6

Liberalisation of Trade in Non-agricultural Products

Introduction

This chapter provides an overview of the assistance provided to member countries of the Group to enable them to decide on their approach in the negotiations on the modalities that could be adopted for liberalisation of trade in non-agricultural products. The negotiations in this sector are referred to as 'market access' negotiations as they focus mainly on securing improved market access for these products by obtaining further reductions in tariffs and the removal of non-tariff barriers.

Background and context

The developed countries and some of the developing countries were the main proponents of the proposal that negotiations in the area of trade in goods should not be confined to agricultural products, but extended to non-agricultural (or industrial) products. They were influenced in this by the following considerations.

The first consideration was the increasing trend towards regionalism. It was argued that preferential trade among a few countries could result in discriminatory treatment for the trade of other countries that are not parties to the regional arrangement. Second, the EU and other countries, which followed protectionist policies in the field of agriculture, argued that if liberalisation was confined to the agriculture sector and no liberalisation took place in the industrial sector, the results would be unbalanced from their point of view. They would only be able to justify a reduction in the protection of agriculture if they could secure compensatory concessions in both the agricultural and industrial sectors, particularly from emerging economies like Argentina, Brazil and India. The emerging economies were becoming important markets but were maintaining high levels of protection in both the sectors. Third, developing countries that favoured negotiations being held felt they would prompt substantial reductions in peak tariffs applied by developed countries to products of export interest to developing countries, and elimination of tariff escalation in the tariff structures of developed countries. In addition, the developing countries themselves may be required to take tariff reduction on a most-favoured-nation basis, which could boost the growing intra-regional trade among these countries.

However, a number of the developing countries were cautious. Two factors appear to have influenced them. First, they had serious doubts as to whether developed countries would be able to make significant reductions in peak tariffs as their industries considered them to be import sensitive. Second, they were apprehensive that even though their trade may not benefit much from reductions in tariffs made by developed countries, if negotiations were held they may have to reduce their tariffs and bind them in return. Many of the developing nations were still feeling the negative effects of the IMF and World Bank liberalisation measures previously imposed on them. They felt their economies would need more time to adjust to the measures already taken before venturing into a process of further liberalisation, particularly in the context of multilateral negotiations where reduced tariffs have to be bound against further increases.

But despite the reluctance of a number of countries to engage in negotiations for further liberalisation of trade in industrial products, the decision to commence such negotiations as part of a single undertaking was taken at the Doha Ministerial meeting held in November 2001. It was agreed that negotiations should aim at improvements in access to markets of non-agricultural products by securing further reductions and where possible elimination of tariffs and removal of non-tariff barriers.

Negotiations on Tariffs

Average levels of developed and developing countries

The Uruguay Round had made significant progress in increasing the spread of binding and in reducing tariffs on non-agricultural products. Almost all tariffs of developed countries are now bound against further increases. In the round, these countries also cut their tariffs by 40 per cent overall. As a result of these reductions, the average level of tariffs of developed countries for industrial products declined from 6.3 per cent to 3.8 per cent by 2000, the year in which a staged reduction agreed in the Uruguay Round was completed. But this average concealed the differences that existed in the tariff levels of different developed countries. In most of the countries peak tariffs, which were more than three times the average level, applied to such products as textiles and clothing, leather and leather items and other simple manufactured goods of export interest to developing countries.

Developing countries were able to participate more actively in the area of tariffs in the Uruguay Round of negotiations because of the liberalisation measures they had already taken to open up their markets on an autonomous basis. These countries offered to bind tariffs on some products they had previously reduced independently and, where it was considered appropriate and possible, to further reduce applied rates. They reduced their tariffs by 30 per cent overall (i.e. 10 per cent less than developed countries reduced their tariffs). As a result of these reductions, the average level of tariffs (applied rates) of developing countries as a group is estimated to have fallen

from 15.5 per cent in the period prior to the Uruguay Round to 12.3 per cent after the implementation of the reduction agreed to in the Uruguay Round.

The least-developed countries were not required to abide by any target for overall reductions. They were, however, expected to reduce their tariffs taking into account their development and financial needs so most of them made some token reductions.

The Uruguay Round also witnessed a significant increase in the level of tariff bindings given by developing countries. In offering such bindings, these countries were permitted to use as a matter of special and differential treatment, a technique used in the past, mainly by some of the developed countries like Canada, Australia and New Zealand, to bind their tariffs at rates higher than the reduced rates agreed in the negotiations for a limited number of products. Such bindings permit the countries to raise their tariffs to the level of bound rates without breaking their GATT obligations.

Negotiating approach

To assist delegations in deciding on the approach that could be adopted in the negotiations on tariffs applicable to non-agricultural products, a working paper was prepared using information on the prevailing tariff contained in the project's various background papers. The Group discussed the working paper in expert and ambassador level meetings before deciding it should be circulated to Commonwealth governments to enable their national authorities to examine the various issues arising and suggestions on strategies. The Commonwealth Secretariat circulated 'Working Paper 4 of the Geneva Group of Commonwealth Developing Countries on Market Access for Non-Agricultural Products' to all members of the Commonwealth (Rege 2002).

