

**IMPACT OF PRINCIPLES OF GATT AND WTO ON PRESENT  
TRADE MECHANISM**

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## **ABSTRACT**

The WTO is officially defined as ‘the legal and institutional foundation of the multilateral trading system’. Unlike GATT, the WTO is a permanent organization created by international treaty ratified by the governments and legislatures of member states. As the principal international body concerned with solving trade problems between countries and providing a forum for multilateral trade negotiations, it has a global status similar to that of the International Monetary Fund and the World Bank.

The study is also expected to explore the current WTO dispute settlement system, focusing on the critical stage of implementation and enforcement and the practical problems that may arise using the remedies available. The main purpose is to pay attention to the actual effect in practice when using the remedies

A number of global economic Institutions have been formed to carry out multilateral free trade in a world of multi-lingual and multi-religious community in order to boost the world trade and help the developing countries to improve their economy. The main Institutions that form part of global economic Institutions are General Agreement on Tariff and Trade (GATT) or, World Trade Organisation (WTO)

WTO contributes to strengthening the institutional frame work for business relations among member countries. The expanding world trade is expected to provide for the increase in productivity, economies of scale, technology transfer, diversified trade in terms of countries and products.

So far, enough work has not been carried out on WTO and its implications on various sectors of Indian economy and the dispute settlement mechanism of the WTO; hence, a need is felt to carry out a detailed research on these aspect

## ABBREVIATIONS

AMS	-	Aggregate Measure of Support
AOA	-	Agreement on Agriculture
CTC	-	Committee on Trade and Environment
DDA	-	Doha Development Agenda
DEPB	-	Duty Exemption Passbook Scheme
EEC	-	European Economic Community
EU	-	European Union
FDI	-	Foreign Direct Investment
FII	-	Foreign Institutional Investment
GATS	-	General Agreement on Trade in Services
GATT	-	General Agreement on Trade and Tariff
GDP	-	Gross Domestic Product
IBRD	-	International Bank for Reconstruction and Development
ILO	-	International Labor Organization
IMF	-	International Monetary Fund
IPR	-	Intellectual Property Right
ITA	-	Information Technology Agreement
LDC	-	Least Developed Countries
LMG	-	Like Minded Group
LPG	-	Liberalization Privatization Globalization
MEAS	-	Multilateral Environment Agreement
MFN	-	Most Favoured Nation
MTN	-	Multilateral Trade Negotiation
NAMA	-	Non Agriculture Market Access
NDA	-	National Democratic Alliance
NFSA	-	National Food Security Act
NTBs	-	Non Trade Barriers
PPP	-	Purchasing Power Parity
S&DT	-	Special and Differential Treatment
SAP	-	Structural Adjustment Programme
SAPS	-	Special Agricultural Produce Scheme

TFA	-	Trade Facilitation Agreement
TNC	-	Trade Negotiations Committee
TRIMS	-	Trade Related Investment Measures
TRIPS	-	Trade Related Intellectual Property Rights
UNCTAD	-	United Nations Conference on Trade and Development
UNDP	-	United Nations Development Programme
UPA	-	United Progressive Alliance
URAA	-	Uruguay Round Agreement on Agriculture
WB	-	World Bank
WIPO	-	World Intellectual Property Organization
WTO	-	World Trade Organization

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# CHAPTER 1

## INTRODUCTION

We are currently living in the age of globalization. World commerce is an important aspect of globalization and over the years, international trade, production and markets have become exceedingly integrated. World commerce can be viewed as machinery with several complex parts which are affected by various actors and regulated by numerous institutions and organizations. The most important of these organizations is arguably the World Trade Organization (WTO). The World Trade Organization is a permanent organization designed to replace the temporary GATT (General Agreement on Trade and Tariffs). The Organization was established in 1995 and consists of 153 member countries. It has a broad and extensive agenda, which covers trade in merchandizing, services, intellectual property and investment issues<sup>1</sup>

Free trade was promoted in the late 19th century and early 20th century through colonialism and unequal treaties (remember Britain's infamous opium war with China and the annexation of Hong Kong?) by rich nations who continued to maintain high industrial tariffs. Few countries, indeed, have succeeded without protectionism and subsidies, as the past of the leading economies shows. Yet few historians and economists dwell on this aspect while writing paeans to the benefits of globalisation.

### **WTO: An Offshoot of Globalisation**

WTO is an offshoot of globalization. The process of globalisation is a precursor to WTO kind of arrangements. Indian government globalised its economy since, 1991. The steps taken by the government of India helped the country to integrate the Indian economy with the rest of the global economy<sup>2</sup>.

Erasing national and political boundaries for the purpose of business can be termed as globalisation. The entire world becomes one country for the business. In other words, integration of the economy of a country with the rest of the world economy is called globalisation. Globalisation implies opening up the economy for foreign direct investment by liberalizing the rules and regulations by creating favorable and encouraging industrial climate.

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<sup>1</sup> Baylis John, Steve Smith and Patricia Owens, *The Globalisation of World Politics: An Introduction to International Relation*, 3rd Edition. USA: Oxford University Press, 2005, p.601.

<sup>2</sup> Charles Oman, "The Policy Challenges of Globalisation and Regionalisation", OECD Development Centre, Policy Brief No. 11, 1996, p. 5.



**Chi-yu Chang**,<sup>5</sup> defines globalisation as the critical point in that both sides of the coin of global cultural process today are products of the infinitely varied mutual contest of sameness and difference on a stage characterized by radical disjunctures between different sorts of global flows and the uncertain landscapes created in and through these disjunctures.

According to **Paul Hirst and Grahame Thompson**<sup>3</sup> “globalization is a myth suitable for a world without illusions, but it is also one that robs us of hope. Global markets are dominant, and they face no threat from any viable contrary political project, for it is held that western social democracy and socialism of the Soviet bloc are both finished.”

**Charles Oman**<sup>4</sup> states that globalisation is the growth, or more precisely the accelerated growth, of economic activity across national and regional political boundaries. It finds expression in the increased movement of tangible and intangible goods and services, including ownership rights, via trade and investment, and often of people, via migration. It can be and often is facilitated by a lowering of government impediments to that movement, and/or by technological progress, notably in transportation and communications. The actions of individual economic actors, firms, banks, people, drive it, usually in the pursuit of profit, often spurred by the pressures of competition. Globalisation is thus a *centrifugal* process, a process of economic outreach, and a microeconomic phenomenon.

technology. However, globalization is usually recognized as being driven by a combination of economic, technological, sociocultural, political, and biological factors. The term can also refer to the transnational circulation of ideas, languages, or popular culture through acculturation.

The WTO has come to represent the institutionalization of globalization, with its positive trade expansion effects as well as its negative effects on communities, local industry, and human rights. The unfavorable effects of globalization have given boom to a global social movement with active published criticism and consistent protests by activists at WTO Ministerial meetings. The first protest of significant size and impact took place at the WTO Ministerial meeting in Seattle in the late 1990s. A large number of protesters from around the world included human rights groups, students, environmental activists, religious leaders, labor unions, others demanding fair trade with less exploitation, and various protectionist groups demanding a nationalist response to maintain domestic industries and preserve communities without foreign influence. Enormous public protests ensued, ultimately causing the resignation of the Seattle police chief and succeeding in disrupting the meeting, which collapsed.

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<sup>3</sup> Hirst Paul and Grahame Thompson. Globalization in question: the international economy and the possibilities of governance. 2nd edition. Cambridge: Polity Press, 1996, p. 6.

The protests have drawn attention to the democratic deficit within the WTO and to the social issues globalization can adversely impact. Consider, for example, the rules of the game for the international trading system, being progressively set in the WTO. There are striking asymmetries. National boundaries should not matter for trade flows and capital flows but should be clearly demarcated for technology flows and labor flows. It follows that developing nations would give access to their markets without a similar access to technology and would have capital mobility without a similar provision of labor mobility.<sup>5</sup> This implies further openness in some spheres but less openness in other spheres. The difference between the free movement of capital and the free movement of labor across national boundaries lies at the heart of the inequality in the rules of the game.

Furthermore, the developed countries have attempted to throw the burden of the collapse of WTO's ministerial meetings to the developing countries. But over the past several decades, governments in the developed world, particularly the United States and the European Union have used de-facto strategic trade theory to maintain their dominance over global market for major agricultural commodities.<sup>6</sup> They have been continuously demanding more and more market access in developing countries but do not fulfill their commitment which they made at the time of Uruguay Round for eliminating their subsidies. The continuation of high domestic support to agriculture in developed countries is a cause of concern as it encourages agricultural overproduction in these countries leading to lower level of international prices of agriculture products. At the same time the rich industrialized countries continue to subsidize farmers by giving them direct payments which are exempted from any reduction requirement and which essentially are cash handouts contingent on making adjustments in production.<sup>7</sup> These payments are neither affordable nor helpful in developing countries. The result is that the industrialized countries continue to dominate world trade in agriculture which prevents India and other developing countries from achieving self-sufficiency in food production.<sup>8</sup>

Noticeably, in the contemporary era, the WTO, at the level of its institutional functioning has been going through the stage of major crisis and challenges. There have been constantly repeated episodes of the breakdown and deadlock of the dialogues which have resulted as a major hindrance for the WTO to achieve its goal to promote a free and fair world trade regime. The

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<sup>5</sup> Bagchi, Jayanta (2000), World Trade Organization: An Indian Perspective, Calcutta: Eastern Law House.

<sup>6</sup> Aggarwal, Manmohan (2012), India and Coalitions in Multilateral Trade Negotiations" in Barua, Alokesh and Robert M. Stern, The WTO and India: Issues and Negotiating Strategies, New Delhi: Orient Black Swan.

<sup>7</sup> Ahluwalia, Montek Singh (2007), "India in a Globalizing World" in Baldev Raj Nayar, Globalization and Politics in India, New Delhi: Oxford University Press.

<sup>8</sup>

member countries, driven by their own nation-specific interests, are competing and negotiating actually for the unequal bargaining power. In this typical scenario, the international community has been keenly anticipating India to emerge as an influential actor and play a leadership role to improve the present situation and initiate for more equitable economic order under the WTO.

## **WTO AND INDIA**

India is emerging as one of the fastest growing economies of the world but still its economy is basically agrarian. In 2009 the share of agriculture in Indian Gross Domestic Product is 16.6 percent and relatively more than 50 percent its population is engaged in agriculture. India is in favor of liberalization of agriculture trade and disposal of export and domestic subsidies. It was declared that WTO will enlarge international trade in agriculture commodities to the extent of \$450 billion and India will also enhance their share in the enlarged trade. But fatefully, these anticipations had not realized very much. The share of Indian exports in the world agricultural exports was 0.56 percent in 1990 which accelerated to 0.66 percent in the year 1994. Then onward, the share has remained stagnant at 0.60 percent<sup>9</sup>

India doesn't give any product specific support. Product specific supports for nearly all the products (cotton, soya bean, tobacco, rice, wheat, coarse cereals, pulses, groundnut, rapeseed and mustard,) are negative. India also doesn't have any export subsidies. In India, exporters of agriculture commodities do not get a direct subsidy<sup>10</sup>. India is under no commitment to reduce product specific and non-product specific subsidies. According to the WTO's Agreement on Agriculture, India's agricultural subsidies are related to water and power is being abolished under the World Bank Structural Adjustment Programmed. It means that whilst support to the farming sector has been declined, support and subsidies for industries supplying agriculture input have been going up. Hence, India said that the politics of subsidies of WTO favors industrial and Northern agri-business and goes against the farmer of developing countries<sup>11</sup>

In Indian economy the contribution of agriculture to GDP has been diminishing with an accelerated pace. The data ratify that share of agriculture in GDP at factor cost has registered a full from 59.2 percent in 1950-51 to 34.9 percent in 1990-91 further its decline to 26.6 percent in 2000-

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<sup>9</sup> Chakraborty, Achin (2005), "The Rhetoric of Disagreement in Reform Debate" in Jos Mooig, The Politics of Economic Reforms in India, London: Sage Publications.

<sup>10</sup> Ingco, Marlinda D. and Croome John(2005), "Trade Agreements: Achievement and Issue Ahead" in Marlinda D. Ingco and John D. Nash, (ed.), Agriculture and the WTO, Creating a Trading System for Developing, Washington, DC: The World Bank.

<sup>11</sup> Jaitley, Arun(2005), "Agricultural Flaged as India's Key Concern in WTO Negotiations" in S.B. Verma (ed.), WTO and Development Opportunities, New Delhi: Deep and Deep Publications Pvt. Ltd.

01. However, in the Indian context the deceleration in share of agriculture in GDP has not been accompanied by a declining labour force in agriculture and allied activities (Gauri, 2004: 162). Beside the deduction commitment by developed countries during Uruguay Round most of developed countries like European Union and the United States enhanced their subsidies and the accumulative impact of increased subsidies is felt on international prices. As a result, it is difficult for India to locate export markets for its agricultural commodities; their domestic market is facing the threat of reasonable import. Indian exports stand to lose heavily due to the distortion in the world market, and worse, erstwhile in the domestic markets as well <sup>12</sup>

Many Indian farm products become non-competitive in the global market. Particularly, low value product like rice (non-basmati), wheat oil meal which had touched new heights in their earlier phase, could not resist the global competition and their exports were dropped significantly. Beside in the event of a decline in the international prices of farm produce, it is not easy to safeguard indigenous production against competition from affordable import. Because of the subsidies in developed countries, India has faced agrarian crisis and more than 100,000 farmers have committed suicide and around 40 percent of the 650 million farmers are abandon agriculture profession because, price of their produce is low because of subsidies which are providing to farmers in developed countries and Indian farmer find themselves in debt trap. The future policy thrust for Indian agriculture is to assuring food security to a giant and growing population and assuring livelihood security for millions of poor farmers and tenant farmers.

Being a member the WTO, India in the beginning thought that its agriculture would gain from liberalization, as the developed countries would decrease domestic and export subsidies to their farmer. But the developed countries did not decrease these subsidies as per commitment. They not only introduced the protection under different boxes i.e. the Green Box for research and extension, and promotion policies and Blue Box, income support and production limiting programmes, which are to be handled as non-trade-distorting factors, but also tried to protect their farmers from the clause of Sanitary and Photo sanitary Measures (Vekateswara, 2008: 34-35). However, apprehensively or unconsciously, India stepped into an unequal and unjust trade bargain in 1994. Now there is need to being fully aware of the various implications of the nation's participation in the WTO<sup>13</sup>.

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<sup>12</sup> Hoekma, Bernard M., Petres C. Mavroidis (2007), The World Trade Organization: Law Economic and Politics, New York: Routledge.

<sup>13</sup> Hoda, Anwarul(2002), "WTO A.A. and India" in Anwarul Hoda (ed.), WTO Agreement and Indian Agriculture, New Delhi: Social Science Press.

India played very passive role during the Singapore and Geneva Ministerial conferences but in Seattle Ministerial conference India had emerged as one of the principal negotiators in the WTO (Karmakar, 2007: 67). At the Seattle Ministerial, India came to the forefront for the first time, when it strongly protested against incorporation of labour and environmental concern under the wing of WTO. India argues that, Indian government has opened its economy to multilateral trade, globalization and liberalization to accumulate and smooth the path of culminate

economic growth and modernization. But for developed countries globalization means a thing of any kind different from the real meaning of the term globalization. For them it is traffic to one way with the arrow “Developed Countries Only”<sup>14</sup>.

