

India's Stand in the WTO Doha Round*

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Introduction

The failure of the Mini-Ministerial meeting of the World Trade Organisation (WTO) in July 2008 to finalise the “modalities” in agriculture and Non Agricultural Market Access (NAMA), and the inability of the WTO Director General to take another jibe in December 2008 has put question a mark on the future of Doha Round. The intention behind these efforts in 2008 was to: agree on the commitments to be made by Members on these two main issues so that fairly elaborate exercise of preparing schedules of commitments could be completed by 2009; and wrap up negotiations in all the other areas to conclude the Doha Round.

It has been reported in the press that lack of convergence between the US and India on certain issues was the reason for shelving this time-table. While that may not be entirely true, and we still have to wait for some time to know the new US administration's stance on trade negotiations, it will be useful to examine the background and the current state of Indian position to assess the possibility of any such convergence arising in the event that the US really wants to conclude the Doha Round.

First, India did not ask for the Doha Round. Without going into the history and reasons behind the launch of the Round in 2001, one can safely state that India went along with the then emerging consensus because it supported a rule-based multilateral trading system. Second, at that time, India had not emerged as an important player in the realm of regional trade agreements (RTAs) but it had benefited from the predictability of the GATT/WTO framework. Third, India engaged constructively and carried a twin responsibility: protecting its own core negotiating interests and joining other like-minded developing countries in formulating a coordinated position of the developing world.

The August 2003 joint proposal of the US and the EC on agriculture and NAMA was a watershed because developing countries realised that unless they joined hands to support a more development-friendly agenda, the repeated affirmations about the Round being a Development Round would stay affirmations and would not translate into reality.

To actualise this, India played a role in creating the G-20 group of developing countries with a common position on agriculture negotiations to thwart the US-EC proposal. The African group, too, played a crucial role in edging out certain issues from the negotiating agenda, i.e. investment, competition and government procurement, which India supported.

As the US and the EC did not want a Round with little market access commitments from countries like India whose vast markets are attractive to them they preferred to return empty-handed from Cancun. Failure of the 2003 Cancun Ministerial had one more structural paradigm shift: QUAD faded away and the G-4 comprising US, EC, India and Brazil became the new inner circle of WTO, while G-7 (Australia, Brazil, China, EU, India, Japan and US) became the next level of inner circle for negotiations followed by the Green Room meetings and the Trade Negotiations Committee (TNC) meetings. This pattern was followed in the July 2008 Mini-Ministerial. Based on its stand in these meetings, issue specific positions of India are discussed below.

Agriculture

Disagreements on issues of agriculture have been contentious and intractable, which include cuts in overall trade distorting support (OTDS), percentage of products to be declared as sensitive products, tariff rate quota expansion for such products, tariff capping, special

* The paper is based on materials collected on the Indian position from various sources and does not necessarily reflect CUTS position on issues under negotiations.

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products, and the Special Safeguards Mechanism (SSM). On a number of these issues, the G-7 was able to narrow down its differences.

For India, it appears that OTDS, quota expansion and tariff capping were not deal-breaking issues, and with some intelligent negotiations, issues relating to sensitive products and special products of interest to India could also be secured with the give and take policy with developed countries. The issue of SSM, however, became the deal-breaker.

India argues that since agriculture is associated with poverty and subsistence in the country, market opening has to be calibrated to protect the livelihoods of the poor farmers and their families. The proposed SSM would enable developing countries like India to take remedial action through higher tariffs in case of import surges or import-induced price declines.

Due to India's efforts, SSM remained an integral part of the mandate throughout the Doha negotiations, as reiterated in the Hong Kong Ministerial Declaration. Differences between India and the US are about the level of increase in import volume (i.e. the trigger) required to cross the Uruguay Round (UR) bound levels of tariffs and the extent by which the UR bound tariffs can be exceeded. India's position, like that of most developing countries, was that there should be no difference in the triggers leading to increase of tariffs up to and above the UR levels.

For the bound rate trigger, the so-called Lamy Text put a figure of 140 percent, i.e. import volumes to rise by more than 40 percent to enable increase of tariffs beyond the UR bound levels. India was flexible enough to consider different options around that number, and suggested a figure of 115 percent. But the US continued to insist on a trigger of 140 percent. India expressed its inability to accept this trigger, citing studies purportedly proving that substantial injury can occur at level above 110 percent.