Improvement in access to the markets of developed countries

The working paper suggested that in the negotiations with developed countries the developing countries approach of developing countries in the negotiations should seek to secure:

- Substantial reductions in the peak most-favoured-nation (MFN) rate of tariffs that apply to products of export interest to them;
- Reductions in all other MFN rates of tariffs; and,
- Reduction and/or elimination of tariff escalations in sectors where they exist.

However, it would be necessary to recognise in the negotiation that developing countries benefiting from preferential access under the Generalised System of Preferences may not have the same interest as other developing countries in securing substantial reductions in MFN rates of duties applicable to products in which they had meaningful preferential advantage. The measures taken by the EU for improvements in preferential access for imports from least-developed countries, and by the USA for imports from African countries (both least developed and other developing countries), had

increased the importance of such access for the trade of these countries. Therefore, in relation to the tariff lines on which the erosion of preferential margins through reductions in MFN duties was likely to adversely affect their trade, the developing countries should seek to ensure the ground rules for negotiations provided for flexibility that would enable them to request:

- Less than the average reductions envisaged (by the formula) being made; or alternatively,
- A longer period than provided for gradual staging of reductions to reach the level of tariffs agreed in the negotiations (e.g. 10–15 years instead of 5–8 years).

Determination of contribution by developing countries

In deciding on the extent to which they could liberalise, the developing countries should take into account the following factors.

In the past developed and developing countries had adopted different approaches in reducing tariffs. The developed countries had reduced tariffs gradually over a period of nearly 50 years through participation in the eight rounds of multilateral trade negotiations. The developing countries on the other hand had liberalised during the period unilaterally outside the framework of multilateral trade negotiations. While a few countries in Asia and Latin America, which were at a relatively high stage of development, took such unilateral measures gradually as part of their national policies for promoting export-oriented production, most of the countries in Africa were required to liberalise trade in keeping with the conditions imposed by the World Bank and IMF under their structural adjustment programmes or as suggested under their technical assistance programmes. These programmes required countries to make high percentage cuts across the entire range of tariffs. This left their agricultural and industrial producers without enough time to adjust to import competition. (UNCTAD called this a 'big-bang type' of liberalisation.) The result was that instead of improving the competitive strength of these industries, which had previously benefited from high levels of protection, liberalisation led to what some economists have called, a process of 'de-industrialisation'. For instance, a number of industries in Kenya, Tanzania and Zimbabwe were forced into closure, as they were unable to make the technological changes needed to face the increased competition (Wignaraja and Ikiara 1999). In a number of other African countries, the surge in imports following liberalisation also adversely affected the few existing consumer industries (e.g. beverages, tobacco, textiles, sugar, leather, cement and glass products), causing many to close down. In almost all these countries, unemployment increased instead of decreasing, particularly as no investment was being made for the development of new industries.

This dismal experience contrasts with the experience of a few of the developing countries such as China, India, Malaysia and Thailand in Asia and Brazil, Chile, Mexico and Peru in Latin America, which had liberalised gradually over a period on a selective basis

by reducing tariffs by small percentages. In most of these countries the liberalisation measures taken made a contribution, albeit a modest one, towards increased investment in the development of new industries, which resulted in increased employment. But the relative success of these countries in gaining modest benefits from liberalisation for economic growth cannot be solely attributed to the gradual pace of liberalisation and to proper sequencing. In fact, the governments in most of these countries, while pursuing import substitution policies, had been able to build up vital infrastructure necessary for the development of export-oriented production – that is: physical infrastructures (such as transport and public utilities); financial infrastructure (e.g. banking and insurance); human resource infrastructure (e.g. trained technical personnel).

Box 11 summarises the views of some of the leading economists who support the findings in the empirical studies, described above.

Box 11: Leading economists on how liberalisation has impacted developing countries

The unsatisfactory and somewhat dismal experience of the liberalisation measures taken by a large number of developing countries (particularly by low income, least-developed and small economies) has led some economists to argue that the classical principle 'free trade benefits all countries' needs rethinking. This should not be taken to imply that these economists are arguing in favour of a reversal to import substitution policies by developing countries, particularly by those at the lower stages of development. As Helleiner (2000) puts it, 'there are few reputable developing country analysts or governments who question the positive potential roles of international trade and capital inflow on economic growth and overall development. How could they question the inevitable need for participation in a considerable degree of integration with world economy? The real debate is not whether integration is bad, but over matters of policy (for liberalisation) and priorities.' In another context, he goes on to observe that 'it is not at all obvious that further external liberalisation is now in every country's interest and in all dimensions'.

