

THE INFORMATION TECHNOLOGY AGREEMENT (ITA); CONSIDERATIONS FROM A DEVELOPMENT PERSPECTIVE

SYNOPSIS

This note discusses the contents of the Information Technology Agreement (ITA), including the scheduling approach under the ITA, the experiences of ITA members thus far, and the propositions for expansion of the ITA product coverage.

The review indicates that:

- Many of the developing country members had joined the agreement pre-maturely without enough capacity to take part in the export markets. As a result, several have witnessed exponential increases in their trade deficit in ITA products since their membership in the ITA Agreement.
- For several developing countries members of the ITA, an adjustment of their current commitments would be necessary in the course of an ITA review process if they want to build (or rebuild) their domestic IT industry.
- Any review of the product coverage of the ITA is pre-conditioned on the consensus among all the ITA members.
- ITA Members have a core interest in seeking to establish special and differential treatment rules under the ITA that reflect the consensus among WTO member in regard to establishing more effective SDT under the Doha Round, and integrating the principle of 'less than full reciprocity' into the ITA.

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I. THE CONTENTS OF THE INFORMATION TECHNOLOGY AGREEMENT (ITA)

Origins and objectives

The Information Technology Agreement (ITA) was concluded by 29 WTO Member States at the Singapore Ministerial Conference in 1996. The official name of the ITA is the 'Ministerial Declaration on Trade in Information Technology Products'. The annex and attachments contain the modalities and product coverage of the agreement. Further implementation modalities were agreed in April 1997. These implementation modalities also established the 'Committee of Participants on the Expansion of Trade in Information Technology Products' (ITA Committee).¹ According to the agreed modalities, each Member shall incorporate its tariff reduction commitments agreed under the ITA into its schedules to the General Agreement on Tariffs and Trade (1994)².

As of 2013, the ITA covers 76 signatory countries. Annex 1 contains the list of WTO members taking part in the ITA.³ Today, a higher number of developing countries participate as members of the ITA compared to when the ITA entered into force (1997), many of which are recently acceded WTO Members.

The stated objectives of the ITA include raising standards of living and expanding production and trade in information technology products. It is assumed that the agreement will make positive contributions to global economic growth, through cost reductions of inputs into information and communications technology (ICT) services, integration of more countries into the export markets of IT products, and global diffusion of technology.

The ITA covers around 200 tariff lines on a six-digit level. Products covered are significantly diverse, and fall within six broad product groups including: computer hardware and peripherals, telecommunications equipment, semiconductor manufacturing equipment, analytical instruments, and semiconductors and other

¹ WTO document G/L/160 of 2 April 1997, 'Implementation of the Ministerial Declaration on Trade in Information Technology Products'.

² See: Paragraph 1 of Annex of ITA Ministerial Declaration entitled 'Modalities and Product Coverage' (WT/MIN(96)/16).

³ WTO document WT/MIN(96)/16 of 13 December 1996. For more information, see the WTO website at: http://www.wto.org/english/docs_e/legal_e/itadec_e.htm.

electronic components. According to estimates by the WTO secretariat, the share of IT products in world merchandise exports in 2010 was 9.5 per cent which is more than trade in all agricultural products (9.2 per cent) and automotive products (7.2 per cent).⁴

The ITA eliminates tariffs

The ITA is solely a tariff cutting mechanism. Paragraph 2 of the ITA Declaration (WT/MIN(96)/16) established that participants to the agreement shall "bind and eliminate all customs duties and other duties and charges of any kind on information technology products" within the meaning of Article II:1(b) of the General Agreement on Tariffs and Trade 1994, through equal duty rate reductions, on:

"(a) all products classified (or classifiable) with Harmonized System (1996) ('HS') headings listed in Attachment A to the Annex to this Declaration"; and

"(b) all products specified in Attachment B to the Annex to this Declaration, whether or not they are included in Attachment A".

ITA signatories must also bind all 'other duties and charges' (ODCs) on ITA products at zero. Other duties and charges are levies on imports that are not classified as 'ordinary customs duties' as referred to Article II of GATT on schedules of concessions- (usually referred to as applied tariffs or MFN tariffs) or as 'fees and charges' under Article VIII of GATT (fees and formalities connected with Importation and exportation).

The ITA does not provide for exceptions to product coverage; however some Members, as well as recently acceded WTO Members, had an extended implementation period for sensitive items defined by each Member. The commitments undertaken under the ITA are on a 'most-favoured nation' (MFN) basis, and therefore all benefits accrue to all WTO Members regardless of whether they are party to the ITA.⁵

Tariffs were already not significant in the case of developed countries; the pre-ITA applied tariffs for developing countries party to the ITA were much higher than those applied by developed country Members of the ITA.

⁴ http://www.wto.org/english/tratop_e/inftec_e/symp_may12_e/speaker4maurer.pdf.

⁵ Source: http://www.wto.org/english/tratop_e/inftec_e/itaintro_e.htm.

