

Chapter-9

INTERNATIONAL TRADE ORGANIZATIONS

Activities relating to the World Trade Organization (WTO)

The membership of the WTO increased to 153 with Ukraine and Cape Verde joining it in the year 2008. The state of play of multilateral negotiations in the WTO on various issues covered by the Doha Work Programme is elaborated in the subsequent paragraphs.

I. Agriculture

The year saw intensive discussions and considerable progress on many elements of the Agriculture and NAMA modalities, but as in the past, issues relating to agriculture proved to be the major stumbling blocks.

Following the Revised Draft Modalities for Agriculture issued on 17th July 2007, the Chair of the WTO Committee on Agriculture (Special Session) the Agriculture Negotiating Group brought out revised drafts on 8th February, 19th May and 10th July, 2008. A fourth revision was issued on 6th December 2008. The Draft Modalities can be accessed on the WTO website (www.wto.org). The draft modalities of 10th July 2008 formed the basis of discussion at the mini-Ministerial meeting held at Geneva from 21-29 July 2008, along with a set of proposals made by the Director General of the WTO on 25th July 2008.

The mini-Ministerial talks ended without an agreement on any issue. While there was a broad consensus on some issues, there were wide divergences in positions on others including the

issue of the Special Safeguard Mechanism (SSM). Many important issues could not be taken up for discussion at all.

The Chair of the Agriculture Negotiating Group has specifically identified certain elements in the Fourth Revised Draft Modalities Text of 6th December 2008, as areas where large negotiating gaps remain to be bridged. These are Sensitive Products (SEPs), tariff quota creation, non-SEPs with tariffs higher than 100 per cent, tropical and diversification products, preference erosion and the Special Safeguard Mechanism (SSM), proposals for reduction in subsidies for Cotton and tariff simplification. The proposals in the draft modalities of 6th December 2008 are summarised below. The version is yet to be discussed in the multilateral forum.

Market Access

Tariff Cuts: Tariff cuts are proposed in four bands each for developed and developing countries. The cuts proposed for developing countries are two-thirds of the cuts to be undertaken by developed countries in a different tiered structure which is as under:

Developed Countries

Band	Cut
0-20	50%
20-50	57%
50-75	64%
75+	70%

Developing Countries

Band	Cut
0-30	33.33%
30-80	38%
80-130	42.67%
130+	46.67%

Developed countries are required to take a *minimum* overall average tariff cut of 54% while developing countries have to take a maximum overall average cut of 36%; which is two-thirds of the developed country average cut.

Special Products: the revised draft text of 6th December, 2008 proposes an average tariff cut of 11% for a 12% of total tariff lines to be designated as special products SPs with 5% of tariff lines taking zero or no tariff cuts. Although the issue was discussed during the mini-Ministerial meeting, there are a number of elements yet to be resolved to the full satisfaction of India and its coalition partners in the G-33.

Special Safeguard Mechanism: The Special Safeguard Mechanism (SSM) is important for developing countries as to enable them to protect their poor and vulnerable farmers from the effect of import surges and price declines. This is provided in the mandate of the Doha Round. So it must be a simple and effective mechanism.

- In the 6th December, 2008 version of the draft modalities, the Chair of the Agriculture Negotiating Group has retained the proposals of his text of 10th July 2008 including square brackets on the above the Uruguay Round (UR) bound level solution, which had caused the impasse in the July 2008 mini-Ministerial meeting.

- However, the Chair has given his suggestions for a possible solution to the above UR bound problem in a separate paper (TN/AG/W/7) also brought out on 6th December 2008. These suggestions, in brief, are as follows:-

- There would be two triggers for the volume based measure of 120% and 140%. The remedies corresponding to these triggers would respectively be 33% of the current bound or 8 percentage points (ppt) and 50% ad valorem or 12 ppt, on whichever is higher basis.
- The SSM would be applicable during a reporting year of 12 months for a period of [4-8] months. However, if the remedy has been applied only within [2-4] months of the end of the reporting year, it can spill over into the next 12 month period for another 2-4 months.
- The remedies would not be applicable unless the domestic price is actually declining. There may, however, be exceptional circumstances where the authorities, in the absence of sufficient data but foreseeing an imminent decline in prices, may impose the remedies. This would, however, be subject to an expedited review by a standing panel of experts.
- The SSM would be available only for 2.5% of tariff lines in any 12 month period.

There are several unresolved issues in the SSM on which considerable work needs to be done.

Sensitive Products (SEPs) and Tariff Capping: The proposal is for an entitlement of 4% tariff lines for developed country Members. Developed

country Members, who have more than 30% of their tariff lines in the top tariff band, get an additional 2% entitlement. However, in the draft modalities of 6th December, the Chair has also stated that Japan and Canada have declared themselves not to be in a position to agree to the limitation of 4% entitlement. The Chair has also retained in square brackets the proposal to allow 1% (dropping 2% from his earlier text) of non-SEPs to have tariffs of above 100% even after the implementation of the Doha Round. In a separate paper (TN/AG/W/5) also brought out on 6th December 2008, the Chair has provided some suggestions for a possible solution to the two problems of SEP entitlement and high tariffs even for non-SEPs after the Doha Round.

