

URGENT MEMORANDUM

To: Kamal Nath, Union Minister of Commerce & Industry, India

From: Pradeep S. Mehta, Secretary General, CUTS International

Cc: Gopal K. Pillai, Secretary, Department of Commerce; Rahul Khullar, Additional Secretary, Department of Commerce; Ujal Singh Bhatia, India's Ambassador to the WTO

Subject: India's Strategy in the Doha Round at the current juncture

Date: 28/06/2008

We are submitting this urgent memo keeping in view India's critical role in the ongoing Doha Round of trade negotiations and the latest happenings in Geneva, on which the Minister held a press conference on 25th June 2008. A Mini-Ministerial has been summoned on 21 July 2008 in Geneva, in which more than 30 trade ministers are expected to take part. Therefore, we urge our Minister and other trade negotiators to review the following pertinent issues while engaging in crucial negotiations ahead.

The need for strategic thinking

The original Quad (USA, EU, Japan and Canada) that met regularly at ministerial level from the end of the Tokyo Round in the 1970s through the lengthy Uruguay Round negotiations to the early days of the WTO does not meet at the Ministerial level now. A new Quad comprising of USA, EU, Brazil and India assumed greater importance in multilateral trade negotiations. While India has been participating quite actively and vocally in this privileged group, it has not been as proactive in dropping new issues on the negotiating table. For instance, we have witnessed in the past how issues like ITA (Information Technology Agreement) were lobbed into the arena at Singapore or E-commerce was thrown in at the Geneva ministerial meeting on the Golden Jubilee of the GATT. These and several other issues were brought out of the blue into the WTO negotiating agenda. And the rich countries supported by their battery of negotiators are quite clever at this game, always scheming and planning, and putting the rest of the world on the defensive. Traditionally, India has largely been reactive in its own stance.

In the past, India has tried to push forward issues like temporary movement of natural persons, S&DT (special & differential treatment), developmental box in agreement on agriculture and implementation issues, but during the course of negotiations all these issues have been relegated to the backburner. Raising and persisting with such issues is always useful in putting the opponents on a defensive and reactive mode. And in negotiations, offense is the best form of defense.

The most recent example is the inclusion of "anti-concentration" clause in NAMA text (19th May 2008), which has brought sharp reactions from India and many other developing countries, including our two apex business chambers. But is that sufficient to make our case?

We must use strategic thinking to respond to such measures, rather than just opposing the suddenly placed new issues and be caught on the back foot. More on this in the following.

AMA vs. NAMA

The current negotiations on the Doha round have straddled between Agriculture Market Access and Non-Agriculture Market Access (AMA vs. NAMA), with the rich wanting to extract their pound of flesh in industrial goods, while giving up something on agriculture. The problem is that they are demanding greater commitment from developing countries under NAMA. While, the level of ambition in agriculture has been lowered significantly, in NAMA the rich are much too greedy and patently dishonouring the core mandate of NAMA negotiating agenda. The inclusion of anti-concentration clause under Paragraph 7(f) in the latest NAMA text, linking coefficients with flexibility goes against the principle of “less than full reciprocity” as envisaged in the negotiating agenda.

Not just as a response to this, but on an equally strong basis, India must, in conjunction with its G-20 allies, launch a new paper, which will:

a) Push for inclusion of a separate agreement/clause in the agriculture text on preventing the practice of box slotting and additions. Developed countries have been following this practice by shifting most of their potentially trade distorting subsidies into the Green Box, meant for inclusion of only those subsidies which are least trade distorting. In order to curb this tendency, we need to ask the developed countries to prepare a positive list of programmes and boxes in which they want them. (This needs to be cast in stone, as it is expected from the poor countries). See Annexure-A

b) Ask for an anti-concentration clause in the list of sensitive products which the rich would be seeking a carve out for. See Annexure-B

Raising the above issues at this juncture would be a befitting reply to “anti-concentration” clause in NAMA as lobbed into the text at the behest of EU and the USA.

India Not Morally Bound

Not being a demandeur of a new round of trade negotiations at Doha in 2001, India is not morally bound to ensure its successful winding up. In spite of that, as a good international citizen, India has been playing a constructive role in the ongoing negotiations. In fact, India can take a high moral ground today reminding the world of her original stance that without satisfactorily addressing the implementation issues a new round was not desired. India cannot be blamed as the spoiler under the circumstances when both EU and the US are behaving quite irresponsibly. For instance, the US farm bill has made mockery of any subsidies reduction deal in the Doha round, even though the actual payments of the allotted amounts may never be made if we take a look at the rising farm incomes in the west. However, for the purpose of negotiations this is analogous to bound tariffs and applied tariffs.

It was the rich countries who promised to deliver on development but contrary to this it is India, Brazil and China who have better tried to address the developmental concerns of poor countries. Following the Hong Kong Ministerial Declaration on duty free quota free market access to LDCs, India, Brazil and China have declared their intentions to this effect. On the other hand USA continues to exclude Asian LDCs – Bangladesh, Cambodia, Lao etc. from its duty free quota free market access scheme for LDCs.