In the face of differences on this issue, Lamy tried to broker a compromise through an alternative proposal involving defining substantial injury and inserting a strict monitoring mechanism. India agreed to negotiate on this proposal but the US turned it down. With the efforts of the EC, the G-7 senior officials worked out an alternative proposal. India was again ready to use this as a basis for negotiations but the US again turned it down. Clearly, the US has shown no flexibility on this issue.

NAMA

In NAMA (industrial goods but including fisheries), discussions focused on three issues – “coefficients” for tariff reduction by developed and developing countries, the anti-concentration clause and “sectorals.” On coefficients, the depth of India's autonomous liberalisation provided it with an adequate cushion based on which it appeared to accept the proposals in the NAMA text albeit developing countries were being asked to cut tariffs more than those of developed countries.

Under the mandate for NAMA negotiations, developing countries have some flexibility in tariff reduction for a negotiated percentage of tariff lines. On such tariff lines, they can either take zero cuts for a smaller number or 50 percent of the formula cuts for a higher number.

However, developed countries wanted to restrict this flexibility through the so-called anti-concentration clause to ensure that developing countries would not use it to block liberalisation in sectors important to them, for example, automobiles. India did not accept a blanket restriction on this flexibility, but was willing to consider a *via media*, which did not effectively restrict its ability to protect important sectors. Having failed to secure that India reverted to its original negotiating position that infant and vulnerable industries of developing countries needed to be protected. It is apparent that India would not have blocked a deal on these issues.

In essence, the issue of sectorals was very sensitive. That was clear from the presence of relevant industry associations in Geneva mounting delegations to the Indian Mission there. Under the mandate, negotiations on sectorals are to be pushed forward on a voluntary basis wherein some Members may agree to undertake deeper tariff reduction commitments, preferably zero tariffs, in selected sectors. India had not committed itself to participate in these negotiations in the run up to the July 2008 Mini-Ministerial. The US asked for commitments from important countries like India and China. India refused on the ground that negotiations on this issue were not mandatory. This issue remained undecided.

After the July 2008 meeting, India's Commerce Minister, Kamal Nath stated that India and other developing countries strongly opposed these negotiations and that there was an attempt by developed countries to make these negotiations mandatory despite the Hong Kong Ministerial Declaration having reaffirmed them to be non-mandatory. In December 2008, India's Minister of State for Commerce, Jairam Ramesh

reiterated India's negotiating position that participation must be on a non-mandatory and good faith basis without prejudging the outcome.

Services

Services liberalisation is another important issue for India due to its interest in the movement of natural persons in the category of experts and skilled persons. There was a Signalling Conference on Services during the July 2008 meeting with the idea that Members with an important interest in services could provide clear signals to each other regarding their intentions to open their markets. India signalled a liberal offer in important areas of interest to developed countries including telecommunications, distribution, financial services, energy and environment services, and courier services.

In the areas of its interest like Mode 1 and Mode 4, India received positive signals from, among others, EU, Canada, Norway and Japan. However, the US response on Mode 4 did not cover new ground; though it talked of increasing H-1B visas and that too in consultation with the Congress, but it did not mention anything on liberal entry norms for contractual service suppliers (CSS) and independent professionals which is India's main demand.

Other Issues

On intellectual property rights (IPRs), India seeks changes in the Trade Related Aspects of Intellectual Property Rights (TRIPS) agreement to accommodate concerns relating to bio-piracy, and is supporting the EC demand for a higher level of protection to all products. Though it is not clear whether India has undertaken any sound analysis on commercial interests in these two issues, their political visibility will require a reasonably credible outcome. The US is against both the issues. This could be another deal-breaker in the end game.

On trade remedies, zeroing in anti-dumping and fisheries subsidies in the Subsidies Agreement are important. On the former, there is a big group led by Japan and Chinese Taipei opposing the US position, which incidentally is also the position emerging from WTO jurisprudence. India's stand is similar to that of Japan and therefore, it is content to follow suit.

In the case of fisheries subsidies, fate of small and artisanal farmers in India depends on India taking a frontal position to insist upon flexibilities, which is possible with the help of intelligent negotiation that would help avoid collateral benefits flowing down to big and heavily-subsidised enterprises in some WTO Members.

Box 1: Despair in Doha and Hope in Hong Kong

Murosoli Maran began India's Statement at the Doha Ministerial Conference with...