In Doha Round, India denied to participate in the launching of a new round before the accomplishment of market access promised in agriculture under Uruguay Round. The DDA eventually took note on all of four of Indian concerns. These are ensuring market access, removing domestic and export subsidies and the concern over the food security <sup>15</sup> In Cancun ministerial meet of WTO, India has emerged as a leader of the developing nations of the world. The Indian team was successful in argue for the interest of 650 million Indian farmers<sup>16</sup>. Indian Commerce Minister made it crystal clear that if developed countries provide subsidies to their agriculture and then developing countries have full freedom in fixing tariffs in agriculture. He said that, our tariffs have a direct influence on the lives of the farmers. We can’t permit social unrest. “Trade liberalization” cannot regulate the framework for how food is produced and how agriculture is organized. Countries cannot neglect the issue of Social, Economic and Environmental Sustainability<sup>17</sup>.

On Derbez Draft Indian Commerce Minister said that all domestic subsidies which are included in Green Box and Blue Box distort the trade. In July 2004 FIPs (Five interesting Parties) meeting, the two tariff reduction formula which was proposed by US and Australia, India rejected it. (Chakrabarty and Khan, 2008: 32). Indian government said that India ready for talks on tariff

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<sup>14</sup> Hertel, Thomas W., Koekman, Bernard M. and Will Martin (2002), “Developing Countries and a New Round of WTO Negotiations” in the World Bank Research Observer, Vol. 17, No. 1, New Delhi: Oxford University Press.

<sup>15</sup> Jara, Alejandro(2006), "WTO Dispute Settlement: A Brief Reality Check" in Giorgio Sacerdoti, Alan Yanovich and Jan Bahanes (ed.), The WTO at Ten: Contribution of the Dispute Settlement System, United Kingdom: Cambridge University Press.

<sup>16</sup> Finger, J. Michael and Schuler, Philip (2002), "Implementation of Commitments: The Development Challenge" in Bernard Hoekman, Aaditya Mattoo and Philip English (ed.), Development Trade and the WTO, Washington DC: The World Bank.

<sup>17</sup> Chakraborty, Debashish (2012), “Searching for the missing link: India’s negotiating strategy of WTO”, in Alokes Barua and Robert M. Stern (ed.), The WTO and India: Issues and Negotiating Strategies, New Delhi: Black Swan.

deduction (market access) only if the developed countries are prepaid to relent on heavy domestic and export subsidies (Tiwari, et al., 2008: 53). In Potsdam meeting India also made it very clear that, domestic subsidies in agriculture are structural flaws that should not be allowed at all, a likely to industrial subsidies, which are based in the WTO. India said that the US and EU should eliminate their domestic subsidies and do so without expecting any reciprocity, since these are structural flaws. They cannot be placed equation of asking developing countries to “give”<sup>18</sup>.

India and other developing nations uninterruptedly making efforts for liberalization of agriculture trade and disposal of export and domestic subsidies including Green and Blue Box which considered less or not trade distortive in WTO’s AOA. But there has been little significant development in agricultural negotiations, G11 group met in February 2011 to bargain over agriculture and NAMA. The controversy continued on how best to negotiate both issues. Brazil proposing that linking these would allow reciprocal concessions to be made in each and the US still favors in separate treatment of the two product categories<sup>19</sup>

WTO has failed in getting its member to agree on some certain issues like Agricultural Subsidies and Services. Further trade liberalization is a nonstop job. Failure to complete Doha Development Round is the latest to in this count. Development side of trade is yet to be gripped by WTO. Doha round has yet not been concluded. At the Hong Kong Ministerial conference, it was feared that WTO may be destined. Developing and less developed countries are not satisfied with the secure regime of developed countries and the developed countries do not want to remove their agricultural subsidies<sup>20</sup>.

India’s position on making Intellectual Property Rights a standard for the Global Trading System has seen a drastic change. India’s moving stance on IPR at the GATT/WTO spanning over whole period of the Uruguay and the Doha rounds (1986 till date) has drawn a lot of attention in current analysis. India earliest had a strong opposition to include Intellectual Property Rights within the ambit of trade negotiations. But with passage of time this defensive approach became more moderate and finally turned somewhat assertive with respect to specific dimensions. At the Uruguay Round, developed nations (the US, in particular), under pressure from their

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<sup>18</sup> Das, Bhagirath Lal(2004),WTO and the Multilateral Trading System Past, Present and Future, London: Zed Book.

<sup>19</sup> Hertel, Thomas W. Bernard M. Hoekman and Will Martin (2002), "Developing Countries and a New Round of WTO Negotiations", The World Bank Research Observes, Published by Oxford University Press, Vol. 17, no.1

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Ahmad, M. Mustaque,(2003), "WTO: Impact of Indian Agriculture" in Y Chandra Sekhar (ed.), WTO, The Emerging Agenda, Hyderabad: The ICFAI University Press.

pharmaceutical corporate lobby, suggested to introduce a uniformly strong IPR regime on all nations as part of a multilateral trading agreement through the TRIPS agreement.

This strong stance on IPR deliberately goes against the core philosophy of the WTO's moral rules of promoting competition and free trade. Moreover, in the presence of theoretical and empirical literature, firmly establishing that IPR regime must be endogenously certain within the economy, depending on the technological learning and capability levels of the country in question. Exogenous imposition of a strong IPR regime may severely hamper the process of technological catch up. Ironically, there is historical proof to suggest that the developed world has had the flexibility to embrace an appropriate IPR regime during their process of development and technological learning. Countries like Switzerland, Germany, Japan and Italy did not embrace a strong product for a long time.

India, starting in the 1970s and well into the 1980s, was going through a phase of "know-why" oriented technological learning. It was building up process development capabilities through reverse engineering – both infringing process for off-patent items and non-infringing processes for patented ones. This was possible because of its 1970 patent act which permitted only process (and not product patents) on chemical substances. Switching over to strong product patent regime at that point would have put a pre-mature halt to this technological capability building process. The Indian pharmaceutical industry lobby, which was experiencing a remarkable growth and development based on its process development capabilities (often referred to as the process revolution), was extremely apprehensive about the TRIPS agreement. India's strong defiance to TRIPS in the starting years of the Uruguay Round appears to be natural and justified.

The domestic pressure was now immense. Concerns were expressed about the potential increase in drug prices and its adverse effects on access to medicine and public health in India. While the pressure from the industrial lobby was getting weaker and milder compared to what it was in the 1980s, the opposition from the civil society lobby against TRIPS was gaining momentum. This did have an influence on India's position on IPR yet again. At Doha, India along with other developing countries notably Brazil and South Africa (constituting the IBSA group), pushed for an explicit acknowledgement of the primacy of the member countries' rights to protect public health and promote access to affordable medicines. This was achieved in the form of a declaration on TRIPS and public health at Doha that came as major victory for the developing world and an important feather in IBSA's cap at WTO negotiations. The declaration recognizes members' "right to grant compulsory licenses and the freedom to determine the grounds upon

which such licenses are granted.” Moreover it grants each member the “right to determine what constitutes a national emergency or other circumstances of extreme urgency” in implementing

## **TRIPS.**

Two other IPR related issues were raised by India at Doha. First, it wanted to extend protection under „geographical indication“ (GI) beyond wine and spirit, to other products. The entire episode of the artificial development of rice variety similar to the Indian Basmati rice by the US agro-company RICETEC was under scanner. Second, it demanded restrictions on misappropriation of biological and genetic resources and traditional knowledge. India’s position on TRIPS has remained unchanged post Doha up to Hong Kong. Presently it has focused on three prime concerns – technology transfer, biodiversity and geographical indications. India is of the view that LDCs face serious difficulties in procuring new technologies which could be overcome by suitable safeguards in the domestic IPR laws of LDCs and thereby check the sole rent seeking objectives of the developed country firms in many cases. The other aspect of north-south technology transfer is the growing tendency of intra-firm transfer of technology backed by market seeking motives that relies more on intellectual property protection. This has invoked India to take up the case of technology transfer at the WTO, so that sufficient arrangements can be made to assure such transfers cater to developmental and environmental needs also.

The recent decades have authenticated trade liberalization on the one hand and growing protectionism on the other. Indeed, all over the world, trade liberalization and protection are among the most widely discussed subjects. Whilst the global profits of trade liberalization and the prospects of enhancing exports of individual countries instigated the demand for liberalization of trade, the fear of extinction of domestic industries coupled with the vested interests insisted on trade barriers. A clear benefit of trade liberalization is accelerated economic growth rates and fast growth of international trade. The moderate growth rates of GDP and exports for the major countries were seen to be the lowest when protectionism was growing very quickly and these growth rates tended to be high when there was significant trade liberalization.



## **OBJECTIVES OF THE STUDY**

- To study the origin, structure, role and responsibilities of the WTO.
- To study principles of GATT and WTO
- To study and analyse the dispute settlement mechanism under WTO and critically examine use of the dispute settlement procedures for India.
- To study impact of WTO on present trade mechanism

## **METHODOLOGY**

The present study will be both descriptive and analytical by nature and it will be entirely based on documentary sources. Such sources include: various official reports and publications of Government of India, surveys and reports of different international organizations, relevant books, journals and different websites on internet.

## CHAPTER 2

### HISTORICAL OVERVIEW OF THE GATT AND WTO

An open multilateral trading system has been remarkably contributed both for increasing free flow of goods and services as well as production and consumption pattern among states even transcending traditional political boundaries of states. In fact, disparities on environmental protectionism have seriously challenging the sovereign equality of states. The mandate of the concept of Sustainable Development cannot be realized both bilateral or regional trade and environmental agreements alone. This has diametrically necessitates that for collective global trade principal forum for negotiations on multilateral trading relations among member states<sup>21</sup>

The World Trade Organization (WTO) and its predecessor, the General Agreement on Tariffs and Trade (GATT) have been enormously successful over the last 50 years at reducing tariff and other trade barriers among an ever-increasing number of countries. The predecessor to the WTO i.e., the GATT began in 1947 with only 23 members; today it has 153 members, comprising approximately 97 per cent of world trade.<sup>17</sup> See table - 1.1 for a timeline of GATT and the WTO. Although the WTO, established in 1995, is relatively young for an international institution, it has its origins in the Bretton Woods Conference at the end of World War II<sup>22</sup>.

. In the early 1990s the WTO was brought with the hard struggle between developing and developed states. The present chapter gives an account of the evolution and brief historic review of an International WTO and its organizational structure<sup>23</sup>. This chapter also covers the environmental provisions within WTO and its covered agreements. To make effective harmony between MEAs and the WTO covered agreements this chapter also focuses the contribution of the various CTE and the various Ministerial Conferences for achieving environmental sustainability in all states. Let us examine this chapter in detail.

#### 2. 2. Origin and Development

A modern harmonised international trade rule is the product of World War II. The advent of the First World War massively disrupted international trading relationships. A functional understanding of modern international trade policy on an institutional level necessarily involves some appreciation on the broader forces at work for free trade during eighteenth and the early

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<sup>21</sup> Michael J. Trebilock and Robert Howse, *The Regulation of International Trade*, (Third Edition, Routledge, London, 2005), p. 23.

<sup>22</sup> GOI (1950), *Report of the Fiscal Commission (1949-50)*, New Delhi, 1950, p. 272.

nineteenth centuries.<sup>24</sup> To establish an International Trade Organization (ITO), the then President of the United States and the Prime Minister of the United Kingdom<sup>25</sup> issued Atlantic Charter on 14 August, 1941. Subsequently, the work began, in 1944 at the Bretton Woods Conference. At the Conference the participating states had decided to establish three international institutions such as:

- 1 the International Monetary Fund (IMF);
- 2 the International Bank for Reconstruction & Development (IBRD) or World Bank; and
- 3 the International Trade Organization (ITO).

The first two institutions came into existence on December 27, 1945. These institutions deal with the international economics and financial aspects at international level. Following the establishment of the above institutions, there was a need for a third organization to regulate trade issues which had resulted ITO. The ITO Charter was much broader than the GATT and contained several provisions to promote co-operation foreconomic development and reconstruction.<sup>26</sup> However, the proposed ITO could not be established as wished due to clash of interests between the United States and other states.<sup>4</sup> Origin and development of the international trading system can be classified into two sub-parts, such as

i) ITO to GATT; and

ii) GATT to WTO

### **2. 2. 1. ITO to GATT**

The ITO was never formally rejected, essentially as drafted as an interim arrangement with some rectifications agreed just after the close of Havana Conference.<sup>27</sup> ITO<sup>28</sup> was one piece of the so called Bretton Woods system, designed in the post - World War II era to

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<sup>24</sup> Steve Charnovitz, "The World Trade Organisation and the Law Enforcement" 37 *Journal of World Trade* (2003), pp 817-837 at 827.

<sup>25</sup> John H. Jackson, *Sovereignty, the WTO and Changing Fundamentals of International Law*, (First Published, Cambridge, London, 2006), p. 134; See also KH Menjor Singh, *World Trade Organization and the Third World*, (A Mittal Publication, New Delhi, 2005), p 9-20; and Hudec, "GATT or GABB? The Future Design of the General Agreements on Tariffs and Trade" 80 *Yale Law Journal* (1971), pp 1299-1387 at 1307.

<sup>26</sup> Andreas F. Lowenfeld, *International Economic Law*, (Second Edition, Oxford University Press, London, 2008), p 28; See also Supra note 1, p. 23.

<sup>27</sup> The International Monetary Fund and International Bank for Reconstruction and Development The World Bank - were the other two main pieces.

John H. Jackson, *The Jurisprudence of t*

<sup>28</sup> GATT and the WTO, (First Edition, Cambridge University Press, Cambridge, 2000), p.38.

promote and manage global economic development.<sup>29</sup> Promotion and liberalization of free trade in goods and services has been the objective of international trade law since the formation of ITO. The foundations of the International Trade Regime date back to the 1947 when the GATT was concluded.

## **GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)**

The General Agreement on Tariffs and Trade (GATT) was originally created by the Bretton Woods Conference as part of a larger plan for economic recovery after World War II. The GATT's main purpose was to reduce barriers to international trade.

This was achieved through the reduction of tariff barriers, quantitative restrictions and subsidies on trade through a series of different agreements. The GATT was an agreement, not an organization. Originally, the GATT was supposed to become a full international organization like the World Bank or IMF called the International Trade Organization. However, the agreement was not

ratified, so the GATT remained simply an agreement. The World Trade Organization has replaced the functions of the GATT<sup>30</sup>.

The GATT came in to force in the year 1948 and India is the founder member. In the beginning there were 122 member countries, the majority of which were under developed and developing countries, which were parties to GATT.<sup>18</sup>

Over the next 40 years, GATT grew in membership and in its success at reducing barriers to trade. GATT members regularly met in what came to be known as *negotiating rounds*. These rounds were primarily focused on negotiating further reductions in the maximum tariffs that countries could impose on imports from other GATT members. The success of these rounds is evident (see table - 1.1).

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<sup>29</sup> See the WTO webpage at [www.wto.org](http://www.wto.org).

<sup>30</sup> Mitsuo Matsushita, Thomas J. Schoenbaum and Petros C. Mavroidis, *The World Trade Organisation, Law, Practice and Policy*, (Second Edition, Oxford University Press, London, 2006) p. 2; Supra note 1, p 827; See also Supra note 7, p.119; see gen. Joost Pauwelyn, "The Transformation of World Trade" 104 *Michigan Law Review* (2005), pp 1-65.

Tariffs on manufactured products fell from a trade-weighted average of roughly 35 per cent before the creation of GATT in 1947 to about 6.4 per cent at the start of the Uruguay Round in 1986.<sup>19</sup>

Over the same time period, the volume of trade among GATT members surged; In 2000 the volume of trade among the WTO members stood at 25 times its 1950 volume. This growth in the volume of trade is impressive and appears to have accelerated in recent decades (see figure - 1.1).