Dani Rodrik (1999) points out that 'economic development is a lot more than just throwing borders open'. Trade policy is one of many policies countries have to follow simultaneously. These include, apart from policies needed for infrastructure development, policies that aim for:

- Reform of the tax structure to make up for loss in tariff revenues that would result from the reduction of duties;
- Safety nets to compensate displaced workers;
- Technological assistance to upgrade firms adversely affected by import competition;
- Establishment of legal and administrative framework required for taking contingency protection measures to provide additional protection for a temporary period to industries that are not able to withstand import competition and to protect them from unfair foreign competition, by imposing anti-dumping and countervailing measures;
- Training programmes to ensure export-oriented firms have access to skilled workers.

The success of liberalisation would depend on how far these policies form a part of the reform process and complement the measures that are taken for the liberalisation of trade.

Source: Rege 2007, pp. 23–25

Techniques for negotiations on reduction of tariffs

Against this background the working paper suggested that developing countries in negotiations on the techniques that could be adopted for reductions in tariffs, base their negotiating strategy on two main considerations.

First, in all the eight rounds that have taken place the developing countries had chosen to negotiate with developed countries on a product-by-product basis by following request and offer procedures – for example, in the Kennedy Round (when cuts were made by the developed countries on the basis of a linear formula), in the Tokyo Round (when they used a formula with a harmonising element) and in the Uruguay Round (when choice of the techniques to be used was left open). This was largely because product-by-product negotiations provided them with the flexibility they needed in determining the extent to which they could reduce tariffs, taking into account the capacity of the industry concerned to meet import competition.

Second, tariff reductions imply curtailment in the revenue collected from customs. For a large number of developing countries, customs revenue constituted a significant proportion of their total revenue and alternative sources for raising revenue were not readily available. Therefore it might be desirable for them to adopt a technique that resulted in least loss. In the case of a formula cut, duties are cut across the board whether they are protective or purely for revenue as these are levied on imported products for which there is no domestic production. In the case of product-by-product negotiations, on the other hand, it is possible to confine reductions in duties that are of a protective nature and avoid cuts in duties imposed purely for collecting revenue.

If all developed countries decided to adopt the harmonisation formula approach, would it be in the interest of developing counties to agree to apply such a formula to their tariff reductions? The answer to this question would depend on agreement being reached on the level to which developing countries could reduce their tariffs and on whether the ground rules for the application of the formula would provide for exclusion from, or reductions in, formula cuts on products requiring, in their view, the continued application of protection. The attitudes taken may vary from country to country and would depend on not only economic factors, but also on how far any such across-the-board reductions would be acceptable at political level. However, as a large number of developing countries are not 'demanders' in the negotiations for further reductions of tariffs in the industrial sector, and consider that their industries would need time to adjust to the liberalisation measures already taken by them on autonomous basis, it appears that most of them would prefer to make reductions in their tariffs through negotiations on a product-by-product basis rather than on the basis of a formula providing for a rigid level of percentage cuts.

State of Play in the Negotiations

In the initial period of the negotiations, a large number of developing countries had taken the position that while developed countries should reduce tariffs on the basis of a harmonisation formula, which results in deeper reductions being made in higher tariffs, developing countries should be permitted, as was done in the past rounds of negotiations, to participate on the basis of requests and offer procedures. They considered that this technique would provide them with sufficient flexibility to determine on which products tariffs should be reduced, and their level, and those that could be excluded from tariff reductions. The only obligation that the modalities should impose was that, as in the Uruguay Round, the average level of tariffs should be reduced by an agreed percentage.

However most of the developed countries, which were seeking markets for their exports particularly in the emerging economies, insisted that the developing countries should also reduce tariffs on the basis of a harmonisation formula. Ultimately, as a result of pressures from these countries, it was agreed that the reductions in tariffs should be based on a Swiss formula that would permit reductions being made by developing countries at rates lower than those of developed countries.

Table 4 explains the formula and how it results in lower reductions if a higher coefficient is used. Thus, a tariff rate of 10 per cent would be reduced to 4.44 per cent if a coefficient of 8 were used, while if a coefficient of 20 were used the same tariff would be reduced to only 6.7 per cent.

Table 4: Tariff-cutting formula

The formula that would be applied for reduction: $Z = AX/(A+X)$

X = initial tariff rate

A = coefficient and maximum tariff rate

Z = resulting lower tariff rate (end of period)

The rates that would result from the application of the above formula for developed and developing countries are as follows:

X/A	8	10	20	22	25
10	4.44	5	6.7	6.87	7.1

There is now general consensus that in order to ensure developing counties are able to reduce tariffs at rates significantly lower than those applied by developed countries, they should be allowed to use a higher coefficient than that used by developed countries. The differences on the coefficient that could be used for this purpose as well as the extent to which products should be excluded from reduction or tariff bindings or on which lower formula cuts could be made, have bogged down the negotiations.

In his report submitted on 12 August 2008, the Chairman of the NAMA (non-agricultural market access) Negotiating Group suggested there was some support for the proposal that developed countries should use a coefficient of 8, and the developing countries should have the flexibility to use one of the three high coefficients, that is 20, 22, or 25. However, as shown in Table 5, the flexibility for them to make reductions lower than the formula cut, or to leave tariff rates unbound, would vary according to the coefficient used. The higher the coefficient, the lower the level of flexibility available to developing countries.