SEP entitlements for developing countries: the Chair has proposed flexibility for Members not wanting to expand or create tariff rate quotas (TRQs) in exchange for taking less than formula cuts on products to be designated as SEPs.

Tariff Simplification: the Chair has modified his proposal of 10th July, 2008 and has given two alternatives, viz. either 100% conversion of non ad valorem tariffs to ad valorem tariffs in the Member's Doha Round schedules or 90% conversion in the schedules (carved out of 85% for the EC), along with a condition to carry out a review during the implementation period so that within one year after the implementation period, a decision can be taken as to how to achieve 100% ad valorem coverage.

India has been asking for simplification of all agricultural tariffs (as in NAMA) as such. Complex tariffs are non-transparent and act as an additional layer of protection, which makes it difficult for developing countries to access developed country markets.

Domestic Support

Overall Trade-distorting Domestic Support (OTDS)

A tiered formula has been proposed for reduction of OTDS. Developing countries with commitments to reduce Aggregate Measurement Support (AMS) under the Uruguay Round have to take two-thirds of the reductions in OTDS proposed for developed countries. Developing countries, like India, with no AMS commitments will be exempt from any reduction commitments.

OTDS	Cuts
More than US\$ 60 billion	80%
More than US\$ 10 billion and less than or equal to US\$ 60 billion	70%
US \$10 billion or less	55%

A 70% cut brings US OTDS to about US \$ 14.5 billion. This is still well above their estimated applied level of US\$ 7 billion in 2007.

Aggregate Measurement of Support (Amber Box)

The Amber Box support also has to be reduced according to a tiered formula as indicated below. India does not have any AMS reduction commitments.

AMS	Cuts
More than US\$ 40 billion	70%
More than US\$ 15 billion and less than or equal to US\$ 40 billion	60%
Less than or equal to US\$ 15 billion	45%

Product Specific AMS Caps

In addition to the reductions on Amber Box support, this Round also seeks to place limits on subsidies at the level of products, in order to avoid shifting support between different products. For countries other than the US, the ceiling or maximum level would be the average support actually provided during the Uruguay Round implementation period (1995-2000). The calculation for the US would be based on total Amber Box support for specific products per year for that period but shared among products according to the average share over the years 1995–2004. Another special dispensation, implicitly for the US, is that they can begin with a cap that is 30% higher than the scheduled limits. The G-20 proposal envisaged all countries using 1995-2000 as the base period. India along with some other G-20 members has opposed the special dispensations proposed for the US.

Export Subsidies

According to the Doha mandate, all forms of export subsidies were to be eliminated by an agreed end date. The negotiated date was to mark the end of all scheduled export subsidies, all export credits,

export credit guarantees or insurance programmes with repayment periods beyond 180 days; and those with shorter repayment periods but failing to conform with disciplines to be negotiated. Also to be eliminated are trade distorting practices of state trading enterprises that are considered to be subsidised and food aid that did not conform with various disciplines are also to be negotiated.

Export subsidies of the kind listed in the AOA, which attract reduction commitments, are not extended in India. Also, developing countries are free to provide certain subsidies, such as subsidising of export marketing costs, internal and international transport and freight charges etc.

According to the proposals in the 6th December 2008 text, developed countries are required to eliminate all export subsidies by 2013, of which half is to be eliminated by 2010 and the rest in equal installments by the end of 2013. Developing countries are required to do so by the end of 2016. They will continue to have the right to use some types of export subsidies till the end of 2021. The draft modalities also prescribe detailed disciplines for Export Credits, Food Aid and State Trading Enterprises.

Box 9.1

India's Priorities in the Agriculture Negotiations

- Safeguarding the interests of low income and resource poor agricultural producers;
- Substantial and effective reductions in domestic support and tariffs in agriculture by developed countries, while enabling developing countries to protect and promote the interests of their low income and resource poor farmers;
- India has been working constructively with her coalition partners in developing country groupings such as the G-20 and the G-33 in order to achieve an outcome in the agricultural negotiations that would fully reflect the level of ambition of the Doha mandate and the interests of developing countries.

II. Non Agricultural Market Access (NAMA)

NAMA negotiations, deals with market access for non agricultural or industrial goods, along with appropriate special and differential treatment for developing countries. Agriculture and NAMA have been part of the core negotiating agenda at the WTO during 2007 and 2008 with the focus on finalising modalities.

The NAMA negotiations have been based on the texts or draft modalities taken out by the Chairman of the NAMA negotiating group. The revised text of 6th December 2008 taken out by the new Chairman of the NAMA Negotiating Group Ambassador Luzius Wasescha incorporates some of the numbers proposed on formula coefficients, flexibilities and anti-concentration by the Director General of the WTO during the July 2008 Mini Ministerial meeting. On issues such as sectoral initiatives, the text recognizes that further work or negotiations are required.

The main elements of the NAMA negotiations are:-

Formula for tariff reductions

Under the Doha mandate, the tariff reduction on bound rates is to be effected through a non linear formula known as the Swiss formula. The mandate is to eliminate high tariffs, tariff peaks and tariff escalation, especially on products of export interest for developing countries. Moreover, the mandate states that the tariff reductions would follow the principle of less than full reciprocity (LTFR) in reduction commitments. India and its coalition partners in NAMA-11 have been advocating that any selection of Swiss coefficients must satisfy the LTFR mandate wherein developing countries would undertake lower reduction commitments from bound rates than developed countries.