The GATT was not intended to be an international organization, gradually filled this void to create an ITO.<sup>31</sup> The GATT was created as a temporary framework for tariff negotiation which assumes the power of world economic administration<sup>32</sup> not of regional.<sup>33</sup> The GATT is a code of general rules regulating the conduct of the parties.<sup>34</sup> Many provisions of the Havana Charter excessively constrain domestic sovereignty.<sup>12</sup> However, reduction of tariffs eventually eliminate tariff as a barrier to international trade.<sup>35</sup> Trade and development also helps the state and people indirectly dependent on their access to resources and opportunity for people to free themselves from local ecological constraints by importing resources outside the boundaries of their own territory.<sup>36</sup> GATT established the two basic directions for the trade regime:

- Developing requirements to lower and eliminate tariffs; and
- Creating obligations to prevent or eliminate other types of impediments or barriers to trade (Non - tariff barriers).

The Preamble to the GATT looks to raising standards of living, ensuring full employment and a large and steadily growing of volume of real income and effective demand

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<sup>31</sup> Harvard Law Review Association, "Free Trade and Preferential Tariffs: The Evolution of International Trade Regulation in GATT and UNCTAD", 81 Harv. L. Rev. (1968), pp 1806-1817 at 1806; John H. Jackson, "The Jurisprudence on International Trade: The Disc Case in GATT" 72 AJIL (1978), pp 741-781 at 748.

<sup>32</sup> A. J. Fonseca, Trade and Development, (Indian Social Institute, New Delhi, 1967), p. 116.

<sup>33</sup> John H. Jackson, "The Puzzle of GATT: Legal Aspects of a Surprising Institution" 1 Journal of World Trade Law, (1967) pp 131-161 at 133; Supra note 7, p. 27; see gen. Faizel Ismail, "Mainstreaming Development in the World Trade Organisation" 39 Journal of World Trade (2005), pp 11-21.

<sup>34</sup> Supra note 1; Kym Anderson, "Setting the Trade Policy Agenda: What Roles for Economists?" 39 Journal of World Trade (2004) pp 341-381 at 343.

<sup>35</sup> Veijo Heiskanen, "The Regulatory Philosophy of International Trade Law", 38 Journal of World Trade (2004), pp 1-36 at 2

<sup>36</sup> Brain R. Copeland and M. Scott Taylor, Trade and Environment - Theory and Evidence, (First Edition, Princeton and Oxford, 2003), p. 221.

by expanding the production and exchange of goods.<sup>37</sup> The percolating states aim to accomplish these goals by entering into reciprocal and mutually advantageous agreements to the substantial reduction of tariffs and other trade barriers and to the elimination of discriminatory treatment in international commerce.<sup>38</sup> There was no role is the decision making and also GATT were able to enforce their decisions on the basis of international law, which limited their influence on the emerging international economic order. However equal participation amongst the contracting parties will be beneficial on the emerging of international economic order.

- Universal Most Favoured Nation Treatment (MFN);
- No Increased Trade Barriers;
- Accepted Form of Trade Tariffs;
- National Treatment; and
- Regular Negotiations.

\* **2. 2. GATT to WTO**

WTO is the principal forum for negotiations on multilateral trading relations among member states. With respect to the governance of GATT,<sup>39</sup> from 1948 to 1994, eight negotiating “Rounds” took place under the auspices of GATT to further develop the trade regime.<sup>40</sup> The United Nations Conference on Trade and Development (UNCTAD), in 1964, institutionalized permanent organ of the General Assembly of the United Nations provided a forum in which developing countries tried to evolve some and articulate a common position on matters relating to trade.<sup>41</sup> The GATT was not intended to be such a forum and had an

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<sup>39</sup> General Agreement on Tariff and Trade, 55 U.N.T.S. 194; 61Stat. 5; TIAS 1700.

<sup>40</sup> Supra note 5, p.31; Norma Breda dos Santos, Rogerioin Farais and Rapael Chuna, “Generalised System of Preferences in GATT/WTO: History and Current Issues” 39 *Journal of World Trade* (2005) pp 637-670; See also Betsy Baker, Protection Not Protectionism: Multilateral Environmental Agreements and the GATT, 26 *Vand. J. Transnat’l L.* (1993-1994), pp 437-668 at 448; Henrick Horn, National Treatment in the GATT, 96 *The American Economic Review* (2006), pp 394-404.

<sup>41</sup> Asoke Mukherji, “Developing Countries and the WTO - Issues of Implementation” 36 *Journal of World Trade* (2000), pp33-74 at 35; Curtis Reitz, Enforcement of the General Agreement on Tariffs and Trade, 17 *U. Pa. J. Int’l Econ. L.* (1996) pp 555-603; H. H. Liebhafsky, “Ten Years of GATT”, 25 *Sothern Economic Journal* (1958), pp 74 -87.

oversight role in trade matters that UNCTAD never had.<sup>42</sup> Early rounds focused more on tariffs alone but non-tariff barriers have since come to the force.<sup>43</sup>

To establish the WTO as GATT's successor the number of WTO participants and the organization's contributed throughout the negotiating process as a landmark in international law and policy.<sup>44</sup> Although often lengthy, the end of the Uruguay round of trade negotiations, the Marrakesh Agreement establishing the WTO rendered a profound change in the legal structure of the institutions for international trade.<sup>45</sup> Lowenfeld describes that the GATT evolved unevenly from its almost accidental beginnings in the 1940s to a vastly greater organization and corpus of law.<sup>46</sup> The Director General said, 'the world has chosen openness and cooperation instead of uncertainty and conflict'.<sup>26</sup> James Cameron describes that the Uruguay Round of GATT negotiation has been described as "the most important event in recent economic history"<sup>27</sup> as a "central international economic institution."<sup>28</sup> The Marrakesh Agreement 1994 has been administered by the WTO and came into existence on 1 January 1995.

Protectionism is the pivotal aim,<sup>47</sup> the WTO breaks in terms of the binding nature of its provisions and extensive enforcement mechanisms and generally viewed in terms of the "four pillars" that establish the fundamental obligations of WTO Members. These pillars are

- (1) Most-Favoured Nation treatment (MFN);<sup>48</sup>
- (3) National Treatment;<sup>31</sup> National Tariff binding; and
- (4) transparency and the prohibition of quantitative restrictions.

The WTO<sup>49</sup> does not have as its primary objective the protection of the environment,<sup>50</sup> the importance of this policy goal is clearly acknowledged in its Preamble and various

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<sup>42</sup> Hakan Nordstrom, "The World Trade Organisation Secretariat in a Changing World" 39 *Journal of World Trade* (2005), pp 819-853 at 820.

<sup>43</sup> Ryan L. Winter, "Reconciling the GATT and WTO with Multilateral Environmental Agreements: Can We Have Our Cake and Eat it Too?" 11 *Colo. J. Int'l. Envtl. L. & Pol'y* (2000), pp 223-255 at 227.

<sup>44</sup> *Supra* note 1, p. 38.

<sup>45</sup> *Supra* note 13, p 5.

<sup>46</sup> "Between Environmental Protection and Environmental Protectionism" 47 *Int'l J.* (1991-1992), pp 723-750 at 728; See Baldwin Robert, "An Economic Evaluation of the Uruguay Round Agreement", *The World Economy*, (1995), p. 161.

<sup>47</sup> Autar Krishen Koul, *Guide to the WTO and GATT Economics, Law and Politics*, (Kluwer International, The Netherlands, 2005), p.5.

<sup>26</sup> <sup>48</sup> See GATT, *News of the Uruguay Round*, 21 December, 1993, 1.

John H. Jackson, "Dispute Settlement and the WTO : Emerging Problems" 1 *Journal of International Economic Law* (1998), pp 329-351 at 332.

Agreements.<sup>34</sup> The WTO system consists of the GATT together with 12 other agreements. James Thou argues that justice and fairness is incorporated in the international trading system to ensure protection of human rights and the free flow of public goods that benefit everyone, such as free trade, collective security and environmental protection.<sup>51</sup> The WTO oversees the implementation, administration, and operation of the Multilateral Trade Agreements which are legally binding upon its members.<sup>52</sup> The WTO-DSB performs multiple complementary functions together to eliminate most form of trade restrictions.<sup>53</sup> The WTO places no constraints on governments implementing within their borders whatever legitimate policy options they wish with respect to the environment.<sup>54</sup>

The Ministerial Decision on Trade and Environment adopted at Marrakesh, reiterated the mandate of Rio Declaration

*“in order to coordinate policies in the field of trade and environment...without exceeding the competence of the multilateral trading system, which is limited to trade policies and those trade-related aspects of environmental policies which may result in significant trade effects for its members”*<sup>55</sup>

Although there are criticisms on the effectiveness of the GATT; it was asserted that the WTO was created to cure the birth defects of the GATT as a UN specialized Agency with an

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<sup>49</sup> The texts of the Agreements are to be found in WTO, The Results of the Uruguay Round Negotiations: the Legal Texts, WTO, Geneva, 1995, April 15, 33 ILM 1144 (1994), in force 1<sup>st</sup> January, 2005.

<sup>50</sup> Mitsuo Matsushita, “Governance of International Trade under World Trade Organisation Agreements- Relationships Between World Trade Organisation Agreements and other Trade Agreements” 38 Journal of World Trade (2004), pp 185-210; Robert W. Benson, “The Threat of Trade, the Failure of Politics and Law, and the Need for Direct Citizen Action in the Global Environment Crisis” 15 Loy. L. A. Int’l & Comp. L. Rev. (1992), pp 1-18 at 7; also available at <http://digitalcommons.lmu.edu/ilr/vol15/iss1/1/>; Ishita Chatterjee, “Trade Regulatory Measures for Sustainable Management of Natural Resources” XII NYA DEEP (2011), pp 32-38 at 33; .

<sup>51</sup> The Preamble to the Agreement Establishing the World Trade Organisation states that WTO Members recognize: “that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living .... while allowing for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so.....” Supra note 32.

<sup>52</sup> Ernst-Ulrich Petersmann, “The Future of the WTO: From Authoritarian “Mercantilism” to Multilateral Governance for the Benefit Citizens” 6 Asian J. WTO & Int’l L & Pol’y (2011), pp 45-80 at 75; James Thuo Gatahii, “International Justice and the Trading Regime”, 19 Emroy International Law Review (2005), pp 1407-1430 at 1410; Supra note 22 at, 845; Susan Hainsworth, “Sovereignty, Economic Integration and the World Trade Organisation”, 33 Osgoode Hall Law Journal (1995), pp 583-622.

<sup>53</sup> See gen. Supra note 3; also Faizel Ismail, “Mainstreaming Development in the World Trade Organisation” 39 Journal of World Trade (2005), pp 11-21.

<sup>54</sup> Gary P. Sampson, World Trade Organisation and Agreements to deal with the Environment, (Institute of Advanced Studies, United Nations University, New York, 1999), p. 9.

<sup>55</sup> UNGA Res. 47/191 (1992), Rio Declaration, 14 June 1992, UN Doc. A/Conf.151/26, reprinted in 31 ILM 874 (1992).



organizational structure and a DSB.<sup>56</sup> The WTO is overseeing an integrated DSB and to undertake a proactive trade policy surveillance role<sup>57</sup> Koul described that the contribution of the developing countries in international trade obviously not only ensure NIEO but also resolve North South Dialogue.<sup>58</sup> Today's modern trade regime allows states for a greater chance of influencing and dominates in the multilateral system in the context of a trade round than bilateral relationships between major trading nations<sup>59</sup>

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<sup>56</sup> John H. Jackson, *Sovereignty, the WTO and Changing Fundamentals of International Law*, (First Published, Cambridge (2006) p. 159 and Supra note 21, p. 14.

<sup>57</sup> *ibid*, p. 6; Supra note 1, p. 38; John H. Jackson, "Dispute Settlement and the WTO : Emerging Problems" 1 *Journal of International Economic Law* (1998) pp 329-351 at 332; James Thuo Gatahii, "International Justice and the Trading Regime", 19 *Emroy International Law Review* (2005), pp 1407-1430 at 1410; see gen. Supra note 22, at 827; Catherine Jean Archibald, "Forbidden by the WTO? Discrimination Against a Product When its Creation Causes harm to the Environment or Animal Welfare" 48 *Nat. Resources J.* (2008), pp 15-51 at 18.

<sup>58</sup> A. K. Koul "Settlement of Disputes in International Trade", 1 *Capital Law Journal* (2005), pp 46-68; Autar Krishen Koul, "The North South Dialogue and the NIEO" 26 *IJIL* (1986), pp 385-404; and Supra note 25, p 20.

<sup>59</sup> Supra note 21, p. 30; Kym Anderson, "Setting the Trade Policy Agenda: What Roles for Economists?" 39 *Journal of World Trade* (2004) pp 341-381 at 353.

## CHAPTER 3

### PRINCIPLES OF GATT AND WTO

The GATT functions according to the following four fundamental principles are:

**1) Most-Favored-Nation Treatment (MFN):** According to Article I, the famous "most favored nation clause," no country is to give special trading advantages to another or to discriminate against it.<sup>20</sup>All are one and on an equal basis, and all share the benefits of any moves towards lower trade barriers.

**2) National Treatment Principle:** This is Article III of the GATT and requires that once goods have entered a market, they must be treated no less favorably than the equivalent domestically produced goods.<sup>60</sup>

**3) Anti-Non-Tariff Barriers Principle:** This principle states that, where protection is given to domestic industry, it should be extended exclusively (subject to very limited exceptions) through customs tariffs and not through other commercial measures. Among other things, the aim of this rule is to make the extent of protection clear and quantifiable. Fees and charges other than tariffs must be limited to the approximate cost of the services<sup>61</sup>. The "Escape Clause" exception permits the imposition of tariffs and non-tariff barriers in cases where, as a result of unforeseen developments, a product is imported into the territory of a contracting party of like or directly competing with a domestic product in such increased quantities and under conditions which causes harm or threatens serious injury to domestic producers. These may be imposed only to the extent and for such a time as is necessary to prevent or remedy the injury. Exceptions also exist for national security, public morals, short supply or domestic price stabilization, health, and other valid public policy reasons.<sup>62</sup>

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<sup>60</sup> Schaffer, Richard, et al. International Business Law and Its Environment. 7th ed. USA:

South-Western Cengage Learning Inc., 2009, p.306.

<sup>61</sup> Ibid., p.310.

<sup>62</sup> John W. Head and Frisch, David, Global Business Law: Principles and Practice of International Commerce and Investment (Carolina Academic Press Law Casebook Series. 2nd Edition. Durham, NC USA: Carolina Academic Press.2007,p.516

**4) Tariff Concession Principle:** Under standard GATT operating practice, a country wishing to become a contracting party to the Agreement must submit negotiated tariff concession schedules (including lists of non-GATT complying non-tariff trade restrictions). These are sometimes referred to as "bindings." They may include schedules of tariff reductions or the elimination of specified non-tariff trade restrictions. These tariff concession schedules are negotiated with other members collectively. Thereafter, tariffs and other trade restrictions may only (with certain exceptions that invite retaliatory action by other members) be reduced or eliminated through scheduled, unilateral, or mutually negotiated further trade liberalization. They may not be increased.<sup>63</sup>

Comparing the growth of world GDP, expressed as an index number, to the growth of the volume of trade among GATT/ WTO members, also expressed as an index number, Figure-1.1 shows that while trade grew more slowly than world GDP in the early years of the GATT/WTO, in recent years it has outpaced GDP growth. Despite this success, by the 1980s several problems had surfaced with the GATT apparatus. Firstly, the dispute resolution mechanism of GATT was not functioning as effectively as had been hoped. Countries with longstanding disagreements were unable to reach any sort of resolution on a number of issues, ranging from government subsidies for exports to regulations regarding foreign direct investment. Secondly, a number of commodities, most importantly, agricultural products and textiles, were widely exempt from GATT disciplines. Thirdly, it was widely believed that certain forms of administered trade protection antidumping duties, voluntary export restraints, and countervailing- duties were restricting trade and distorting trade patterns in many important sectors. Fourthly, trade in services was expanding rapidly and GATT had no rules regarding trade in services. Fifthly, countries that produced intellectual property movies, computer programs, patented pharmaceuticals were becoming increasingly frustrated by the lack of intellectual property protection in many developing nations. Lastly, the rules regarding trade-related investment measures for example, domestic purchase requirements for plants built from foreign direct investment were hotly disputed. To address these problems, a new round of trade negotiations the Uruguay Round was launched in 1986. The goals of the Uruguay Round were far more ambitious than in previous rounds. It sought to introduce major reforms into how the world trading system would function. The treaty negotiated during the Uruguay Round, the GATT treaty of 1994, established the WTO the international institution

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<sup>63</sup> Michael. J. Trebilcock and Robert Howse. The regulation of international trade. 3rd ed.

to govern trade that was first visualized by the attendees of the Bretton Woods Conference 50 years earlier<sup>64</sup>.