Non Tariff Barriers (NTBs)

Non-tariff barriers (NTBs) – in the form of national standards and regulations or international standards - have been the most significant barriers that developing country products face in accessing the ITA markets⁶, whether or not these countries are part of the ITA.

In the ITA, discussions on NTBs have been put on a different track than that on tariffs. Paragraph 3 of the Ministerial Declaration provided for consultations on non-tariff barriers to trade in information technology products under the proviso that ‘such consultations shall be without prejudice to rights and obligations under the WTO Agreement.’ The ITA has no binding commitments concerning NTBs.

A work programme addressing NTBs was set in the year 2000.⁷ It was structured in three phases:

- (I) identifying non-trade measures that are impediments to trade in ITA products;
- (II) examining the economic and developmental impact of such measures on trade in ITA products and the benefits that would accrue to participants from addressing their undue trade-distorting effects; and
- (III) the formal consideration by the Committee of the outcomes of Phases I and II.

As of November 2012, Members were reporting that the discussions on NTBs were “still at an early and conceptual stage with a view to developing some common ground on which they could base further talks or to finding a basis for concrete work or looking at areas where they could proceed”.⁸

⁶ Out of 456 TBT notifications between 1995 and 2000 by all WTO members, developed countries had 356, making 78 per cent of the total. For ITA products, technical-barriers-to-trade notifications are on the basis of either national standards and legislation (includes: labelling and certification, technical regulation or standards and certificates, trade facilitation and harmonization acc. to international standards, human safety and environmental protection, animal and health safety, consumer protection...). Source: Murali Kallumal, “Process of Trade Liberalization under the ITA: the Indian Experience”, CWS/WP/200/3 working paper, Centre for WTO Studies, Indian Institute of Foreign Trade.

⁷ See: G/IT/19 of 13 November 2000, and G/IT/SPEC/Q4/19/REV.2 AND G/IT/SPEC/Q2/11/REV.1.

⁸ See page 4 of document G/IT/M/56.

The ITA Committee

On 26 March 1997, the participants to the ITA established the ‘Committee of Participants on the Expansion of Trade in Information Technology Products’ in order to monitor the provisions of paragraphs 3, 5, 6 and 7 of the Annex to the ITA Declaration (See Annex 2 for text of the articles).⁹

The rules of procedure adopted by the ITA Committee establish that the “Committee shall hold regular meetings to review developments related to the implementation of the Declaration, and shall hold special meetings at the request of any participant or as otherwise necessary by invitation of the chairperson”.¹⁰ In conducting the consultations and review of the product coverage, as described in paragraph 3 of the Annex to the ITA Declaration (WT/MIN(96)/16), ITA Members agreed that the Committee may also take into account changes in patterns in trade in information technology products.¹¹

II. THE SCHEDULING APPROACH UNDER THE ITA IS PROBLEMATIC

Attachment A

ITA signatories eliminate tariffs on products listed in Attachment A and B of the Ministerial Declaration. Attachment A is modelled based on the traditional way of classifying concessions in the WTO Members’ schedules of commitments, which is based on codes in the Harmonized System (HS) of tariff classification, and currently covers around 200 tariff lines on a six-digit level. The Harmonized System is an international standard for reporting goods to customs and other government agencies, established and administered by the World Customs Organization (WCO).

The ITA uses the 1996 version of the HS. The WCO introduced sets of amendments to the HS in 2002, 2007 and 2012, including on subheadings covering ITA products. Customs authorities usually adjust their nomenclatures to take into account these amendments. This causes difficulty in comparing the concessions in WTO schedules

⁹ See: [G/L/160](#) (2 April 1997), « Implementation of the Ministerial Declaration on Trade in Information Technology Products », para. 3.

¹⁰ The text of the Rules of Procedure can be found in [G/IT/3](#).

¹¹ See [G/L/160](#), 2 April 1997, “Implementation of the ministerial declaration on trade in information technology products”.

starting from 2002 onwards.¹² Technical work on this has been on-going in the ITA Committee.

Other challenges include the divergence of product classifications, and the detailed classification given that the products are often complex. As a result, participants often list different HS1996 subheadings in order to liberalize trade in the same products.

Moreover, some of the products might overlap with those under the 'electrical and electronics' sectoral initiative negotiated under the agreement on non-agricultural market access (NAMA).

Attachment B

Attachment B takes a different scheduling approach. It contains a positive list of 13 product categories with short descriptions (See Annex 3). ITA Members have to eliminate tariffs for these products wherever they are classified in the HS, even if the codes are not mentioned in Attachment A.

The way how commitments are scheduled in Attachment B is problematic. Delegates have raised the issues of multiple uses of products, inversion in the duty structure, and difficulty in monitoring at the customs level many of the products covered by the ITA.¹³ According to a WTO study, schedules of commitment by ITA participants diverged in classification of 55 products; these products included 13 listed in Attachment B, and 42 listed in Attachment A and labeled 'for attachment B'¹⁴.