Table 5: Level of flexibility against the coefficients

Coefficient used in the formula	Flexibilities available to developing countries	
	Option 1: Make less than formula	**Option 2: Keep tariffs lines unbound or not apply formula**
20	14% of tariff lines if they do not exceed 16% of total imports	6.5% of tariffs lines if they do not exceed 7.5% of total imports
22	10% of tariff lines if they do not exceed 10% of total imports	5% of tariff lines if they do not exceed 5% of total imports
25	No flexibility	No flexibility

Special and differential treatment to LDCs, countries with low binding coverage and SVEs

As in the case of agricultural products, it is now tentatively agreed that a large number of developing countries, particularly those in the least-developed and middle stages of development, would not be required to make reductions on the basis of the Swiss formula. The strategy adopted by developed countries to accommodate the interests of these countries in the negotiations on non-agricultural products was slightly different to that adopted for negotiations on agricultural products.

In the Uruguay Round all countries, including least-developed countries, had bound their tariffs applicable to agricultural products. No such requirement was applied in that round to non-agricultural products, with the result that a large proportion of tariffs of these countries remain at present unbound. At a very early stage of the negotiations, the developed countries made it known that they would not expect least-developed countries to make any reductions in tariffs if they agreed to bind all of their tariffs on non-agricultural products.

Likewise, before the Hong Kong Ministerial meeting in 2005, it was agreed that some 12 countries with binding coverage of less than 35 per cent (viz. Cameroon, China, Congo, Côte d'Ivoire, Cuba, Ghana, Kenya, Macau, Mauritius, Sri Lanka, Suriname and Zimbabwe) would not be required to make reductions on the basis of the tariff formula, if they agreed to increase the level of their bindings.

It is now agreed that countries with tariff bindings below 15 per cent should bind 70 to 90 per cent of their tariff lines while those with bindings above 15 per cent should increase them by 75 to 90 per cent. The tariffs should be bound in such a way that the average level does not exceed 28.5 per cent.

As in the case of negotiations on agricultural products, some 40 small and vulnerable economies would not be required to apply the tariff-cutting formula. The criteria used for identifying such countries for negotiations in the non-agricultural sector is much simpler than that adopted for negotiations in the agriculture sector. All countries with a share of less than 0.1 per cent in world non-agricultural trade are to be treated as small and vulnerable economies. The aim of the negotiations is to secure from these countries binding of all of their tariffs on non-agricultural products. The extent of the reductions that these countries would be required to make is related to the level of the existing bindings (Table 6).

Table 6: Small and vulnerable economies – modalities for tariff reduction on non-agricultural products

Present state of bindings	Percentage reduction if tariffs are fully bound
Above 50%	Overall average reduction of 28–32%
Above 30% but below 50%	Overall average level of 24 to 28%
Above 20% but below 30%	Overall average level of 18%
Above 50%	Minimum 5% reductions on 95% of tariff lines

Sectoral Negotiations

The Doha mandate for negotiations in the area of non-agricultural products envisages that in certain sectors negotiations should also take place for reductions in tariffs 'over and above what would be achieved by the formula modality' and where possible for their total elimination. It is agreed that participation in such negotiations should be on 'non-mandatory basis'. The developing countries participating in such negotiations would be provided special and differential treatment by, inter alia, providing them with more time to reduce or to eliminate tariffs. In pursuance of this mandate proposals have been tabled, mainly by developed countries that have an interest in exports, for negotiations on the above basis in the following sectors: bicycles and related parts, electronics and electrical products, fish and fish products, forest products, gems and jewelry, hand tools and machinery, health care, sports equipment, toys and textiles, clothing and footwear.

Most of the developing countries have so far shown a reluctance to participate in these negotiations. They have maintained that participation in such negotiations is non-mandatory and therefore left to them to decide on whether or not to participate. However some of the developed countries, particularly the EU and the

USA, have taken the stand that in order to ensure an appropriate balance between the benefits and costs of liberalisation in the negotiations it was necessary that the developing countries at a higher stage of development – the emerging economies – should participate in the negotiations, at least in the sectors where they have production and exports.

Negotiations on Non-tariff Measures

Aims of the negotiations

This brings us to the description of the proposals that have been tabled for the development of additional discipline in the area of non-tariff measures. Most of these proposals aim at ensuring that rules and regulations applied by countries at national level do not result in the creation of new barriers to trade by adopting complementary agreements clarifying the rules of the WTO Agreement on Technical Barriers to Trade. In addition, one of the proposals aims at establishing a framework of special procedures for consultations on non-tariff measures with a view to quickly finding solutions to the problems posed by these measures. It is expected that adoption of such procedures would negate the need of countries adversely affected by the application of non-tariff measures to resort to WTO dispute settlement procedures, which are both time consuming and expensive.