The new GATT treaty provided for an entirely new and different dispute resolution mechanism to eliminate the gridlock of the old system. Furthermore, the Uruguay Round expanded GATT's authority to new areas agreements regarding trade in textiles, agriculture, services, and intellectual property were major achievements. Finally, new sets of rules regarding administered protection came into effect with the creation of the WTO in 1995.

## **STRUCTURE OF THE GATT**

The highest body of the GATT was the Session of Contracting Parties, which met annually. GATT decisions were usually arrived at by consensus, not by vote.<sup>65</sup> When voting took place, each member country had one vote and decisions were by a simple majority. Two-thirds of the votes cast, with the majority comprising more than half the member countries, were needed for "waivers" (authorizations, in particular cases, to depart from specific obligations under GATT). Between sessions of the contracting parties, the Council of Representatives, made up of representatives of all members and referred to as "the GATT Council," was authorized to act on both routine and urgent matters. It usually met once a month. Major GATT standing committees or councils were the Committee on Trade and Development, concerned with issues of special interest to developing countries, the Textiles Committee, made up of the Multilateral Fiber Agreement (MFA) signatories, and committees concerned with the Tokyo Round agreements. Ad hoc committees dealt with specific transitory questions, such as requests for accession to the GATT, verification that agreements concluded by members conformed to the GATT, or the study of issues on which members might later make a joint decision. Panels of Conciliation were often convened to investigate disputes between particular members.

The GATT Secretariat was headquartered in Geneva, Switzerland and constituted the administrative body of the GATT. Headed by an Executive Secretary, the Secretariat was a clearinghouse for the work of contracting parties and was well placed to play an active part in international commercial policy decisions. Also, it collected statistics as well as evidence of

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<sup>64</sup> Jagdish Bhagwati and Mathias Hirsch, eds. "The Role of the GATT Secretariat in the Evolution of the WTO Dispute Settlement Procedure", Essays in Honour of Arthur Dunkel Springer-Verlag, 1998. p. 101-120.

regulation hindering or helping international trade and made it available as a background material to the contracting parties. Much of the evidence collected has become available for the first time on a worldwide basis. The role of the Secretariat, both as catalyst and as an initiator of policies, was thus undoubtedly large.

## **THE GATT SYSTEM**

The goal of the GATT is to convert all trade barriers to tariffs and progressively reduce them. Thus, the GATT presides a mechanism to achieve free trade. When countries accede to the GATT, they agree to use only tariffs to regulate trade and to treat imports from all trading parties equally, and in a manner comparable to treatment of domestic products. They also agree to participate in successive ‘rounds’ of trade negotiations to reduce tariffs. The Uruguay Round is the eighth such round in 40 years.<sup>66</sup>

The GATT has been successful. Industrialised countries adopted its rules and used mechanisms to reduce trade barriers steadily throughout the 1950s and 1960s. However, GATT has never been uniform in its effect, since countries have been unwilling to liberalise certain areas of trade. They have ignored GATT rules, created exemptions from them, or applied other rules.

## **THE OBJECTIVES ACCORDING TO THE PREAMBLE OF GATT:**

- To raise standard of living
- To ensure full employment and a large steadily growing volume of real income and effective demand
- To develop the full use of the resources of the World, and
- To expand production and international trade.

The Preamble also states the contracting parties’ belief that “reciprocal and mutually advantageous arrangements directed to the substantial reduction in tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce” would contribute toward these goals. Importantly, “free trade” is not the stated objective of GATT.

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<sup>66</sup> Alan Oxley, “The Achievements of the GATT Uruguay Round”, Agenda, Volume November 1. 1994. p.45-53

The role of GATT in integrating developing countries into an open multilateral trading system is also of major consequence. The increasing participation of developing countries in the GATT trading system and the pragmatic support provided to them through the flexible application of certain rules helped developing countries to both expand and diversify their trade. It could now be said that a great number of these countries have already become full partners in the system as can be witnessed by their active participation in the Uruguay Round. The task of helping to integrate further the least-developed countries is one of the challenges that lie ahead in the WTO. Similarly, the full integration of countries with economies in transition into the trading system must be achieved in order to strengthen economic interdependence as a basis for greater prosperity and world peace. These negotiations were critical to ensure the future health of the world economy and the trading system. The globalisation

of the world economy over the past decade has created a greater reliance than ever on an open multilateral trading system. Free trade has become the backbone of economic prosperity and development throughout the world. Partly as a result of this, there has been a shift in trade policy mechanisms from border measures to internal policy measures, substantially affecting the management of trade relations.

The Uruguay Round sought to establish a new balance in rights and obligations among trading nations because of this phenomenon. We are gradually moving towards a global marketplace, and for that, we need a global system of rules for trade relations among partners in that market place. The challenges that we face are therefore enormous. The only way back from this globalisation in the world economy would be through depression and eventual chaos. We therefore have no choice but to move forward. In doing so, however, we must be sure to preserve to the highest extent possible the spirit and tradition of the GATT, which to a large extent was the key to its success.

## **GATT ROUNDS OF NEGOTIATIONS**

Although in its forty-seven years the basic legal text of the GATT remained much as it was in 1948, there were additions in the form of plurilateral, voluntary membership agreements in a continual effort to reduce tariffs. Much of this was achieved through a series of eight "trade rounds."

The GATT was the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995,<sup>26</sup> despite attempts in the mid-1950s and 1960s to

create some form of institutional mechanism for international trade; the GATT continued to operate for almost half a century as a semi-institutionalized multilateral treaty regime on a provisional basis.

## **FROM GENEVA TO TOKYO**

Seven rounds of negotiations occurred under the GATT. The first GATT trade rounds concentrated on further reducing tariffs. Then, the Kennedy Round in the mid-sixties brought about a GATT anti-dumping Agreement and a section on development. The Tokyo Round during the seventies was the first major attempt to tackle trade barriers that do not take the form of tariffs, and to improve the system, adopting a series of agreements on non-tariff barriers, which in some cases interpreted existing GATT rules, and in others broke entirely new ground. Because these Plurilateral agreements were not accepted by the full GATT membership, they were often informally called “codes”. Several of these codes were amended in the Uruguay Round, and turned into multilateral commitments accepted by all WTO members. Only four remained Plurilateral (those on government procurement, bovine meat, civil aircraft and dairy products), but in 1997 WTO members agreed to terminate the bovine meat and dairy agreements, leaving only two.<sup>67</sup>

## **THE URUGUAY ROUND**

Most of the early GATT Rounds were devoted to continuing the process of reducing tariffs. With 120 participating countries, the Tokyo Round produced, in addition to important tariff reductions, a series of agreements on non-tariff barriers, in some cases interpreting existing GATT rules and in others breaking entirely new ground. The agreements coming out of the Tokyo Round included: Subsidies and Countervailing Measures, Technical Barriers to Trade (TBT), Import Licensing Procedures, Customs Valuation, Anti-dumping, Government Procurement, Bovine Meat Arrangement, and Trade in Civil Aircraft.

### **Information and Media Relations Division, 2008.**

Only the first five were binding on all members, while the others remain Plurilateral agreements.

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<sup>67</sup> Organization. Illustrated ed. Netherlands: MartinusNijhoff Publishers. 2006. p. 17.

A new negotiating round, called the Uruguay Round, was announced in September 1986. It was the most ambitious trade negotiation ever held. The ministers were able to accept a negotiation agenda, which covered virtually every outstanding trade policy issue, including the extension of the trading system into several new areas, notably trade in services and intellectual property. Traditionally, the GATT had only covered trade in goods. It was the biggest negotiation mandate on trade ever agreed, and the ministers gave themselves four years to complete it. By 1988, the negotiation had reached the stage of "Mid-term-Review." This took the form of a Ministerial Meeting in Montreal, Canada, and led to the elaboration of the negotiating mandate for the second stage of the Round. Ministers agreed to a package of early results, which included concessions on market access for tropical products (aimed to assist developing countries), a streamlined Dispute Settlement system, and a Trade Policy Review Mechanism (TPRM), which provided the first comprehensive, systematic, and regular reviews of national trade policies and practices of members. It took seven and a half years, almost twice the original schedule. By the end, 125 countries were taking part. It covered almost all trade, from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments. It was quite simply the largest trade negotiation ever, and most probably the largest negotiation of any kind in history.<sup>68</sup>

## **PINAL ACT**

The Uruguay Round of multilateral trade negotiations was concluded on 15 December 1993 after seven years of protracted negotiations. This has been the most complex and controversial of the eight rounds of negotiations by GATT since its inception in 1947. The Final Act' was signed on April 15, 1994 at Marrakesh in Morocco. The agreement has come into force on January 1, 1995. The Uruguay Round marks a watershed, and for the first time, multilateral trade negotiations under GATT29 encompass not only the traditional goods sector but also extend to four new areas i.e., (a) Agriculture (b) Intellectual property rights (IPR) (particularly product patents and in plants and medicines) (c) Textiles and clothing (d) Trade in services. The Final Act strings together 25 agreements, declarations and decisions in the goods sector alone, including agreements on Trade Related Aspects of Intellectual Property Rights (TRIPS), Trade Related Aspects of Investment Measures (TRIMS), General Agreement on Trade in Services (GATS) and the agreement on establishing the World Trade Organisation (WTO).<sup>69</sup>

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<sup>68</sup> World Trade Organisation. Understanding the WTO. Geneva: World Trade Organisation  
<sup>69</sup> V) Aggarwal J.C. and Chowdhry K.N., Dtmkel Proposals, Volume II, Shipra Publications, 1994, Pp 7-12.



With the formal establishment of WTO the wheel will come a full circle in the sense that the troika (is *three of a kind*) of international economic institutions envisaged in the aftermath of the Second World War, namely the IMF, IBRD and the International Trade Organisation (ITO) will be complete.

The major areas of interest and concern to us in the Uruguay round are Agriculture, TRIPS, TRIMS, textiles, tariffs trade rules and services.

## GOALS

The main objectives of the Uruguay Round were:

- to reduce agricultural subsidies
- to put restrictions on foreign investment, and
- To begin the process of opening trade in services like banking and insurance.

They also wanted to draft a code to deal with copyright violation and other forms of intellectual property rights.

## THE URUGUAY ROUND OUTCOMES

A large number of agreements were negotiated in the Uruguay round. The principal agreements were to

- reduce tariffs globally by one-third over ten years;
- reduce protection in agriculture through: conversion of all trade barriers to tariffs; reduction over six years of budgets for agriculture by 36 per cent and reduction of the volume of produce exported by 21 per cent;
- convert all barriers to trade in clothing and textiles to tariffs over 15 years;
- impose new restrictions on subsidies, involving the phase down of more directly trade-distorting subsidies;
- increase the authority of the GATT dispute-settlement systems;
- give the GATT Secretariat authority to review the trade policies of members;

- establish multilateral trade rules for the liberalisation of trade in service;
- Create a World Trade Organisation to administer the GATT and other trade agreements negotiated under GATT auspices (some of them, such as the agreements on services and intellectual property, have no formal relationship to the original GATT).

## WORLD TRADE BEFORE URUGUAY ROUND

When the Uruguay Round began in 1986, a number of features of the organisation of world trade had come to be viewed as impediments to liberalisation.

- The level of protection, particularly in the United States, was rising.
- GATT rules were generally not applied in two key sectors of trade: agriculture, which constituted about 12 per cent of world trade, and clothing and textiles, which constituted about 7 per cent of world trade.
- Most developing countries did not apply the GATT rules on tariffs.
- Quotas and agreements that disregarded GATT rules restrained trade in particular sectors, notably EC and US imports of steel and electronic consumer equipment.
- GATT restrictions on subsidies were weak.
- The US and the EC were using anti-dumping procedures to harass and restrict imports, particularly from Japan and other rapidly growingly East Asian economies.
- \* GATT rules designed to obviate the negative impact of customs unions or free-trade areas on the trade of third parties were being ignored.
- The Authority of the GATT dispute-settlement procedures had been weakened by the reluctance of the US and the EC to accept their jurisdiction in the agricultural sector.

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Trying to bring order to a disorganized world, the World Trade Organization (WTO) works to facilitate international trade. It provides a forum where its more than 150 member nations negotiate sign trade agreements. The WTO administers the agreements, handles trade disputes, monitors national trade policies, provides technical assistance and training for developing countries, and cooperates with other international organizations. The organization derives most of its operating income from member contributions. The WTO replaced the General Agreement on Tariffs and Trade (GATT) in 1995. World Trade Organization (WTO), international organization established in 1995 as a result of the final round of the General Agreement on Tariffs and

Trade (GATT) negotiations, called the Uruguay Round. The WTO is responsible for monitoring national trading policies, handling trade disputes, and enforcing the GATT agreements, which are designed to reduce tariffs and other barriers to international trade and to eliminate discriminatory treatment in international commerce. In an effort to promote international agreements, WTO negotiations are conducted in closed sessions; many outsiders have strongly criticized such meetings as antidemocratic. Unlike GATT, the WTO is a permanent body but not a specialized agency of the United Nations; it has far greater power to mediate trade disputes between member countries and assess penalties. In the Uruguay Round, agreement was reached to reduce tariffs on manufactured goods by one third. Under the WTO, subsidies and quotas are to be reduced on imported farm products, automobiles, and textiles, which were not covered by GATT; there is also freer trade in banking and other services and greater worldwide protection of intellectual property. Negotiations to eliminate subsidies and protections for agricultural products, however, have proved to be a stumbling block. The Doha Round of talks, launched in 2001, has been deadlocked over such subsidies; the round was originally scheduled to be finished in Jan, 2005. The WTO is headquartered in Geneva and also holds international ministerial conferences; it has 153 members.

The WTO is the only global international organization dealing with the rules of trade between nations. The WTO members account for over 97 per cent of world trade. The goal is to help producers of goods and services exporters and importers conduct their business.

