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NEGOTIATIONS OF FREE TRADE AGREEMENTS(FTAs)*

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* The views and opinions expressed in this paper are those of the author and not necessarily those of the World Intellectual Property Organization (WIPO) or its Member States.

1. INTRODUCTION

Historically, Trade has been the main focus of international relations, the cause of almost of all regional and international conflicts. For this simple reason the states which fought in the Second World War agreed to set up the General Agreement on Tariffs and Trade(GATT) immediately following the cessation of hostilities. Trade was also the focus of the cold war and remains till today as the main bone of contention even among the friendly states like USA and EU. In addition, trade is considered one of the crucial elements of development in human life be it technological, financial, commercial, scientific or intellectual. Specifically for this consideration all states accord trade their utmost attention and priority.

There has been many attempts to regulate trade among states. Negotiations were directed towards this goal on bilateral, regional and multilateral levels. Due to the complexities of the issues surrounding trade, it was thought that the best way to tackle the problems of international trade on multilateral level. All efforts culminated in the establishment of the World Trade Organization (WTO)in 1995.

Since the inception of WTO differences between the developed and developing countries emerged due mainly to the divergences in the interests of both groups. Likewise, differences among the components of each group were equally irreconcilable. As a result the talks aiming at establishing a world trade acceptable to all were stalled. Understandably, negotiations were bogged down and the Rosy hopes of a speedy resolution for the contentious issues, specially among the developing countries, faded.

2. FREE TRADE AGREEMENTS (FTAs)

The direct result of the failure of the multilateral fora was the decision of some big powers to go bilateral. The United States led this chorus. " As trade negotiations at the WTO level failed to make significant headway, US turned to bilateral and regional free trade agreements as a means of forging new markets of American goods and services.." declared OXFAM in its campaign to defeat FTAs that threaten peoples' rights to livelihood, local development and access to medicine. The role US played in the proliferation of FTAs directly contradicted the efforts of streamlining of international trade through WTO. The Department of State outlined the aims of US in forging FTAs in the Middle East and the world in general were mainly to enable states to build intra-regional groupings as a stage towards converging at later stages unto global trade, establish close ties with these states, integrate with the global economy through trade arrangements and create measures to stimulate trade and investment and to build capacity of partners in trade negotiations to benefit fully from trade liberalization.

3. US FTAs AND THE MIDDLE EAST

The first trade agreement the United States signed was with Israel in 1985. The explanation for this move is obvious. Israel is the main strategic ally of US in the Region and the security and survival of Israel has always been a key factor in their policy in the Middle East.

President Bush issued a sort of a doctrine on the Middle East. It is US-Middle East Free Trade Agreement. He hopes by 2013 all Middle Eastern countries will be bound with US by strong and meaningful ties in all spheres of relationship.

U.S. is aiming at creating a middle east restructured and reformed with its trade streamlined. At first, it wants to see some friendly states in the Region sign few FTAs as proposals to the Middle Eastern Free Trade Agreement. Its trade strategy in the Region, as well as in the rest of the world, is to “pursue multiple market-opening initiatives on a global, regional and bilateral basis, establishing models of success that can be used throughout all negotiations..”

Following the success of its FTA with Israel, America followed a similar strategy and started targeting weaker and more vulnerable allies to ‘impose’ on them some types of FTAs though not similar to that already signed with Israel.

Jordan was the first Arab state to sign such agreement with USA in 2000. It was hoped that this agreement “will eliminate all tariff and non-tariff barriers to bilateral trade in virtually all industrial products within ten years.”

Bahrain was the second Arab state and the first Gulf Cooperation Council (GCC) member to sign an FTA with USA. The State Department says that this agreement is “an important step in implementing US President's economic reforms in the Middle East and pursuing the goal of a Middle East Free Trade Area. US is seeking to eliminate tariffs and other duties on trade between US and Bahrain on the broadest possible basis, improve intellectual property rights protection and eliminate barriers in Bahrain’s service markets.”

Prince Saud Alfaysal, Foreign Minister of Saudi Arabia, furious about the step Bahrain took, says “...It is alarming to see some members of the GCC enter into separate bilateral agreements with international powers.. They diminish the collective bargaining power and weaken not only the solidarity of the GCC as a whole, but also each of its members...”

The harsh reaction of Saudi Arabia is understandable. The economic integration agreement signed by the heads of state of GCC members in 2001 stipulates that “member states shall draw their policies and economic relations in a collective manner vis-a-vis other countries, blocs and regional grouping, as well as other regional and international organizations...”

