Art. 12)
- Right to release of goods by furnishing guarantee where it becomes necessary to delay final determination of Customs value (Art. 13)

Decision on Minimum Values and Imports by Sole Agents

- Where a developing country makes a reservation to retain officially established minimum values and shows good cause, CCV shall give request for reservation sympathetic consideration
- Developing country members who have delayed upto 5 years the application of ACV could use this period to conduct appropriate studies regarding problems that may exist in the valuation of imports by sole agents, sole distributors and sole concessionaires. WCO to assist in such study.

Special and Differential Treatment

- DCs not signatory to Tokyo Round Code on Customs Valuation of 1979 could delay application of provisions of ACV up to 5 years from date of entry into force of the WTO Agreement for such Members.
- DCs not party to the Tokyo Round Code could delay application of paragraph 2(b)(iii) of Article 1 (acceptance of TV for related party transaction on the basis of computed value method in Article 6) and Article 6 up to 3 years after applying all other provisions of this Agreement.

Special and Differential Treatment under Annex III

- Extension beyond 5 years permissible upon request on showing good cause.
- Retain reservation for minimum values on a limited and transitional basis if such goods currently valued on the basis of officially estd. Minimum values.
- No reversal of sequential order provided under Article 4 (deductive value and computed value methods) by entering a reservation.

Special & Differential Treatment under Annex III (Contd.)

No requirement to adopt deductive value method for further processed goods only on the request of importer (Article 5:2).

Implementation Issues

- India had raised certain issues relating to Customs Valuation Agreement as part of implementation concerns.
- The Doha Ministerial decision on implementation related issues has addressed one such concern.
- This relates to a decision that the exporting Member shall offer cooperation and assistance, consistent with its domestic laws, including furnishing information on the export value of the good concerned, where Customs administration of an importing Member has reasonable grounds to doubt the truth or accuracy of the declared value.

Implementation Issues (contd.)

- There are other five implementation issues.
- The decision of Doha Ministerial Conference is that they shall be addressed as a matter of priority by the relevant WTO Body (CCV) which shall report to the TNC by the end of 2002 for appropriate action.

Implementation Issues(contd.)

- The five outstanding implementation issues in brief are:
- 1. The cost of services (like engineering, development and design work) supplied free of charge or at reduced cost by buyer for production of goods imported should be added to the transaction value (Article 8 (1) (b) (iv).)
- 2. The residual method under Article 7 should also permit valuation based on domestic market price in country of export or export price in a third country.

Implementation Issues (contd.)

- 3. Where more than one transaction value of identical or similar goods is found, the highest value should be adopted (Article 2 and 3).
- Buying Commission should be taken into account in the determination of customs value as it is a legitimate component of the landed cost (Article 8 (1)(a)).
- 5. Persons associated with each other as sole agents, sole distributors and sole concessionaires should automatically be deemed related [Article 15 (5)].



Presentation on the Agreement on Import Licensing Procedures

By Shashank Priya, Professor, Centre for WTO Studies, IIFT

Import Licensing

- Definition: Administrative procedures used for operation of import licensing regimes requiring submission of an application or other documentation (other than those required for customs purposes) to the relevant administrative body as a prior condition to importation
- Licensing procedures for TRQs fall under the provisions of Import Licensing Agreement- AB in *EC-Bananas III- "*The term 'restriction' as used in Art. 3.2 should not be interpreted to encompass only QRs, but should be read to also include tariff quotas"

Background

- GATT Article VIII on fees and formalities connected with importation and exportation deals with import licensing procedures in a non-specific manner such as:
- A recognition by Members for the need to minimize the incidence and complexity of import and export formalities and decrease and simplify import and export documentation requirements (para 1 c)

Background (contd.)

- Requirement to review the operation of laws and regulation of Members upon request by another Member (para 2)
- Prohibition on imposing substantial penalties for minor breaches of Customs regulations or procedural requirements (para 3)
- GATT Article X requires Members to publish promptly laws and regulations of general application pertaining to requirements of imports and exports.

Historical Backdrop

- Tokyo Round negotiations (1973-79) addressed some non tariff measures
- Import licensing was one of them- entered into force on 1 January 1980
- Main objective was that import licensing procedures should not hinder international trade
- It was negotiated as a self-standing agreement without a formal legal link to GATT 1947- so membership open to GATT contracting parties as well as any other govt.
- In Uruguay Round, disciplines on transparency and notifications were strengthened.
- Entered into force on 1 January 1995 as part of single undertaking
- Tokyo Round Code terminated on 1 January 1996

Objectives

- Simplify, and bring transparency to, import licensing procedures.
- Ensure their fair and equitable application and administration.
- Procedures applied for granting import licenses should not by themselves have restrictive or distortive effects on imports.
- Imp. To Note: Basis, scope or duration of a measure being implemented by a licensing procedure cannot be questioned under this Agreement.

General Requirements (Art.1)

 The rules and information concerning procedures for submission of applications shall be **published**: Should cover subjects like eligibility of persons, firms, institutions to make such applications; administrative bodies to be approached; list of products subject to licensing requirements. Such publication, wherever practicable, should be 21 days in advance of the effective date.

General Requirements (Art.1)

- Application forms and renewal forms should be simple.
- Only documents and information considered strictly necessary may be required on application.
- Application/renewal procedures shall be simple.
- Minimum 21 days be given for submitting license applications in case it has closing date.
- Normally, only one administrative body to be approached – maximum 3.

General Requirements (Art.1)

- Application not be refused for minor documentation errors.
- No excessive penalty for minor documentation errors.
- Licensed imports not to be refused for minor variations in value, quantity or weight than that appearing on the license on account of normal commercial practice.

Additional Requirements for Automatic Import Licensing

- Normally instituted to collect statistical and other factual information on imports.
- Def: Automatic import licensing: import licensing where approval of the application is granted in all cases and where the below mentioned conditions are fulfilled.
- Automatic import licensing procedures shall not be administered in such a way so as to have restrictive effects on imports. This condition would be deemed to have been achieved if a licensing procedure has following features:
- (i) Equal eligibility for all persons/institutions/firms to apply and obtain import licenses.
- (ii) Application be submitted on any working day prior to customs clearance of goods.
- (iii) Application for licenses be approved within a maximum of 10 working days.

Non-Automatic Import Licensing

- Def: Import Licensing not falling within the definition of Automatic Import Licensing.
- Normally instituted for quota or other restrictions
- Requirements:
- (i) Should not have restrictive or distortive effects on imports additional to those caused by the imposition of the restriction
- (ii) In scope and duration, it should correspond to the measure to be implemented;
- (iii) No more administratively burdensome than absolutely necessary;
- (iv) Publish sufficient information regarding the basis for granting and/or allocating licenses like quota amounts, opening and closing dates of quotas and country specific quota allocations;

Non-Automatic Import Licensing

- (iv) Where quota administered by licensing overall amount of quota (by quantity and/or value) be published at least 21 days in advance;
- Transparency in quota allocation- there should be no discrimination among applicants; if license is refused, on request, reason for refusal be given in writing and there should be a right of appeal;
- (vi) Period for processing applications shall not be longer than 30 days if applications are considered as and when received, and not longer than 60 days if applications are considered simultaneously

Non-Automatic Import Licensing (contd.)

 (vi) While allocating licenses, Members should consider import performance of the applicant. Whether licenses issued in the past fully utilized. Reasonable distribution of licenses to new importers. Special consideration be given to those importers importing products originating in DCs and in particular, LDCs.

(vii) Validity of a license should be of reasonable duration and not be so short as to preclude imports, including from distant sources.

Non-Automatic Import Licensing (contd.)

(viii) Licenses should be issued in economic quantities.

- In EC-Poultry case, Panel rejected Brazil's claim of violation of this condition (only 5 tonnes given to newcomer applicants) on the ground that total TRQ had been fully utilized.
- (ix) If quotas not allocated by country, the license holder should be free to choose the sources of import; if allocated among supplying countries, the license should clearly stipulate the countries.
- (x) Members are to provide, upon request of any Member having an interest in the trade in the product concerned, all relevant information.

Notifications

- Members to submit copies of publications containing information on import licensing procedures and the full text of relevant laws and regulations
- Where publications and legislations are not in a WTO official language, such notifications should be accompanied by a summary in one of the WTO official languages (Article 1.4a, 8.2 b and G/LIC/3))

Notification of Changes

- Members which institute licensing procedures or introduce changes in these procedures are required to notify the Committee on Import Licensing within 60 days of publication
- Such notification should include information on; products subject to licensing; contact point for information on eligibility; administrative bodies for submission of applications; date and name of publications where licensing procedures are published along with their copies; whether licensing is automatic or nonautomatic; administrative purpose of automatic import licensing procedures; measures implemented through non automatic import licensing procedures; expected duration of the licensing procedures (Articles 5.1-5.4)

Reverse Notification

- A Member which considers that another Member has not notified a licensing procedure or changes therein, may bring the matter to the attention of such other Member.
- If the other Member still does not make a prompt notification, such Member may itself notify the licensing procedures or the changes therein (Article 5.5)
- This provision has not yet been used.
- Members to complete an annual questionnaire on import licensing procedures by 30 September of each year (Article 7.3)

Indian Licensing Regime

- 53 tariff lines at 8-digit level are prohibited for imports in India under Article XX and XXI of GATT.
- Broadly import prohibitions applies to wild life and products made from wild life (e.g. tiger skin and other animal products of endangered species), mutton tallow, beef tallow and ivory
- 423 tariff lines at 8-digit level are restricted for imports under Article XX and XXI of GATT
- These include live animals, planting material (seeds), narcotics and psychotropic drugs, stones including marble, granite and sandstone, hazardous waste and scrap of metal and plastic, substances which deplete ozone layer, explosives, arms and ammunitions, used tyres, sandalwood, security printing paper, nuclear reactor, TV and Radio transmitters, communication jamming equipment, etc

Indian Licensing Regime (contd.)

- Import of restricted items can be allowed by DGFT against a licence (non-automatic)
- Form to be filled up is (Ayat Niryat Form) ANF 2B available on DGFT website
- These licences are considered by a Committee called Export Facilitation Committee which meets twice a month
- The Committee is chaired by Additional DGFT in DGFT Hqrs
- Concerned administrative Ministries are invited to the Committee for their inputs

Thank You.

Trade Facilitation

Shashank Priya, Professor, Centre for WTO Studies

Singapore Issues – Geneva Framework Agreement by GC (1st August 04)

- Trade and Investment; Trade and Competition Policy and TGP will not form part of the work programme set out in Doha Declaration (in paras 20-22, 23-25 and 26).
- No work towards negotiations on any of these issues will take place within the WTO during the Doha Round.
- On Trade Facilitation, explicit consensus to commence negotiations on the basis of modalities set out in Annex D.

What is Trade Facilitation

- Systematic rationalization of procedures and documentation for international trade (UN ECE definition).
- In WTO context, it means issues covered under GATT Articles V, VIII and X.
- Would essentially cover subjects relating to importation and exportation: fees and charges; formalities; documentation; publication of laws; judicial and administrative tribunal; transit.

Why Trade Facilitation in WTO

- Rule based
- Strong dispute resolution
- Open markets and smooth flow of international trade possible only if trade facilitative customs procedures in place.
- Reduce transaction costs
- Signify political commitment
- Uniformity of efforts.