WTO's main task is to make the multilateral trading system credible and transparent. This is the hope, based on assertions by the world's major traders especially the US. The WTO in its

principal role as a trade police man will ensure the countries obey multilaterally accepted trade roles, carryout recommendations and rulings and compensate complaints.<sup>70</sup>

## HOW THE WTO DIFFERS FROM GATT

Whereas the GATT was a provisional, multilateral agreement negotiated by its contracting parties but never ratified by their parliaments, the WTO is a formal international institution. It joined the ranks of the World Bank and International Monetary Fund (IMF) when it came into being as of January 1, 1995 as the embodiment of the Uruguay Round of GATT trade negotiations.<sup>31</sup> The Agreement Establishing the WTO was ratified by member governments and stipulates rules according to which the organization functions. The WTO mandate was extended beyond the traditional GATT role of negotiations related to trade in goods to include trade in services as well as intellectual property rights. The three multilateral agreements which make up Annex I of the WTO charter include: the GATT 1994 (the updated version of GATT 1947), the General Agreement on Trade in Services (GATS), and Trade-Related Aspects of Intellectual Property Rights (TRIPS). Annex II - the Understanding on Rules and Procedures Concerning the Settlement of Disputes, Annex III - the Trade Policy Review Mechanism (TPRM), Annex IV - the Plurilateral Agreements\*, and the multilateral agreements among members along with Annex- I, constitute the WTO framework.

In addition, GATT 1947 accession procedures have been largely carried over to the WTO with the deliberations on trade schedules extended to include services and intellectual property rights. Furthermore, the WTO charter establishes a formal Secretariat headquartered in Geneva.

## PRINCIPLES OF WTO<sup>71</sup>

Principles inherited from the GATT and embodied by the WTO include promoting a trading system that is:

- Non-discriminatory - by applying MFN and national treatment principles;
- Reciprocal - by allowing automatic exchange of market access commitments among members;

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<sup>70</sup> Chatterjee, Aneek. *International Relations Today: Concepts and Applications*. Pearson Education. Noida India. Pp. 194-196. 2010.

<sup>71</sup> A plurilateral agreement implies that WTO member countries would be given the choice to agree to new rules on a voluntary basis. This contrasts with the multilateral WTO agreement, where all WTO members are party to the agreement

- Liberalized - by negotiating lower tariffs and bringing down other barriers and allowing progressive market opening
  - Predictable - by having countries "bind" their commitments thereby promising not to raise barriers without compensating members if they renege;
  - Fair - by discouraging unfair competitive practices such as export subsidies and dumping (selling products below cost to gain market share);
    - Helpful to less developed countries-by allowing more time to adjust to agreements and greater flexibility as well as special privileges.<sup>32</sup>
- Specific agreements included under the WTO negotiated according to these principles include: agriculture, textiles, clothing ,services, government procurement, and rules of origin, intellectual property, financial services, telecommunications, provisions on the environment as well as ministerial declarations on the obligations and commitments of all WTO members. Exceptions are also made for regional trading agreements under the GATT.

Customs unions (i.e. the European Union, which is a member in its own right, is usually represented by the European Commission at the WTO, though all EU member countries are also WTO members in their own right. The WTO accommodates all free trade areas and common markets, the GATT involves the dispute settlement process embodied in Annex II of the WTO Agreement. Under the GATT, the procedure for settling disputes had no fixed timetables, rulings were easy to block, and cases often dragged on inconclusively. The Uruguay Round introduced a more structured process with clearly defined stages and emphasis on prompt settlement. The WTO Agreement also made it extremely difficult for the losing country to block the adoption of the ruling. Under the GATT, rulings were not adopted unless full consensus was reached, meaning one vote, i.e. the losing countries, could block a ruling. Under the WTO, however, rulings are automatically adopted unless there is a consensus for rejection. According to this procedure, any country wanting to block the adoption of a ruling has to convince all other WTO member countries, including the country favored by the ruling, to do so.<sup>7273</sup>

<sup>72</sup> <http://www.wto.org/wto/about/hasics.htm>, updated October 13, 1997.

<sup>73</sup> <http://www.wto.org/wto/about/disputel.htm>, contribution," last updated October 13, 1997

"Principles of the Trading System," last

"The WTO's most individual

## **OBJECTIVES OF WTO<sup>74</sup>**

- To promote an equitable, non-discriminatory, multilateral, integrated and durable trading system;
- To liberalise the trade with a view to raising standard of living;
- To ensure optimal use of the world resources;
- To ensure full employment;
- To expand the production and trade;
- To protect and preserve the environment;
- To ensure linkages between trade policies, environmental policies and sustainable development.

## **THE FUNCTIONS OF WTO**

Among the various functions of the WTO, these are regarded by analysts as the most important:

- It oversees the implementation, administration and operation of the covered agreements.<sup>7576</sup>
- It provides a forum for negotiations and for settling disputes<sup>37</sup>-
- Additionally, it is the WTO's duty to review and propagate the national trade policies, and to ensure the coherence and transparency of trade policies through surveillance in global economic policy-making.<sup>37</sup>

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<sup>74</sup> Ibid., p.306

<sup>75</sup> Siddaiah, Thummuluri. International Financial Management, Dorling Kindersiey India. New Delhi. 2009.p.331

<sup>76</sup> Arora, N.D. Political Science for Civil Services Main Examination. Tata McGraw-Hill Education Private Limited, New Delhi. 2010. p 377.

Another priority of the WTO is the assistance of developing, least-developed and low-income countries in transition to adjust to WTO rules and disciplines through technical cooperation and training.

- The WTO is also a center of economic research and analysis: regular assessments of the global trade picture in its annual publications and research reports on specific topics are produced by the organization.<sup>39</sup>
- To confirm whether the agreements that have been covered are implemented, administered and executed effectively.
- The WTO shall facilitate the implementation, administration, operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.
- To settle negotiations and disputes by providing a forum check.
- The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.
- The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annex 2 to this Agreement.
- The WTO shall administer the Trade Policy Review Mechanism provided for in Annex 3 to this Agreement.
- With a view to achieving greater coherence in global economic policy-making, the WTO shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development (IBRD) and its affiliated agencies.

Finally, the WTO cooperates closely with the two other components of the Bretton Woods system, the IMF and the World Bank.

### **WTO ENHANCED THE VALUE AND QUALITY OF TRADE**

The WTO has been endeavoring along with key international aid and development organisations in conducting review of 'Aid for Trade', an initiative aimed at helping developing and least-developed countries to increase their level of exports of goods and services, to integrate more effectively into the multilateral trading system and to benefit from liberalized trade and increased market access opportunities.<sup>40</sup> Both trade and output grew faster in developing economies than in developed ones the trade volume in respect of major product groups viz., manufacturers, fuel and mining products and agricultural products increased at a higher quantum especially since 1995 onwards, commemorating the post WTO scenario trends.<sup>77</sup>

### **WTO ERADICATED TRADE TARIFFS BUT NON-TRADE BARRIERS ARE ON THE RISE**

Non-tariff barriers to trade (NTBs) are trade barriers that restrict imports but are not in the usual form of a tariff. Some common examples of NTB's are anti-dumping measures and countervailing duties, which, although they are called "non-tariff barriers, have the effect of tariffs once they are enacted.

Their use has risen sharply after the WTO rules led to a very significant reduction in tariff use. Some non-tariff trade barriers are expressly permitted in very limited circumstances, when they are

deemed necessary to protect health, safety, or sanitation, or to protect depletable natural resources. In other forms, they are criticized as a means to evade free trade rules such as those of the World Trade Organization (WTO), the European Union (EU), or North American Free Trade Agreement (NAFTA) that restrict the use of tariffs.

Some of non-tariff barriers are not directly related to foreign economic regulations, but they have a significant impact on foreign-economic activity and foreign trade between

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<sup>77</sup> Loc.cit.,19 Dr. Abdul Rahman, "WTO and Its Impact on Indian Agriculture". Pratiyogita Darpan. May, 2008 p.1949.



countries. Trade between countries is referred to trade in goods, services and factors of production. Non-tariff barriers to trade include import quotas, special licenses, unreasonable standards for the quality of goods, bureaucratic delays at customs, export restrictions, limiting the activities of state trading, export subsidies, countervailing duties, technical barriers to trade, sanitary and phyto-sanitary measures, rules of origin, etc. Sometimes in this list they include macroeconomic measures affecting trade.

With the exception of export subsidies and quotas, NTBs are most similar to the tariffs. Tariffs for goods production were reduced during the eight rounds of negotiations in the WTO and the General Agreement on Tariffs and Trade (GATT). After lowering of tariffs, the principle of protectionism demanded the introduction of new NTBs such as technical barriers to trade (TBT). According to statements made at United Nations Conference on Trade and Development

(UNCTAD, 2005), the use of NTBs, based on the amount and control of price levels has decreased significantly from 45% in 1994 to 15% in 2004, while use of other NTBs increased from 55% in 1994 to 85% in 2004.

Increasing consumer demand for safe and environment friendly products also have had their impact on increasing popularity of TBT. Many NTBs are governed by WTO agreements, which originated in the Uruguay Round (the TBT Agreement, SPS Measures Agreement, the Agreement on Textiles and Clothing), as well as GATT articles. NTBs in the field of services have become as important as in the field of usual trade.

Most of the NTB can be defined as protectionist measures, unless they are related to difficulties in the market, such as externalities and information asymmetries information asymmetries between consumers and producers of goods. An example of this is safety standards and labeling requirements.

The need to protect sensitive to import industries, as well as a wide range of trade restrictions, available to the governments of industrialized countries, forcing them to resort to use the NTB, and putting serious obstacles to international trade and world economic growth. Thus, NTBs can be referred as a “new” of protection which has replaced tariffs as an “old” form of protection.

**WTO BROADENED SCOPE OF THE TRADE GOVERNANCE**

The WTO has widened the scope of rule based administered trade in investment, services and intellectual property. We consider two alternative modes of trade governance: 1) a universal global integration (GI) mode and 2) an alternative regional integration mode.<sup>41</sup> The GI mode is stylized after the current system of international trade governance in the form of the WTO but mainly its predecessor the GATT. It is advised to stick to the terminology of global instead of multilateral as in its current form the GATT/WTO system is only partially multilateral even though it is commonly referred to as such. This is because the GATT/WTO adopts a largely bilateral or small group approach to negotiations and enforcement. Although the most-favoured-nation principle, which requires that the results of any reciprocal bargaining outcome between two or more members be multilateralised to all members, should render the GATT/WTO multilateral in terms of its negotiating function, the enforcement mechanism of the WTO, the other pillar of the WTO governance system, works largely on a bilateral basis. Moreover, there is considerable debate in both the theoretical and empirical literature on the practical effectiveness of the MFN rule in benefiting non- participating members as well as its weakening overtime.<sup>78</sup>

## **WTO EMERGED AS A GREATER INSTITUTION THAN GATT**

The establishment of the WTO has resulted in further changes which place additional demands on developing countries for their effective participation: First, the WTO covers a variety of new areas, such as services, standards, intellectual property rights, all of which require additional institutional capacity in member governments both for more effective representation in Geneva and in their home capitals. Second, the WTO, unlike GATT, has been engaging in a number of on- going negotiations in the liberalization of different sectors which require continuous active involvement by member countries. Three such negotiations, on Basic Telecommunications, Information Technology Products and Financial Services were concluded in 1997 and more are in store starting in 1999, as part of the built- in agenda of the Uruguay Round expanded the WTO agenda by including developmental policies.

## **WTO EASED SETTLEMENT OF DISPUTES BY ENFORCING IMPROVED RULES<sup>79</sup>**

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<sup>78</sup> Beverly D. McIntyre, Hans R. Herren and Judi Wakhungu, eds. IAASTD International Assessment of Agricultural Knowledge, Science and Technology for Development: Global Report, 2nd edition, Washington DC:Isiand Press,2008.

<sup>79</sup> Ignacio Garcia Bercero and Stefan D. Amarasinha “Moving the Trade and Competition Debate Forward”, Journal of International Economic Law, Volume.4, Issue3, 2001. Pp. 481-506.

The WTO's main function, according to its web site "is to ensure that trade flows as smoothly, predictably and freely as possible." WTO Agreements thus aim at "disciplining" an extremely wide range of measures, including export and import restrictions, but also domestic measures that in some way affect trade, such as environmental and health measures. To enforce its rules, the WTO has a binding dispute settlement mechanism. The mechanism is based on clearly defined procedural rules. Rulings in disputes are first made by a panel and can be appealed on points of law. Rulings are automatically adopted unless there is a consensus amongst all WTO Members to reject a ruling. This is one of the main differences with the previous GATT dispute settlement under which rulings could only be adopted by consensus, meaning that one single opposition, including that of the losing party, could block the ruling. Between the WTO's creation in January 1995 and 26 October 2005, 350 cases have been initiated.<sup>80</sup>

The WTO system is perceived as effective because it is binding and provides for sanctions. If a party is found to violate one of the many WTO rules, the challenging WTO Member can request the permission of the dispute settlement body to impose trade sanctions, meaning, for instance, that the winning Member can increase tariffs on products emanating from the "losing" Member.

Compared to its predecessor - the GATT, the WTO has improved transparency and, to some extent, has even become more participatory. Nevertheless, given its considerable economic and public policy implications, WTO dispute settlement remains too undemocratic and non-transparent. It is suggested that citizens around the world can be informed when a dispute procedure is initiated and they can read WTO jurisprudence first hand.<sup>44</sup><sup>81</sup>

## **WTO IMPROVED MONITORING BY INTRODUCING THE TRADE POLICY REVIEW AND THE WORLD TRADE REPORT**

Governments are vulnerable to backsliding on liberal policies in their dealing with the global financial and economic crisis. A replay of the tariff surges that exacerbated the Great Depression of the 30s will most likely be prevented. But evidence is mounting that governments are resorting to creeping protectionism as they did after the oil shocks of the 70s and whose

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<sup>80</sup> Ibid

<sup>81</sup> Democratizing international dispute settlement: The case of trade and investment disputes. The 6th International Conference of New or Restored Democracies (ICNRD-6), Doha - Qatar. 29th October - 1st November 2006.

pernicious effects lasted well into the 80s. Recent monitoring of trade policies shows a growing number of antidumping investigations, subsidy programs that favor domestic employment and lending, non-automatic licensing, discriminatory government procurement, and suspicious food safety measures.<sup>82</sup>

In this situation, the WTO's Trade Policy Review Mechanism (TPRM) assumes particular importance. It serves 'the regular collective appreciation and evaluation of the full range of individual Members' trade policies and practices and their impact on the functioning of the multilateral trading system.'<sup>46</sup> This mandate sounds promising. The TPRM could take stock of trade distorting policies and reveal their costs, so that governments and their domestic constituents become more willing to embrace liberalization. However, little is known about the actual quality and effectiveness of the TPRM. The self-assessments of the Trade Policy Review Body offer much praise and no evidence, while the academic literature is largely descriptive and outdated.

## WTO INCREASED TRANSPARENCY BY REMOVING GREEN ROOM NEGOTIATIONS

Having highlighted the institutional strengths of the WTO, one needs to draw attention to a major difference of the world trade regime from its financial counterpart and associated institutions—the IMF and the World Bank. The WTO, especially in recent years, has acted as a negotiation forum for member countries, and its duties in terms of policy formulation and implementation have remained quite restricted. Thus, simply highlighting the organizational strengths of the institution fails to provide sufficient information in terms of evaluating its overall contribution. What needs to be focused on, in this context, is the overall performance of the trade regime during the period of the WTO's existence.<sup>83</sup>

## WTO ENCOURAGED SUSTAINABLE TRADE DEVELOPMENT

As traditional tariff barriers have fallen everywhere, and as trade negotiators have turned their attention to other government policies which may affect international trade in products

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<sup>82</sup> Baldwin and Evenett (2009), Erixon (2009), Gamberoni and Newfarmer (2009) and several reports by WTO Director-General Pascal Lamy.

<sup>83</sup> Ziya Oniş and Koray Mutlu, WTO at the end of its first decade: The political economy of asymmetric Interdependence, *The Journal of International Trade and Diplomacy* 1 (1), Spring 2007:57-89.

and services, the international trading system governed by the WTO has come to affect more and more areas of government policy. Governments deciding environmental, health and labour standards, rules for service provision or intellectual property rights protection now cannot ignore the WTO.

