

Dismantling trade barriers

MIERSCOPE

By

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The question of market access has always been the centrepiece of all multilateral trade negotiations (MTN). In the last eight MTN rounds under the auspices of the General Agreement on Tariff and Trade (GATT), the main focus was on tariff reductions relating largely to items of export interest to developed countries. The primary reason why developing country interests were scarcely addressed in the first seven rounds was they chose not to be directly involved in the negotiations. In the Uruguay Round (UR), the active participation of developing countries led to some significant tariff reductions in developed countries for items of export interest to the former.

Consequently, tariffs as a protectionist instrument has declined in importance especially in developed countries. The developed country trade-weighted average tariff on industrial products has fallen by 40 per cent to 3.8 per cent at the end of 2000, thanks to the UR. In developing countries, the average tariff has been slashed by 37 per cent. What is more, the increased coverage of tariff bindings, from 78 per cent of the tariff lines to 99 per cent for developed countries and from 21 per cent to 73 per cent for developing countries, under the UR, has effectively limited potential policy backsliding.

Substantial progress notwithstanding, some key industrial sectors remain unevenly protected with considerable inter-country and inter-commodity differences in the tariff structure. Of particular concern to many developing countries are the tariffs on textiles, wearing apparel and wood products. Without a doubt, there are still concerns over tariff barriers, which take the form of high tariffs, tariff peaks, tariff escalations and tariff quotas, not to mention the rampant use of non-ad valorem tariffs such as specific and compound tariffs. Textiles and clothing, in particular, has a high proportion of tariff peaks and tariff escalation.

It is non-tariff barriers (NTBs) which need greater attention, not only because they are far more complex but also because protectionists tend to increasingly take the non-tariff route as tariffs are on the decline. NTBs are far more dangerous than tariffs, as they often involve administrative discretion rather than open rules of protection. The Omnibus Trade Bill of the United States (US) represents a case in point.

It is important to distinguish non-tariff measures (NTMs) from NTBs, although their impacts are the same to the extent that they all restrict market access. The main difference lies in the fact that NTMs are seen as benign and necessary, while NTBs are viewed as vicious and protectionist. The World Trade Organisation (WTO) recognises that certain measures are warranted to protect consumer interests, which include concerns for safety and health. There are several WTO Agreements that allow government measures to monitor or regulate imports. The Agreement on Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT) are interesting cases in point. These are meant to discipline the use of measures, standards and technical requirements.

To be sure, there are gray areas, as the dividing between NTMs and NTBs is sometimes blurred. Voluntary export restraints (VERs) are treated as NTMs, apparently because it is self-imposed, although in reality it constitutes a barrier to trade. For example, Malaysia has prohibited export of logs from the peninsula to encourage downstream activities, while Japan had agreed in the 1980s to voluntarily limit car exports to the US, ostensibly to help the US reduce its ballooning bilateral trade deficits with Japan. Variable levy adjustment mechanism to stabilise domestic prices also falls into this category. A case in point is India's import surcharge on palm oil that varies inversely with world prices.

Control measures such as SPS, meant to protect humans, animals and plants, tend to go overboard through the application of standards that exceed internationally accepted norms. Thus, there have been some instances of Malaysian consignments of prawns and frozen seafood being rejected by European Community (EC) authorities who are bent on zero bacteria count instead of a minimum acceptable level as per international standards. It is noteworthy that prawns and seafood products exported by these companies have encountered no such problems in Japan or the US.

Technical barriers to trade (TBT) arise where standards, regulations and assessment systems, which are intended to ensure safety, are not applied uniformly. Experience has shown that duplication of testing procedures that do not value-add to the product adds to cost of compliance.

It is by no means rare to find cases of NTBs being used against the exports of Malaysia, which could apply to other countries as well. Some examples should suffice. Medical

gloves made from natural rubber have been labelled in the United States with a note “Caution: This product contains natural rubber latex, which may cause allergic reaction”. Likewise medical equipment that contain dry natural rubber also carry similar warning labels in the US. This smacks of unfair trade practice, as there are no such warning labels for gloves and medical equipment made from synthetic rubber, despite the fact they also have similar protective chemicals as found in the natural rubber. This is clearly discriminatory as the medical hazards of synthetic gloves, including nitrile, polyurethane and vinyl, are not publicised.