Background

- Before Cancun Ministerial, a group of countries raised several issues on which clarification was needed.
- Some important issues were:
- Estimated costs for undertaking commitments?
- What mechanism for compensating DCs for additional expenditure?
- > Nature of Special and Differential Treatment?
- How to enhance effective cooperation between Customs authorities?
- How to preserve development policy space?
- Discussions on above issues continued during post-Cancun phase

Negotiation process

- Intensive negotiation took place between 22nd to 31st July, 2004 in Geneva.
- The Annex D modalities of GC Decision of 1st August, 2004 was a result of such negotiation and took on board most of the concerns of DCs.
- A Core Group consisting of countries like India, Malaysia, Philippines, Jamaica, Egypt, Bangladesh, Indonesia, etc. highlighted the concerns of DCs regarding cost implication, technical assistance, S&DT provisions and customs cooperation mechanism.

Elements of Annex D

- Negotiations to clarify and improve Articles V, VIII and X.
- Negotiations to aim at enhancing technical assistance and support for CB.
- Negotiations to aim at provisions for effective cooperation between customs authorities on TF and customs compliance issues.

S&DT provisions in Annex D

- S&DT should extend beyond granting of traditional transition periods for implementing commitments.
- Extent and timing of entering into commitments shall be related to the implementation capacities of DCs.
- DCs not obliged to undertake investments in infrastructure projects beyond their means.

S&DT provisions in Annex D

- Members to identify TF needs and priorities of DCs.
- Members to address concerns of DCs related to cost implications of proposed measures.
- Support and assistance to be provided to DCs to implement commitments resulting from negotiations.

S&DT provisions in Annex D

- Where implementation of commitments require support for infrastructure development, developed country members will make every effort to ensure such support
- Where required support and assistance for infrastructure is not forthcoming and DCs continue to lack necessary capacity, implementation of commitment will not be required

Other elements of Annex D

- A review of effectiveness of support and assistance provided.
- Collaborative effort with other relevant international organizations for TA and CB (IMF, OECD, UNCTAD, WCO, WB).
- Due account shall be taken of the relevant work of the WCO and other relevant international organizations.

GATT Article VIII

- GATT Article VIII deals with fees and formalities connected with importation and exportation. Its important elements are:
- All fees and charges (other than import and export duties) imposed in connection with importation and exportation shall be limited to the approximate cost of services rendered. It should not represent an indirect protection to domestic products or a taxation of imports or exports.
- The number and diversity of fees for above purposes should be reduced.

GATT Article VIII (contd.)

- There is a need to minimize the incidence and complexity of import/export formalities and to decrease and simplify import/export documentation requirements.
- Substantial penalties should not be imposed for minor breaches of customs regulations or procedural requirements.

GATT Article VIII (contd.)

- The provision of this Article shall extend to fees, charges, formalities and requirements imposed by government authorities in connection with importation and exportation.
- Illustrative list of areas where this would be applicable: consular transactions, such as consular invoices and certificates; quantitative restrictions; licensing; exchange control; statistical services; documents, documentation and certification; analysis and inspection; quarantine, sanitation and fumigation.

Important Proposals on Art.VIII

- More than 100 written contributions made so far More than 70 deal with the first aim
- proposals made by countries like EC, US, Canada, Japan, Switzerland, China, Korea, Uganda, Rwanda, Paraguay, Mongolia, Argentina, India etc. Compiled in TN/TF/W/43/Rev.13

Simplification of fees

- fees be relatable to service provided and not be ad valorem
- Publication/Notification of fees/charges
- Prohibition on collection of unpublicized fees
- Periodic review of fees/charges
- Automated payment
- Reduction/minimization of the number and diversity of fees and charges

Important Proposals on Art. VIII (contd.)

Simplification of procedures and documentation

- Risk management
- Post clearance audit
- Single Window/one time submission
- Border agency coordination
- Authorized trader system
- Automation of customs
- Acceptance of commercially available information and copies of documents
- Use of international standards
- Pre arrival clearance
- Expedited procedures for express shipments
- Separating Release from Clearance Procedures
- Periodic Review of Formalities and Requirements

Important Proposals on Art. VIII (contd.)

- Establishment and publication of average release and clearance times
- Abolition of pre-shipment inspection, consular invoices and compulsory use of brokers
- Objective criteria for tariff classification

Proposals made by India on Art. VIII

- Members of a Customs Union (CU) should adopt the same border procedures- this should include adoption of same standards, including specifications, terminologies, and definitions, inspection, sampling, and test methods, for border clearance of agriculture and food products
- All forms and documentation requirements relating to import clearance should be uniform for all members of a CU

Proposals made by India on Art. VIII (contd.)

- In case of rejection of a consignment to meet certain standards, an option would be first given to return the rejected good to the exporter and only upon failure to exercise this option within a reasonable period of time, any other course of action, including destruction of goods could be considered
- Norms of authorised trader system shall be applied uniformly across a CU
- To the extent possible, a harmonised risk management system would be adopted across the entire CU

GATT Article X

- GATT Article X deals with publication and administration of trade regulations. It lays down:
- Various laws, regulations, judicial decisions and administrative rulings relating to various customs related issues for clearance of goods (classification or valuation; rates of duties; requirements, restrictions or prohibitions on imports/exports) shall be published promptly by the contracting parties to enable governments and traders to become acquainted with them.

GATT Article X (contd.)

- No increase in rate of duty or a more burdensome requirement, restriction or prohibition on imports shall be enforced before such measure has been officially published.
- Each contracting party shall administer the laws of the above kind in a uniform, impartial and reasonable manner.

GATT Article X (contd.)

- The contracting parties shall maintain judicial, arbitral or administrative tribunals for prompt review and correction of administrative action relating to customs matters.
- Such tribunals shall be independent of the agencies entrusted with administrative enforcement.

Important proposals on Art. X

Transparency

- Publication of all border related laws, regulations, procedures and practices (Gazettes, Internet)
- Time interval between publication of rules and entry into force
- Prior consultation and commenting on new and amended rules
- Information on policy objectives
- Enquiry point/SNFP
- Advance Ruling
- Right of appeal/Release of goods in event of appeal
- Maintenance of integrity amongst officials

India's proposals on Art. X

- Import alert/rapid alert be imposed all across a CU only if all members apply uniform standards
- Rapid alert be lifted if [x] successive consignments imported from a country/exporter fulfill the prescribed standard
- The speed and standard of publicity of denotification of such alert shall be of same level as its issuance

India's proposals on Art. X (contd.)

- When goods are detained for inspection by customs or any other authority, there should be a mechanism to inform the importer regarding such detentioneither by issuing detention memo or through an online system
- Each member should allow importer or exporter a right of a second confirmatory test of a sample where the first test result has given an adverse finding

GATT Article V

- GATT Article V deals with freedom of transit of goods.
- The term "traffic in transit" implies movement of goods and means of transport (other than aircraft) across the territory of the country, where both the starting and the terminating point of the journey lies beyond it.
- There should be freedom of transit via the routes most convenient for international transit.

GATT Article V (contd.)

- No distinction shall be made on the basis of flag of vessels, the place of origin, departure, entry, exit or destination, ownership of goods or means of transport.
- The charges imposed on traffic in transit shall be reasonable and will be on MFN basis.

Important Proposals on Art. V

Transit Fees and Charges

- Publication of fees and charges and prohibition of unpublished ones
- Periodic review of fees and charges

Transit formalities and documentation requirements

- Give choice of route to operators
- Reduction/Simplification of procedures
- Harmonization/Standardization
- Promotion of regional transit arrangement
- Simplified and preferential clearance for certain goods

Important Proposals on Art. V (contd.)

- Whether transit of oil and gas through pipeline and electricity through grid could come under Article V (in addition to air, road, rail and boat)
- Non-discrimination between individual carriers and types of consignments for transit procedures
- Movement of goods from one part of a country to another through a foreign country be recognised as movement in transit

Technical Assistance/Capacity Building

- Proposal by Latin American countries (TN/TF/W/41) (Arg, Brazil, Chile, Col.,etc)
- Compliance with future commitments should be commensurate with demonstrated implementation capacity of each Member
- Gradual implementation linked to capacity
- Identification of needs and priorities should be a compulsory benchmark, parallel to identification of future commitments
- Differential transitional periods combined with progs of TA/CB
- Establish a mechanism to organize and coordinate TA/CB, pooling of efforts of donors, recipients and other international orgns.

Technical Assistance/Capacity Building

- Africa Group suggested the following in their Paper (NG/TF/W/56)
- Prepare a revised WCO Self Assessment checklist in conformity with the scope of negotiations
- WTO Sect. to compile needs and priority put forward by different Members
- Support for TA should be during negotiations as well as during implementation of commitments
- Coordination amongst international donors

Technical Assistance/Capacity Building (contd.)

- A joint paper by China, India, Pakistan and Sri Lanka (W/82) on the process of TF
- Arrangement of commitment for DCs- Rules be divided into different modules, depending on degree of difficulty and extent of resources required
- Basic commitment on easier issues by all DCs- after a transition period
- Establish a coordination/collaborative mechanism or build upon existing mechanisms
- DSU- establish an agreement-specific process of consultation or mediation. Disputes be first brought to a dedicated body, such as Committee on TF

Technical Assistance/Capacity Building (contd.)

- Latin American countries presented a detailed paper on S&DT (W/81)
- Proposes a mechanism for taking commitment in 4 phases:
- (i) Capacity self-assessment- by themselves, with the help of other Members/international organizations
- (ii) Notification- Before entry into force of TF Agreement, DCs to notify such obligations which cannot be met on account of lack of capacity; other obligations to be met in an indicated time frame not exceeding 6 yrs. No DSU on notified measures
- (iii) Capacity Devt.- Formulate and implement CB plans- donor, time to build capacity, verification mechanism
- (iv) Confirmation of capacity acquisition and fulfillment of obligation- a verification mechanism comprising of recipient, donor, and agency responsible for implementing the plan

Customs cooperation

- India filed a joint paper with US (W/57) and followed up with its own detailed paper (W/68) and textual proposals
- Exchange specific information upon request on matters such as HS classification, quantity, full and accurate description, valuation and country of origin of goods
- Such exchange would be in limited number of cases where there is a reason to doubt the truth or accuracy of the declaration filed
- Request for information to be limited to data elements contained in export/import declaration and the supporting documents filed
- Internal verification be made before making a request
- Information exchanged would be subject to a confidentiality clause- to be afforded same degree of protection as in the requesting Member's country and not to be shared with third parties except in judicial proceedings

Hong Kong Ministerial

- Report of Chairman of NGTF to TNC was a consensus document
- It took note of the progress made and gives a broad listing of proposed Measures
- Recommended to intensify negotiations on the basis of current proposals and fresh proposals
- Move to focused drafting mode early enough after the 6th MC for timely conclusion of text based negotiation
- Intensify support for TA/CB by developed Members, backed by secure funding
- Deepen and intensify negotiation on S&DT

Post Hong Kong

- Smaller papers presented by demandeurs on specific issues to serve as draft texts in the later phase of negotiations- so called thirdgeneration papers (bottoms-up approach)
- Intensification of discussion on TA/CB issues

Thank You

37

Theoretical Framework for RTA Feasibility Assessment

Dr. (Mrs.) Vijaya Katti Chairperson (Research) Indian Institute of Foreign Trade New Delhi

What is RTA

- RTA stands for Regional Trading Arrangement
- Two or a group of country come together to form some sort of trading arrangement among themselves