In the text of the Director General of the WTO at the Mini Ministerial during July, 2008 and the revised NAMA text of 6 December, 2008; a Swiss coefficient of 8 was proposed for the developed countries. For developing countries applying the formula, coefficients were linked to the quantum of flexibilities used as given in the table in the next page.

Treatment of Unbound tariff lines

Unbound tariff lines are those lines where WTO Members had not taken any binding commitments during the earlier rounds of trade negotiations. However, in the NAMA negotiations, all countries applying the formula are to bind all these tariff lines. In the draft NAMA modalities of 6 December, 2008, it was proposed that on unbound tariff lines, Members would apply a 25 basis points mark up on their applied rates of 2001 to arrive at the base rates. The formula reductions would then commence from these base rates.

Flexibilities

Flexibilities refer to the right of developing countries to exclude certain number of their products from any new tariff reduction commitment or binding or not offer that level of reduction as what the common formula finally agreed will require. Flexibilities are integral to the concept of special and differential treatment for developing countries in all WTO agreements. In the Doha Round negotiations, the issue has been the extent of flexibilities that developing countries should have that will balance their developmental needs and also contribute to the significant enhancement in the market access for industrial products. Till now the issue was how to address the varying needs of the different developing countries, all of whom are at differing levels of development and with different industrial and economic structures.

Coefficient and Flexibilities for Developing Countries

Swiss coefficient	Flexibilities
20	At least half the formula cuts to 14% lines subject to 16% of total NAMA imports, OR Keeping unbound and /or not applying formula cuts to 6.5% lines subject to 7.5% of total NAMA imports
22	At least half the formula cuts to 10% lines subject to 10% of total NAMA imports, OR Keeping unbound and /or not applying formula cuts to 5% lines subject to 5% of total NAMA imports
25	No flexibilities

Box 9.2

India's priorities in NAMA

- Application of the principle of “less than full reciprocity” in tariff reduction commitments for developing countries;
- A fair markup on the applied tariffs for unbound tariff lines;
- Appropriate and adequate flexibilities to protect the sensitive tariff lines;
- Participation in sectoral agreements to be on a non mandatory basis without any pre-judgment of the outcome, and no linkage between formula coefficients and participation in sectorals.

In the 6th December 2008 draft modalities, the Chairman offered developing countries the option to choose from a menu that has three alternate Swiss formula coefficients namely 20, 22, and 25 with related flexibility levels. A lower coefficient, i.e., higher general tariff reduction would allow a developing country higher flexibility and vice versa. This structure has been generally accepted, though the numbers are still being negotiated.

Anti-concentration clause on flexibilities is meant to ensure that developing countries do not concentrate their flexibilities in specific NAMA sectors. In the NAMA text of 6th December, 2008, its has been proposed that each developing country

utilising flexibilities would take full formula cuts on a minimum of either 20% of the national tariff lines or 9% of the value of NAMA imports in each Chapter of the Harmonised System (HS) of tariff classification.

Sectoral Initiatives

A non-mandatory element of the NAMA negotiations is the sectoral initiative wherein the tariffs could be eliminated or harmonized at low levels in specific sectors of export interest to the proponent or the country proposing the sector. Sectoral initiatives allow members to focus on specific sectors of their interest and ensure greater market opening than that achieved through the

formula approach. The sectoral initiatives have become a key issue for many proponents in the context of an overall agreement at the WTO.

In the draft modalities of 6th December, 2008; 14 sectoral proposals are annexed to the draft modalities which include automotive and related parts; bicycle and related parts; chemicals; electronics/ electrical products; fish and fish products; forest products; gems and jewellery; hand tools; enhanced healthcare; industrial machinery; raw materials; sports equipment; textiles clothing and footwear; and toys. The modalities state that participation in sectoral initiatives is on a non mandatory basis without pre-judging the outcome. Further, specified group of countries are to agree to participate on a self-identified basis in negotiating the terms of sectoral tariff initiatives, with a view to making them viable.

Non-tariff barriers

On non-tariff barriers (NTBs), the negotiations are based on specific textual proposals either cutting across sectors (known as horizontal proposals) or pertaining to specific sectors (vertical proposals).

Out of the 13 proposals listed in the NAMA text of 6th December, 2008, the following 7 proposals merit special attention:

- i. Ministerial Decision on Procedures for the Facilitation of Solutions to Non-Tariff Barriers;
- ii. Ministerial Decision on Trade in Remanufactured Goods.
- iii. Negotiating Proposal on Non-Tariff Barriers in the Chemical Products and Substances Sector;
- iv. Understanding on the Interpretation of the Agreement on Technical Barriers to Trade as Applied to Trade in Electronics;

- v. Agreement on Non-Tariff Barriers Pertaining to the Electrical Safety and Electromagnetic Compatibility (EMC) of Electronic Goods;
- vi. Understanding on the Interpretation of the Agreement on Technical Barriers to Trade with Respect to the Labelling of Textiles, Clothing, Footwear, and Travel Goods; and
- vii Agreement on Non-Tariff Barriers pertaining to Standards, Technical Regulations and Conformity Assessment Procedures for Automotive Products.