Members of the ITA have agreed that the ITA Committee would meet as often as necessary to agree on, where appropriate, a common classification for those products and, if necessary, to take appropriate action at the WCO. Paragraph 5 of the ITA Annex¹⁵ directs ITA participants to consider any divergence among them in

¹² See: WTO publication "15 years of the Information Technology Agreement", page 98.

¹³ See: G/IT/ M/ 56.

¹⁴ See: WTO publication "15 years of the Information Technology Agreement", page 29.

¹⁵ Para. 5 of the ITA Annex establishes that: "Participants shall meet as often as necessary and no later than 30 September 1997 to consider any divergence among them in classifying information technology products, beginning with the products specified in Attachment B. Participants agree on the common objective of achieving, where appropriate, a common classification for these products within existing HS nomenclature, giving consideration to interpretations and rulings of the Customs Co-operation Council (also known as the World Customs Organization or 'WCO'). In any instance in which a divergence in classification remains, participants will consider whether a joint suggestion could be

classifying information technology products, beginning with the products specified in Attachment B, in furtherance of the "common objective of achieving, where appropriate, a common classification for these products within existing HS nomenclature". The bulk of the divergences in the classification of the Attachment B items relate to parts and accessories of semiconductor manufacturing equipment, semiconductor manufacturing equipment, and computers¹⁶.

Furthermore, difficulties arise with the arrival of new products to the market. Take for example tablet computers such as the iPad.¹⁷ The Harmonized System Committee (HSC) at the WCO, in its 49th session in March 2012, addressed the classification of tablet computers. Delegations had varying opinions concerning the selection of headings or subheadings under which to classify these products, ranging from music storage devices to radio navigation receivers (because of their GPS capabilities) to radio transmitter-receivers (because of their WiFi or transmission capabilities)¹⁸. The HSC deliberations resulted in classifying the tablets as automatic data-processing (ADP) products, which are covered under Attachment B of the ITA under the product category 'Computers'. The other headings or subheadings suggested by delegations are currently not covered by the ITA.

This interpretation is highly contestable especially in the case of iPad. According to Attachment B, a computer is a device that can be 'freely programmed in accordance with the requirements of the user'. An iPad is a device designed to restrict users, and is clearly not a complete replacement for desktop or laptop computers. Such cases clarify the significance of the classification exercise as a negotiation exercise, and could lead to capturing additional markets and accordingly changing the dynamics in those markets.

The WTO Panel and the ITA

The WTO Panel in the EC-IT Products case (DS 375, DS 376, DS 377¹⁹) extensively addressed the ITA and schedules of commitment of the EU²⁰. The case dealt with the

made to the WCO with regard to updating existing HS nomenclature or resolving divergence in interpretation of the HS nomenclature."

¹⁶ See: WTO (2012), "15 Years of the Information Technology Agreement", page 29.

¹⁷ See: WCO, agenda for the 48th and 49th session of harmonized system committee 2011, and WTO report "15 Years of the ITA" page 31).

¹⁸ Source: Newsletter on 'International Trade Compliance' (June 2012), Baker and McKenzie.

¹⁹ See:

https://www.wto.org/english/tratop_e/dispu_e/find_dispu_cases_e.htm?year=none&subject=G135

tariff treatment of several products that were found to fall under the scope of attachment B of the EU schedule of commitments, specifically set top boxes, which have a communication function, flat panel display devices, and multifunctional digital machines.

The panel noted that the majority of ITA participants included a "headnote" in advance of listing of products under Attachment B, which reads as follows: "*With respect to any product described in or for Attachment B to the Annex to the Ministerial Declaration on Trade in Information Technology Products (WT/MIN(96)/16), to the extent not specifically provided for in this Schedule, the customs duties on such product, as well as any other duties and charges of any kind (within the meaning of Article II:1(b) of the General Agreement on Tariffs and Trade 1994) shall be bound and eliminated as set forth in paragraph 2(a) of the Annex to the Declaration, wherever the product is classified*"²¹.

Nineteen out of 24 of the original "ITA Schedules" (excluding those of WTO acceding States or separate customs territories) included such a head-note in their WTO Schedules employing nearly identical language.²²

The Panel highlighted that due to the informal nature of the plurilateral technical discussions that took place during the negotiations and implementation of the ITA, there is no formal record of ITA participants' discussions. Yet, almost all ITA participants included an identical or similarly worded head-note in their WTO Schedules, but there is no express requirement in the ITA itself or elsewhere to do so. The origin of the idea for including a head-note as an aspect of the implementation of the ITA is not clear. However, the panel underlined that "the substantial uniformity with which ITA participants included a head-note with highly similar language, including identical language in many cases, is fully consistent with the notion that the head-note was intended to play an important role in those Members' schedules" (paragraph 7.446 of the panel's report).

&agreement=none&member1=EEC&member2=none&complainant1=false&complainant2=true&respondent1=true&respondent2=true&thirdparty1=false&thirdparty2=false#results

²⁰ See: WT/DS375/R; WT/DS376/R; WT/DS377/R- 16 August 2010.

²¹ See: Schedules of commitment, and page 32 of panel report, WT/DS375/R, WT/DS376/R, WT/DS377/R.