Why RTAs

- Economic growth
 - Larger market creates economies of scale, encourages specialization, attracts foreign investment
- Non-economic objectives
 - Helps manage immigration flows, or enhances regional security
- Solidifies domestic economic reforms
 - East European nations have looked to association with the EU as a way of locking in economic reforms

Consequences of RTAs

- Static effects
 - Trade creation effect (consumption effect, production effect)
 - Trade diversion effect
- Dynamic effects
 - Economies of scale
 - Greater competition
 - Investment stimulus

RTA Overview

- Objective
 - Economic
 - Geo-Political
- **S**cope
 - **Tariff Elimination & Reduction**
 - Limited Scale
 - Extensive
 - **Beyond Tariff**
 - Services
 - Investment
 - Competition, Environment, Labour

RTA Negotiation Issues

- Trade In Goods
 - Rules of Origin
 - Modalities
 - Early Harvest Programme
 - Offer List
 - Negative List
 - Sensitive List
- Trade in Services
 - Commitment for Sectors
 - Level of Market Access

RTAs & WTO

Legal Framework

□ Art.xxiv, GATT, 1947

Understandings, 1994 (UR)

□ Enabling Clause, 1979

□ Art.v, GATS, 1994

RTAs & WTO

- Procedure
 - Notification
 - Enquiry
- Mechanism
 - CRTA (Committee on RTA)
 - CTG (Goods)
 - CTS (Services)
 - CTD (Trade and Development)

RTA Disciplines

- 1st "Substantially All" test
- 2nd "Higher or More Restrictive" test
- 3rd Notification under XXIV

RTAs & WTO Rules

- Permitted under Article XXIV of GATT 1994.
- Exception to MFN treatment within the Rules subject to fulfillment of conditions:
 - items on which there is substantial trade to be covered
 - the phase out of duties should be within a reasonable period of time
 - it should not have trade distorting effect

WTO Provisions

Divergent Interpretations

- Article XXIV "Substantially all the trade"
- Quantitative Approach
 - Trade coverage percentage
- Qualitative Approach
 - No major sector is to be kept out of intra-RTA trade liberalisation

WTO Provisions

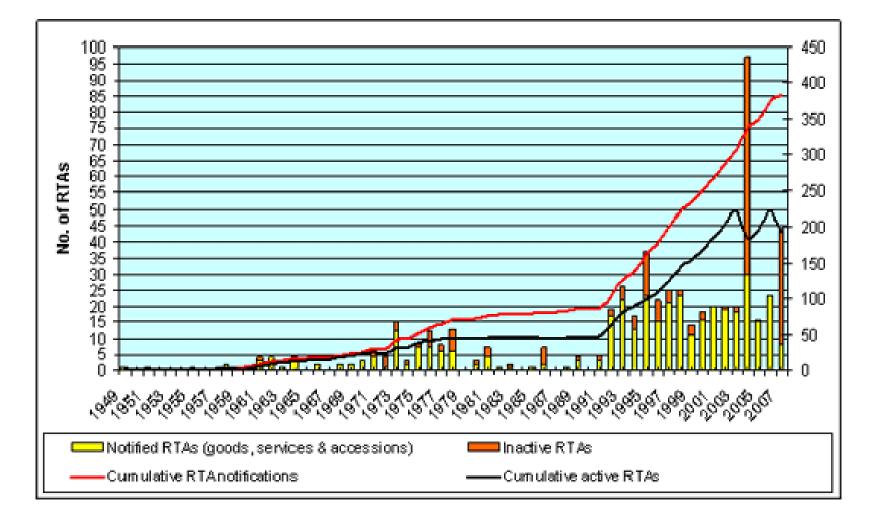
Quantitative & Qualitative Approach

- Product coverage
 - Trade flow
 - Percentage of tariff lines
- Percentage of trade between the parties under RTA RoO.
- Transition period
 - 10 years or more?

RTAs & WTO

Fourth Ministerial, Doha, 2001 "....Need for a harmonious relationship between the multilateral and regional processes"

Growing Number of RTAs



RTAs notified to the GATT/WTO (1948-2007), including inactive RTAs, by year of entry into force. Source: WTO Website

Major RTAs

- EU Single Market Programme, 1992
- Latin America Mercosur, 1991
- NAFTA Canada US Mexico, 1994
- Asia ASEAN 1992, SAFTA 2006
- Africa SADC, SACU
- Middle East GCC

RTA Configuration

•Regional/Cross-Regional

• Bilateral/Plurilateral

Stages of Regional Integration PTA FTA CU/MONETARY UNION ECONOMIC UNION

PTA

 Preferential Trade Area (PTA) refers to a union between two or more countries in which lower tariff are imposed on goods produced in the member countries than goods produced outside.

FTA

 An Free Trade Area (FTA) is a PTA with tariffs eliminated entirely on goods produced in the member countries

Customs Union

• A Customs Union (CU) is an FTA with all members imposing a common external tariff on a given good

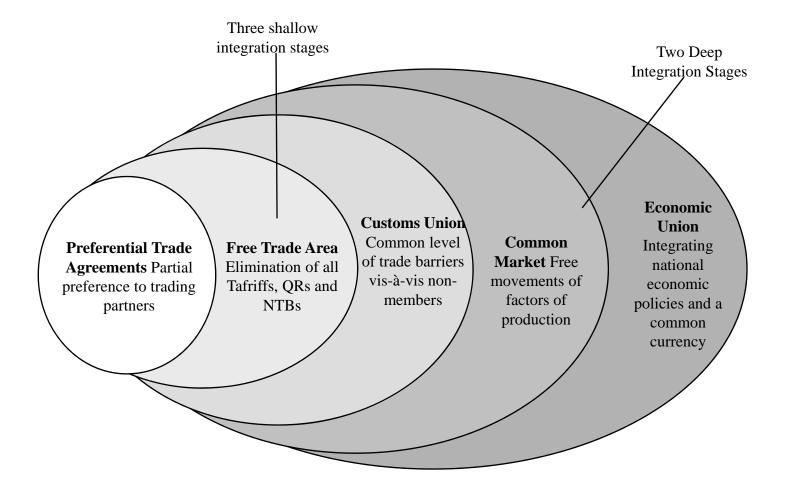
Common Market

• A Common Market is a Customs Union where free movements of factors of production among the member states are undertaken

Economic Union

 An Economic Union is a Common Market which integrates national economic policies and have a common currency

Stages of Regional Integration



Key Issues

Outcome of RTAs

Impact difficult to estimate

Positive

- Economies of Scale, Competition
- **FDI**
- Implementation of Multilateral Trade discipline
- Laboratories for change & innovation
- Capacity building of countries negotiating sides

Negative

- Reduced enthusiasm for liberalization at multilateral level
- Vested interests-protectionist trends
- International Trade Complex & Costly

(contd.)

Key Issues

- Trade Diversion/Deflection
- Trade & Investment diversion
- Marginalisation of Weakest Countries

India's RTAs

- FTAs concluded
 - India-Sri Lanka FTA March, 2000
 - SAFTA-01-06-2006
 - India-Singapore CECA-01-08-2005
 - India-Nepal Treaty of Trade-06-03-2007
 - India-Bhutan-29-07-2006

India's RTAs (contd.)

PTAs Implemented

- APTA-01-11-1976-A few tariff lines-MOP
- GSTP-Apr., 1989-A few tariff lines-MOP
- India-Afghanitan-05/2003-38 lines-MOP
- India-Mercosur-signed-19-03-2005
- India-Chile PTA-09/2007-A few tariff lines-MOP
- India-Thailand-09/2004-82 lines-0%

India's RTAs (contd.)

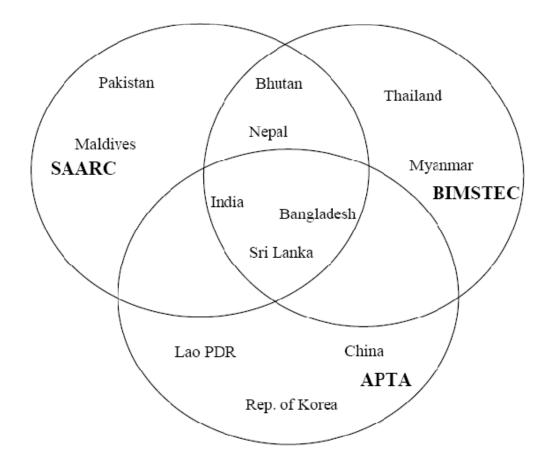
Under Negotiation

- India-ASEAN CECA
- India-Thailand FTA
- BIMSTEC
- India-GCC
- India-Mauritius
- India-Sri Lanka
- India-South Korea
- India-Japan
- India-Israel
- India-EU
- India-SACU PTA

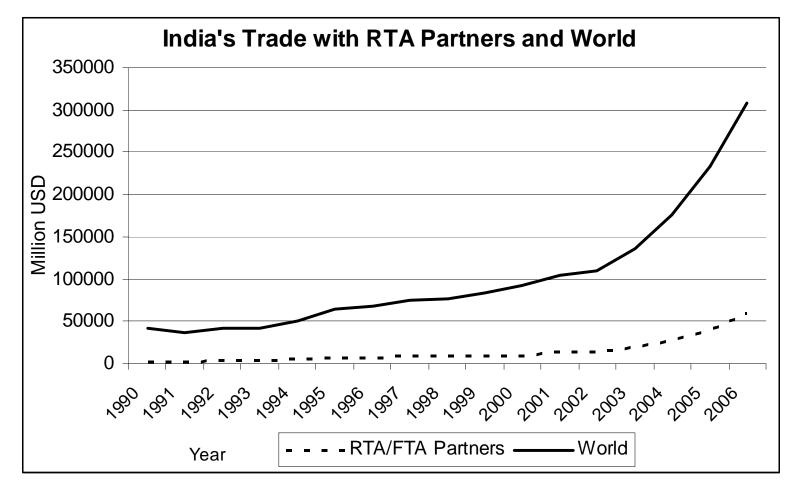
Joint Study Groups

- India-China
- IBSA
- India-Russia
- India-Malaysia
- India-Indonesia
- India-EU