Preference Erosion

An issue affecting smaller developing countries is the erosion of their market access due to the reduction in MFN tariff levels. All developed countries have established schemes that allow smaller developing countries duty free or low duty access for their export products. These schemes are largely responsible for the export performance of these countries, despite their lack of a general competitive industry. To allow these small developing countries time to restructure and improve their competitiveness, developed countries will be granted a longer period to phase in their tariff commitments on such products. On the other hand, there is also recognition that some developing countries would be disproportionately affected since some of these affected tariff lines are of export interest to them. The tariff cuts would be accelerated for these disproportionately affected countries for the specific lines of export interest for them.

In the NAMA text of 6th December, 2008; 57 tariff lines of the EC and 29 tariff lines of the US have been identified as being affected by erosion of preferences. Bangladesh, Cambodia, Nepal, Pakistan and Sri Lanka are listed as countries disproportionately affected.

Box 9.3

Duty Free Tariff Preference Scheme For LDCs

- The Duty Free Tariff Preference (DFTP) Scheme for Least Developed Countries (LDCs) was announced by the Hon'ble Prime Minister at the India- Africa Forum Summit on 08.04.2008 at New Delhi. The Scheme provides preferential and duty market access on exports of specified products into India from all the 49 LDCs.
- Though undertaken unilaterally, it is in line with the decision taken in the World Trade Organisation's (WTO's) Hong Kong Ministerial Declaration of December, 2005. Annex F of the Ministerial declaration mandates that developed-country Members and developing-country Members (declaring themselves in a position to do so) should provide duty free quota free (DFQF) access on a lasting basis on at least 97% of the products originating from LDC. However, Developing-country Members like India are permitted to phase in their commitments and enjoy appropriate flexibility in coverage.
- The DFTP scheme grants duty - free access on 85% of India's total tariff lines to be implemented over a period of 5 years through 5 equal tariff reductions of 20% each on the current applied rates. On 9% of India's total tariff lines, the scheme grants preferential duty access as per a prescribed margin of preference (MOP) on the applied rates over the same period of 5 years. Thus, the DFTP LDC Scheme would provide duty free and preferential market access on 94% of India's total tariff lines. Only 6% of India's total tariff lines are in the Exclusion List on which no preferential duty access would be granted.
- The Scheme provides preferential duty access on products comprising 92.5% of global LDC exports. The products of immediate interest to LDCs which are covered include cotton, cocoa, aluminium ores, copper ores, cashew nuts, cane sugar, readymade garments, fish fillets and non-industrial diamonds.
- 15 LDCs namely, Benin, Burkina Faso, Cambodia, Gambia, Eritrea, Ethiopia, Lao PDR, Madagascar, Malawi, Mozambique, Myanmar, Rwanda, Samoa, Uganda and Tanzania have been notified as beneficiaries under the Scheme.

III. Services

Services negotiations are an essential part of the Doha Development Agenda (DDA). For India, an ambitious outcome in Services would be integral to the overall balance in the results of the DDA as a single undertaking.

The core interest of most of India's trading partners particularly developed countries is in Mode 3,

where they have requested either for binding the present level of FDI policy, or not for offering a more liberal policy than what is currently prevailing by opening up new Services sectors.

Another area of crucial interest to India is development of strong disciplines in domestic regulations without which Mode 4 access gets severely impeded. Negotiations on this subject are proceeding on the basis of Chairman's text tabled in

Box 9.4

India's major interests in Services

India's major interests in services negotiations lie in the liberalization of Modes 1&2 (Cross Border Supply) and Mode 4 (Movement of Natural Persons). In Cross Border Supply of Services (Modes 1 & 2), India has requested from its major trading partners for a broad based commitments across a wide range of sectors while in Mode 4, India has asked its trading partners to undertake liberal commitments with regard to temporary entry of Independent Professional (IP) and Contractual Service Suppliers (CSS) for providing services and sought removal of various limitation for movement of natural persons.

Working party on Domestic Regulations (WPDR). India has argued to strike a balance between the right to regulate and regulations becoming unnecessary barriers to trade.

A mini-Ministerial meeting was held at the WTO during 21-30 July, 2008 to finalize Agriculture and NAMA modalities when a 'Signaling Conference on Services' was also held on 26th July, 2008. At the Conference members gave signals with regard to the services sectors/modes they are likely to offer a qualitative improvement upon their earlier commitments/ offers. In the Signaling Conference India has indicated that it may improve its Revised Offer in some of the services sectors of interest to the developed countries subject to the conditions that the developed countries should also respond positively to India's interest in Modes 4 & 1 and disciplining of Domestic Regulations.

The Chairman of the Council for Trade in Services – Special Session on 28th July, 2008 has come out with his report titled "Elements required for the Completion of the Services Negotiations". India welcomes this report as it has not deviated the objectives and purposes of the services negotiations stipulated at Annex 'C' of the Hong Kong declaration.