²² The WTO Schedules of Japan and Switzerland/Lichtenstein, in particular, do not contain a head-note like those appearing in the WTO Schedules of other ITA participants. Japan included similar, though not identical, language in note 3 of the "Notes to Attachment II to Section II of Part I" to its Schedule (See WT/Let/138, p. 5; (17 April 1994). Switzerland/Lichtenstein (participating jointly) did not include a head-note at all in their Schedules (see WT/Let/253, 20 November 1998).

The Panel determined that due to the inclusion of the head-note in the EC schedule, concessions are defined by the narrative product descriptions in the Annex to the EU schedule (i.e. Attachment B) and not by the terms of the tariff item numbers beside them, which are "illustrative" of the headings that the EU considered relevant at the time of ITA implementation (See: paragraph 7.841 of the Panel's report). Thus, the tariff item numbers do not delimit the particular products that should be extended duty-free treatment, according to the panel.

Accordingly, the panel noted that the EU concession for 'set top boxes'²³ in the Annex to the EU schedule (i.e. Attachment B) is defined only by the relevant narrative description, which the panel went on to analyse (See paragraph 7.843 of panel's report)²⁴.

According to this case, the headnote attached to Attachment B establishes a broad 'catch-all' effect of the list of products covered under Attachment B. It includes products whose characteristics fall under the descriptions listed in Attachment B but that not necessarily fall under the HS code items under Attachment A. The dual nature of the schedule of commitments of the ITA Members, along with the approach adopted by the panel in the EC-IT Products case, point to an expansive approach to the scheduling of commitments under the ITA. This exposes WTO Members to obligations on a multitude of products on which they might not necessarily have the intention to suspend duty.

III. THE CASE FOR RENEGOTIATING SPECIAL AND DIFFERENTIAL TREATMENT UNDER THE ITA

'21st century' considerations on SDT and increased developing country membership in the ITA call for reconsideration of SDT rules under the ITA.

Special and differential treatment (SDT) under the ITA is of very limited scope; there are no exceptions to product coverage, and the agreement only offers extended or gradual elimination of tariffs. These periods do not necessarily allow the needed time for building or advancing an IT sector in developing countries.

²³ According to Attachment B, 'set top boxes', which have a communication function, are: a microprocessor based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange.

²⁴ See paragraphs 7.445-7.447 of the panel's report for a summary of overall conclusions on interpretation of the EC head-note.

The ITA falls short of the development aspirations of developing countries. There is a general consensus among the WTO Membership, especially since the launch of the Doha Round in 2001 that SDT has to be more robust than transitional periods. This provides a case for developing countries party to the current ITA to call for a revision of the SDT rules under the ITA, in light of the new consensus that emerged since 1996 on seeking more effective SDT.

Four points could be raised in this regard:

First, the principle of ‘less than full reciprocity’ has to be integrated into the ITA. Under the Doha mandate on market access for non-agricultural products, the WTO membership agree that “negotiations shall take fully into account the special needs and interests of developing and least-developed country participants, including through *less than full reciprocity* in reduction of commitments, in accordance with the relevant provisions of Article XXVIII bis of GATT 1994” (See paragraph 16 of the 2001 Doha mandate, emphasis added).

Second, all other SDT principles for developing and least developed countries embodied in Part IV of the GATT 1994, the Decision of 28 November 1979 on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, the Uruguay Round Decision on Measures in Favor of Least-Developed Countries, and all other relevant WTO provisions have to be integrated. This was also agreed in paragraph 50 of the 2001 Doha mandate.

Third, SDT in the ITA should at the very least be based on the non-agricultural market access (NAMA) sectoral initiatives under the NAMA negotiations. After long-standing sectoral discussions on SDT amongst Members, the concept of the “Product Basket Approach” (PBA) materialized.²⁵ The objectives of the PBA include providing a framework to enter detailed negotiations on individual NAMA sectorals, allowing exploration of different forms of tariff treatment within a specific sector to accommodate areas where some Members may have difficulty with tariff elimination, and addressing appropriate SDT for developing country Members as part of the overall solution.²⁶

²⁵ According to JOB/MA/75, the Product Basket Approach (PBA) is ‘a tool to construct sectorals with broad product coverage that reflect Members’ interests while providing pragmatic ways to address Members’ sensitivities.

²⁶ See JOB/MA/85 - as of March 2011.

An example of the PBA is the one suggested for sectoral 'Fish and fish products'. SDT could include the options of longer implementation periods, different implementation patterns for different product groups or subsectors; "zero for x" approach whereby developed countries bind at zero whereas developing countries get the option of excluding an [X]% of national tariff lines of a member's choice to be bound at [Y]%; or participation in a smaller number of products as well as ability to review commitment based on trends of trade.²⁷

Fourth, the modalities of implementation of the Ministerial Declaration on Trade in Information Technology Products (G/L/160) have established that "in light of the technical specificity of information technology products, participants may wish to consider, in the course of the review provided for in paragraph 3 of the Annex to the Declaration, additional procedures to address the concerns of small and medium-sized exporting participants regarding their rights under Article XXVIII²⁸, bearing in mind that a review will be conducted by the Council for Trade in Goods five years from the date of entry into force of the WTO Agreement pursuant to paragraph 1 of the Understanding on the Interpretation of Article XXVIII of the General Agreement on Tariffs and Trade 1994" (paragraph 10 of the ITA modalities G/L/160).