In Belgium, there is a law that permits the use of a voluntary label called “ethically produced goods” ostensibly to promote “Socially Responsible Production”. Goods qualified to adorn the label are those which are produced, from subcontractors to manufacturers, in accordance with the International Labour Organisation (ILO) standards. Not all products can carry the label, as social audit firms approved by the Belgian Ministry of Economy need to check on the companies for ILO compliance. Such unilateral actions tend to create discrimination against non-labelled products.

The EC regulations apply stringent rules on food quality, packaging and labelling. Exports of poultry products have been particularly affected by such sanitary regulations by virtue of the fact they encompass rules pertaining to equipment and methods used in the processing and packaging of the product. Obtaining approvals is a needlessly long-drawn process, which involves substantial documentation and tedious bureaucratic procedures. It took a Malaysian exporter of meat products two years to get the approval.

To be sure, NTBs are encountered not only in developed country markets but also in developing countries, as borne out by the Malaysian experience. China is known to apply different standards to a particular product, which makes the task extremely difficult for exporters. As China is yet to develop its own standards, the standards of the country of origin is often used, but then the certification may have to be done by Chinese experts in the country of origin. What is worse, safety and inspection procedures applied on imports are far more rigorous than those applied on import substitutes.

Imports of fresh tropical fruits into South Korea must go through an elaborate Pest Risk Assessment (PRA), which requires the infestation and fumigation methods used by exporters are acceptable to the National Plant Quarantine Service. Likewise, exports of

medical devices to South Korea are subject to tight regulations, which include among others submission of confidential information and non-transferable import license.

The Malaysian experience has shown that the mandatory inspection and testing applied in the Philippines on a wide range of products are cumbersome and costly. In Thailand, the language requirement also constitutes a barrier, as application forms and supporting documents have to be in the Thai language, which raises the cost of registering a product in the market.

Malaysia, too, has instituted administrative licensing measures on imports, which it considers not inconsistent with the WTO Agreement on Import Licensing. However, needless to say, licensing is generally viewed as a non-tariff barrier. Malaysia does apply mandatory standards on imports. For example, the Energy Commission insists on conformance to Malaysian Standards for 41 products, while the Fire Services & Rescue Department has come up with 8 Malaysian standards that importers of products must comply with.

Regulations by themselves may not constitute a trade barrier, if they are applied uniformly on all comparable items regardless of the country of origin in a non-discriminatory manner. NTMs and NTBs that deliberately restrict trade can, of course, be challenged in the WTO. Interestingly, the Article XXIII of the GATT even allows measures that are WTO-consistent to be challenged, if they nullify or impair the benefits conferred directly or indirectly under the WTO Agreements. While, thus, there is legal redress against NTMs and NTBs under the WTO, developing countries, in practice, find dispute settlement a time-consuming and costly exercise.

The Doha Declaration seeks to improve market access by cutting both tariff and non-tariff barriers to trade, focussing on developing country needs and products of export importance to them. There is a need to do away with partial or piecemeal tariff reforms. Reducing low tariffs and leaving high tariffs intact would only widen tariff disparities. Instead, across-the-board tariff cuts would be more comprehensive. A proportionate tariff cut would lower all tariffs by a given percentage, reducing higher tariffs more, thereby narrowing tariff disparities. A non-proportional tariff cut, slashing higher tariffs by a bigger margin, would reduce disparities even faster and render the exercise economically more meaningful in terms of efficiency and welfare gains.

Care should also be taken to ensure that the effectiveness of tariff reductions is not offset by misuse or abuse of anti-dumping and other variants of so-called “sanctioned” forms of protection. It is indeed worrisome that more and more countries are resorting to anti-dumping. The US has long been the heaviest user of anti-dumping, but it now pales in comparison with India in this regard. There is a need to subject anti-dumping to greater discipline, lest it will proliferate. Non-tariff barriers are even harder to deal with, as they can lend themselves to be less transparent and more discretionary and discriminatory. While there is certainly a case for NTMs to be placed under closer scrutiny, the only solution for NTBs is total dismantling.

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