India's Multilateral Trading Arrangements

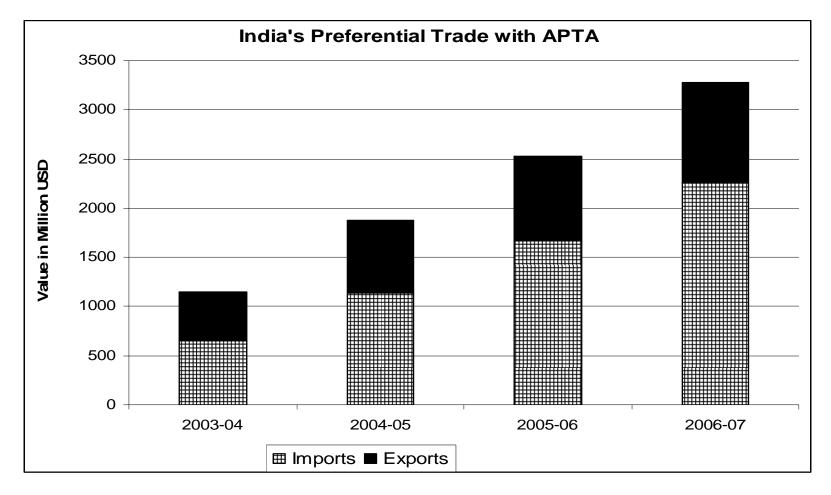


India's Trade with RTA Partners and World



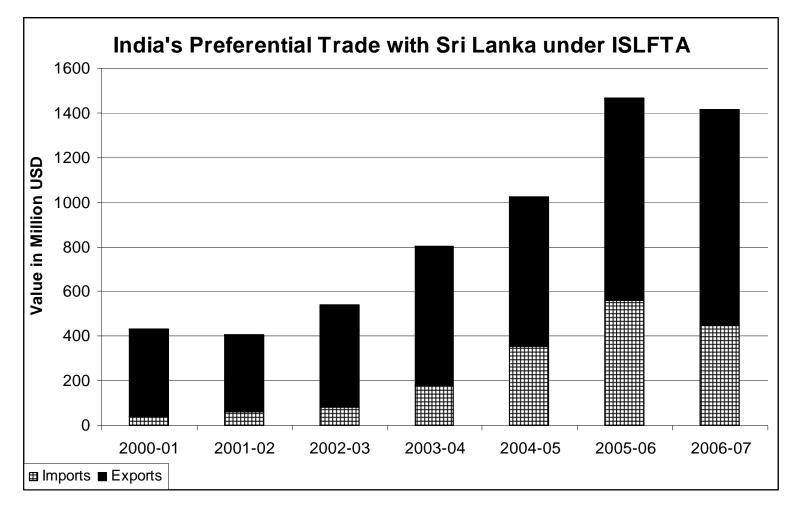
Note: The countries included belong to the SAFTA (Bangladesh, Bhutan, Maldives, Nepal, Pakistan and Sri Lanka), BIMSTEC (Bangladesh, Bhutan, Myanmar, Nepal, Sri Lanka, Thailand), APTA (Bangladesh, China, Lao PDR, Korea, Rep., Sri Lanka), ISLFATA (Sri Lanka) and ITFTA (Thailand), ISCECA (Singapore). *Source: IMF, DOTS-CD ROM.*

India's Preferential Trade with APTA



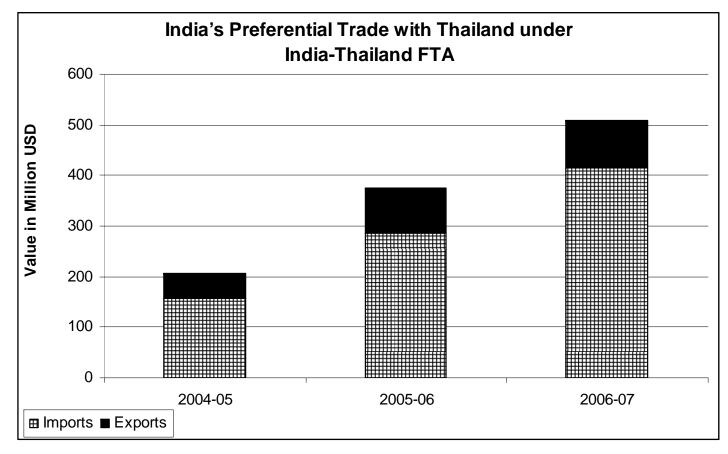
Source: WITS & DGFT Database, January 2008.

India's Preferential Trade with Sri Lanka under ISLFTA



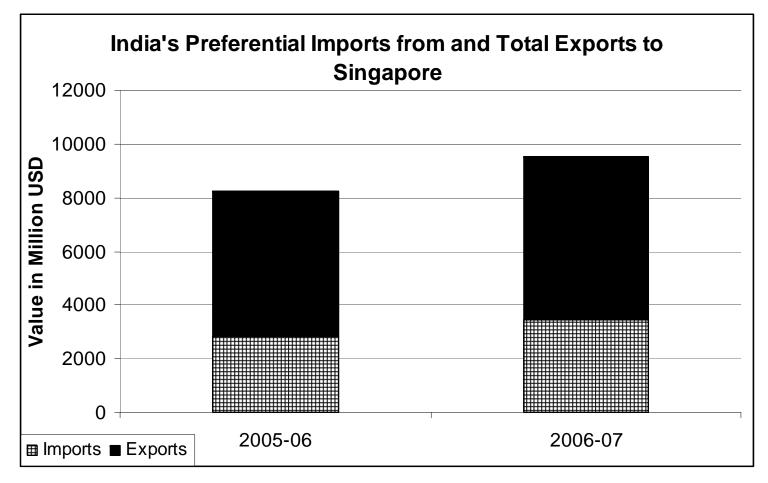
Source: DGFT Database, January 2008

India's Preferential Trade with Thailand under India-Thailand FTA



Source: DGFT Database, January 2008.

India's Preferential Imports from and Total Exports to Singapore



Source: DGFT Database, January 2008.

Changing Nature of India's RTA

- PTA and FTA were the major thrust in India's foreign economic relations (SAPTA, ISLFTA)
- Now India is interested in CECA/CEPA (Singapore, Sri Lanka – Negotiations are on)

Parameters of Assessment

- Trade in Goods (phasing out of tariff)
- Trade in Services
- Investment
- Negative List
- Rules of Origin

Thank You...

WTO Agreement on the application of Sanitary and Phytosanitary Measures (SPS)

Chanchal C. Sarkar Dy. Director (TPD) Department of Commerce Government of India Udyog Bhawan, New Delhi

What is SPS Agreement ?

A WTO Agreement which sets out the basic rules for:

Food safetyAnimal and Plant health standards

PS measure: — Any measure applied:

a) to protect animal or plant life or health within the territory of the Member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;

 b) to protect human or animal life or health within the territory of the Member from risks arising from additives, contaminants, toxins or disease-causing organisms in foods, beverages or feedstuffs;

c)to protect human life or health within the territory of the Member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or

I) to prevent or limit other damage within the territory of the Membe from the entry, establishment or spread of pests.

What are SPS Measures and how are they different from TBT ?

- The SPS Agreement covers all measures whose purpose is to protect:
- Human or animal health from food-borne risks;
- Human health from animal-or plant-carried diseases;
- Animals and plants from pests or diseases;
- The TBT covers all technical regulations, voluntary standards and the procedures to ensure that these are met, except when these are sanitary or phytosanitary measures as defined by the SPS Agreement.
- Types and purpose of the measure which is relevant in determining whether a measure is subject to the SPS or TBT Agreement.

Technical Regulation

Document which lays down product characteristics or their related processes and production methods, including the applicable administrative provisions, with which compliance is mandatory. It may also include or deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process Or production method.

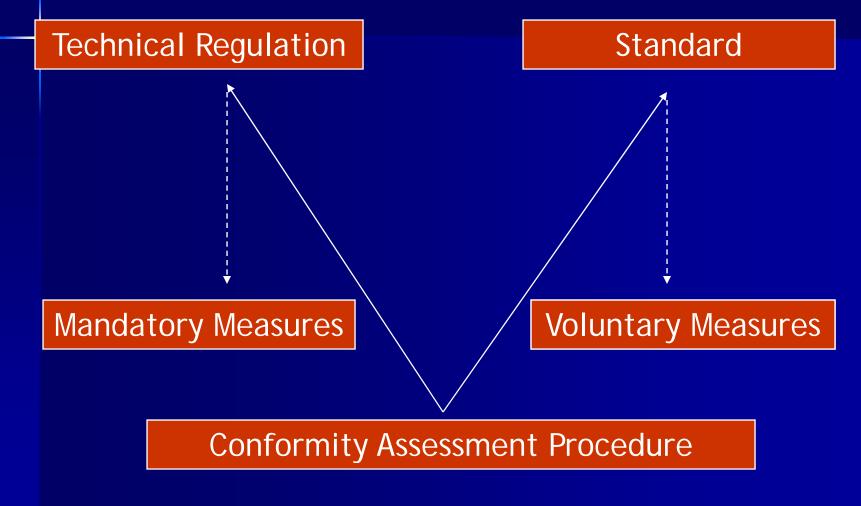
SPS measures typically deal with:

- Additives in food or drink
- Contaminants in food or drink
- Poisonous substances in food or drink
- Residues of veterinary drugs or pesticides in food or drink
- Certification: food safety, animal or plant health
- Processing methods with implications for food safety
- Labeling requirements directly related to food safety
- Plant / animal quarantine
- Declaring areas free from pests or disease
- Preventing disease or pests spreading to a country
- Etc...

TBT measures typically deal with:

- Labeling of food, drink and drugs
- Quality requirements for fresh food
- Packaging requirements for fresh food
- Packaging and labeling for dangerous chemicals and toxic substances
- Regulations for electrical appliances
- Regulations for cordless phones, radio equipment etc.
- Textiles and garments labeling
- Testing vehicles and accessories
- Regulations for ships and ship equipment
- Safety regulations for toys
- Etc.....

What measures are subject to TBT provisions?



Department of Commerce, Government of India

SPS or TBT ?

<u>Fertilizer</u>

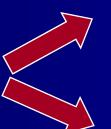
- Regulation on permitted fertilizer residue in food and animal feed – Cdx
- Specifications to protect farmers from possible harm from handling fertilizer ISO

<u>Fruits</u>

- Regulation on treatment of imported fruit to prevent pests spreading – IPPC
- Regulation on quality, grading and labelling of imported fruit – Cdx

What about this ?

Government Health Warning: Smoking Can Seriously Damage Your Health



The warning. Objective: human health

The label's appearance. Typography, colour, size, position, etc.

Salient Features of SPS Agreements

- MFN (Article 2)
 - Harmonization (Article 3)
 - Equivalence (Article 4)
- Risk Assessment and ALOP (Article 5)
- Adaptation to Regional Condition (Article 6)
- Transparency (Article 7)
 TA and S&DT (Article 9 & 10)

MFN & National Treatment

Members shall ensure that their sanitary and phytosanitary measures do not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail, including between their own territory and that of other Members.

Sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade.

Harmonisation

To harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members shall base their sanitary or phytosanitary measures on international standards, guidelines or recommendations, where they exist.

Members may introduce or maintain sanitary or phytosanitary measures which result in a higher level of sanitary or phytosanitary protection than would be achieved by measures based on the relevant international standards, guidelines or recommendations, if there is a scientific justification,

Equivalence

Members shall accept the sanitary or phytosanitary measures of other Members as equivalent, even if these measures differ from their own or from those used by other Members trading in the same product, if the exporting Member objectively demonstrates to the importing Member that its measures achieve the importing Member's appropriate level of SPS protection.

Members shall, upon request, enter into consultations with the aim of achieving bilateral and multilateral agreements on recognition of the equivalence of specified SPS measures.

Risk Assessment and ALOP

Members shall ensure that their SPS measures are based on an assessment, as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organizations.

In the assessment of risks, Members shall take into account available scientific evidence; relevant processes and production methods; relevant inspection, sampling and testing methods; prevalence of specific diseases or pests; existence of pest — or disease — free areas; relevant ecological and environmental conditions; and quarantine or other treatment

Members should, when determining the appropriate level of sanitary or phytosanitary protection, take into account the objective of minimizing negative trade effects

Adaptation to Regional Condition

Members shall ensure that their sanitary or phytosanitary measures are adapted to the sanitary or phytosanitary characteristics of the area — whether all of a country, part of a country, or all or parts of several countries

Members shall, in particular, recognize the concepts of pest or disease-free areas and areas of low pest or disease prevalence. Determination of such areas shall be based on factors such as geography, ecosystems, epidemiological surveillance, and the effectiveness of sanitary or phytosanitary controls

Technical Assistance (Article 9)

- 1. Members agree to facilitate the provision of technical assistance to other Members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phytosanitary measures necessary to achieve the appropriate level of sanitary or phytosanitary protection in their export markets.
- 2. Where substantial investments are required in order for an exporting developing country Member to fulfil the sanitary or phytosanitary requirements of an importing Member, the latter shall consider providing such technical assistance as will permit the developing country Member to maintain and expand its market access opportunities for the product involved.