IV. Rules negotiations

As per the mandate of the Doha Declaration in para 28, Members are engaged in negotiations aimed at clarifying and improving disciplines under the Anti Dumping Agreement and the Agreement on Subsidies and Countervailing Measures (ASCM), while preserving the basic concepts, principles and effectiveness of these agreements and their instruments and objectives. Based on the negotiations held in the Negotiating Group on Rules (NGR) under the Doha Round, the Chair of NGR had issued draft texts of the Anti-dumping Agreement and the Subsidies and Countervailing Measures Agreement including the fisheries subsidies on 30th November 2007. The texts had several imbalances. For instance, in the Anti-dumping agreement it proposed amendments to allow the practice of zeroing in dumping margin calculations which was opposed by a large number of WTO Members. Also, the provision of lesser duty rule was dropped from the text even though it was required of Members only on a voluntary basis. In fisheries subsidies, the text prescribed several unwarranted conditions for availing the special and differential treatment (S&D) by the developing countries. India along with Indonesia and China proposed a revised fisheries subsidies

Box 9.5

India's stand on Rules Negotiations

- Strengthening of disciplines in anti-dumping including prohibition of zeroing, stronger rules on reviews- including sunset reviews, mandatory application of lesser duty rule.
- India is opposed to the enlargement of the scope of prohibited subsidies in the Agreement on Subsidies and Countervailing Measures (ASCM) and /or limit the existing flexibilities for the developing countries.
- India is seeking effective special and differential treatment (S&D) for the developing countries in the new disciplines on fisheries subsidies, particularly in the light of employment and livelihood concerns for small, artisanal fishing communities and for retaining sufficient “policy space” so as to enable it to develop its infrastructure.

text in the papers submitted to the NGR in April and May 2008. The Chair has now issued new draft texts on 18th December, 2008 on Rules negotiations wherein he has identified issues where there is considerable disagreement among Members in the Anti-dumping and Subsidies Agreements. In fisheries subsidies, the Chair has not tabled a revised text but has instead suggested a road map for further discussions on the identified issues.

V. TRIPS Related Issues

TRIPS – CBD

India and other developing countries have been raising the issue of protection of traditional knowledge and the relationship between the Convention on Bio-Diversity (CBD) and the TRIPS Agreement for the last few years in the WTO. India had submitted a proposal (IP/C/W/474 dated 5th July 2006) to amend the TRIPS agreement by incorporating a new provision, Article 29, that would make it mandatory for patent applicants to disclose the use of any biological resources or associated traditional knowledge (TK) in their invention. The thrust areas of the Disclosure

Groups proposal (comprising of Brazil, China, Colombia, Cuba, India, Pakistan, Peru, Thailand and Tanzania) are:

- Source and country of origin of the biological resource and of the traditional knowledge used in the invention should be disclosed;
- Evidence to be furnished of prior informed consent (PIC) under the relevant national regime;
- Evidence to be furnished of benefit sharing (BS) under the relevant national regime.

There have been discussions on the proposals submitted in this regard by various countries including India. While some countries have expressed support for the Disclosure Group's Proposal, some developed countries have strongly opposed the proposal and, in general, the idea of a disclosure amendment to the TRIPS Agreement. Their argument is that a new disclosure requirement would not help prevent the issuance of “bad” patents that incorporate genetic resources without proper recognition of the source or access agreements. The disclosure proposal is also viewed as being burdensome in terms of procedures & costs on patent offices.

Geographical Indications (GI) Extension

The “Friends of GIs Group” (India, Switzerland, the EC, Sri Lanka, etc.) have been demanding the removal of the disparity between two different levels of protection for GIs (one, for wines and spirits, two for all other products). They have been demanding an expansion of the scope of protection available under Article 23 of the TRIPS Agreement to products other than wines and spirits also. The basic idea behind seeking extension of Article 23 protection to all other products is that GIs can be used to promote the export of valuable products and prevent misappropriation.

GI Register

Informal consultations are also taking place at the WTO on the issues around the GI Register. In 2007, the EC had proposed a new proposal on GIs. In these discussions, India has emphasized on the strong linkage between the issues of GIS and CBD.

Present State of Play

During 2008 there has been a significant change in dynamics in TRIPS related issues. Around 110 countries including India, EC, Albania, Brazil, China, Colombia, Ecuador, the European Communities, Iceland, India, Indonesia, the Kyrgyz Republic, Liechtenstein, the former Yugoslav

Republic of Macedonia, Pakistan, Peru, Sri Lanka, Switzerland, Thailand, Turkey, the ACP Group and the African Group have filed modalities text on the three TRIPS issues (TN/C/W/52) on July 19, 2008.

Key elements of the draft modalities text on disclosure incorporate a TRIPS Amendment to include a mandatory disclosure requirement of country providing/source and defining the details of Prior Informed Consent (PIC) and Access and Benefit Sharing (ABS) later on. While pre-grant sanction has been included, post grant legal effects will be discussed later. On GI Extension, of which India has been one of the old proponents, the text calls for extending higher level of protection (currently available to only wines and spirits,) to all products. There is a window for including these items in the GI Register, if GI extension is agreed to.