Understandably, GCC Member states fear that duty-free American goods will find their way to their markets through Bahrain. The situation has changed a lot after Saudi Arabia joined WTO and Oman became the second GCC member to sign FTA with USA, in addition that UAE is currently negotiating similar agreement with Washington.

4. EGYPT AND QIZ

Qualified Industrial Zones (QIZ) is a different type of FTA. In its efforts to break the wall of isolation around Israel, the United States came up with the idea of QIZ. It was successfully imposed on Jordan and later Washington spearheaded the efforts to convince Egypt to sign the new QIZ. The idea behind it is that it is supposed to remove customs duties on Egyptian garments and other textile goods exported from Egypt to US. It, however, carries one condition: those items must contain at least 11.7 per cent Israeli component “most likely to consist of packing and hangers.”

It is noticeable that the policy followed in Middle East is somehow different from that followed elsewhere in the world. In explaining the motives, and contradictions of the US trade policy there the State Department that motives behind the strategy of President Bush on MEFTA are as follows:

- To enable ME economies to build an effective intra--regional trade zone;
- to establish a clear and closer links with USA;
- to enable ME economies integrate with the global economies through trade arrangements tailored to their environment and progress with reform;
- to apply reform measure in all sphere of life through good governance and rule of law. That meant going fully democratic.

In a statement later the US Trade Representative added that his country wanted “the Middle East states increase trade and investment with the US and others in the world economy. The first step is to work closely with peaceful nations that want to become members of WTO in order to expedite their accession. As these countries implement domestic reform agendas, institute the rule of law, protect property rights (including intellectual property) and create the foundation for openness and economic growth, US would expand and deepen economic ties through Trade and investment Framework Agreements (TIFAs).”

He adds that US wants to promote the “establishment of legal protections for investors, improvements in intellectual property protection more transparent and efficient customs procedures and greater transparency in government and commercial regulations. US hopes through MEFTA to help rebirth an optimistic and tolerant Islam.”

5. NEGOTIATIONS OF FTAs

The nature of multilateral agreements negotiation is drastically different from those of bilateral or regional trade agreement negotiations. The first type is open and fully transparent; the latter is mostly held behind closed doors, either for security reasons or foreign policy considerations, or for fear of arousing public outcry! This leads to lack of transparency. That means that the most sectors of society affected by those agreements, e.g workers, farmers petty traders, are excluded from participation in shaping such agreements.

6. FTAs VERSUS GLOBALISM

Globalism is very much manifested in WTO which is described as a system based on rules which apply to all states. "...Its central obligation is to ensure that trade is non-discriminatory. Foreign and domestic goods produced are treated equally." Compared to GATT, WTO is a "fully-fledged international organization with stronger and broader authority.. Its motto being to promote openness, fairness and predictability in international trade for the benefit of humanity.." It is precisely for this reason that trade is considered the main pillar of world development.

Under WTO all its members are equal. It means that all members, have the right to participate in decision-making process. Consensus means all members have veto power.

WTO was the legitimate outcome of the Uruguay Round (1986-94) which was preoccupied mainly with agriculture and textile, trade in services, reduction of the level protection, and most importantly to WIPO, the Trade-Related Aspects of Intellectual Property Rights (TRIPS). TRIPS "attempts to strike a balance between the long term social objective of providing incentives for future invention and creation, and the short term objective of allowing people to use existing inventions and creations."

7. WTO AND HUMAN RIGHTS

WTO literature finds, justifiably, common things between multilateral trading system and human rights conventions. Both promote peace, better standard of living, employment, real income, optimal use of world resources which are all conducive to the promotion of human right, in particular the right to development.

Mr. Jose Manuel Borroso, President of EU, Says "...Multilateralism is the most effective and the most legitimate means to address the global challenge we face.. Effective, because of its global reach. Legitimate, it gives big and small, rich and poor, a voice in the way our world is organized. We have seen a high participation rate from developing countries, confirming that multilateral approach protects all members, not just the large and the strong. The alternative is unilateralism and the law of the jungle. Trade is not an end in itself. It is an essential means to deliver a better life for billions of people..."