S&DT (Art. 10)

- 1. In the preparation and application of sanitary or phytosanitary measures, Members shall take account of the special needs of developing country Members, and in particular of the least-developed country Members.
- 2. Where the appropriate level of sanitary or phytosanitary protection allows scope for the phased introduction of new sanitary or phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country Members so as to maintain opportunities for their exports.
- 3. With a view to ensuring that developing country Members are able to comply with the provisions of this Agreement, the Committee is enabled to grant to such countries, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement, taking into account their financial, trade and development needs.
- 4. Members should encourage and facilitate the active participation of developing country Members in the relevant international organizations. Department of Commerce, Government of India 18

What is Transparency?

Linked with notification requirements and also associated with the following.

 Publication of the proposed regulations at early appropriate stage when change can be incorporated at the appropriate occasions.

2. Notify measures other WTO Members using appropriate forms through WTO.

3. Establishing Enquiry Point and Providing copies of proposed regulations on request of others.

Who would Notify?

A single central Government Authority.
 Department of Commerce.

Enquiry Points DoAC, DoAH&D, MoH&FW

Department of Commerce, Government of India

Under what circumstances to Notify?

- 1. A relevant international standard does not exist;
- The technical content of a proposed measure is not in accordance with the technical content of the standard;
- 3. The proposed measure may have a significant effect on the trade of other Members.

Functioning of Enquiry Points

Enquiry Points must respond to reasonable enquiries and provide relevant documents regarding: Technical regulations, standards and conformity assessment procedures

Membership and participation in international and regional standardizing bodies and conformity assessment systems / bilateral and multilateral arrangements

Location of notices published

Location of other Enquiry Points

Roles of Enquiry point and Notification agency

Enquiry point (EP)

- Bureau of Indian Standards (BIS)
- Respond to reasonable enquiries and provide relevant documents when sought about
 - Technical regulations adopted / proposed
 - Standards adopted/proposed
 - Participation in international and regional standardisation bodies, bilateral/multilateral arrangements

National Notification Agency (NNA)

- Department of commerce, Ministry of Commerce & Industry
- Notification to other members of proposed regulations and CAPs that deviate from relevant international standards and have a significant impact on trade of the other member countries
 - Provide relevant documents regarding
 - Location of notices issued pursuant to the TBT agreement
 - Location of enquiry points

SPS and TBT activity by India vis-à-vis World

All Members

- 124 of 148 members have communicated existence of Enquiry point
- 81 members till date have made notifications with over 8500 notifications.
- Average notifications per year is about 600

<u>India</u>

- 80 notifications under TBT since 1995 (45 between 1995 to 2001, 35 from 2002 to date) and 56 SPS notifications.
- Almost all notifications were proposals under consideration with comment periods

Functions of NNA

Co-ordinates and co-operates with all the relevant regulatory Bodies/ Ministries.

After getting notifications from the relevant Standard or Regulatory Bodies, it examines where & when to notify or takes any other appropriate action required.

WORLD TRADE		G/TBT/N/-		
ORGANIZATION		(00-0000)		
Commi	ttee on Technical Barriers to Trade			
 NOTIFICATION The following notification is being circulated in accordance with Article 10.6.				
1.	Member to Agreement notifying: If applicable, name of local government involved (Articles 3.2 and 7.2):			
2.	Agency responsible: Name and address (including telephone and fax numbers, e-mail and web-site addresses, if available) of agency or authority designated to handle comments regarding the notification shall be indicated if different from above:			
3.	Notified under Article 2.9.2 [], 2.10.1 [], 5.6.2 [], 5.7.1 [], other:			
	Department of Commerce, Government of India	26		

4.	Products covered (HS or CCCN where applicable, otherwise national tariff heading.	
	ICS numbers may be provided in addition, where applicable):	
5.	Title, number of pages and language(s) of the notified document:	
6.	Description of content:	
7.	Objective and rationale, including the nature of urgent problems where applicable:	
8.	Relevant documents:	
9.	Proposed date of adoption: Proposed date of entry into force:	
10.	Final date for comments:	
11.	Texts available from: National enquiry point [] or address, telephone and fax numbers, e-mail and web-site addresses, if available of the other body:	

Simple Search

(Enter criteria in one or more fields, then click on Search. For assistance on selecting criteria, click on ?)

Document symbol:	g/tbt/n*		
Document title:			?
Document number:			?
Countries:			?
Full text search criteria:			?
Document date (dd/mm/yyyy):	start	rend 📄	2
	Search	Clear the form	More fields

http://docsonline.wto.org/-

How does SPS and the TBT Committee functions?

Three meetings in an year where Members can raise any queries/ concerns on any country's measures which have restricted its trade.

A few case Studies

 More stringent standards than the OIE in case of Meat & Meat products

 Lack of harmonization of egg products standards in EU member countries

 Different MRLs by the member countries for pesticides, drugs and other contaminants

•EC should give sufficient transitional time for the implementation of new standards.

Definition of Whiskies

 Export of Groundnuts - Rapid alerts on account of misdeclaration

Equivalence Agreement on Organic Products

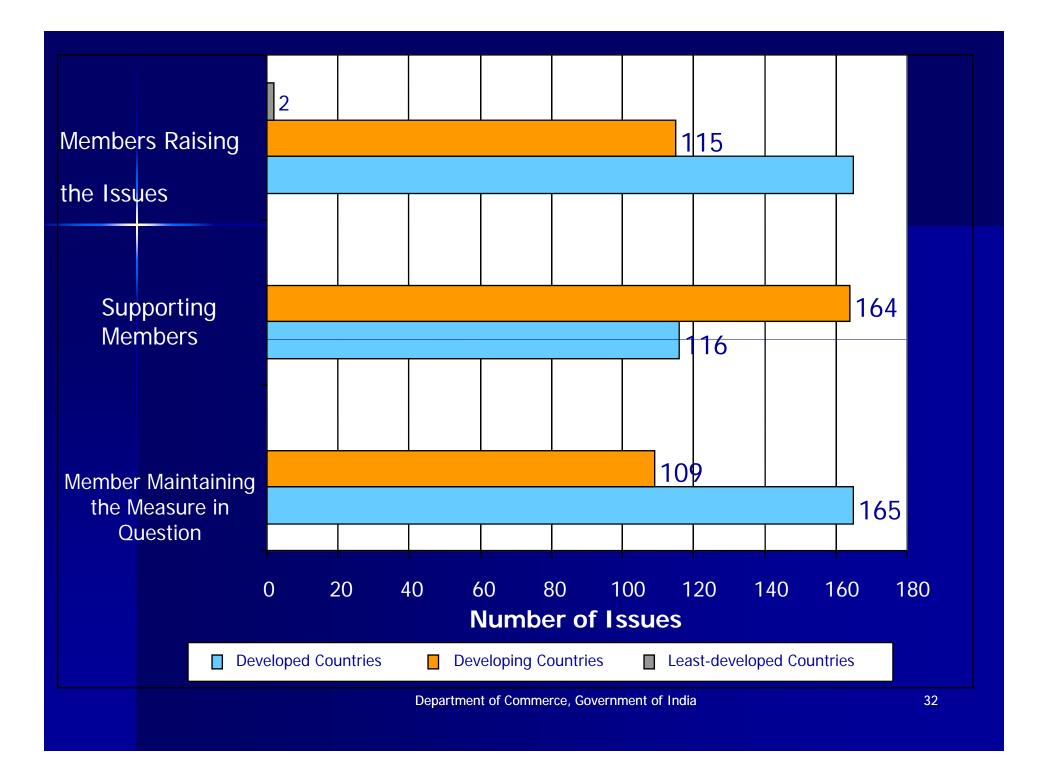
Market access to Ayurveda

Success so far

During 1995-2005, 235 SPS related trade concerns were raised.

115 Raised by Developing Countries 165 Raised by Developed Countries

Composition 27 % on Food Safety Related 29 % on Plant Health Related 40 % on Animal Health 4 % on Other Issues (notifications etc.)



How many Solved?

Out of 235 Trade Concerns 62 – Reported Solved (26%) 14 – Partially Solved (6%) 159 – No Solution (68%)

India's Position

Only two issues raised in the main SPS Committee Meeting.
 However several issues have been taken up bilaterally.
 A few issues have been solved.

Thank you for listening !

Issues in India-EU FTA in services

Dr. Biswajit Nag Indian Institute of Foreign Trade New Delhi

Content

- India-EU Bilateral Relation
- India-EU Trade in Goods: A Brief Overview
- India-EU Trade in Services
- FTA Negotiation
- Negotiating Issues in Services Trade: Some Examples
- Summary of India's Approach in Services Negotiation
- Analysis of Sector wise issues of concern

India-EU Bilateral Relation

Reading:

http://ec.europa.eu/external_relations/india/docs/index.htm

	Development Cooperation	Economic Cooperation	
1970	Cooperation programme: Operation Flood (milk cooperative)		
1971		EEC introduces General Tariff Preferences for India (GSP)	
1973		Commercial Cooperation Agreement	
1976	Beginning of regular development cooperation		
1981& 1985		Commercial & economic agreements	
1991		European Community Investment Partner scheme to promote joint ventures (ECIP)	
1992		Joint Business Forum	
1993	Sectoral programme: education	HE WAR WHE WAR WITH WAR	
1994	Cooperation Agreement on partnership and development		
1996	Sectoral programme: health & family welfare	Source: Christa Wichterich,	
2000	1. EU-India Summit in Lisbon	WIDE Network	
2002	Country Strategy Paper 2002-2006	He la Mell A He la Mell A He la Me	
2005	Joint Action Plan for Strategic Partnership		
2007	Country Strategy Paper 2007-2013	Launch of negotiations on a bilateral FTA	

EU programmes on India

- India is one of the main recipients of EU development aid.
 Funds come from the EU budget and other sources.
- Loans provided by the European Investment Bank, for example, in the power generation sector.
- Also aid came from the individual member states.
- 1970's: Assistance in developing milk cooperatives
- 1980's : Assistance in agriculture and rural development
- 1990s: Assistance for linking development programmes with the market driven liberalisation process. Focus on poverty eradication and family welfare which got extended to human resource development through assistance in health and education.
- In 2005, aid strategy has increasingly linked with trade
- EU assistance to India went up to 54 million euro per year in 1990s compared to 26 Euro per year in 1980s.

Results of EU programmes on India

- The result is mixed so far.
- The agricultural projects were determined by technical and quantitative factors and directed towards marketoriented producers, not towards small-scale or subsistence farmers
- Programmes on health and education sectors identified marginalised group, women and children as the target beneficiary of the programs but there is no clear indicators that they were benefited.