The outcome of this process is to bring to the fore the disputed relationship between sustainable development and the liberalization of international trade. It has been argued that trade liberalization is essential to economic and social development and environmental protection; and, conversely, that it is harmful to one or all of these three pillars of sustainable development - or at least, that it gives a much greater focus to economic growth at the expense of the social and environmental dimensions.<sup>48<sup>84</sup></sup>

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## **PRINCIPLES OF THE TRADING SYSTEM UNDER WTO**

**1. Non-Discrimination.** It has two major components:

- a) **Most-favoured-nation (MFN):** Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and the same to be granted for all other WTO members.<sup>49</sup> This principle is known as most-favoured-nation (MFN) treatment. It is so important that it is the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (GATS) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO. Some exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate, but the agreements only permit these exceptions under strict conditions. In general, MFN means that every time a

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<sup>84</sup> Duncan Brack, *The World Trade Organization and sustainable development: A guide to the debate*, Energy, Environment and Development Programme EEDP BP 05/03, London: Chatham House, December, 2005.

country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners whether rich or poor, weak or strong.<sup>85</sup>

#### b) **National treatment: Treating foreigners and locals**

**equally:** imported and locally produced goods should be treated equally, at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these. National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.<sup>86</sup>

2. **Reciprocity:** It reflects both a desire to limit the scope of free-riding that may arise because of the MFN rule, and a desire to obtain better access to foreign markets. A related point is that for a nation to negotiate, it is necessary that the gain from doing so be greater than the gain available from unilateral liberalization; reciprocal concessions intend to ensure that such gains will materialise.

3. **Binding and enforceable commitments:** The tariff commitments made by WTO members in a multilateral trade negotiation and on accession are enumerated in a schedule (list) of concessions. These schedules establish "ceiling bindings": a country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. If satisfaction is not obtained, the complaining country may invoke the WTO dispute settlement procedures.

4. **Transparency:** The WTO members are required to publish their trade regulations, to maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members, and to notify changes in trade policies to the WTO. These internal transparency requirements are supplemented and facilitated by periodic country-specific reports (trade policy reviews) through the Trade

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<sup>85</sup> Washington D.C: The World Bank. 2002. p. 42.

<sup>86</sup> Eoekman and Bernard, eds. Development Trade and the WTO: A Hand Book.

Policy Review Mechanism (TPRM).<sup>53</sup> The WTO system tries also to improve predictability and stability, discouraging the use of quotas and other measures used to set limits on quantities of imports.

5. **Safety valves:** In specific circumstances, governments are able to restrict trade. There are three types of provisions in this direction: articles allowing for the use of trade measures to attain noneconomic objectives; articles aimed at ensuring "fair competition"; and provisions are permitting intervention in trade for economic reasons.<sup>55</sup> Exceptions to the MFN principle also allow for preferential treatment of developing countries, regional free trade areas and customs unions.

## VOTING SYSTEM

The WTO operates on a *one country, one vote* system, but actual votes have never been taken. Decision making is generally by consensus, and relative market size is the primary source of bargaining power. The advantage of consensus decision-making is that it encourages efforts to find the most widely acceptable decision. Main disadvantages include large time requirements and many rounds of negotiation to develop a consensus decision, and the tendency for final agreements to use ambiguous language on contentious points that makes future interpretation of treaties difficult.

In reality, WTO negotiations proceed not by consensus of all members, but by a process of informal negotiations between small groups of countries. Such negotiations are often called "Green Room" negotiations (after the colour of the WTO Director-General's Office in Geneva), or "Mini-Ministerial", when they occur in other countries. These processes have been regularly criticized by many of the WTO's developing country members which are often totally excluded from the negotiations.

## **ACCESSION AND MEMBERSHIP**

The process of becoming a WTO member is unique to each applicant country, and the terms of accession are dependent upon the country's stage of economic development and current trade regime.

The process takes about five years, on average, but it can last more if the country is less than fully committed to the process or if political issues interfere. As is typical of WTO procedures, an offer of accession is only given once consensus is reached among interested parties.

### **ACCESSION PROCESS**

A country wishing to accede to the WTO submits an application to the General Council, and has to describe all aspects of its trade and economic policies that have a bearing on WTO agreements. The application is submitted to the WTO in a memorandum which is examined by a working party open to all interested WTO Members.

After all necessary background information has been acquired; the working party focuses on issues of discrepancy between the WTO rules and the applicant's international and domestic trade policies and laws. The working party determines the terms and conditions of entry into the WTO for the applicant nation, and may consider transitional periods to allow countries some leeway in complying with the WTO rules. The final phase of accession involves bilateral negotiations between the applicant nation and other working party members regarding the concessions and commitments on tariff levels and market access for goods and services. The new member's commitments are to apply equally to all WTO members under normal non-discrimination rules, even though they are negotiated bilaterally.<sup>56</sup>

When the bilateral talks conclude, the working party sends to the general council or ministerial conference an accession package, which includes a summary of all the working party meetings, the Protocol of Accession (a draft membership treaty), and lists ("schedules") of the member-to-be's commitments. Once the general council or ministerial conference approves of



the terms of accession, the applicant's parliament must ratify the Protocol of Accession before it can become a member.<sup>57</sup><sup>87</sup>

## **DOHA ROUND TRADE NEGOTIATIONS**

The Doha Round of trade negotiations at the WTO has been under way since 2001. Discussions were slow to resume after they paused in December 2008 and there has not been much progress since. A stock taking exercise took place in the WTO in March 2010, where members agreed to take the discussions ahead based on the work already done while maintaining the focus on the development dimension of the Round. The positive signals given by world leaders at the G-20 Leaders' Summit held in Seoul in November 2010, have imparted a sense of urgency amongst members regarding the Geneva process that is supposed to resume in January 2011. The Director General, WTO, has suggested a cocktail approach of discussions combining the Chair-led processes within the negotiating groups and bilateral contacts, both in specific areas and at horizontal level. India is willing to work with the coalition groups in the WTO towards an early conclusion of the Doha Round. Its stand, however, is unequivocal: the protection of poor, subsistence farmers of developing countries and vulnerable industries is a priority.<sup>58</sup>

## **TRADE FACILITATION**

Another important area of the Doha round is the negotiations on trade facilitation. Simplification of trade procedures by reducing trading costs is in the interest of all WTO members. A Draft Consolidated Negotiating Text on Trade Facilitation was worked out by the WTO members on 14 December 2009. The draft text has since been revised six times in 2010 through discussions in the meetings of the Negotiating Group on Trade Facilitation. India has been actively participating in these meetings and has also tabled a few proposals on 'Customs Cooperation', 'Rapid Alerts System of Customs Union', and 'Appeal Mechanism'. Developed countries do not want to change their trade procedures but expect others to do so. Developing countries<sup>88</sup>

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<sup>87</sup> Geraint Howells, Iain Ramsay, Thomas Wiheimsson and David Kraft eds. *Hand Book of Research on International Consumer Law*, UK: Edward Elgar Publishing Limited,

<sup>88</sup> 58 - WTO Negotiations and India, *Economic Survey of India 2010-11*, Govt, of India.

have, by and large, adopted an extra defensive approach to negotiations. Least developed countries, in general, do not want to undertake any binding commitment. Capacity constraints and lack of resources are two major factors that prevent developing countries (and least developed countries) from taking on binding commitments in trade facilitation. The current scenario indicates that developed countries and other donors may not invest in building physical infrastructure in these countries, although the July 2004 Framework Agreement clearly links commitments to support and assistance for infrastructure development. It is important that this linkage is respected by the entire WTO membership, particularly the developed countries and that adequate assistance is provided for implementation of commitments so that a high standards agreement on trade facilitation can be reached.

## CHAPTER 4

### IMPACT OF WTO ON PRESENT TRADE MECHANISM

The principal purpose of this chapter is to appraise critically the various aspects of the WTO that have received attention in the earlier chapters.

#### **Globalisation has come to stay:**

Globalisation has defied national and political boundaries. The national economies of various countries have been integrated in the process. Rules and regulations relating to trade exchanges and foreign investment have been liberalised under the impact of globalisation.

#### **Globalisation offers benefits:**

The process of globalisation has enabled cross country free flow of information, ideas, technologies, goods, services, capital, finance and people. As a result, there are lower prices, more employment and a better standard of living in these developing nations. It is feared that some developing regions progress at the expense of other developed regions. However, such doubts are futile as globalisation is a positive-sum chance in which the skills and technologies enable to increase the living standards throughout the world.

Some of the beneficial arrangements are related to the substantial the substantial reduction in tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce. They set procedures for settling disputes, they prescribe special treatment for developing countries. They require governments to make their trade policies transparent by notifying WTO laws in force and measures adopted, and through regular reports by the WTO secretariat on their trade policies.

#### **Uruguay Round - The most ambitious trade negotiation:**

A new negotiating round, called the Uruguay Round, was announced in September 1986. It was the most ambitious trade negotiation ever held. The ministers were able to accept a negotiation agenda, which covered virtually every outstanding trade policy issue, including

the extension of the trading system into several new areas, notably trade in services and intellectual property. Traditionally, the GATT had only covered trade in goods and established rule based multilateral trade in the form of administered protection.

### **Outcomes of Uruguay Round:**

The Uruguay Round concluded agreements relating to reduction in global tariffs by one-third over ten years, reduce protection in agriculture through conversion of all barriers to trade over six years, conversion of all barriers to trade in clothing and textiles to tariffs over fifteen years phasing down of trade distorting subsidies, increasing the authority of the GATT dispute settlement system and establishing multilateral trade rules for the liberalisation of trade in services.

However, the loss of opportunity in textiles could be made up in other goods. The liberalization of trade in goods brought about by the new treaty opportunities to India is the biggest gain and outweighs all the costs imposed by the treaty.

### **WTO principles inherited from GATT:**

The study reveals the non-discriminatory, reciprocal, liberalised, predictable and fair character of the WTO principles. These principles apply equally the MFN treatment among the members by allowing reciprocal access, initiated steps in the direction of progressive market opening by eliminating unfair competitive practices such as export subsidies and dumping and providing greater flexibility in agreements for developing countries. However, apprehensions are continuing among various countries on the application of fairness and equity of principles.

### **WTO aims at full competitive opportunity of trade for all**

#### **countries:**

WTO applies two principles, viz., the most-favoured-nation treatment (MFN) and the national treatment. The former essentially means the non-discriminatory treatment across the members of the world trade organisation, while the latter meant for the non-discriminatory

treatment between the exporting and importing members themselves. Thus, MFN ensures ‘ equal competitive opportunities among various member countries within the WTO purview, while the national treatment ensures the opportunities between the exporting and importing members of the world trade organisation.

### **WTO the principal rule based organisation:**

In the field of the trade, the World Trade Organization (WTO) is the principal international institution responsible for laying down rules for the smooth conduct of trade in goods and services among nations in this globalized world.

### **Laudable objectives of WTO:**

The WTO has set clear-cut goals for its functioning like, promoting equitable, non-discriminating and multilateral trading system, bringing improvements in standards of living through trade liberalisation, optimum use of the global resources, ensuring full employment expansion of production and trade, environmental protection and sustainable development.

### **Main Task of WTO:**

WTO’s main task is to make the multilateral trading system credible and transparent. This is the hope, based on assertions by the world’s major traders especially the US. The WTO in its principal role as a trade police man will ensure the countries obey multilaterally accepted trade roles, carryout recommendations and rulings and compensate complaints.

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### **Enhancement in the quantum and quality of Trade:**

We can conclude that the efforts of WTO definitely would be adding to the value and volume of global trade. Easy flow of goods and services and information across the international boixters because of technology development has reached immense proportions in the last few decades.

### **Increased transparency through TPRM;**

WTO has paved way for enhancement of transparency in trade dealings among the members as all the members are required to publish their trade regulations and allow the review of administrative decisions affecting trade. Internal transparency requirements are supplemented and facilitated by periodic country-specific reports (trade policy reviews) through the Trade Policy Review Mechanism (TPRM)

### **WTO affects sustainable development:**

The Study reveals that, as traditional tariff barriers have fallen everywhere, and as trade negotiators have turned their attention to other government policies which may affect international trade in products and services, the international trading system governed by the WTO has come to affect more and more areas of government policy. Governments deciding environmental, health and labour standards, rules for service provision or intellectual property rights protection, now cannot ignore the WTO.

Thus, the study focuses on the agreement that trade liberalization is essential to economic and social development and environmental protection; and, conversely, that it is harmful to one or all of these three pillars of sustainable development - or at least, that it gives a much greater focus to economic growth at the expense of the social and environmental dimensions.

### **WTO - a unique decision making process:**

WTO operates on a one country, one vote system decision making is generally by consensus. Under the WTO the advantage of consensus decision-making is that it encourages efforts to find the most widely acceptable decision. Main disadvantages include large time requirements and many rounds of negotiation to develop a consensus decision, and the tendency for final agreements to use ambiguous language on contentious points that makes future interpretation of treaties difficult. However, there is also a criticism that the WTO practice of arriving decisions on a consensus basis is mainly due to the fear of the presence of more number of developing countries as members of WTO, who constitute the largest quorum.

### **Strike a balance of interest of Developed vs Developing countries:**

Under the WTO, developing countries now far outnumber the developed countries. Despite this fact, the developed countries still demonstrate superior bargaining power, as was seen in the Uruguay Round, where issues such as intellectual property rights and environmental regulations were codified into the WTO framework. Even though the developing countries have also greatly benefited from their participation in the WTO, trade and environmental issues are two main points of divergence in interests between the developing and developed world.

### **Agriculture - emerged as a multilateral trade negotiation:**

The Uruguay Round marked a significant turning point in world trade in agriculture. For the first time, agriculture featured in a major way in the GATT round of multilateral trade negotiations. Although the original GATT - the predecessor of the World Trade Organisation (WTO) - applied to trade in agriculture, various exceptions to the disciplines on the use of non-tariff measures and subsidy meant that it did not do so effectively. The Uruguay Round agreement sought to bring order and fair competition to this highly distorted sector of world trade by establishment of a fair and market oriented agricultural trading sector. Agriculture is featured as a multilateral trade negotiation.

### **Developing countries face market inaccessibility:**

Developing countries fear that when pressure on developed countries will force them to decrease their market access tariff barriers, they will resort to more and more use of quality standards as non-tariff barriers. In any event developing countries should make serious efforts to comply with these standards. These are aimed at better quality living for the living beings. WTO Agreement on Sanitary and Phytosanitary Measures the desirability of maintaining quality standards clearly mentions that these should not be used as trade barriers.

### **Agricultural Issues:**

India's position would continue to be guided by national interest, i.e., safeguarding agriculture - the backbone of her economy. India should not turn its back on country's legacy in the WTO and that the rights of farmers and farm produce must be strengthened. The rights

of Indian farmers and farm produce must be safeguarded and the government must make all efforts to ensure this. Thus, main issue continues to be agriculture and protection of farmers, which has economic ramifications as well as larger domestic political implications.

#### **Developed countries overriding on AoA:**

Trade distortions are more conspicuous in agriculture sector. By providing export subsidies and export credits, developed countries have been able to effectively dump their excess production in international markets causing a fall in prices of agricultural products. Resultantly developing countries exports suffer from low profits due to fall in international prices and in worst scenarios their domestic markets have been lost due to inflow of artificially cheap imports from developed countries.