On the other hand, the Doha Development Agenda (DDA) sums up the issue of globalization of trade as follows.. "to make trade an instrument for global development and peace and security at a time of considerable economic and political uncertainty..." Accordingly, globalization does not render states or governments irrelevant. "We need states for legislation, personal security, education, sense of belonging, good governance.. For each country globalization is at least as much a choice as a destiny..."

8. BTAs, RTAs AND FTAs

The issue of Bilateral Trade Agreements (BTAs), Regional Trade Agreements (RTAs) is still hotly discussed among politicians and academics. It is seen in the context of national interests and international obligations. As tensions grow high between the two camps and interest groups, BTAs proliferate on the expense of multilateral arrangements. Some countries prefer to go it bilateral. Those who defend multilateralism are faced with the long stalled international negotiations of WTO issues.

Mr. Kamal Nath, the Indian Minister of Commerce and Industry sums the views of those who favour BTAs as follows.. "BTAs were perfectly compatible with the norms mandated by WTO. RTAs are a fact of life. In no way do they replace, displace or contradict a rule-based multilateral trading system. WTO provides for bilateral trade agreements."

On the other hand, Mr. Pascal Lamy, WTO Director General, differs with the Indian official. He believes these trade agreements contradict the non-discrimination principles of WTO. "...If so, why are so many countries ready to accept rules and disciplines at the bilateral level that they are not prepared to accept at the unilateral level..."

9. CONCLUSION

It is apparently that many powers try to apply trade policy to achieve non-trade related objective. USA is leading this camp with some contradictions. In the Americas Washington wants collective and comprehensive trade agreement forging more than 24 countries. In GCC It wants to deal with the six members individually. Both in the name of reform, liberalization of trade and formation of a strong alliance against terrorism. The developing countries have to wait and see if the regional and bilateral trade agreements pursued by the big powers will help efforts of different groups merge in one big bloc that can convince the influential trading world powers to go back to the WTO forum.

10. SUDAN'S EFFORTS TO JOIN WTO

A study prepared by the Commission for WTO Affairs gives clear steps taken to implement the decision of the Accession Process of Sudan to the WTO. The silent

features of this study which was presented to the Council of Ministers gives the steps taken so far to join the World Trade Organization. Here are the main points the study carries:

“Sudan applied for membership of WTO in 1995 in accordance of Article X11 of Marrakech Agreement Establishing the WTO stipulates that " Any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations may accede to this agreement on terms to be agreed between it and the WTO.”

Sudan submitted its memorandum on the Foreign Trade Regime some four years later. As the Agreement states a working party of 28 member states was established to examine “the application of the Government of Sudan to accede to the World Trade Organization under Article X11.”

The Working Party held its first meeting in July 2003. Following receipt of new inputs from Khartoum the second meeting of the Working Party was held in March 2004. The third meeting scheduled towards the end of 2004 was postponed indefinitely “due to the fact that more time was needed by Members to examine the very impressive documentation submitted by Sudan..”

“As the issue of accession of some countries was bogged down, and due to the importance many WTO Members attached to accession of such new members, a number of concrete steps were taken to facilitate accession negotiations of the Least Developed Countries (LDCs). Accordingly, the number of Working Party meetings for LDCs has been reduced to an average of three to four meetings as opposed to the average figure of six to seven. Sudan is expected to benefit from such decision.”

“Following this decision a pragmatic approach has been developed which puts emphasis on focused informal consultations between interested Members and the aspiring LDCs with a view to accelerating the accession process and lessening the financial and human resource burdens of the negotiating LDCs.” The Sudanese Commission has already conducted successful informal bilateral consultations with some 8 Member states including USA, EU, Canada, Australia and Brazil.”

Despite the postponement of the meeting of the Working Party the Commissions relations and contacts continued with WTO. Sudan continued to benefit from trade-related technical assistance programs offered by WTO. Sudan as well benefited from technical assistance from EU, UNCTAD, the six agency Working Group of Integrated Framework.”

11. ACTION PLAN OF SUDAN TO ACCELERATE ACCESSION PROCESS TO WTO

The Commission established an impressive road map on this issue. The Commission committed to continue bilateral negotiations with Members of the Working Party, continue the reform process leading eventually to WTO membership and circulate up to date track

record of Sudan during 2005 on the various measures taken by Sudan to comply with WTO disciplines (Trade Liberalization, Reform of the banking system, Privatization and most importantly, the implementation of the CPA).

It is hoped that after the decision of WTO members on the acceleration of accession process of LDCs the application of Sudan will be finalized once the third meeting of the Working Party is held.

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