Latest Issues

- In 2003, the then EU trade commissioner Pascal Lamy "proposed" to create a strong link between development aid and domestic rule-making by building domestic capacities to meet Sanitary and Phytosanitary Standards, modernizing customs or setting up a domestic competition regime. However, Lamy was eager to ensure that this proposal was a new effort of the tied-aid concept of the past.
- The country strategy paper of 2007-13 says that India at the threshold level and its need for aid is decreasing. However, several experts feel that India needs to be considered as development partner and it requires assistance in focused areas.
- EU assistance will adopt a two-pronged approach: A) it will provide budget support to the health and education sector to help India meet the Millennium Development Goals, encompassing the facilitation of good governance, institutional reforms and public sector management-a strategy in compliance with the principles of the Paris Declaration on aid Effectiveness; and B) implement the Joint Action Plan and "address the most recent challenges of its economic reform process" through facilitating policy reforms, sectoral dialogues particularly on energy, climate change and environmental concerns, and the enhancement of economic partnership

New Dimension

- India and EU now wants to pursue deep commercial relationship for the betterment of both.
- Now the idea is EU will benefit from India both in goods and services, the way India will also gain from EU.
- However, development linkages are still weak in India despite more than one and half decade of liberalisation drive. Perhaps, focused assistance is still required to bridge the great divide which is still acute in Indian economy as well as society.

Bilateral relation with EU Members

- Very strong relationship with UK, Germany, France and other members.
- Cultural and science & technology cooperation have gone much deeper.
- Current focus is on energy and environment and transportation
- Higher Education sector is coming up with lots of students and faculty exchange
- Cooperation in Employment and Social policy is also identified

Some Important Initiatives

- EU-India Civil Aviation project
- EU-India Maritime Transport Project
- Science & Technology Co-operation
- Cooperation among space industries
- EU-India Energy Panel
- EU-India Initiative on Clean Development and Climate Change
- Customs Co-operation Agreement
- Trade and Investment Development Programme

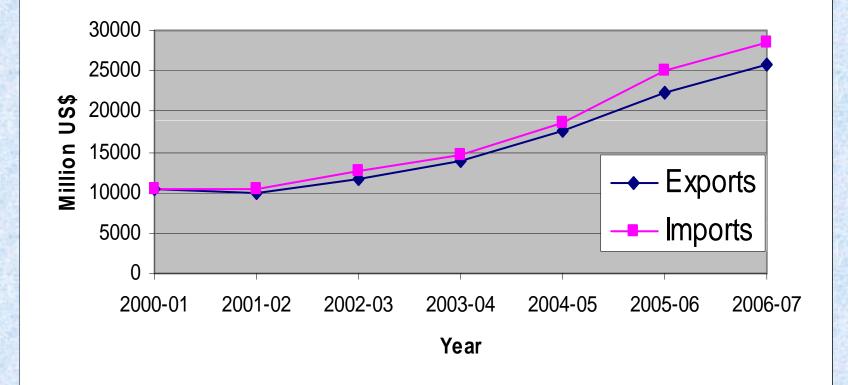
India & EU: Further Cooperation

- Joint Action Plan in September 2005
- •High level trade group_reported to the 7th EU-India Summit in Helsinki on 13 October 2006
- FTA Negotiation started and going on.
- This is the most comprehensive negotiation India is engaged.
- India's gain in productivity increase, market access of manufacturing and services and attracting more FDI from India
- EU's gain is in market access in all products except agriculture, more collaboration, more outward investment
- Expectedly, Indian market will be more transparent, standards will be of international level.
- In goods sector, EU will gain as India's tariffs are high. At the same time issues like NTMs, non-advalorem duties, quota, etc. will also be discussed.

Reading: http://ec.europa.eu/trade/issues/bilateral/countries/india/index_en.htm

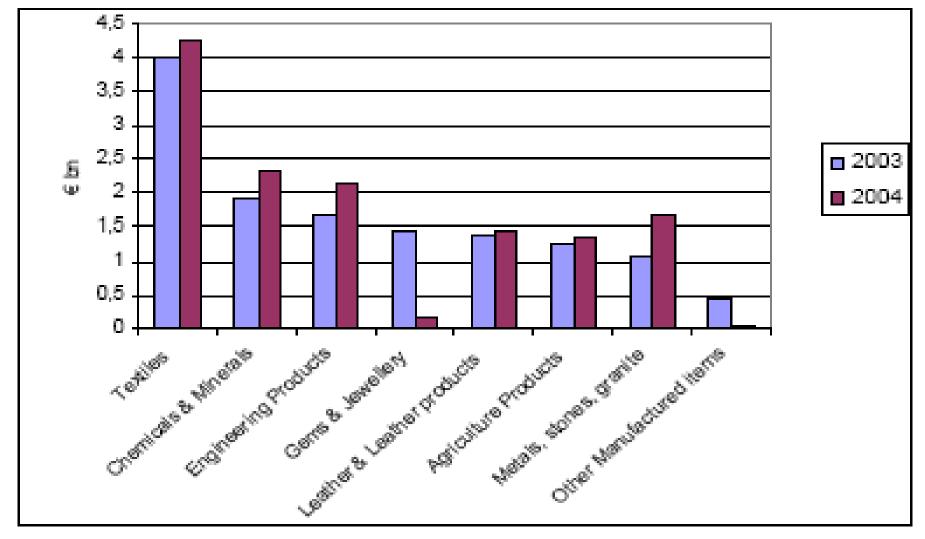
India-EU Trade in Goods: A Brief Overview

India's Exports/Imports to/from EU15



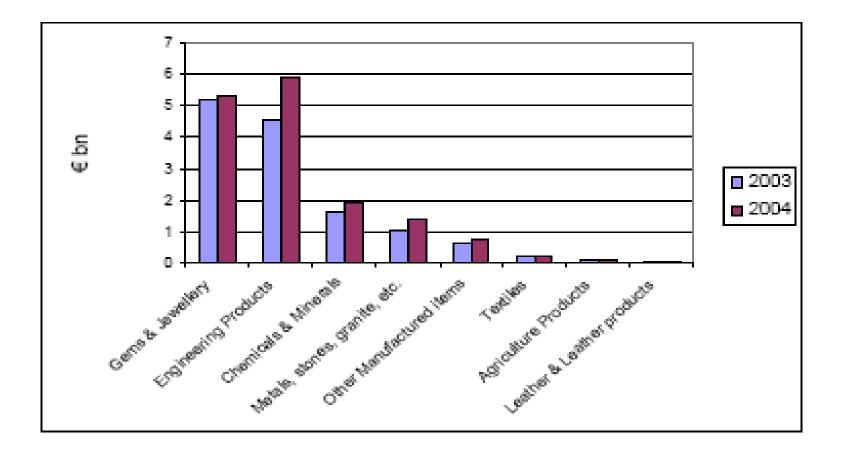
Calculated from India Trades, CMIE

Sectoral Breakdown of EU Imports from India in 2003 and 2004



Calculated from Eurostat

Sectoral Breakdown of EU Exports to India in 2003 and 2004



Calculated from Eurostat

India's Export to EU

Million US\$

Importing Country	Commodity Name	2004-05	2005-06	2006-07
World	Agricultural & allied products	8471.21	10212.3	12506.19
European Union	Agricultural & allied products	1493.16	1731.18	1983.79
World	Ores & minerals	5076.48	6162.68	7028.4
European Union	Ores & minerals	381.41	491.15	639.33
World	Manufactured goods	60705.72	72552.12	82761.97
European Union	Manufactured goods	14323.71	17160.74	19874.53
World	Petroleum & crude products	6986.46	11637.94	18539.41
European Union	Petroleum & crude products	778.15	2363.79	1940
World	Other commodities	2261.68	2510.36	5410.03
European Union	Other commodities	555.92	634.82	1359.08

India's Import from the EU

Million US\$

Countries	Commodity Name	2004-05	2005-06	2006-07
World	Food & related items	3516	3263	3908
EU	Food & related items	31	23	51
World	Textiles (incl. RMG)	1571	2050	2150
EU	Textiles (incl. RMG)	169	223	216
World	Chemicals and related products	8716	11383	13879
EU	Chemicals and related products	1535	1962	2122
World	Machine tools	620	1076	1480
EU	Machine tools	263	464	623
World	Non-electrical machinery	6815	10008	13840
EU	Non-electrical machinery	3070	4511	6115
World	Electrical machinery	1195	1504	1954
EU	Electrical machinery	345	436	514
World	Project goods	596	883	1753
EU	Project goods	323	416	536
World	Professional inst, optical goods etc.	1530	1972	2327
EU	Professional inst, optical goods etc.	506	680	764

India's Import from the EU

Million US\$

Countries	Commodity Name	2004-05	2005-06	2006-07
World	Transport equipment	4326	8837	15403
EU	Transport equipment	1140	3620	8491
World	Other non-POL items	48532	58315	72175
EU	Other non-POL items	10795	12109	12940
	Artificial resins, plastic materials etc.	411	532	624
	Iron & steel	601	1006	1209
	Electronic goods	1678	1979	2477
Table	Pearls precious & semiprecious stones	5573	5178	4633
	Metaliferrous ores & metal scrap	372	780	709
	Computer software in physical form	351	469	503
	Manufactures of metals	325	435	517
World	Other commodities	4224	5895	4531
EU	Other commodities	528	704	865

Source: India Trades, CMIE

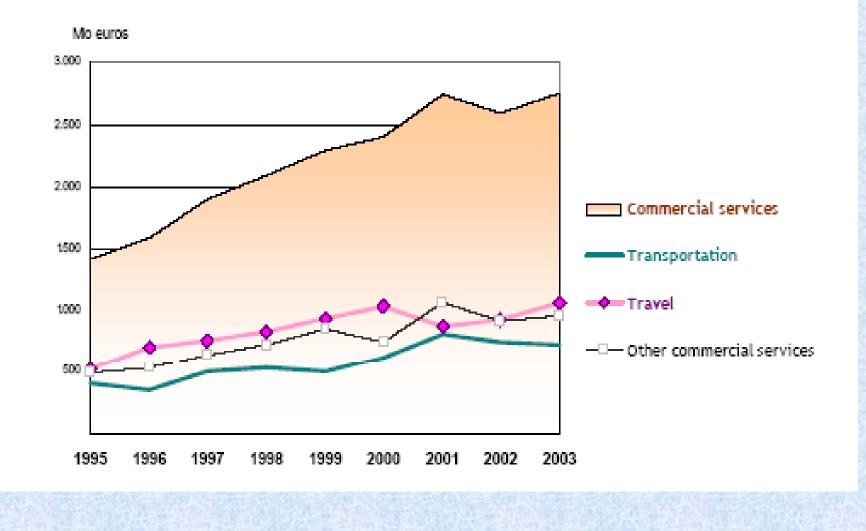
India-EU Trade in Services

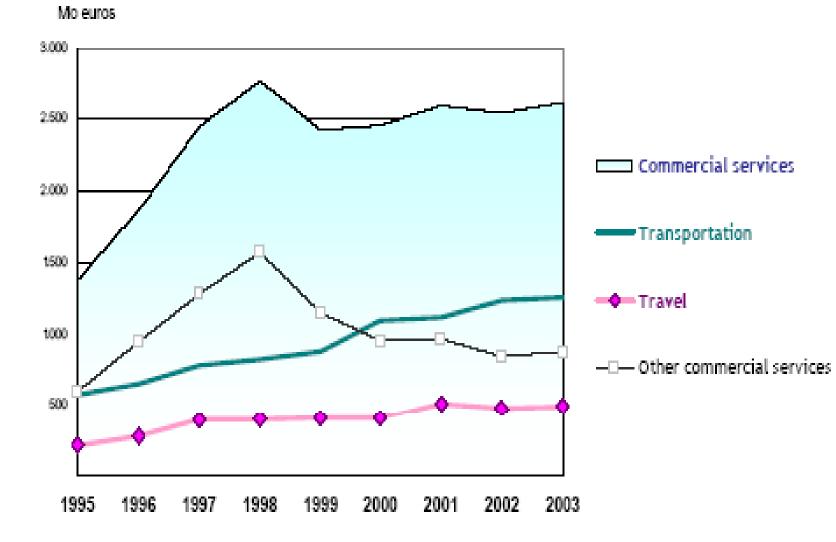
India-EU Trade in Services

- Bilateral trade in services reached €5.4 billion in 2003, up from €2.8 billion in 1995.
- Growth in trade in services between the EU and India has been particularly impressive:
- Annual growth of EU services exports to India averaged 8.3% between 1995 and 2003.
- Annual growth of EU services imports from India averaged 8.7% between 1995 and 2003.
- The EU's trade balance in services with India has deteriorated in recent years. Trade balance in transportation services with India has been positive and growing, and balance in travel services persistently negative, interesting to note that since 1998 EU's trade balance in other commercial services with India has sharply declined, largely due to India's success in offshore outsourcing.