These '21st century' considerations on SDT, together with the fact that more developing countries are members to the ITA, provide a sound basis to reconsider SDT rules under the ITA.

Expansion of ITA coverage and the prerequisite of consensus between ITA participants

The ITA Ministerial Declaration establishes that participants "shall meet periodically under the auspices of the Council on Trade in Goods to review the product coverage specified in the Attachments, with a view to agreeing, by *consensus*, whether in the light of technological developments, experience in applying the tariff concessions, or changes to the HS nomenclature, the Attachments should be modified to incorporate additional products, and to consult on non-tariff barriers to trade in information technology products. Such consultations shall be without prejudice to rights and obligations under the WTO Agreement" (See Para. 3 of WT/MIN (96)/16, emphasis added).

²⁷ See: TN/MA/W/59 (4 July 2005) "Market Access for Non-agricultural products", Communication from Japan, Korea, Singapore, and the United States.

²⁸ Article XXVIII GATT addresses modification of schedules.

The ITA Committee was mandated to act as a forum for negotiations for the expansion of the product coverage. This process was halted when the Doha Round was launched in 2001, yet the push to reinvigorate the negotiations towards the expansion of the ITA re-emerged since 2006.

In May 2012, several developed countries proposed to (1) expand the product coverage of the ITA²⁹; and (2) include non-signatory information technology producers in the ITA which could encompass countries such as Mexico, Brazil, Tunisia, South Africa, Argentina, and Chile. According to the proposal, the ITA needed to be revised due to 'changes in the industry and the pace of innovation', which has 'contributed to uncertainty with respect to customs classification for numerous electronics products.' The communication highlighted examples of key categories of products that could be covered by the ITA expansion, including a) products capable of processing digital signals; b) products that can send or receive digital signals with or without lines; c) ICT manufacturing equipment; and d) related components, attachments, and parts. - Malaysia and Costa Rica supported this proposal.

After this proposal, review of product coverage has been a standing agenda item of the ITA Committee. This is commonly referred to as 'ITA expansion' or 'ITAI negotiations'.

Most of meetings discussing expansion of coverage have been held bilaterally.³⁰ Several countries, including Egypt, India, El Salvador, Guatemala, Honduras and the Dominican Republic, have voiced concerns and reservations with regard to the process and substance of the review. They have highlighted the need for transparency, inclusiveness and the granting of flexibilities to developing countries.

For example, Egypt called for careful assessment of data, which might show that some countries benefited more than others from ITA implementation. Egypt called for a fine balance between reduction of tariffs and development of the information technology industry. El Salvador stressed that flexibilities for developing countries should not be undermined by the ITA review process. Nicaragua had expressed its

²⁹ See G/IT/W/36 (2 May, 2012).

³⁰ See minutes of meetings March 2013; G/IT/M/56.

reservation concerning the revision of the ITA product coverage, while Indonesia noted that it was carrying out analysis of the impact of the ITA on its economy.³¹

Moreover, India contested the claim that benefits as a result of the ITA accrued to India in terms of increasing employment³². India had noted that its information technology manufacturing had dipped quite profusely due to the ITA. In regard to the proposed list of information technology products proposed for the expansion, the Indian delegate underlined a general concern that the consolidated list (JOB/IT/7/Rev.1) could create an inversion in the duty structure, and pointed to the multiple-use of many products and the difficulty in monitoring at the customs level for many of the products that have multiple-use.³³

The discussions on expansion of the ITA towards ITA II have been taken place in a technical committee that does not include all countries party to the ITA I. The committee commenced its work with 18 countries from among the ITA member countries, and later expanded to 26 countries³⁴ (by June 2013, and counting the EU as one member). The countries participating in the technical committee represent more than 90% of international trade in information technology. The list of products proposed for inclusion under ITA II includes 256 items. The discussions do not include a consideration of special and differential treatment for developing countries. Several countries, including China, have raised concern over multiple items in the proposed list, which they consider as 'sensitive products'.

IV. ITA TRADE TRENDS: TRADE DEFICIT FOR SEVERAL DEVELOPING COUNTRIES IN ITA PRODUCTS HAS INCREASED EXPONENTIALLY

The review process has to take into account changes in patterns in trade in information technology products. The implementation modalities of the Ministerial Declaration stipulate that "in conducting the consultations and review described in paragraph 3 of the Annex to the Declaration, the Committee may also take into

³¹ See: G Manicandan (2013) "ITA I and ITA II- A brief note of concern", and Committee of Participants on the Expansions of Trade in information Technology Products, minutes of the meeting (15 may 2012). See also G/IT/M/55 and G/IT/M/56.