"I am constrained to point out that the draft Ministerial Declaration is neither fair nor just to the viewpoints of many developing countries including my own on certain key issues. It is negation of all that was said by a significant number of developing countries and least-developing countries. We cannot escape the conclusion that it accommodates some viewpoints while ignoring "others". The forwarding letter most surprisingly and shockingly also does not dwell on the substantive differences and focuses more on what are individual assessments. Even after these were reiterated in the strongest possible terms in the General Council on October 31 and November 1, we recognise that there is a refusal to reflect these points in a substantive manner even in the forwarding letter.

The only conclusion that could be drawn is that the developing countries have little say in the agenda setting of the WTO. It appears that the whole process was a mere formality and we are being coerced against our will. Is it not then meaningless for the draft declaration to claim that the needs and interests of the developing countries have been placed at the heart of the Work Programme?"

Kamal Nath ended India's Statement at the Hong Kong Ministerial Conference with...

"A Development Round has no credibility in the absence of substantial benefits for the weakest Members of the WTO. The Hong Kong Ministerial needs to address the burning issues of cotton and of preference erosion. We need to finalise the proposal for duty-free quota-free access for exports of LDCs to developed country markets, without hedging. Developing countries too are ready to play their part, according to their abilities. India shall not be found wanting in this respect.

In the name of completion, if the content of this Round only perpetuates the inequities of global trade, then it will be no Round. To redeem the pledge we made at Doha, let us resolve to make this a Round for those who need it. Let us make this a Round that truly reflects the development dimension in its most beneficial and most effective sense."

On trade facilitation, the deal is actually ready, and waiting for the 'nothing-is-agreed-until-everything-is-agreed' adage to be proved.

Conclusion

The scenario post-July 2008 Mini-Ministerial meeting, including the failure of Lamy to secure sufficient support in December to call them to Geneva again is unclear. While a number of analysts have observed that the Doha Round is frozen, at least till the middle of 2009 (by then Obama administration is expected to have it on its table and the Indian elections will be over), there is plenty of support for continuation of the negotiations given that considerable progress was made in the run up to and during the Mini-Ministerial meeting.

Lamy certainly does not have any intention of giving up. After his visit to Delhi for the Conference on Global Partnership for Development organised by CUTS in August 2008, he travelled to Washington and elsewhere to gauge

the mood. But with the Obama administration's tongs in many other fires, negotiators are not calling their trade ministers to Geneva any time soon.

Given the broad support to calibrated liberalisation accompanied by regulatory and institutional policies amongst most Indian political parties, so long as its farm sector is protected, the US does not insist on upfront commitment of a zero-for-zero in any sector of industrial goods. Moreover, so long as it can take some commercially meaningful achievements home on Mode 4 and some politically useful commitment to accommodate Convention on Biological Diversity (CBD) in TRIPS, India may not be the deal-breaker.

Unlike having to face a monosyllabic Maran as in Doha in 2001 (see Box 1), its negotiating partners may prefer a more vocal Kamal Nath showing interest in any permutations and combinations (see Box 1&2). Also, one has to wait for the results of the Indian elections to see if the present government will be re-elected or not.

Box 2: Musings on the Doha Round in 2008

Kamal Nath in the TNC in July 2008 before the collapse...

"We are meeting in the rather grim context of a number of crises in various parts of the world, of which the global food crisis is perhaps the most serious. The WTO can help in addressing this issue by making serious progress in agricultural reforms in developed countries. ...

While our primary task in the next few days is to conclude modalities in Agriculture and NAMA, we must not forget that this is a Development Round and that developing countries, especially the smaller ones, expect a down payment on the issues of the greatest concern to them. These include DFQF for LDCs, preference erosion, special provisions for small and vulnerable economies etc. In our deliberations, such issues deserve priority attention."

Pascal Lamy on December 17, 2008 on future work beyond DDA....

"First, I believe that the WTO has a particular responsibility to follow up on the trade measures which been taken in the wake of the financial crisis; you all know that I have set up an internal Task Force to produce regular updates of these measures so that we have a better sense of the trade consequences of the financial crisis.

Second, I believe we need to keep reviewing developments in the area of trade finance where the WTO early interventions have been useful in mobilising resources for this important area; trade finance is an area, which seriously impacts trade flows for developing countries and we should remain vigilant and active.

Third, I believe we need to have a clear roadmap for work on Aid for Trade in 2009, culminating with the second Global Review before the summer break. We need to keep the focus on mainstreaming trade into Members' development policies and we also need to keep pressure on the mobilisation of funds, which has been reasonably successful but where more could be done, in particular in view of the current financial crisis."