EU's Country Strategy Paper on India 2007-13)

Evolution of EU Imports in Commercial Services from India





Evolution of EU Exports in Commercial Services to India

FTA Negotiation

FTA Negotiation: Some Issues Issues for Discussion:

Rules of Origin, NTMs, Trade Facilitation, various lists, other issues: IPR, Trade and Development, dispute settlement,

Target Date: 2010 for operation. EU submitted goods list and India is about to submit. EU's negative list is expected to affect India's chemical, plastic, pharmaceutical industry.

India is concerned about lack of harmonisation of microbiological standards in the European countries, tough fruit export norms, aflatoxin limits in groundnuts, visa issues, a lack of recognition of qualifications and work experience and value-added tax. EU on the other hand is concerned about patents, competition policy, govt. purchase and FDI protection and environment issues in India

FTA Negotiation: Some Issues

Goods Sector Negotiation

- Proposal recommend elimination of customs duty for 90% of the tariff lines in 7 years
- Elimination of non-tariff barriers. Anti-dumping duties, countervailing duties and safeguards will be subject to discussion.
- Average import duty in India is 7.5% to 10% whereas in EU, it is 3% to 8%
- India may lose considerable revenue due to customs duty reduction
- Agriculture may be bone of contention. Duty free access of agricultural products may become a political issue
- Rules of Origin policy under EU Framework Agreement prescribes:
- Change in HS Classification
- Minimum local content requirement
- Cumulation of local content
- Compliance with certain technical standards

FTA Negotiation: Some Issues

Service Sector and Investment

India is bullish on liberalisation of service sector whereas EU is cautious

- FTA on services may cover
- -National Treatment to service provider
- Going beyond Market Access exemptions mentioned in GATS
- Horizontal access to all service sectors
- Mutual recognition of professional qualifications
- -Liberalised entry of natural person

- EU is looking for more transparent service market in India for its gain in medium term and India wants greater market access in some selected sectors even in the short run

FTA Negotiation: Some Issues

Service Sector and Investment

Investment:

- National Treatment to Investors
- Transparency of regulatory framework
- Movement of investment related natural persons
- Trade Facilitation: Simplification of procedures, cuts red-tapism
- Public Procurement: Open procurement regime which is transparent and equitable
- Technical Regulation: Protecting health, food, safety and environment
- Intellectual Property Rights: Minimum protection requirements
- Competition Policy: Transparent and non-discriminative legal framework for foreign operators

• Dispute Settlement: Mechanism to resolve disputes if not resolved through mutual consultation

Opportunities in Services Trade: Negotiating Issues

- Services sectors are not very transparent in both side.
- Markets are evolving in many EU member countries and India.
- Though there are Single Market Directives in EU, progress so far is uneven in EU.
- Regulation, quota, licenses, citizenship criteria, ownership limitations and presence of national monopolies both in EU and India are making the negotiation difficult.
- Regulatory structure in member countries are different in EU despite there are EU wide directives. Hence, an agreement in services with EU may not provide effective for India. Bilateral agreement with individual country is deemed to be more important.

- In case of IT/ITES, India's interest is in Mode1,3 and 4. In many countries mode3 and mode 4 are linked. Indian companies need to set up branches or subsidiaries in order to apply for a work permits. India is interested to de-link these two. This is due to the fact that
 - -Relatively more difficult to set up branch versus a subsidiary
 - -Difference in investment regulations and timelines across member countries
 - -Need to repeat procedures in establishing commercial presence across member countries
- Apart from this 'data protection' issue in EU has come out to be a major issues in Mode1. Smaller Indian BPO companies are affected.

- Other barriers in EU market: Cultural and linguistic barriers, labour laws, multiple layers of taxes.
- On the other hand as India is having comparative advantage the sector itself is fairly open. Some problems do exist which are mainly related to infrastructure, procedural delays, FDI related issues, etc.

- In health services, India has opportunities in EU market.
- EU is highly IT integrated health market with good presence of both public sector and private sector. Health care expenditure in EU countries is between 6-9% of GDPs.
- However, aging population and limited human resources is an area of concern in many European countries. Waiting time for patients is continuously increasing even in a country like UK.
- In a statistics from UK, shows that one out of four cardiac patients die while waiting and one out of five cancer patients wait so long that the disease become un treatable.
- Problem is worse in India. The difference is in EU affordability is not that problem due to public expenditure, insurance, etc. In India, there are only handful public hospitals which are of low cost. Poor just don't have access

- Major opportunities for India in
- Telemedicine (bioinformatics, remote monitoring of patients, teleradiology, telediagonistics) through Mode1
- Clinical trials and clinical research through Mode2
- Medical tourism through Mode 3
- Collaborative ventures among laboratories, universities, hospitals through mode 3 and 4
- Medical BPOs (transcription, revenue cycle management, coding, back office, etc) through Mode 1
- Movement of health professionals through Mode 4

Several interrelated regulatory issues are matter of concern from Indian perspective. MRA, data protection, visa requirements, etc are important negotiable issues with EU

- International medical insurance in several EU countries are prohibiting patients to travel to countries like India which is also a negotiable issues. Legal contracts regarding liablity, indemnity, non-disclosure and overseas jurisdictional issues are matter for negotiation.
- Legal aspects about medical data sharing is also a negotiable agenda.
- EU companies may consider clinical trials and research in India is a lucrative proposal. Huge population, diverse genetic pool, wide range of diseases provide ample possibilities. However, legal issues in India on these issues are relatively stringent.
- Indian labs may seek for EU certification for conducting clinical tests for European patients.

- In contrast to the sector mentioned above, in case of courier and postal sector India is restrictive but EU is quite competitive and has business interest in India. Companies like DHL, TNT, etc are already present in India.
- EU's approach in the sector is different from other countries as it defines them through 'Handling' of services which truly divides the services into several components and several EU countries still have partial liberalisation in postal sector meaning that some sub-services are open for competition and others are not. In India new postal Act has not yet passed. This intends to define letters in terms of weight. Things will move slowly till then.
- However, 100% FDI is already allowed in the courier sector

Summary of India's Approach in Services Negotiation

Mode 4 is generally unbound in case of south-south services agreement. However, issues related to mutual recognition of qualification, economic and management need tests, visa relaxations etc. are important issues which should be dealt with properly for enhancing not only services trade but also trade in manufacturing. India should be aggressive in case of those destination countries where shortages of required human capital provide an opportunity for Indian service providers.

• Mode 3 should be opened in India for sectors where technology may come along with the investment.

• India must seek market access in mode 1 and 2 in destination countries which has an indirect impact on the domestic employment such as courier service, audiovisual service, architectural, planning, health etc.

• At the second stage, India must negotiate for time bound market access exemptions.

Nature of barriers in Service Trade

<u>Market Access Exemptions</u>: Limitations on the number of service suppliers, value of service transactions, quantity of services output, number of persons that may be employed in a particular service sector and establishment of commercial presence (the type of legal entity and the extent of foreign capital participation).

• <u>National Treatment Limitations</u>: Preference towards domestic players (sometimes service providers are govt. owned monopolies)

• Non-<u>Transparency</u>: Non-transparency in service sectors are quite common. Most of the time, it is difficult to find out the list of exact measures affecting the services even in a developed country. (for example, in EU quotas in many services such as film/movie quota follows both national policies and EU audiovisual directives)

• <u>Domestic regulation:</u> Well defined regulatory structure for service sector is welcome. Apparently it is affecting both domestic as well as foreign suppliers equally. However, in some cases, regulatory discretion goes against the foreign players. For example, postal administration may be kept outside regulatory structure and provided some advantages (tax relief).

Analysis of Sector wise issues of concern

Banking Sectors

• Entry Barrier, authorisation, equity limit, barrires on day-to-day transactions, branches recognised as foreign entity, access to fund more costly, limit on expansion, limit on lending, etc. restriction on banks to go into other financial services,

• Negotiation strategy: Mode 3 issues may be negotiated especially for issues like number of branches, their legal entity, etc. India may seek better harmonisation of rules like minimum capital requirement, etc. Visa and work permit related issues may also be negotiated.

Accountancy Services

 Issues related to MRA (requirement of various accreditations), Licensing requirement, Mode 4 etc. are major concerns. In some countries, citizenship and residency criteria is also in place. Increasing Finance and Accounting Outsourcing (FAO) opens the opportunity in Mode1 also.

• Strategy should be made to avoid articleship of Indian Accountants in foreign countries. India must concentrate on Mode1 and 4.

Analysis of Sector wise issues of concern

IT/ITes

•_Major concerns are Visa requirements (longer time to get work permits), investment regulations, tax discrimination, data protection and labour market regulations. Indian companies interested in investment abroad are unable to bring sufficient number of Indian workers.

• India's interest in mode 1, 3 and 4. Issues required aggressive negotiation.

Health Services

• Opportunities are there in telemedicines (bio-informatics), clinical trials and research, medical tourism, collaborative research, back office support (transcriptions, coding, etc.). Several interrelated regulatory issues are matter of concern from Indian perspective. MRA, data protection, visa requirements, etc. Several countries would like to see mode 3 and 4 together but India wants to view and negotiate them separately. In some countries Registration and work permits to be taken separately. For Indian doctors it is a matter of concern. Insurance issues for international patient is also matter of concern in case of mode 2.

 India is interested in all 4 modes. In several countries, limitation on mode 3 needs to be negotiated.

Analysis of Sector wise issues of concern

Telecommunication

•_Role of regulators in telecom is very important. However, it remains inconsistent in many countries especially in case of spectrum allocation, pricing and bundling of services. Restrictions are there in the form of licensing, equity limits, limit on resale, etc. Markets are often fragmented.

• Large investment is required and hence Govt. needs to understand the benefit of commercial presence of Indian players outside. VSNL is now present in Sri Lanka, EU. Their experience needs to be analysed.