³² See G/ITM/55.

³³ See: G/IT/M/56 paragraph 2.10.

³⁴ The committee includes Canada, Australia, China, Taiwan, Costa Rica, Croatia, the EU, Hong Kong, Israel, Japan, South Korea, Malaysia, New Zealand, Norway, Philippines, Singapore, Switzerland, Thailand, United States, Montenegro, Turkey, Mauritius, El Salvador, Iceland, Guatemala, and Dominican.

account changes in patterns in trade in information technology products” (See para. 7 of G/L/160).

Thus, the review process has to consider how the ITA benefited Members in terms of trade expansion of ITA products. As some developing countries already alluded to, it is quite obvious that not all countries have benefited equally. Some countries have trade surpluses in ITA-covered products while many other Members have developed large and persistent trade deficits. Trade deficits are not necessarily a problem for countries that have a net income from intellectual property rights, large net foreign direct investment inflows, or national companies repatriating profits to the country. Also some countries might have developed a competitive ICT service sector that might bring in foreign exchange to compensate for a trade deficit.

On the next page, the evolution of the trade balance in ITA-covered products for six countries is presented, for the period between 1998 and 2011. Three countries acceded to the ITA after 1996 (China as part of WTO accession, Oman in 2001, and Egypt in 2003).

‘ITA products’ are measured by their HS1996 codes on a 6-digit level. It only includes trade in products figuring in Attachment A of the Ministerial Declaration. This might misrepresent the totality of the actual trade balance. Some Attachment B products are not the same as those tariff lines listed in Attachment A; whilst some others overlap with Attachment A products. Also, some of the tariff lines listed in Attachment A are ‘ex-outs’ meaning that tariff elimination only applies partially in such cases. In the calculations for these figures the entire tariff line has been included which might compensate for the non-inclusion of Attachment B products, which by their nature do not have HS codes as such. However, the focus is on showing the trend and the size of the surplus or deficit.

The trends are quite clear. China’s ITA surplus has increased to more than USD300 billion in 2011 while the US trade deficit has increased to USD 100 billion in the same year. The US figures do not reflect exports by US-owned companies in China or the income associated with intellectual property rights or repatriated profit. Japan’s trade surplus stayed at stable levels (USD 60 billion). India, Egypt and Oman’s trade deficits have increased and have reached significant levels. Egypt’s ITA trade deficit tripled directly after it started to implement ITA commitments in 2003 and reached USD 2.5 billion in 2011. India’s ITA trade deficit in 2011 was around USD 18 billion.

India, Egypt and Oman are not the only countries suffering enlarged trade deficits after signing the ITA. There are a number of others. Developing countries therefore need adjustment of the current ITA commitments which can take place for instance via an ITA review process. This is important if these countries have the intention of building domestic IT industries. The result of such a review could be a more robust SDT in the ITA including exclusion of some products and lines, or if necessary, more fundamental changes in the ITA liberalization regime, taking into more realistic consideration, the time it requires for developing countries to build their IT industries.

Figures - ITA trade trends for different countries

India (original ITA signatory)	Japan (original ITA signatory)	Egypt (ITA participant since 2003)
<p>India - Increase trade deficit in ITA products, especially after 2002. Total ITA trade deficit around USD 18 billion in 2011.</p>	<p>Japan – relatively stable surplus of around USD 60 billion / year with dips in 2001-2003 and 2009. Increase of exports by Japanese owned entities abroad is not reflected.</p>	<p>Egypt – trade deficit more than tripled after implementation of ITA, from around USD 800 million in 2002 to USD 2.5 billion in 2011 (first staging in 2003 and full implementation in 2007).</p>
United States (original ITA signatory)	China (ITA participant since 2001)	Oman (ITA participant since 2001)
<p>US – Increase in ITA trade deficit reaching over 100 USD billion in 2011. Figures do not reflect exports by US-owned companies abroad.</p>	<p>China – increase in ITA trade surplus reaching more than USD 300 billion in 2011.</p>	<p>Oman – a stable trade deficit of USD 200 million/year increased to USD 800 million in 2011</p>

V. CONCLUDING REMARKS – CONSIDERATIONS FROM A DEVELOPMENTAL PERSPECTIVE

The status and objectives of the countries parties to the ITA, including the levels of development of their information technology sectors, have been significantly different. Several of the developing country members of the ITA had joined the agreement pre-maturely without enough capacity to take part in the export markets. Opening up the sector too early impacts the sector, and often leads to concentration of the economic activities in assembling and trading in information technology products rather than in acquiring and expanding manufacturing capacity. Such structural shifts impact as well the achievement of value-addition and the creation of employment in the sector.

Overall, the implementation of the ITA is tantamount to giving up the use of tariff policies in a sector encompassing a wide variety of products that are central to the future of the manufacturing sector and that hold significant cross-linkages with other sectors, such as the services sectors. Losing the ability to dynamically use and adjust tariff policies according to the broader objectives that a country holds in building a particular sector reflects a loss of policy space necessary to move up the production cycle and value chain in this sector. In such cases, a country is not able to change its tariffs policy, raising it on products it intends to acquire manufacturing capacity in and lowering it on intermediate products needed to support building up its manufacturing capacities.