At the request of the members of the Group, an analytical paper was prepared explaining the issues that would have to be examined in clarifying the rules of the Agreement on Technical Barriers to Trade (TBT) on a 'product-specific basis' in such areas as: labelling of textiles, clothing, footwear and leather products; electronic products; lighters; fireworks; and forestry (wood) products used in building construction. Following is a brief summary of the main points made in the background paper and a description of the issues that need further examination (Rege 2008).

Proposals to clarify the TBT Agreement rules on a product-specific basis

Objectives and main rules

The aim of the Agreement is to ensure that the standards and technical regulations formulated and applied do not cause unnecessary barriers to trade. The Agreement envisages that this aim can be achieved if countries use international standards in formulating, developing and adopting technical regulations. The Agreement permits countries to deviate from the rule where it is considered international standards would be ineffective or inappropriate because of fundamental climatic or geographical factors, or technological problems. However, in such cases countries are required to publish their regulations in draft form and take into account the comments made by the governments of other countries in finalising and adopting them.

Understanding on labelling requirements

The proposal tabled by the US and the EU aims at clarifying the rules of the TBT Agreement by adopting an Understanding on labelling requirements for textiles, clothing, footwear and other leather articles. The Understanding would divide the labelling requirements into two categories. In the first category would fall the requirements in respect of which it would be presumed 'are not more trade restrictive than necessary' to attain the legitimate objectives. This category would include requirements to indicate in the label fibre content or material used, country of origin and in the case of textiles 'care instructions'. The requirements in the second category, which it would be presumed are trade restrictive, would include those that limit the languages used or require the label be pre-approved or prohibit inclusion of information on the brand names. Although the proposal does not make it explicit, the motivation behind the proposal appears to be to encourage development of harmonised and binding rules at international level for labelling of these products on the above basis.

Points needing further examination

The background paper emphasises that the question as to whether it should be presumed that mandatory requirements to show 'country of origin' in the label for textile products do not create barriers to trade would need further examination taking into account the following factors:

- Even when GATT was being adopted in 1948, it was recognised that regulations requiring 'country of origin' be included in the marking on a product (or a label) may in practice result in barriers to trade by causing exporting countries 'difficulties and inconveniences' in complying with these requirements. It therefore calls on countries to keep such requirements to the minimum (Art. XIX).
- Largely because of these considerations, very few countries appear to have adopted regulations providing for mandatory labelling of textiles, clothing, and footwear and leather products. Japan, South Korea and the US are among the developed countries that have such regulations while Canada, the EU and Switzerland do not. However, the European Commission appears to be under pressure from its domestic industries to adopt mandatory labelling regulations for these products. Only a few developing countries appear to have such regulations.
- The main motivation behind the pressures in the EU for the adoption of mandatory labelling requirements appears to be to increase indirect protection to domestic industries.
- There is a growing view in industry and trade circles that consumers make their choices on the basis of information relating to material content and size.

In the case of textiles consumers attach importance to information relating to care requirements. They attach less and less importance to the information on country of origin in the labels as they become increasingly aware that with globalisation of the world economy, most products are manufactured on a multi-country basis and 'country of origin' merely indicates where the last transformation of the product took place. It could therefore be argued that mandatory requirements to provide country-of-origin information in labels, places an unnecessary burden of compliance on the exporters.

- In countries where there are no mandatory requirements to provide information on country of origin through labels, the importers, retailers and departmental stores are opposed to the adoption of such requirements. These actors are increasingly marketing the products under their brand or trade names, and they are apprehensive that any such information could be used by interest groups to build pressure for boycotting imports from countries where, in the view of such groups, environment and labour standards are not being followed.
- The present situation in which there are differences in the rules adopted by countries in determining origin of goods is expected to undergo changes when the ongoing WTO work on harmonisation of origin rules used for determining origin of goods imported on a non-preferential basis is completed. The adoption of these rules by all countries as a basis for their labelling requirements would constitute an important and positive step towards harmonisation of origin rules on labelling. It would however be unrealistic to assume that their adoption would prevent countries from using labelling requirements for protective purposes. For instance there may be pressures from industry that labelling requirements for imported textiles products should, in addition to indicating the country where the last transformation took place, also indicate the county in which the fabric used in further processing was produced. Such additional requirements, by increasing the costs of compliance, could have an adverse impact on the competitive position of the exporters.

It is evident from the complex issues to be addressed that further work in this area would have to be undertaken in a forum where, in addition to governmental representatives, all interested stake holders such as manufacturers, importers and retailers, and consumers and environmental groups are able to participate. Since WTO rules do not permit such participation, it would be necessary for the WTO to agree to modify its procedures by establishing a separate ad hoc technical committee to permit participation of non-governmental representatives.

The WTO could also request the International Organization for Standardization (ISO) or other standardisation bodies, which provide for participation of various interest groups, to examine the issues and formulate standards that could later be used for

negotiations on technical regulations. When the issue was raised in the Negotiating Group on Market Access one view was that it was difficult to draw a clear dividing line between where the work on the adoption of standards ends and the work on the adoption of technical regulations begin. In practice however, it would be necessary to ensure that standards used in technical regulations are formulated and adopted with full participation of industries producing the product and other stakeholders.