#### **Creation of awareness amongst the farmers:**

The use of fertilizers, pesticides and other chemicals at various stages of crops is highly unscientific in India and leads to increase of chemical levels beyond internationally permissible levels. Disease and pest control should be on modern lines to produce quality products. Chains of laboratories which are internationally accredited and well equipped to deal with the requirements of local exportable produce are required to be established, creation of awareness amongst the farmers, exporters, middle men and government departments to cater to this challenge. Overall research and development environment in agriculture sector needs to be enhanced.

#### **Market access but not without tariffs:**

No doubt the WTO kind of arrangement addresses itself strongly towards eradication of tariff and non-tariff barriers. In case of tariff reduction commitment, however, certain lags have been noticed in the study. Market access provisions under WTO are based on the principles of “tariffs only”. Non-tariff restrictions like quotas have been replaced by tariffs but the bound levels of tariffs for agricultural products originating in developing countries are excessively high in developed countries. In Japan, for instance, tariff on rice is up to 1000% making it very difficult for agricultural products from developing countries to enter and compete in developed country markets. Moreover developed countries have been discouraging value addition at each step in the processing ladder by tariff escalation.



### **Green subsidies encouraged:**

WTO rules permeate green subsidies, all subsidies that have normal or at most minimal, trade distorting effects or effects on production and do not have the effect of providing price support to producers are treated as green subsidies and are exempt from reduction commitments.

### **Listed subsidies have little impact on Indian agriculture:**

None of the subsidies listed in the GATT as export subsidies apply to Indian agriculture as these are not provided at the moment. The only export subsidy provided at the moment by India is the exemption of export profit under sections 80-111C of the Indian Income Tax Act which is not on the listed subsidies. India is, therefore, free to provide subsidies for internal and of export marketing costs. The reduction in protection levels, which are high in developed countries, should help in India's exports though major benefits are to be appropriated by the developed countries.

India has tremendous export potential for fruits and vegetables and processed foods if measures are taken to improve the infrastructure and latest technology is used for the improvement of production. Exports from India consist of mainly traditional items like tea, jute, coffee, rubber, spices etc. It is inferred that neither the excess nor the larger size of the market but certain structural bottlenecks like price competition, products specifications and brand names including quality and other factors which really stand in the way of increasing export of India's conventional farm produces. Therefore, controversy about subsidies will not have any adverse effects on India's interests.

### **Positive gains on agriculture front are forecast:**

The phased reduction on agricultural subsidies in developing nations, did not decrease the market in the post Uruguay Round phase for most of the commodities. One can apprehend that world price volatility will increase the domestic price instability of agricultural products in India and consequently it may become an attractive market for agriculture imports. The fear is not totally unfounded. After 1996, domestic prices have turned higher than international prices causing shock waves among farmers as has been seen in case of wheat, broken rice chicken and some other commodity

### **Expected gains are yet to reach farmers:**

It is expected that the combined effect of the reforms in the domestic policies and international trade reforms would result in a much larger integration of the Indian economy with the rest of the world, and such a scenario would bring about substantial benefits to the Indian farmers. The reforms undertaken so far have, however, failed to bring about the expected gains to Indian farmers. The process of reforms is still continuing and it is hoped that once the negotiations on reforms conclude and the envisaged reforms are implemented in letter and spirit, the gains to Indian agriculture would be positive and substantial.

### **Efforts to reduce distortions in agriculture:**

The primary objective of the Agreement on Agriculture (AoA) is to reform the principles of, and disciplines on, agricultural policy as well as to reduce the distortions in agricultural trade caused by agricultural protectionism and domestic support.

### **Positive Impact of AoA:**

One of the aims of AoA is to reform trade in agriculture sector, and to make policies more market oriented. Under the agreement, members commit themselves to reducing import tariffs, export-promoting subsidies, and total aggregate support to agricultural producers. The agreement also takes into account the particular needs and conditions that developing countries face and allow them a more gradual course of liberalization. The agreement allows governments to support their rural economies, but preferably through policies that cause minimum distortion to trade. Developing countries are given special and differential treatment regarding reduction in subsidies, and they are given a longer transition time to complete their obligations.

### **Unrealized part of AoA or shortfall in expectation:**

Most studies reveal that the expectations on the gains arising out of the AoA have not materialised. It was expected that AoA would result in increased access for agricultural exports from developing countries to the markets of the developed countries. In reality, exports to the EU and Japan have declined in proportionate terms in the post Uruguay Round period. It was also expected that there would be a redistribution of grains production from the highly subsidizing West to the less subsidizing South. There is no evidence to show that this shift has taken place.

### **A Negative impact of AoA on farmers in developing countries:**

Developing countries have been pressed to open their economies to imports under structural adjustment programmes. Increase in imported foodstuffs displaces rural farmers from domestic markets, depriving them of incomes. Cheap food imports into many developing countries takes away the livelihoods of poor

people of which farmers are in the majority. Reduction of tariffs allows cheap imports of low cost agricultural produce that compete (and often dislodge) with domestic products and destroy local livelihoods. Thus agricultural production may actually increase in the US and EU while developing countries becomes net-importers.

### **AoA helped more the rich than the poor:**

Agricultural subsidies remain in developed countries and as a result the dumping of surpluses on world markets continues unabated. Poor farmers in developing and least developed countries, who are barely supported by their governments, have to compete in world markets against rich farmers who often receive massive subsidies from their governments. As a result, rich farmers are getting richer while the poor get poorer.

### **Dos and Dents of AoA:**

Primarily covered under Article 8 of the Agreement, these commitments are intended towards curtailing the hitherto common practices of the nations to grant subsidies to farmers, which are contingent upon export performance. Therefore, if a farmer exports a part of this production, he would be rewarded in the form of increased benefits/tax incentives or other ways as the country may provide. These benefits, so far as they have the effect of promoting exports are justified. However, if they amount to reduction in costs of production of the commodities meant for export, would subvert

the mechanism of comparative advantage, which is the entire basis/rationale for international trade. Thus the Agreement requires the Members from refraining to grant export subsidies and also obliges them from reducing the levels, which they have been maintaining. Similar to domestic support, the Agreement makes provision for identification of export subsidies.

### **Distortionary effects of AoA Subsidies:**

Domestic support policies with the most distortionary effects on trade are those, which provide farmers in major producing countries of the world with incentives to produce substantially more of a particular product than they would do without such policies. This tends to generate large agricultural surpluses. The sale of these surpluses on the world market can only occur at a loss unless subsidized because the domestic price of the commodity is higher than the world price of the same. Increased volumes of domestic production can substitute for imports in domestic markets, while subsidized exports can create unfair competition for external producers.

### **The poor farmers in developing countries are disadvantaged a lot:**

Export subsidies increase the share of the exporter in the world market at the expense of those who are not subsidized. They also tend to depress world market prices through the dumping of surpluses and may make them more unstable. A vast majority of

developing countries do not or cannot subsidize exports while many developed countries like the US and the EU do. Thus, poor farmers in developing countries, who are barely supported by their governments, are competing against rich farmers who often receive support from their governments.

Agriculture and farmers have a right to benefit from international trade and be freed from the heavy hand of government intervention. Three brief arguments in support of concluding the agriculture negotiations can be made at this juncture. First, reductions in export subsidies, domestic support and import tariffs can be seen as the first step to make agriculture more open and globally traded. This requires building of trust and assuring domestic groups that vital interests of food security are not being compromised. Second, our small and marginal farmers will not be deluged by subsidized imports because the great majority will be protected under the special safeguards mechanism (SSM) that will allow about 7 per cent of agriculture tariff lines to be exempt from the agreed tariff cuts. And in any case members are entitled to impose higher duties in case of import surges. There is then no question of our 'poor farmers' having to compete against the US treasury or the European bourses. Third, the plight of our small and medium farmers has much more to do with our own domestic policy-generated constraints than the global trading regime. Our farmers suffer more from lack of adequate electricity and new seeds, and poor access to bank credit and

markets than from subsidized import surges. Agriculture ministry has to implement the necessary reforms.

There were serious differences between developing and developed countries over the level to which they were willing to open their markets under NAMA.

A well-integrated agricultural sector should enhance food security, reduce real food prices especially beneficial to the poorer communities of the nation who spend a disproportionate share of their income on food, increase employment and income, create important economic linkages in production chains, and have a positive impact on the environment. Given the chronic incidence of rural poverty and the concomitant harmful environmental practices, a development framework for agriculture must now focus on, among other things, equity and sustainability.

Trade ministers should stick to the offers already on the table and build on them and called for an inclusive approach in the way negotiations are carried out and help accentuate the progress of the Doha Round talks.

### **India's role recognized:**

India, one of the founder members of WTO, had its own expectations as well as reservation about the new economic order. Almost all member countries of WTO have in-principal supported India's proposals that seek to make the organisation more relevant, vibrant and user-friendly. Members like China, US, and the EU have formally endorsed India's stand on several issues. In the last decade, our economic agenda and the policies to be pursued have been largely shaped by the WTO commitments. In the developing world, only India and Brazil have a separate mission in Geneva for WTO matters, which is backed by a good size trade policy structure and research institutions at home

### **Doha Round would reduce the barriers:**

According to World Bank estimates, complete elimination of all merchandise trade restrictions would ultimately boost developing-country incomes by no more than 1 per cent. The impact on developed-country incomes would be even smaller. And, of course, the Doha

Round would only reduce these barriers, not eliminate them altogether. The Doha Round was constructed on a myth, namely that a negotiating agenda focused on agriculture would constitute a "development round". This gave key constituencies what they wanted. It provided rich-country

governments with an opportunity to gain the moral high ground over anti-globalisation protesters.

But the myth of a "development" round, promoted by trade officials and economists who espouse the "bicycle theory" of trade negotiations - the view that the trade regime can remain upright only with continuous progress in liberalization - backfired, because the US and key developing countries found it difficult to liberalise their farm sectors. What ultimately led to the collapse of the latest round of negotiations was India's refusal to accept rigid rules that it felt would put India's agricultural smallholders in jeopardy.

### **Developmental Issues - Missing consensus:**

India's stand that the development dimensions was "central to the Doha Round", that has missed several goalposts for want of consensus among 153 WTO members. The need of the hour is a rule-based multilateral trading regime, which takes on board developmental aspirations of the poor countries and at the same time ensures better access for all.

### **Need for concluding Doha Round of talks:**

These are not the best of times for the Doha Round of multilateral trade negotiations under the aegis of the World

The talks, which began in November 2001, are nowhere near completion. What is worse the topic appears to have been dropped from public discourse. One hardly hears anything that would induce optimism on concluding the talks. While there could be many reasons for this justified public apathy, it is incorrect to write off the Doha development round.

WTO has been criticized for paying lip service to the concerns of developing countries in the field of agriculture while pursuing an agenda of developed countries. Under Article 20

of Agreement on Agriculture the review process to ascertain the progress made towards establishing a “fair and market oriented trading system in agriculture” started in the year 2000. In pursuance of this “built in agenda” many proposals have been submitted on the three pillars of market access, domestic support and export competition as well as to make more meaningful and enforceable the “special and differential treatment” provisions. Under pressure of an increasingly assertive civil society, anti-globalization movement that emerged at the time of Seattle Ministerial Conference, developed countries agreed to make more meaningful concessions to developing countries at Doha in 2001. According to Doha declaration a road map was provided for agriculture negotiations. The deadline for agreeing on modalities was March, 2003 which has passed without any agreement.

### **Stalemate on Doha Round of Trade Negotiations:**

Most of the issues relating to finalization of modalities for Agriculture and Non-Agricultural Market Access (NAMA) have not ended without any agreement on any issue. Some of the issues which either could not be discussed were: Cotton subsidies; Tariff capping; Tariff simplification; new Tariff Rate Quota creation, etc., in agriculture and sectoral initiatives in NAMA. Developing countries also have concerns in other areas of the Doha Round negotiations such as Fisheries subsidies; Anti-dumping; Trade-Related Intellectual Property Rights (TRIPs) and its relationship with the Convention on Bio-Diversity; liberalization of trade in environmental goods and services etc.

### **India stands firm:**

The Doha round can only be completed when WTO members agree on the modalities for Agriculture and NAMA, and complete negotiations in all the areas covered under the Doha Work Programme. India not only wants the US to drastically reduce its overall trade distorting farm subsidies (OTDS) and in particular the cotton subsidies, but also has said that it would not take part in ‘sectoral’ negotiations as demanded by the US. Sectoral negotiations are aimed at drastically cutting or altogether eliminating duties on certain sectors like industrial machinery, electrical electronics, and chemicals that are of interest to the US.

### **Economic growth linked progressive liberalisation of services:**

The General Agreement on Trade in Services of the World Trade Organization (WTO) came into effect in 1995, as a result of the Uruguay Round of multilateral trade negotiations.

The study reveals that GATS strives is to promote the progressive liberalization of trade in services as a means of achieving economic growth for all countries and the development of developing countries, by applying basic rules of the WTO to services trade, with the necessary modifications.

### **Larger number of services under the ambit of GATS:**

GATS covers trade in all commercial services, categorized by the WTO in 12 groups: business including professional and computer services, communication service like, postal, courier and telecommunication, construction and engineering services, distribution services, educational services, environmental services, financial (insurance and banking) services, health services, and other services not included elsewhere. GATS, however, excludes air transport and government authority services. Unlike trade in goods, there is no harmonized system of classification for services and countries have a wide discretion.

### **GATS obligates lower barriers:**

GATS requires each member country to lower barriers against foreign service providers, in the service sub-sectors committed by the member, and to commit never to raise the barriers in the future, failure of which the member could be forced to compensate the affected countries.

### **New technology widened the scope of services trade:**

Prior to the Uruguay Round, services were considered to offer less potential for trade expansion than goods. However, the development of new transmission technologies facilitating the supply of services (e.g. satellite communication, electronic banking, tele - education), the opening of monopolies in many countries and gradual liberalization of hitherto regulated sectors like transport, banking and insurance combined with changes in consumer preferences, enhanced the tradability of services.



## **TRIMS:**

It is evident from the study that WTO Agreement deals importantly with the trade related investment measures (TRIMs). Sometimes certain investment requirements which distort international trade in goods are taken care of in the overall WTO negotiations. TRIMs broadly pertain to local content requirements, trade balancing requirements and export restrictions attached to investment decision making.

The member countries of WTO have to remove any inconsistencies that are in contravention with the TRIMs framed by the WTO. A transition period of two years and five years in case of the developed and developing countries respectively under the agreement so as to synchronise the provisions. India does not have any outstanding obligations under the TRIMs agreement as far as notified TRIMs are concerned.

## **TRIMs obligate free flow of foreign investment:**

Foreign investment flows facilitate economic growth both in developed and developing countries. However, countries are cautious and become discriminatory in allowing the FDIs with a view to protecting their indigenous industries. TRIMs will create a kind of self-regulation on the part of member countries by not imposing restrictions on foreign investment inflows.

## **Tariff Reductions**

## **Technical barriers to trade (TBT):**

The TBT Agreement recognizes that WTO members have the right to take standards-related measures necessary to protect human health, safety and the environment at the levels they consider appropriate and to achieve other legitimate objectives. At the same time, the TBT Agreement imposes a series of rules regarding the development and application of those measures. For example, the TBT Agreement requires governments to develop standards-related measures through transparent processes, and to base these measures on relevant international standards (where effective and appropriate). The TBT Agreement also prohibits measures that discriminate against imported products or create unnecessary obstacles

to trade. The TBT Agreement sets out a Code of Good Practice for both governments and non-governmental standardizing bodies to guide the preparation, adoption, and application of voluntary standards. The Code is open to acceptance by any standardizing body located in the territory of any WTO Member

The TBT Agreement requires WTO Members to provide other members the opportunity to participate in the development of mandatory standards-related measures, which helps to ensure that standards-related measures do not become unnecessary obstacles to trade. In particular, the TBT Agreement requires each Member to publish a notice in advance that it proposes to adopt a technical regulation or conformity assessment procedure.