Would it matter to India if the Doha round cannot be concluded now? Or in the words of Jomo Sundaram, Assistant Secretary General of the UN, "I think only a significant failure might actually force people back to the drawing board".

India cannot do Hara-kiri

Although Lamy has called for Mini-Ministerial in July but in no way it indicates that we are closer to the deal. Since Lamy is running against time, and is in a Catch 22 situation, he has no option but to take this decision. Firstly, consensus still eludes both AMA and NAMA. In fact, NAMA negotiations have become more complex and contentious.

Secondly, we know that the US Congress would not pass a Doha round package even if it is supported by the unpopular President George Bush before he leaves office in January 2009. In the absence of the Presidential Trade Promotion (Fast Track) Authority, US Congress would be free to make amendments or reject the deal. Therefore, India must not show any urgency on its part for striking a deal.

Thirdly, we are likely to have a general election in winters, and any deal which maybe struck will invite strong criticism from the Opposition, which is bound to oppose any deal. The Minister is likely to face the brunt of such criticism.

Moreover, India is not going to lose much in the eventuality of delay in conclusion of a round or its failure. According to one estimate a failed Round would only cost India approximately US\$3.5bn, while it will cost Brazil about US\$3.9bn and China only US\$1.3bn.

It is a fact that the failure will lead to increased protectionism and disputes, and further economic slowdown globally, but do we have a choice. Our own economy is doing well and our Look East policy should also be accelerated to ensure that our export lead growth strategy does not suffer much.

What should be done by India when the worse happens

Blaming campaigns will be launched against India in particular, as we have seen as rehearsals already happening. We need to engage in a massive advocacy and awareness building campaign to counter the false propaganda and rebut the charges in association with the Ministry of External Affairs and non-state actors, including business chambers, media and NGOs like CUTS.

The CIM has contributed some good articles in the Wall Street Journal. This should be done on a mission mode. And to reach out to other influential dailies like Financial Times, Washington Post, New York Times and in the rest of the world in Arabic, Russian, French and Spanish languages. In India too, the same can be done in English and Indian languages.

Our Missions abroad do not engage much in public diplomacy as much as is being done by China and even rich countries. The MEA/MOCI should engage our Missions to do so effectively by organizing local seminars with think tanks etc. This would also mean holding an orientation exercise for them at Delhi so that they are well prepared. The MEA has a Public Diplomacy Division which can be the focal point for such a project.

CUTS and business chambers have a good outreach among the business community and research fraternity, respectively and together, through out the world, and can be engaged in to do Track-II diplomacy to send out the message clearly.

For this purpose, the DOC should put together a working group at Delhi to launch preparations immediately, so that we are well prepared with an action plan to be launched soon after the summer holidays.

Advocacy and awareness generation is crucial in ensuring that India is perceived to be a good international citizen worthy of entering the UN Security Council and meet with its other international obligations in the best manner.

Annexure-A

Slotting of Amber Box Subsidies

Agriculture continues to be the Achilles heel of the developing countries. The new US farm bill and the new EC CAP are taken as such sacrosanct national compulsions that any argument about real cuts in subsidies is not even discussed seriously. Why should this anomaly be tolerated? Let developing countries bring up their own national compulsions: poverty reduction programmes, small and medium sector enterprise development programmes, infant industry protection programmes; there will be scores of such programmes, some of them even funded by donors from the developed country governments and charities. Let all these programmes be considered equally sacrosanct and built into the texts as non-negotiable.

The boxes in agriculture negotiations are a strange but now increasingly understood WTO jargon. Taking a convoluted traffic light approach, three boxes determine how domestic support to agriculture will be allowed, regulated or prohibited. The green box is for allowed subsidies, the blue box is allowed subsidies that are tied to programmes that limit production, and amber box is for every other subsidy that gets subjected to reduction commitments. Whatever does not get slotted in any of the boxes, but is a prohibited subsidy under the WTO subsidies agreement, is prohibited.

The boxes fooled developing countries in the Uruguay Round; they should not fool them again. The agriculture agreement limits what gets slotted in blue box and the green box. The green box is a broad concept that even the amendments proposed in the May 2008 text do not pin them down enough. The amber box is not defined anywhere; the Agriculture Agreement slots all domestic support which is not in the blue or the green boxes into it. The developing countries should insist upon a positive list for both these boxes so that items are not merrily added after the deal is done. The fact that Brazil had to fight a costly dispute to get market access in cotton and even after winning the dispute has to search for items on which it can retaliate without affecting its own economy should squarely establish the point.

For both the positive lists of green and amber boxes, any new entry should need re-negotiations. After all, this is what industrial market access commitments entail; any binding which a Member wishes to increase has to be renegotiated with the rest of the Members.

If the idea is accepted, details of the kind of predictability of market access developing countries would achieve by this exercise can be worked out.