It is relevant to note in this context that most of the work on developing international standards and rules for labelling is being undertaken in international standardisation bodies. For instance, Codex Alimentarius Commission is actively engaged in developing rules for labelling of food products. This practice would have to be taken into account when considering whether the WTO should get involved in developing rules for labelling of such products as textiles.

Understanding on electronic products

Two separate proposals – one by the EU and the other by the USA – have been tabled for the adoption of an Understanding to clarify the rules of the TBT Agreement relating to the 'standards, technical regulation and conformity assessment procedures' applicable to 'the safety of electrical equipment and electronic magnetic compatibility'. It would cover electrical and electronic equipment, electrical household appliances and consumer electronics. The objective is to take forward the work on standards, technical regulations and conformity systems that has been done under the auspices of the Information Technology Agreement by adopting an Understanding providing for agreed rules. There are, however, significant differences in the proposals tabled by the EU and USA.

Differences in the EU and US approaches

As noted earlier, the TBT Agreement obliges countries to use international standards in formulating and adopting technical regulations. But it does not identify the international standardisation bodies whose standards should be used for this purpose. The EU has suggested that the proposed Understanding should limit the international standards that could be used in technical regulations providing for 'safety of electric equipment and electro-magnetic capability' to those adopted by the ISO, International Electrotechnical Commission (IEC) and International Telecommunications Union (ITU).

The US proposal takes an opposing view. It provides that 'each member should be free to decide on' which international standard should be used taking into account 'the principles set out in the Decision adopted by the TBT Committee on Principles for the Development of International Standards, Recommendations and Guidelines'. The Decision does not specify any particular standardisation bodies whose standards could be used in technical regulations leaving it open to countries to pick and choose.

The US proposal thus reflects its consistent stand against any proposal that limits the standards for use in technical regulations to those prepared by the ISO, IEC and ITU. It holds that standardisation bodies situated in the country that permit participation of other countries also prepare standards that are international.

The US proposal aims further at making basic change in the concept and principles on which the rules of the TBT Agreement are based. The TBT Agreement encourages countries to base their technical regulations on international standards prepared by international standardisation organisations. However, it permits a country to deviate from the rule if, 'for fundamental climatic or geographic factors or fundamental technological problems', the relevant international standard is not found suitable or where an international standard does not exist. In such cases, the country adopting the standard is expected to publish the technical regulations or conformity procedures in draft form and take into account the comments and views of other countries before finalising them. The US proposal provides that this requirement should be applicable to electronic products in all cases, 'regardless of whether relevant international standards, guides or recommendations exist'.

In terms of operational provisions, the basic aim of the EU proposal is to secure acceptance of principles on which existing community regulations are based and which permit low-risk electronic products (such as electrical household appliances and consumer electronic products) to be marketed on the basis of a 'suppliers declaration of conformity'.

For a limited number of products for which it is considered inappropriate to rely solely on a 'suppliers declaration of conformity' because of the safety, health and other related risks they pose, the proposal would allow them to be marketed on the basis of an 'assurance of conformity' issued by a conformity assessment body (namely a testing laboratory) 'approved for the purpose by authorities of another WTO Member' (i.e. exporting country). It would, however, be open for a country to require proof of the technical competence of the issuing body as a condition to accepting the 'assurance of conformity' issued.

The proposal further provides that in all cases where an 'assurance of conformity' is considered necessary, the choice of testing laboratory should be left to the supplier. There should be no requirement that the product be blocked from entry unless it is tested in a laboratory in the importing country. Likewise, there would be no requirement for registration of the product with the authorities before it can be marketed.

While the EU considers it would be possible to develop through negotiation a multilaterally agreed list of 'low risk' products, which could be marketed on the basis of a suppliers declaration, and 'high risk' products that could be sold on the basis of an 'assurance of conformity' assessment issued by a testing laboratory in the importing country, the USA appears to be sceptical about agreements being reached on such multilaterally agreed lists. It has therefore proposed that each country be left to determine the type

of positive assurance it may require for a product to be marked, and that these requirements be listed in its schedule of commitments. Each country will have schedules and these schedules would form the integral part of the Agreement.

Issues for further examination

What are the likely implications of the proposal for developing countries? It would be necessary to examine this issue from both the perspectives of a) the few that have become, or have the potential to be become, exporters of electronic products, and b) the many that have no domestic production and must depend almost entirely on imports for their requirements of such products.

Producer countries

There are 27 developing countries with growing electronics sectors that are members of the WTO International Technology Agreement. They would certainly benefit if international rules were adopted requiring all countries to rely as for as possible on the supplier's 'declaration of conformity', and providing that importing countries should rely on the conformity assessment made by the testing laboratory in the exporting country and not insist on the product being tested again or for its registration.