It is worth noting that the delegate representing Egypt had raised this point in meetings of the 'Committee on the Expansions of Trade in Information Technology Products', underlining the need to achieve a fine balance between the reduction of tariffs and the development of the IT industry and the movement up the value chain in this area³⁵.

For example, the demise of India's electronic hardware industry is partly explained by India's premature signing of the ITA. This step exposed Indian manufacturers to direct competition with established rivals in the East Asian countries that have massive scales of production due to their links with multinational supply chains³⁶.

³⁵ See: G/IT/M/55.

³⁶ See: UN ESCAP, "Trade, capital flows and the balance of payments: trends, challenges and policy options for India", March 2013.

One of the objectives of developing countries that joined the ITA I had been attracting foreign direct investment in the information technology sector. A foreign investor undertaking an investment in one of the ITA Member countries will be searching for low costs of production and markets for their products. The zero-tariff rates are not expected to be the main attraction for foreign investors, except if they want to benefit from importing intermediate products for their production line. This in turn could result in negative impacts on the balance of payment position of host countries, especially if the foreign investor does not engage in enough export activity. It is worth considering that a country can always undertake unilateral liberalization on certain products without the need to join the ITA.

Furthermore, host countries for foreign investments in the information technology sector aim at achieving technology transfer. This is not automatic and requires significant policy direction and policy space. Technology transfer requirements, especially when linked to conditions of local content, could be found in violation of the agreement on trade-related investment measures (TRIMS) under the WTO, as well as other obligations that countries may have undertaken under international investment treaties.

Generally, developing countries need to focus on building up their own production and export capacities in high-technology products. Accordingly, they need to design their longer-term plan for dynamic use of tariff policies in order to support such an objective. They also need to define and differentiate between policies relevant to building a sector focused on supporting assembling services and traders and those relevant to supporting and nurturing manufacturing capacities. The use of tariff and trade policies will essentially vary in each of these cases. Overall, countries need to be selective and to consider the opportunities for complementarities at the regional level. Countries also need to think into the long-term, and look beyond their current comparative advantages. Strategic and temporary import substitution could be contemplated in cases where the objective is to leverage the sizeable domestic markets in order to develop domestic supply capabilities. Such an approach helps generate value addition and jobs while helping to moderate trade deficits (Aggarwal and Kumar 2012).

Recommendations:

- Countries need to actively design, with a futuristic perspective, domestic policies supporting the IT sector, defining the areas where the country wants to build a manufacturing capacity and others where they will focus on assembling and provision of services;
- Accordingly, countries ought to define longer-term plans for dynamic and selective use of tariff policy in order to support such potential, and nurture institutional capacities and inter-institutional coordination that allows for effective assessment of productive, trading, and innovation capacities in the sector;
- Countries ought to consider and seek regional complementarities and possibilities of nurturing regional production chains in the area of IT products, and establish cooperation mechanisms with foreign companies and multinationals that guarantee transfer of technology and know-how and contribution to local content development;
- Countries have a core interest in seeking SDT and other development-oriented rules under the ITA that reflect the consensus among WTO member with regard to establishing more effective SDT under the Doha Round, and integrate the principle of 'less than full reciprocity' into the ITA. Such rules should fully consider the need for a selective approach to tariff policies in developing countries' markets, which requires securing the right to select 'sensitive products' under the ITA and undertake a temporary 'opt-out' of commitments for selected products under the ITA.

ANNEXES

Annex (1)

ITA PARTICIPANTS (as of March 2013)	
Source: G/IT/1/Rev.48	
Albania	Macao, China
Australia	Malaysia
Bahrain, Kingdom of	Mauritius
Canada	Moldova
China	Montenegro
Colombia	Morocco
Costa Rica	New Zealand
Croatia	Nicaragua
Dominican Republic	Norway
Egypt	Oman
El Salvador	Panama
European Union (compromises the commitments of 27 Members of the EU)	Peru
Georgia	Philippines
Guatemala	Saudi Arabia, Kingdom of
Honduras	Singapore
Hong Kong, China	Switzerland (on behalf of customs union of Switzerland and Liechtenstein)
Iceland	Chinese Taipei
India	Tajikistan
Indonesia	Thailand
Israel	Turkey
Japan	Ukraine
Jordan	United Arab Emirates
Korea, Republic of	United States
Kuwait, the State of	Viet Nam
Kyrgyz Republic	

Annex (2):

Paragraphs 3, 5, 6 and 7 of the Annex to the ITA Declaration:

Article 3. Participants shall meet periodically under the auspices of the Council on Trade in Goods to review the product coverage specified in the Attachments, with a view to agreeing, by consensus, whether in the light of technological developments, experience in applying the tariff concessions, or changes to the HS nomenclature, the Attachments should be modified to incorporate additional products, and to consult on non-tariff barriers to trade in information technology products. Such consultations shall be without prejudice to rights and obligations under the WTO Agreement.