VI. Trade and Environment

The Doha Ministerial Declaration had provided a negotiating mandate on certain issues relating to trade and the environment. On the important issue of identifying environmental goods and services, the developed countries had submitted a list of environmental goods. The list focuses only on goods, and does not address the issue of environmental services. Moreover, most of the

Box 9.6

India’s Stand on Geographical Indications (GI)

- The issues of GIs and CBD are inextricably linked.
- India expects similar outcomes on the three TRIPS issues.
- Without a satisfactory outcome on CBD and GI Extension, we do not envisage an independent outcome on GI register.

goods in the “list” have dual or multiple uses and cannot be justified as pure environmental goods.

India has submitted an alternative approach, called the “Environmental Project Approach” which clearly identifies environmental benefits and eliminates, or at least reduces, benefits from accruing to dual or multiple use products. It brings in synergy between environmental goods and services, and by linking tariff concessions to a particular project, mitigates the apprehensions caused by the “list” approach, of misuse. The approach has been supported by some developing countries. India and Argentina have recently submitted an integrated {Job (07)/77} approach on 6th June, 2007 essentially keeping the essence of the project approach along with an element of the list approach, which has received the support of some countries.

Present State of Play

The present status of the negotiation in the WTO is that in July 2008 members have been requested to prepare a work plan and make submission on environmental goods of interest to them identified across as many categories as possible; and submit a list of environmental goods exchanged with the other members under request/offer approach. Members have also been requested to submit concrete proposals on cross cutting issues such as technical assistance, capacity building, S&D treatment and transfer of technology.

VII. Trade Facilitation

Negotiations on trade facilitation started in November 2004 pursuant to the WTO’s July Framework Agreement of 2004. The modalities for negotiation are set out in Annex D of the July Framework Agreement.

The object of the negotiations is to reduce trading costs and facilitate trade. In the ongoing

negotiation, Members have submitted a large number of proposals for amplification of GATT Articles V, VI and X. The proposals cover a wide range of issues connected with import, export and transit procedures and connected requirements of documentation and fees. The main thrust of the proposals is to impart greater transparency to laws and regulations concerning import and export, and to modernize the border clearance and transit procedures. The domain of most of the proposals is confined not just to Customs but extends to other border agencies as well.

India’s participation in the negotiations has been positive and constructive. India has posed several questions and has submitted proposals of its own. India has made a proposal for establishing a mechanism for exchange of information between customs administrations. India has presented a proposal stipulating uniformity in border clearance procedures at the borders of a customs union.

Developing countries have emphasized the need for an adequate mechanism for technical assistance and capacity building for developing and least developed countries to enable them to implement the commitments that may emerge out of the negotiations. India has expressed support for these concerns.

VIII. Disputes in the WTO and negotiations under the Dispute Settlement Understanding (DSU)

Dispute Settlement is the central pillar of the rules based multilateral trading system and the WTO’s unique contribution to the stability of the global economy. It underscores the rule of law and makes the trading system more secure and predictable. The salient features of the system are:

- It is based on clearly-defined rules,
- There are timelines for completing a case,

- Provisions exist for consultations, good offices, conciliation and mediation.
 - Rulings are first made by a panel and endorsed (or rejected) by the WTO's full membership.
 - Appeals based on points of law are possible.
- As per the mandate of the Doha Declaration, the WTO Members are engaged in negotiations aimed at improvements and clarifications of the Dispute Settlement Understanding (DSU). The negotiations are taking place in the Special Session of the Dispute Settlement Body (DSB). The work

Box 9.7

India and the DSU

- In the *dispute DS345*, India had challenged the Enhanced Bond Requirement (EBR) stipulated by the US Customs under the Amended Bond Directive for importation of shrimps from India. For India, this dispute has significant economic implications as shrimp farming in India is dominated by small farmers who are engaged in low-density farming and the EBR had made their exports uncompetitive and posed a threat to their livelihood. The WTO Panel had given its ruling on 29th February 2008 concluding *inter-alia* that the US EBR as applied to India's shrimp exports was inconsistent with the Anti-dumping Agreement. Both the US and India had appealed against the Panel's rulings on different grounds. The Appellate Body, in its report dated 16th July, 2008 upheld the Panel's ruling that the US EBR as applied to shrimps exports from India is inconsistent with the WTO Anti-dumping Agreement. The Appellate Body report was adopted by the Dispute Settlement Body (DSB) of WTO on 1st August, 2008. As per the procedures of the DSU, the US has agreed to implement the ruling of the Appellate Body by 1st April, 2009.
- As a respondent, India was involved in the dispute *DS 360* where the US had challenged the levies of additional duty by India under section 3(1) of the Customs Tariff Act and such other additional duties under section 3(5) of the Customs Tariff Act in excess of its bound rates. The report of the panel was issued on 9th June, 2008. The Panel had concluded, *inter-alia*, that (a) the United States has failed to establish that India's Additional duty (AD) on alcoholic liquor is inconsistent with Article II.1 (a) or (b) of the GATT 1994; and (b) the US has failed to establish that such Additional Duty (SUAD) of India is inconsistent with Article II.1 (a) or (b) of the GATT 1994. Both the US and India had appealed on the Panel's rulings on different grounds. The Appellate Body issued its report on 30th October, 2008. The Appellate Body has reversed the Panel's findings that the US had failed to establish that the AD and SUAD are inconsistent with Articles II: 1 (a) and II:1 (b) of the GATT 1994. However, the Appellate Body found that the US was required to present arguments and evidence that the AD and SUAD are not justified under Article II:2 (a) of GATT 1994 and that India, in asserting that those duties are justified, was required to adduce arguments and evidence in support of its assertion. The Appellate Body could not give a categorical finding regarding the justification of additional duty and SUAD under Article II: 2(a) of GATT in the absence of sufficient arguments and evidence. The Appellate Body has, however, refrained from making any recommendations to the Dispute Settlement Body (DSB).
- India has also been participating as a third party in several disputes and expressing its systemic concerns and seeking to protect its trade interests from non-compliance of negotiated multilateral rules at the WTO by some Members.