Countries that are mainly consumers

The question is whether the large number of developing countries that are not producers of these products and depend entirely on imports, should list them in their schedules. The EU proposal emphasises that the policy of relying on manufacturer or supplier 'declaration of conformity' in ensuring consumer safety and protection depends on the existence in the country of a system for continuous surveillance of the market, supported by strong and well developed product liability laws.

Most of the developing countries, except perhaps a few that are at a higher stage of development, have not yet been able to establish systems for surveillance of markets. In countries where such systems exist, it is difficult to recruit the professional staff needed to identify non-compliant electronic products because of the lack of financial resources. As a result the surveillance in most cases is not effective. Further, in most of these countries the liability laws have not yet been fully developed, and even where such laws are on the statute books affected consumers often find that the legal costs for initiating a case for judicial redress is beyond their resources. Developing countries should therefore give careful consideration as to whether it would be in their interest to agree to rely solely on supplier declarations of conformity in allowing electronic products that are classified as involving low risk to be sold in their markets. More specifically, they should examine whether it would best suit them to delay accepting this new international discipline in this are until their national market surveillance mechanisms are fully operational and effective.

Proposals on other specific products

Lighters and fireworks

China contends that a number of countries have deviated from the ISO standard by imposing 'child resistant standards' on low priced lighters that are higher than those prescribed. China's argument is that the ISO international standard specifies 'the general requirements for lighters so as to ensure that lighters are safe when handled properly or even improperly in certain predictable ways', and therefore the imposition of a standard that is higher and stricter than the international standard on the 'basis of price' is not justified under the rules of the TBT Agreement. However, it may be possible to argue that it could be appropriate for a country to provide in its regulations that special 'child resistant devices' should be incorporated in low priced lighters for the protection of children, since it is children who generally buy them because they cannot afford high priced lighters.

In the area of fireworks the problems arise because, as yet, no international standard has been adopted and national standards vary considerably from country to country. China wants the adoption of an 'understanding' that 'WTO should' draw the attention of relevant international organisations to the absence of international standards and encourage them to prioritise fireworks standards development.

Timber products used in building construction

New Zealand has suggested the adoption of a Decision for two apparent reasons. First, is wants to secure recognition that the ISO, particularly its technical committees (EC9, 165 and 218), are the leading bodies for developing international performance standards for timber, timber products and timber used in building construction as they relate to building codes. It proposes that the ISO technical committees and the TBT Committee co-operate in expediting the work on the adoption of international standards. Second, it wants countries to use the international standards developed by these technical committees in their technical regulations.

Systemic policy issues

Would the negotiations on some understandings involve the writing of standards?

As noted earlier, the TBT Agreement calls on countries to base their technical regulations on international standards developed by international standardisation bodies. The rules thus clearly recognise that the WTO, which is an organisation dealing with mainly trade policy and development issues, lacks the scientific and technical knowledge needed for formulating and adopting such standards.

The WTO Workshop on Good Regulatory Practices (18–19 March 2008) went further in emphasising that national regulatory authorities should not get involved in

the formulation of standards that they propose to use in technical regulations. The general practice of most of the regulatory authorities appears to be to use international standards in adopting technical regulations and where such standards are not available to request either standardisation bodies in the country or the relevant international standardisation body to develop them. The regulatory authorities generally desist from developing standards that they propose to use in technical regulations.

What is considered to be a good regulatory practice at national level should also apply at international level to the adoption of understandings or decisions on developing product specific technical regulations that all countries would have to abide by. Such product specific rules should call on countries to use international standards and where such standards do not exist, efforts should be made to persuade international standardisation bodies to develop them before starting work in WTO on the adoption of product specific rules.

The proposal for adopting an understanding on labelling requirements for textiles and clothing and on footwear and leather and leather goods, could by its nature be considered to involve work on developing standards on the various elements of information that would be either permitted or not permitted to be included in the label. For instance, in relation to the elements in respect of which it is envisaged mandatory requirements to provide information would be presumed not to be causing barriers to trade, international standards have been evolved on 'care requirements' but not on the other two elements, 'country of origin' and 'fibre content'. Likewise, China is seeking a modification in the standard already adopted in the ISO. Negotiations on these issues should take place at a technical level in the standardisation body that has evolved the standard and not in the WTO.

Is it desirable to adopt a horizontal approach to ensure international standardisation bodies prioritise the formulation of standards used in technical regulations?

It would also be necessary to consider carefully whether the solution to the problems raised in other product specific proposals, should be found on a horizontal basis instead of on a product-by-product basis. For instance, the Chinese proposal on fireworks wants WTO to recommend that international standardising bodies give priority to the adoption of an international standard for the product. New Zealand is concerned with the ISO's slow progress on the adoption of an international standard for timber product and wants WTO to adopt an understanding reaffirming the 'technical committees' of the organisation as the most appropriate bodies for work on adopting standards on these products.