Article 4. Participants shall meet as soon as practicable and in any case no later than 1 April 1997 to review the state of acceptances received and to assess the conclusions to be drawn therefrom. Participants will implement the actions foreseen in the Declaration provided that participants representing approximately 90 per cent of world trade (2) in information technology products have by then notified their acceptance, and provided that the staging has been agreed to the participants' satisfaction. In assessing whether to implement actions foreseen in the Declaration, if the percentage of world trade represented by participants falls somewhat short of 90 per cent of world trade in information technology products, participants may take into account the extent of the participation of States or separate customs territories representing for them the substantial bulk of their own trade in such products. At this meeting the participants will establish whether these criteria have been met.

Article 5. Participants shall meet as often as necessary and no later than 30 September 1997 to consider any divergence among them in classifying information technology products, beginning with the products specified in Attachment B. Participants agree on the common objective of achieving, where appropriate, a common classification for these products within existing HS nomenclature, giving consideration to interpretations and rulings of the Customs Co-operation Council (also known as the World Customs Organization or "WCO"). In any instance in which a divergence in classification remains, participants will consider whether a joint suggestion could be made to the WCO with regard to updating existing HS nomenclature or resolving divergence in interpretation of the HS nomenclature.

Article 6. The participants understand that Article XXIII of the General Agreement will address nullification or impairment of benefits accruing directly or indirectly to a WTO Member participant through the implementation of this Declaration as a result of the application by another WTO Member participant of any measure, whether or not that measure conflicts with the provisions of the General Agreement.

Annex (3):

Attachment B (source: http://www.wto.org/english/docs_e/legal_e/itadec_e.htm):

Positive list of specific products to be covered by this agreement wherever they are classified in the HS. Where parts are specified, they are to be covered in accordance with HS Notes 2(b) to Section XVI and Chapter 90, respectively.

Computers: automatic data processing machines capable of 1) storing the processing program or programs and at least the data immediately necessary for the execution of the program; 2) being freely programmed in accordance with the requirements of the user; 3) performing arithmetical computations specified by the user; and 4) executing, without human intervention, a processing program which requires them to modify their execution, by logical decision during the processing run.

The agreement covers such automatic data processing machines whether or not they are able to receive and process with the assistance of central processing unit telephony signals, television signals, or other analogue or digitally processed audio or video signals. Machines performing a specific function other than data processing, or incorporating or working in conjunction with an automatic data processing machine, and not otherwise specified under Attachment A or B, are not covered by this agreement.

Electric amplifiers when used as repeaters in line telephony products falling within this agreement, and parts thereof

Flat panel displays (including LCD, Electro Luminescence, Plasma and other technologies) for products falling within this agreement, and parts thereof.

Network equipment: Local Area Network (LAN) and Wide Area Network (WAN) apparatus, including those products dedicated for use solely or principally to permit the interconnection of automatic data processing machines and units thereof for a network that is used primarily for the sharing of resources such as central processor units, data storage devices and input or output units including adapters, hubs, inline repeaters, converters, concentrators, bridges and routers, and printed circuit assemblies for physical incorporation into automatic data processing machines and units thereof.

Monitors: display units of automatic data processing machines with a cathode ray tube with a dot screen pitch smaller than 0,4 mm not capable of receiving and processing television signals or other analogue or digitally processed audio or video signals without assistance of a central processing unit of a computer as defined in this agreement.

The agreement does not, therefore, cover televisions, including high definition televisions. (3)

Optical disc storage units, for automatic data processing machines (including CD drives and DVD drives), whether or not having the capability of writing/recording as well as reading, whether or not in their own housings.

<p>Paging alert devices, and parts thereof .</p>
<p>Plotters whether input or output units of HS heading No 8471 or drawing or drafting machines of HS heading No 9017.</p>
<p>Printed Circuit Assemblies for products falling within this agreement, including such assemblies for external connections such as cards that conform to the PCMCIA standard.</p> <p>Such printed circuit assemblies consist of one or more printed circuits of heading 8534 with one or more active elements assembled thereon, with or without passive elements “Active elements” means diodes, transistors, and similar semiconductor devices, whether or not photosensitive, of heading 8541, and integrated circuits and micro assemblies of heading 8542.</p>
<p>Projection type flat panel display units used with automatic data processing machines which can display digital information generated by the central processing unit.</p>
<p>Proprietary format storage devices including media therefor for automatic data processing machines, with or without removable media and whether magnetic, optical or other technology, including Bernoulli Box, Syquest, or Zipdrive cartridge storage units.</p>
<p>Multimedia upgrade kits for automatic data processing machines, and units thereof, put up for retail sale, consisting of, at least, speakers and/or microphones as well as a printed circuit assembly that enables the ADP machines and units thereof to process audio signals (sound cards).</p>
<p>Set top boxes which have a communication function : a microprocessor based device incorporating a modem for gaining access to the Internet, and having a function of interactive information exchange</p>



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