in the Special Session has been primarily based on efforts by Members to work among themselves and develop areas of convergence. India and other developing countries have been reiterating their intentions for a development oriented review of the Dispute Settlement Procedures under the Doha Development Agenda (DDA). The Like Minded Group (LMG), of which India is a Member, had an extensive outreach programme in different settings i.e., bilateral and plurilaterals aimed at explaining the paper, its substantive contents and reasoning. The Chairman of the Special Session of the DSB issued a report on 18th July 2008 reporting the progress made in the negotiations on various issues such as Third party rights, Panel composition, Remand, Mutually agreed solutions, Strictly confidential information, Sequencing, Post retaliation, Transparency and amicus curiae briefs, Time frames, Developing country interests, including Special and Differential (S&D) treatment, Flexibility and Member control and Effective compliance. Negotiations in the Special Session of the DSB are in progress.

Economic and Social Commission for Asia and the Pacific (ESCAP)

India is one of the founding members of ESCAP, the regional development arm of the United Nations, which serves as the main economic and social development center for the United Nations in Asia and the Pacific. Its mandate is to foster cooperation between its 53 members and 9 associate members. ESCAP provides the strategic link between global and country-level programmes and issues. It supports Governments of the region in consolidating regional positions and advocates regional approaches to meet the region's unique socio-economic challenges in a globalizing world. The major areas of work of ESCAP include:

- Regional Economic Cooperation;
- Poverty Alleviation through Growth and Social Development;
- Environment and Sustainable Development;
- Development of Transport Communications, Tourism and Infrastructure Development in the region; and
- Enhancing capabilities of National Statistical Organisations.

The 64th Annual Session of ESCAP was held in Bangkok, Thailand from 24 – 30 April, 2008. The theme topic for the Session was “Energy security and sustainable development in Asia and the Pacific”. The Indian delegation was led by the Hon’ble Minister for Commerce and Industry, Shri Kamal Nath. He delivered India’s policy statement which expressed India’s support, in principle, to the proposed establishment under ESCAP, of a \$ 1 million fund for undertaking various policy studies for implementation of the Asia-Pacific Sustainable Energy Security Framework.

India sponsored the following two resolutions which were adopted by the Commission:

- ‘Regional cooperation in the implementation of the Hyogo Framework for Action 2005-2015: Building the Resilience of Nations and Communities to disasters in Asia and the Pacific’.
- ‘Promoting Renewables for Energy Security and sustainable development in Asia and the Pacific’.

The 65th Annual Session of ESCAP was held at Bangkok, Thailand from 23rd April to 29th April 2009. The theme topic of the Session was “Sustainable Agriculture and Food Security in Asia and the Pacific”.

Box 9.8**India and ESCAP**

India has worked in close cooperation with ESCAP during the year. Government of India committed continued financial support to the following four regional institutions of ESCAP:

- Asian and Pacific Centre for Transfer of Technology (APCTT), New Delhi, India;
- Statistical Institute for Asia and Pacific (SIAP); and
- Asia and Pacific Centre for Agriculture and Engineering Machinery (APCAEM).
- Asian & Pacific Training Centre for Information & Communications Technology for Development (APCICT).

United Nations Conference on Trade and Development (UNCTAD)

United Nations Conference on Trade and Development (UNCTAD) aims at integration of developing countries into the world economy. UNCTAD serves as the focal point within the United Nations for the integrated treatment of trade and development and the interrelated issues in the areas of finance, technology, investment and sustainable development. Three pillars of UNCTAD's existing mandate are: a) independent policy analysis; b) consensus building; and c) technical assistance.

The Ministerial Conference, which meets every four years, is UNCTAD's highest decision making body. The UNCTAD XII Ministerial Conference Meeting was held in Accra, Ghana from 20 - 25 April, 2008. Indian delegation was led by the Commerce & Industry Minister (CIM). The UNCTAD XII Ministerial Conference included the High-level Segment Meeting which discussed the issue of "Trade and Development for Africa's Prosperity". This meeting was attended by several Heads of State/ Governments. CIM addressed the High Level Segment and utilized this opportunity

in highlighting the benefits of the Duty Free Tariff Preference (DFTP) Scheme, which was announced by the PM during the India - Africa Forum Summit in New Delhi in May 2008.

The theme of UNCTAD XII was "Addressing the Opportunities and Challenges of Globalization for Development". CIM participated in the General Debate of UNCTAD XII, which was held on 22nd April, 2008. CIM's intervention focused largely on India - Africa relationship (as UNCTAD XII Meeting was held in Africa), status of current Doha Round trade talks and the relevance of UNCTAD in the present globalized world. The CIM held meetings with more than ten African Heads of State/ Government and discussed the issues of bilateral trade and economic cooperation and increasing technical cooperation with Africa.