In some ways these proposals reflect the practical difficulties confronting countries, developed and developing, as international standardisation bodies are not giving priority to the preparation of standards required for use in technical regulations. Most of these bodies are private sector organisations; only a few are inter-governmental. The

procedures for selection of products for formulation of international standards as well as those adopted for technical work on evolving standards and for their adoption as international standards, vary greatly from body to body. In some of the bodies that are inter-governmental, the governments and their regulatory authorities may be able to influence the selection of products for standardisation. In others they do not have any such influence.

Against this background, it may be desirable to consider a shift in approach from the practice of making ad hoc requests to the international standardisation bodies to the following two-pronged approach. First, it may be desirable for the TBT Committee in co-operation with the international standardisation bodies to review the procedures adopted by each of them for selecting products, with a view to ensuring greater involvement of 'regulatory authorities' in the selection and formulation of standards that are used in technical regulations. Second, procedures could be adopted under which every one or two years, the WTO member countries would notify the TBT Committee of the products for which they propose to adopt technical regulations and on which international standards do not exist. The Committee, on behalf of the members, could then request the relevant international standardisation bodies to give priority to the products or subjects in the list and to provide periodic reports on the progress made in formulation of the standard. This approach would be both fair and equitable, as it would provide an equal opportunity for all countries to suggest products to be given priority attention by the international standardisation bodies.

Would it be desirable to agree a list of international standardisation bodies whose standards could be used in technical regulations?

The third issue in need of careful examination is whether the developing countries should support the EU proposal to recognise that the international standards prepared mainly by the ISO, IEEC and ITU can be used in formulating technical regulations for electronic products. In considering this issue, it would be necessary to ascertain whether there are others among the existing 50 or so bodies engaged in developing international standards that are preparing international standards on electronic products or have plans for developing such standards. Another issue that arises is how far developing countries have been able to participate effectively in the standardisation activities of the ISO, IEEC and ITU. The three bodies have taken steps for improving developing countries participation. However, it would be necessary to evaluate how these efforts have contributed to increasing the participation of these countries in the work of these three bodies, before taking any decision to support the proposal to make them responsible for standardisation activities in the field of electronics products at international level.

State of Play in the Negotiations

Much of the attention in this area of the negotiations has centred on modalities for reductions in tariffs but there is agreement that there should be an equal emphasis on work in the rule-making areas such as non-tariff measures. By and large, very few developing countries had been able to participate in the negotiations except perhaps in the area of labelling requirements for textile products. In the area of electronic products, there has been progress in reconciling the differences in the approaches adopted by the EU and USA. It is expected that in the coming months the Group on Market Access will pay greater attention to work in this area.

References

Anderson, K, J Francois, T Hertel, B Heckman and W Martin. 2001. Potential Gains from Trade Reform in the New Millennium. Paper presented at the Third Annual Conference on Global Analysis, Monash University, Mt Eliza. June (Mimeo).

Francois, J. 2000. 'The Economic Impact of New Multilateral Trade Negotiations'. Report prepared for DGII of the European Commission. May (Mimeo).

Helleiner, G K. 2000. Markets, Policies and Global Economy: Can the Global Economy be Civilized? Prebesch Lecture, UNCTAD. December.

Khor, M. 2000. Globalization and the South: Some Critical issues. Penang, Malaysia: Third World Network.

Lall, S. 1999. *The Technological Response to Import Liberalization in Sub-Saharan Africa*. London: Routledge.

Newfarmer et al. 2003. *Global Economic Prospects and the Developing Countries*. Washington DC: World Bank.

Rege, V. 2002. Market Access for Non-Agricultural Products. Working Paper 4 of the Geneva Group of Commonwealth Developing Countries. London: Commonwealth Secretariat. February.

—— 2008. Briefing Note on the Proposals for Clarification of the Rules of the Agreement on Technical Barriers to Trade (TBT) on Product Specific Basis.

Rodrik, D. 1999. *The New Global Economy and Developing Countries: Making Openness Work*. Baltimore: Johns Hopkins University Press.

Stewart, T P. 1993. *The GATT Uruguay Round (1986-1992): Volumes 1 to IV*. Austin TX: Kluwer Law International.

Stewart, T P, P J McDonough and M M Prado. 2000. 'Opportunities in the WTO for Increased Liberalization of Goods: Making sure the Rules Work for all and that Special Needs are Addressed. *Fordham International Journal*, Volume 24, November.

Wade, R. 2003. *Governing the Market, Economics Theory and the Role of Government in East Asian Industrialization* (2nd edition). Princeton, New Jersey: Princeton University Press.

Wignaraja, G and G Ikiara. 1999. Adjustment, Technological Capabilities and Enterprise Dynamics in Kenya. In S Lall (ed), *The Technological Response to Import Liberalisation in Sub-Saharan Africa*. London: Macmillan.

UNCTAD. 1999. Trade and Development Report, 1999. Geneva and New York: United Nations.

UNCTAD and Commonwealth Secretariat. 2001. *Duty and Quota Free Access for LDCs: An Analysis of Quad Initiatives*. Geneva and New York: United Nations.

WTO. 2001. *Market Access, Unfinished Business: post-Uruguay Round inventory and issues*. Geneva: World Trade Organization Publications.