WTO's Dispute Settlement System

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Significance of WTO's Dispute Settlement Understanding

- Dispute Settlement Understanding (DSU): WTO's 'Most Individual Contribution'
- DSU procedure underscores the Rule of Law and makes the trading system more secure
- 4 phases in the WTO dispute settlement process:
 - Consultations
 - Panel process
 - Appellate process and
 - Surveillance of implementation

Who Administers

- Administration of DSU is by the Dispute Settlement Body [DSB]- This is all the WTO Members acting together
- DSB has authority to:
 - establish Panels,
 - adopt Panel and AB reports,
 - maintain surveillance and implementation of rulings,
 - authorise Members to suspend concessions and other obligations

DSB: Critical Feature

- DSB *AUTOMATICALLY* adopts/ (i.e., gives legal effect to) Panel and AB Reports
- No Adoption ONLY when there is a Consensus at the DSB on not adopting.
- This basically means even the winning party must agree!
- Reverse consensus rule: A very important tenet of the DSU

GATT - WTO Differences

<u>GATT</u>

- No time frames.
- Rulings adopted by consensus. Single party could block.
- No effective monitoring and enforcement of rulings.

<u>WTO</u>

- Clear Time Tables.
- Automatic adoption. Rejection only by consensus.
- DSB monitors how rulings are adopted.

Some Statistics

- WTO DS: One of the most widely utilized international dispute tribunals
- WTO DS 1995-2008:
 - Received 367 complaints
 - Adopted over 200 Panel and Appellate Body Reports
- Contrast International Court of Justice:
 - 100 Judgments and 24 Advisory Opinions since 1946

What is a WTO Dispute?

A difference between two or more Member Governments of the WTO where one Member claims that its interests are being damaged by another Member's:

- Actions, or
- Regulations, or
- Policies

Typical Elements of a WTO Complaint

- The complaining Member needs to establish breach of a WTO obligation
- This leads to a *presumption* that a benefit under any of the WTO Agreements has been impaired.
- The burden then *shifts* to the other Member to rebut this presumption and show that despite the violation, there has been no negative trade impact on the complaining Member.
- Remedy: If a measure is found to violate a WTO obligation, it must be withdrawn.

How does it all begin? Step 1: Request for Consultations

- Consultations should begin within 30 days of the request being made by a party.
- The goal of the consultation stage is to enable the disputing parties to understand better the factual situation and the legal claims in respect of the dispute and to resolve the matter through mutual discussions.

Consultation Stage [cont'd]

- Parties have flexibilities on manner and form to adopt to resolve dispute:
 - Can be Bilateral between complaining and defending party; or
 - If Complaining party agrees, other Members having substantial trade interest, can join [Multilateral].
- Consultations are Confidential, and without prejudice to rights of Members in further proceedings

Mutually Agreed Solution after Consultations: An example

- July 2004: India requested consultations with the European Communities concerning the imposition of definitive antidumping measures on imports of certain flat rolled products of iron or non-alloy steel, of a width of 600 mm or more, not clad, plated or coated, in coils, not further worked than hot-rolled ("HR Coils") from India
- On 22 October 2004: India and the European Communities notified the DSB that they had reached an agreement with respect to the matter raised by India in its request for consultations. According to the notification, the European Communities agreed to terminate the measure at issue.

Step 2: The Panel Process

- If consultations fail to resolve the dispute within 60 days of the request for consultations, the complaining WTO member may request the Dispute Settlement Body (DSB), the WTO body that oversees the operation of the dispute settlement system, to establish a panel to rule on the dispute.
- A panel is established within approximately 90 days of the initial request for consultations.

Panel: Cont'd

- The WTO Secretariat suggests the names of possible panelists to the disputing parties.
- If the parties cannot agree on the identity of the panelists within 20 days of the panel's establishment, any party to the dispute may request the WTO Director-General to appoint the panel, which he is required to do within ten days of the request.
- The vast majority of panelists are current or former government officials.

Panel: Cont'd

- The task of a Panel: To make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant WTO agreements.
- The DSU sets as a goal that the final report should be issued to the parties within six months of the panel's composition and that, at the latest, the report should be circulated to all members within nine months of the panel's establishment.

Step 3: Appellate Review

- The Appellate Body consists of seven individuals, appointed by the DSB for four-year terms. The Appellate Body hears appeals of panel reports in divisions of three.
- The Appellate Body is required to issue its report within 60 (at most 90) days from the date of the appeal.
- Report is to be adopted automatically by the DSB within 30 days, UNLESS there is consensus among the DSU members to the contrary.

Appellate Review [cont'd]

- Appellate Review: Limited to Legal Interpretation on Questions of Law covered in the Panel Report.
- AB cannot engage in fact-finding or evaluation of evidence

Rights of Members: Party and Third Party

- Complaining Member/s and Defending Member/s are the 'Parties' to a dispute.
- Members having 'substantial trade interest' in a matter can notify their interest to become a 'third party'.
- Every Party and Third Party has a *legal right* to be heard by the Panel & make written submissions.

Amicus Curiae

- Art.13: Panel has "right to seek information & technical advice" from individual or body.
- Case laws: Any individual or body can make submissions to the Panel. Panel has *discretion* whether or not to consider these.
- Concerns: Interest groups from developed world will have greater resources & access. This may prejudice developing country interests.
- No Amicus Curiae at AB level.

Surveillance & Enforcement

- Primary Objective of DS: Modification or Withdrawal of the Offending Measure
- "Losing" Member should inform the DSB of its intentions to implement within 30 days of adoption of the report
- If 'immediate' compliance is impractical, 'reasonable period for implementation' needs to be determined:
 - Proposed by Member and approved by DSB
 - Mutually agreed by the parties
 - Determined by an Arbitrator [Guideline- within 15 mths from date of adoption of ruling]
- Burden on the losing Member to show why immediate implementation is not possible

Implementation (Contd.)

- Surveillance by the DSB: Review after 6 months after determination of 'reasonable time period'; Status report to be filed by implementing Member
- If parties disagree on implementation, either party can request for establishment of a 'Compliance Panel' to adjudicate
- Compliance Panel to decide within 90 days
- Appeals against Compliance Panels also possible

Non-Implementation: Compensation

- If losing Member fails to bring measure into conformity, both parties can discuss and arrive at a *mutually agreeable* 'compensation'
- Compensation: Not necessarily monetary damages
- Compensation can be in form of e.g., tariff reduction, or greater market access for certain goods
- Compensation not retroactive
- Used very sparingly

Non-Implementation: Retaliation

- If within 20 days of expiry of *reasonable time period*, parties have not agreed on compensation, complaining Member can ask DSB for imposing *trade sanctions*
- *Trade sanctions* are in the form of *suspension of concessions* against the losing Member: Such sanctions should be *equivalent* to the level of nullification or impairment
- Permission of DSB essential

Retaliation and Cross-retaliation

- General Principle: Retaliatory measures should be in the same sector as in which violation or other nullification was found. E.g.: If violation in area of 'patents', retaliation in the same sector of 'patents'; if on 'goods', retaliation should be on 'goods'
- If complainant considers this impractical, sanctions can be imposed in different sector under same agreement.
- If that is also impractical, sanctions can be under a different agreement.
- Disagreements about Retaliation can be referred to an Arbitration Panel

Cross-Retaliation: Gambling case

- David v. Goliath story
- Case initiated by Antigua-Barbuda in 2003 because of denial by the US to market access for Antigua's online gambling services.
- Internet gambling is Antigua's second biggest employer after tourism. Antigua argued that the US was violating its commitments under the WTO's General Agreement of Trade in Services (GATS) with its laws restricting online gambling.
- WTO Panel and AB Rulings against the US
- US argument was that it could legitimately restrict online gambling on grounds of public policy. The US had however not made an 'exemption' for online gambling in its Schedule of Commitments under GATS under which it had undertaken to liberalize "recreational services" which is understood to include online gambling.
- What also compromised the US position at the WTO's dispute settlement proceedings was that domestically it allows for online horse race betting and state lotteries.

Right to Cross-retaliate

- US: Not feasible to comply with ruling
- WTO AB awarded the tiny Carribean nation the right to cross-retaliate.
- Place sanctions on US intellectual property (i.e., patents, copyrights, trademarks, etc.), to the tune of <u>\$21 million</u> <u>annually</u>, as compensation for non-compliance by the US with its ruling.
- The practical implication of this ruling is that Antigua can legitimately infringe intellectual property rights (IPRs) belonging to US companies providing goods and services into Antigua.

Cross-retaliation: Practical issues

- Antigua's victory: More symbolic than real
- Issues:
 - While reaching the annual figure of \$21 million, Antigua has the right to condone various acts of IPR infringement, whether in the form of counterfeiting or piracy or any other form of IPR infringement. How to evaluate the value of each cross-retaliatory measure?
 - The US is likely to dispute the value of every act of infringement by Antigua.
- US and Antigua still trying to reach a settlement

Alternate Dispute Resolution

- At time of initiation and throughout all stages of the Dispute, parties have a right to resolve through Mediation and Conciliation
- Parties can request WTO's Director General to facilitate such mediation or conciliation

Confidentiality and Sensitive Issues

- Panel and AB Proceedings: Confidential
- For the first time in 2005, Panel proceedings in EC 'Beef-Hormone' dispute- were open for public , at request of parties to the dispute
- Same matter: First ever open AB hearing
 - EC, Canada, US asked for open hearing July 2008
 - Members participating in the case as third parties (including China and Brazil) were opposed to opening the hearings.
 - Awkward consequence that the public hearing was cut whenever China or Brazil intervened, as they had not given their permission for an open audience

Background of Beef-Hormone

- Dispute launched in 1996 when the US and Canada charged that the EU's ban on hormone-treated beef was not based on a proper scientific risk assessment and that the supporting scientific evidence was insufficient.
- A WTO panel and subsequently the Appellate Body ruled in their favour in 1997 and 1998 respectively.
- Following this, a WTO panel ruled in 1999 that the US and Canada could impose trade sanctions on certain EU products because it had failed to provide the necessary scientific evidence to justify the ban.
- Rulings were criticised by some civil society organisations which argued that the WTO was putting trade concerns before environmental and health protection, and also undermining the states' sovereign right to determine their own environmental and health policies.

Beef-Hormone- Cont'd

- US and Canada: Started retaliatory measures
- October 2003: the EU presented new scientific evidence in an attempt to convince the US and Canada to end their trade sanctions. By that point, the duties amounted to over USD 116.8 million and CAD 11.3 million respectively
- Finally, in November 2004, the EU announced that it would challenge the continued trade sanctions at the WTO, arguing that it had complied with the 1999 ruling. It is these hearings that were opened to the public.
- Panel ruling: EC should comply with earlier decision
- EC: Preferred to Appeal- which was also open to public

Some thoughts for the Road Ahead

- Issue of Remand to the Panel in the event of need to re-assess facts; make a factual finding
- Issue of Compensation for non-compliance
 - As in civil disputes, simply quantify 'damages' and make a lump-sum payment, as a one-time measure or annually

Faster Resolution of NTBs

- India is one of the key Members that recently proposed that for non-tariff barriers (NTBs) such as technical standards/ measures on food safety, etc., there should be a faster and more efficient dispute resolution mechanism.
- Proposal made for a NTB-ADR Facilitation Centre.
- Basic principle behind NTB-ADR: Disposal of disputes through mediation within 30 days of goods entering a country.

Capacity Building

- Strength to muster facts and present a cogent case
- LDCs and Developing countries often assisted by the Advisory Centre for WTO Law in Geneva
- Greater capacity building required to ensure:
 - Effective negotiation
 - Adequate mastery over procedural and substantive rules

THANK YOU!