Global System of Trade Preferences (GSTP)

The Agreement establishing the Global System of Trade Preferences (GSTP) among Developing countries was signed on 13th April, 1988 at Belgrade following conclusion of the First Round of Negotiations. The GSTP came into being after a

long process of negotiations during the Ministerial Meeting of the Group of 77, notably at Mexico City in 1976, Arusha in 1979 and Caracas in 1981. The Ministers of Foreign Affairs of the Group of 77 in New York set up the GSTP Negotiating Committee in 1982. The New Delhi Ministerial meetings, held in July 1985, gave further impetus to the GSTP negotiation process. The Brasilia Ministerial Meeting held in May 1986 launched the First Round of GSTP Negotiations. At the conclusion of the First Round in April 1988 in Belgrade, the GSTP Agreement was signed on 13 April 1988. The Agreement entered into force on 19th April 1989. Forty-four countries have ratified the Agreement and have become participants. The GSTP establishes a framework for the exchange of trade concessions among the members of the Group of 77. It lays down rules, principles and procedures for conduct of negotiations and for implementation of the results of the negotiations. The coverage of the GSTP extends to arrangements in the area of tariffs, para-tariff, non-tariff measures, direct trade measures including medium and long-term contracts and sectoral agreements. One of the basic principles of the Agreement is that it is to be negotiated step by step improved upon and extended in successive stages

The GSTP Negotiating Committee at the Senior Officials' level also met at Accra on the sidelines of the UNCTAD XII Ministerial Conference and agreed to; a) carry out negotiations on the basis of across-the-board, line-by-line, linear cut of 20 to 40 per cent on dutiable tariff lines, to be combined with request-and-offer and/or sectoral negotiations; and b) to assume commitments on at least 70% of dutiable tariff lines.

Asia Pacific Trade Agreement (APTA)

The Asia-Pacific Trade Agreement (APTA), previously named the Bangkok Agreement, signed

in 1975 as an initiative of ESCAP, is a preferential tariff arrangement that aims at promoting intra-regional trade through exchange of mutually agreed concessions by member countries. APTA has six members namely Bangladesh, China, India, Republic of Korea, Lao People's Democratic Republic and Sri Lanka. ESCAP functions as the secretariat for the Agreement.

The Second Ministerial Council Meeting of Asia Pacific Trade Agreement (APTA) was held in Goa on 26th October 2007. The Indian delegation was led by Commerce & Industry Minister (CIM) who presided over the Meeting as Chairman. The Ministerial Council adopted, through the Ministerial Declaration, a common set of "Operational Procedures for the Certification and Verification of the Origin of Goods under the Asia-Pacific Trade Agreement", as recommended by the 27th Session of the Standing Committee and agreed to implement these procedures with effect from 1st January, 2008.

The important decisions taken in the Meeting are as follows:

- The 4th Round of Negotiations would be launched. The Standing Committee has been directed to conclude the negotiations by the 3rd Ministerial Council Meeting (scheduled to be held in October, 2009).
- The Standing Committee is to adopt modalities for extension of negotiations in other areas such as non-tariff measures, trade facilitation, services, and investment. To this effect the prospects of APTA have been widened by the Ministers.
- A common set of Operational Procedures for the Certificate and Verification of the Origin of Goods for APTA was approved and it was decided that the same would be implemented w.e.f. 1st January, 2008.

- The Standing Committee and the Secretariat would take necessary action to expand the membership of this Agreement and Member Countries to give positive consideration to support the Secretariat's activities relating to APTA.

To move forward the 4th Round of Negotiations, the 32nd Session of the Standing Committee was held on 27th-29th May, 2009 in Bangkok, Thailand.

Bay of Bengal Initiative on Multi-Sectoral Technical and Economic Cooperation (BIMSTEC)

The initiative to establish Bangladesh-India-Sri Lanka-Thailand Economic Cooperation (BIMST-EC) was taken in 1994 to explore economic cooperation on a sub-regional basis involving contiguous countries of South East & South Asia grouped around the Bay of Bengal. Myanmar was admitted in December, 1997 and the initiative was renamed as BIMST-EC. It may be mentioned

that the initiative involves 3 members of SAARC (India, Bangladesh & Sri Lanka) and 2 members of ASEAN (Thailand, Myanmar). BIMST-EC is visualized as a bridge between two major regional groupings i.e., ASEAN and SAARC. BIMST-EC is an important element in India's "Look East" strategy and adds a new dimension to our economic cooperation with South East Asian countries.

A free trade agreement between the member states of BIMSTEC is being negotiated. So far 18 meetings of the Trade Negotiating Committee have been held. The last TNC meeting was held in Colombo from 16 -18 October 2008. The 2nd BIMSTEC Summit was held on 13th November 2008, preceded by the 11th Ministerial Meeting and the 13th Senior Official's Meeting on 11-12 November 2008 in New Delhi, India. The Summit has taken place four years after the 1st BIMSTEC Summit in Thailand. The 2nd BIMSTEC Summit has given a strong political impetus to the strengthening of BIMSTEC cooperation in the identified 13 priority sectors.