Annexure-B

Anti-Concentration Clause in Sensitive Agriculture Products

Developed countries are asking for anti-concentration clause on industrial tariffs of developing countries. A similar anti-concentration clause should be put in the sensitive products of developed countries in agriculture negotiations. In terms of the rationale, if, for example, India should abide by the anti-concentration clause in industrial tariffs on auto components, why should not the EC abide by it in agriculture tariffs and subsidies in sugar or the US in Dairy products or Norway in meat? Following are the tariff lines on which price-based safeguard actions were taken by the EC and the USA in 2005-06. This can give an idea on how to work out the volumes of exports into developed countries affected by these safeguard actions and the predictability of the market access to be opened up for developing country exporters of these products. This is given as an example; of course, simulations can be worked out once the idea has been accepted.

I. Dairy Products on which Safeguard Actions were taken by the USA in 2006

0401302500	Other milk and cream, n/ov 45% fat , over-quota
0402105000	Milk powder under 1.5% fat, over-quota
0402215000	Milk and cream, concentrated or containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, exceeding 3 per cent but not exceeding 35 per cent, over-quota
0402295000	Milk and cream, containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5 per cent, over-quota
0402917000	Evaporated milk, airtight cont., over-quota
0402994500	Milk and cream, not in powder, containing added sugar or other sweetening matter, condensed milk, in airtight containers, over-quota
0402995500	Other sweetened condensed milk, over-quota
0402999000	Milk and cream, not containing added sugar or other sweetening matter, over-quota
0403907800	Sour Cream over 45% fat, over-quota
0404101500	Modified whey, over-quota
0405102000	Butter and other fats and oils derived from milk, butter, over-quota
0405203000	Butter substitute dairy spreads, over 45% butterfat weight, over-quota
0405902020	Butter and other fats and oils derived from milk, anhydrous milk fat, over-quota
0406101800	Fresh blue cheese, over-quota
0406104800	Fresh Edam/Gouda cheese, over-quota

- 0406105800 Cheese and curd, fresh (unripened or uncured) cheese, including whey cheese, and curd, Italian-type cheeses, made from cow's milk, in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti and Sbrinz); Italian-type cheeses, made from cow's milk, not in original loaves (Romano made from cow's milk, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz and Goya), and cheese and substitutes for cheese containing, or processed from, such Italian-type cheeses, whether or not in original loaves, over-quota
- 0406106800 Fresh Gruyere process cheese, over-quota
- 0406108800 Cheese and curd, fresh (unripened or uncured) cheese, including whey cheese, and curd, other cheese, and substitutes for cheese (except cheese not containing cow's milk, and soft ripened cow's milk cheese), over-quota
- 0406203300 Grated or powdered Cheddar cheese, over-quota
- 0406203900 Powdered Colby, over-quota
- 0406209100 Powdered cheese NSPF, over-quota
- 0406302800 Processed Cheddar cheese, over-quota
- 0406306700 Processed mixtures of Cheddar cheese, over-quota
- 0406309100 Cheese and curd, processed (process) cheese, not grated or powdered, including mixtures, not made from sheep's milk, other, containing cow's milk, over-quota
- 0406407000 Cheese and curd, Blue-veined cheese, other Stilton cheese, over-quota
- 0406901200 Cheese and curd, Cheddar cheese, over-quota
- 0406903200 Goya, over-quota
- 0406904200 Cheese and curd, Romano made from cow's milk, Reggiano, Parmesan, Provolone and Provoletti cheeses, made from cow's milk, over-quota
- 0406904800 Cheese and curd, Swiss or Emmentaler cheese with eye formation, over-quota
- 0406906800 Cheese and curd, other cheeses, and substitutes for cheese, including mixtures, containing Romano, Reggiano, Parmesan, Provolone, Provoletti, Sbrinz or Goya, from cow's milk, over-quota
- 0406908400 Cheese and curd, other cheeses, and substitutes for cheese, including mixtures, containing, or processed from, American-type cheese (including Colby, washed curd and granular cheese, but not including Cheddar), over-quota
- 0406908800 Other mixtures of Edam/Gouda cheese, over-quota
- 0406909700 Cheese and curd, other cheeses, and substitutes for cheese, including mixtures, not made from sheep's milk (excluding goods containing mixtures of subheadings 0406.90.61 or 0406.90.63), other, containing cow's milk (except soft-ripened cow's milk cheese), over-quota

II. Sugar and related Products on which Safeguard Actions were taken by the USA in 2006

1701115000	Cane or beet sugar and chemically pure sucrose, in solid form, raw sugar not containing added flavouring or colouring matter, over-quota
1701125000	Raw beet sugar, over-quota
1701913000	Colored sugar, over-quota
1701914800	Flavored sugar over 65% sugar, over-quota
1701995010	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or flavoring, over-quota
1701995090	Cane/beet sugar & pure sucrose, refined, solid, w/o added coloring or flavoring, over-quota
1702302800	Glucose, blended, over-quota
1702902000	Sugar syrup, over-quota
1704905800	Dairy confectionery, over-quota

III. Sugar and its Byproducts on which Safeguard Actions were taken by EC in 2005-06

17011110	Cane or beet sugar and chemically pure sucrose, in solid form
17029090	Other sugar
17031000	Cane molasses
17039000	Other molasses