### **India benefits from reciprocal tariff reductions:**

India will have to open its imports upto 3-5% of consumption needs. Stated differently, 3-5 per cent of consumption cannot be on the negative list but will have to be on open general license (OGL) list subject to whatever tariffs exists India has indicated tariffs upto 100 per cent on primary products, upto 150 per cent on processed food and up to 300 per cent on edible oils

In the entire forty-seven years of the GATT, only some 200 cases were disputed. In the first three years of the WTO, 118 complaints have been brought, dealing 411 distinct matters. Many of these cases' have gone through the entire process, resulting in the adoption of appellate reports by the DSB. The increased use of the dispute settlement procedures under the WTO suggests that nations see value in the reforms that were implemented, and that they have increased confidence that other nations will abide by their trade obligations if the DSB finds them to be in violation of specific provisions.

Developing countries such as India were imposing import duties of 50-100 per cent on most goods against 10-20 per cent by the developed countries. India agreed to reduce the import duties because these were counter-productive for all except our inefficient producers. These were, therefore, gradually reduced to present average of about 15 per cent. Simultaneously, developed countries reduced their import duties to about four per cent. In consequence, global trade has increased and our producers have attained access to global markets. Our consumers have received better quality imported as well as homemade products. This global reduction in import duties has been basically beneficial for us.

**Non-tariff barriers - a deterrent:**

The problem faced by many Indian exporters is not of high import duties or prices, but of the non-tariff measures. For example, few years ago the export of skirts from India was banned in America on the unfounded allegation that these skirts were inflammable. This happened because no standards are set for inflammability and there is no provision in the WTO for India to challenge such restrictions.

**India cannot be unconscious of her interests:**

While India go to the negotiating table, she should remain conscious of the interests of millions of her farmers, the interests of her small and medium enterprises, and we remain committed to the aspirations of our booming services industry to get greater market access. We remain optimistic that globally we will be able to find a way forward, free movement of professionals, removal of restrictions on outsourcing and neutralising negative impact of the stimulus packages being implemented by the developed countries on our exports as desired by India. It is equally important for countries of the West to acknowledge the historical imbalances which have queered the pitch for the developing world.

**No real reductions in targets/subsidies by developed countries:**

The WTO has promised that trade liberalization will bring benefits to all countries. In reality, the rich countries took full advantage of the opening of markets in the developing ones. The proposal of the recently revived WTO's Doha round of negotiations suggests that developing countries will have to cut their agricultural targets by 36 per cent. Even the most important products of poor farmers would face around 19 per cent cuts. The proposal does not imply real cuts in huge farm subsidies in the US and EU. Both pretend to effect 70 per cent and 80 per cent cuts in subsidies. Actually, however, there are no real reductions. The current US subsidy is around \$ 7 billion, while a 70 per cent cut would cap its subsidies at \$14.5 billion. Similarly, according to estimates, EU subsidies would be around 12 billion Euros by 2014 while the 80 per cent cut would cap its subsidies at 22 billion Euros.

**WTO environmentally concerned:**

Environmental policy-making is one of the most rapidly evolving areas of national and international policy-making, and it is entirely appropriate that emphasis should be placed now

in WTO on ensuring better policy coordination and multilateral cooperation over the linkages between trade and environment.

### **Improved rules eased out dispute settlement process:**

WTO attempts to remove trade distortions is achieved by developing a set of rules of multilateral trading system which aims to remove, inter alia, trade barriers (tariff and non-tariff) as well as reduce and eventually remove domestic support and system' of export subsidies that distort international trade between nations. This has eased out dispute settlement process.

### **Satisfactory Dispute Settlement:**

Now that the WTO Dispute Settlement procedures have been in use for many years, it is possible to make a tentative analysis of the impact of this institutional evolution of the international trading system. A rich variety of cases have been addressed by the WTO dispute settlement procedures. These include complaints against countries with economies as small as Guatemala, and as large as the European Union. They have also targeted countries at vastly different stages of development, including countries like India at one end of the spectrum and the United States and Japan on the other. '

### **Consultations helped resolve majority disputes:**

Interestingly, a large proportion of cases are successfully resolved during consultations; 46 per cent of all disputes brought to the WTO end at the stage of consultations and three-quarters of

those yield at least partial concessions from the defendant. If consultations do not result in a mutually satisfactory solution, the complainant can request a panel proceeding, marking the start of the formal litigation stage. Panels are comprised of three to five persons with a background in trade law, agreed to by the parties on a case-by-case basis.

The WTO became the first global economic institution with capacity to legally enforce its agreements through the dispute settlement body with powers to authorize sanctions against violators, as the organisation aims at promoting trade liberalization through a rule-based system founded on principles agreed upon by members.

### **Special safeguard measures:**

There are special safeguard provisions if market access leads to an import surge or if imports take place at an extremely low price. None of the agricultural measures used by member countries domestic or border measures can be challenged before 9 years i.e., before 2004

This would require concord and simultaneous efforts on several fronts like increase in the use of modern inputs like fertilizers and plant protection, chemical expansion in area under high yield varieties and improved seeds, provisions of institutional credit for purchase of modern inputs, improved water management

and conservation strategies, reclaiming some of infrastructure to improve efficiency in product and marketing.

India has agreed to lift quantitative restrictions (QRs) on imports of about 2700 items in 6 years because of the complaints by USA, Australia, New Zealand and E.U to Dispute settlement body (DSB) of WTO based on the decision of the Appellate Body. Removal of QRs on agriculture import would promote competition that will benefit the consumers improve social welfare particularly of rural and urban poor.

### **No impact on India's public distribution system:**

On the issue of PDS, India will not be effected because PDS meant for poor consumers and not for farmers. The provision of food stuffs at subsidised prices with the objective of meeting food requirements of the poor in developing countries on a regular basis at reasonable rates is allowed as per the agreement. Although public agencies buy food stocks only at minimum support price, the farmers are free to sell at higher market price offered in the open trade.

### **Exclusion of members from patentability of inventions:**

According to TRIPS agreements (article 73) members may be excluded patentability of inventions which are necessary to protect human, animal or plant life or health or to avoid prejudices to the

environment, provided that such exclusion is not made merely because the exploitation is prohibited by domestic law. It also provides that members may exclude from patentability of (a) diagnostic, therapeutic and surgical methods for the treatment of humans or animals and (b) plants and animals other than the micro-organisms and essentially biological processes for the protection of plants or animals other than non-biological and micro-biological processes. It further states that, however, the members shall provide for the protection of plant varieties either by patents or by an effective Sui Generis system or by any combination thereof. Agreement requires patent protection for a period of 20 years. A grace period of 10 years is available for the introduction of patents.

### **The implications of the TRIPS**

#### **MNCs desire to make India as their production base:**

India stands to gain because production of high value seeds involving the process of pollination which is high labour intensive and availability of conducive weather in India. MNCs may make India as their production base for seeds exporting to global market. There is a great potential for the export of fruits and vegetable and processed food in the international market if the infrastructure required for export and shipment was suitably upgraded to international standards.

#### **Developing countries feel the threat of MNCs:**

Another problem for developing countries agriculture arises out of TRIPS agreement that has made it mandatory for all member countries to accord protective intellectual property rights, which are internationally acceptable, among others to the inventors, of new seeds and plant varieties. For centuries farmers had been saving, exchanging, using and selling farm saved seed. Multinational seed companies have now started claiming patent rights over the seed produced through their research by introducing some new gene sequence. Developing countries fear that this will threaten their centuries old farm practices and make their agriculture dependent on these companies.

### **India will gain from plant breeders' right:**

It is feared that the introduction of a form of monopoly through plant breeders rights (PBRs) would make the seed industry dependent on the licenses, given by those owing to the (PBRs).

India has developed a wide variety of seeds. Therefore, she would gain from the institution of PBRs in a number of ways - (i) this form of protection would motivate the private sector to make much greater investments in plant breeding research for improved hybrids, (ii) India will have greater access to foreign varieties and technology; (iii) PBR, would also made it possible for India to enter the international market in seeds in a big way for which India has the necessary scientific resources and commercial expertise. India's strategic location also offers great potential for the development of vibrant export trade in seed with many neighboring countries.

### **India poised to capture major junk of bulk drug market:**

India is the world's largest exporter of generic drugs in the world with exports to the tune of \$8 billion in 2008-09. The Indian pharma industry is the third largest in world with strength in the value chain and constitutes 40 per cent of the world's exports of bulk drugs. The Indian pharma industry was expected to reach \$30 billion by 2020, Out of every fifth generic drug produced in the world, is from Indian companies. While we are not too much into new drug inventions, we are quite strong in manufacturing formulation and bulk drugs. When the \$60 billion worth of patents expire in the next three to four years, Indian companies will be able to capture a major chunk of the market with our strength in generic drug manufacturing. The rules of TRIPs agreements would support India a lot in future in respect of drug formulas.

### **Sanitary and Phyto Sanitary Measures:**

Sanitary and phyto sanitary are non-tariff measures which a member country can invoke to refuse imports from member countries to protect human and animal health or plant life, subject to the requirement that they are not applied in a manner which could constitute a measure of arbitrary or unjustifiable discrimination between members where identical conditions prevail or disguised restrictions on international trade.

### **Sanitary and phyto sanitary measures compel quality standards:**

India has to be equally conscious about maintaining the quality standards acceptable in the global market in order to penetrate into the international market and boost its export share. E.U. banned import of fish from India because of lack of adequate hygiene protection especially in canning (sacking) of crustaceans (Shellfish).

In terms of quality most of the Indian farm products do not conform to international standards on account of sanitary and phyto sanitary restrictions, processing and packaging specifications and so on. This is evident from the recent rejection of Indian mangoes by Japanese importers due to various organic/inorganic residues on mango skin for which Indian exporters had to import special machines for further processing this commodity.

### **Implications of WTO on Textiles & Clothing**

#### **Supply - side constraints to be taken care of:**

There are supply-side constraints that for a start, it is important to realize that low labour costs do not necessarily lead to price competitiveness. Labour costs are only one component of total input costs. Higher capital and energy costs can very easily nullify the advantage of low wages. In addition, if raw materials are not available at international prices, a labour cost advantage does not translate into price competitiveness. This, for example, characterizes India exports of garments made from manmade fibres. It is true that duty-free imports are available through advance licenses, but the procedures are extremely complicated.

#### **Further Integration a challenge:**

The globalisation of the world economy over the past decade has created a greater reliance than ever on an open multilateral trading system. Free trade has become the backbone of economic prosperity and development throughout the world. The task of helping to integrate further the least-developed countries is one of the challenges that lie ahead in the WTO. Similarly, the full integration of countries with economies in transition into the trading system must be achieved in order to strengthen economic interdependence as a basis for greater



prosperity and world peace. These negotiations are critical to ensure the future health of the world economy and the trading system. Thus the WTO paves the way for revisiting of North - South dialogue of 70s and 80s.

### **Developed countries should exhibit fairness:**

Because of the superior economic might of the developed world, the developed world through these agreements have managed to have the right to retain quotas for textiles and clothing items and to maintain huge subsidies for agricultural items thus effectively shutting out competition and fair market access to the developing countries in these two sectors in which developing countries could be somewhat competitive. Because of today's tough competitive situation, if further obstructions are placed on world trade, the developing world will lose whatever little confidence they have in the multilateral trading system, especially in the equality of the system. There is, therefore, great responsibility on part of the developed world to ensure that fairness and transparency of multilateral trading system is not sullied and jeopardized.

But the chances of the WTO'S Doha Round of talks that started in the capital of Qatar in November 2001, concluding in the near future are rather remote. The differences between developed and developing countries on key issues appear so irreconcilable at present that the WTO - with 153 countries as its members helplessly watches as intransigent negotiating positions are adopted.

Observing that both the US and India had dug their heels in at the negotiations with the US not doing enough in terms of reducing farm subsidies and India sticking to its position on SSM (special safeguard measures), she could turn the table on the US by improving its position on SSM. It is possible to protect the India farmers under other provisions of the WTO, although, there was nothing to be feared by expressing the farmers to competition.

### **India can afford further reductions in import duties**

As cheap labour has emerged as a major determinant for success, our growth rate is respectable while that of the developed countries is languishing. It is suggested that India will have to make larger cuts from the present average rate of 15 per cent. Not much reduction is possible in the average rate of import duty of four per cent being levied now by the developed countries. Normally, this should entail a loss proposition for India. This may not happen though. Just as reduction in import duties from 60 per cent to 15 per cent has not killed our indigenous industries so also further reduction to, say, five per cent is unlikely to wreak much damage upon us.

### **Integration of Indian agriculture with the global economy:**

There is a strong possibility that India would emerge as a major beneficiary in the field of world of agriculture commodities. However Indian agriculture would not be able to escape fierce global competition. An appropriate policy instruments are required for gradual integration of the Indian agriculture with the global economy. Micro level research on competitiveness and other aspects of delivery system will have to be carried out by the firms involved in exports.

Amid the panorama of inequities caused by the force of certain agreements, the major developed countries are pushing for the launch of fresh negotiations that could result in new WTO rules which add to the already onerous obligations of the developing countries and further undermine their developments prospects. It is called that, developing countries to resist these pressures wholeheartedly and insist instead that the myriad asymmetries in the existing agreements be remedied. This in turn, demands that they shed their previous passive stance and forge coordinated and consolidated positions within the WTO, for only with proactive cooperation the countries of the South can advance their interests in the multi-lateral trade.

### **Growth of services sector outpaced:**

The growth of the services sector in India has outpaced aggregate GDP growth from mid 1980s. As a result of this, the share of services in GDP has been rising and is now expected to be around 47% to the GDP as against 29% for industry and 24% for agriculture. The World Trade Organization (WTO) Agreements on services is of substantial interest to the world economy as it has the potential to strengthen economic reforms, to stimulate investment

and capital mobility worldwide, and to create an institutional framework accounting and financial services transactions. Members of the WTO that participated in the multinational trade negotiations made some specific market access commitments in professional services. WTO provides a rule based transparent and predictable multilateral trading system, which protects the member countries from the pressures of their stronger trading partners.

- WTO works on the principle of one country one vote and as such India as well as other members has a say in the rule making process in WTO. The convention is that decision making is done by consensus.<sup>89</sup>
  
- A major advantage arising from WTO is that it automatically guarantees Most Favored Nation (MFN) treatment implying that Members cannot discriminate between various WTO Members in their tariff regimes. In the absence of the MFN Clause, which flows from Membership of the WTO, India would have had to negotiate bilaterally with all Members for obtaining such MFN treatment.
  
- \* The agreement also ensures national treatment for our exports, in all WTO Member countries. National Treatment ensures that our products once imported into the territory of other WTO members would not be discriminated vis-a-vis domestic products in those countries.
  
- Another important benefit accruing is the availability of a strong and effective Dispute Settlement Mechanism (DSM) under the WTO. Out of 30 disputes involving India, 8 were won by India and 6 were lost. Of these, 7 disputes were won against US and the EC and 6 were lost against them. 8 cases were settled amicably. The remaining 8 disputes are continuing.
  
- There are contingency protection provisions built into WTO rules, enabling Member countries to take care of exigencies like balance of payment problems and situations like surge in imports. In case of unfair trade practices causing injury to the domestic producers, there are provisions to impose Anti-

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<sup>89</sup> 39 Ibid., p. 183

dumping or Countervailing duties as provided for in the Anti-Dumping Agreement and the Subsidies and Countervailing Measures Agreement. As per the WTO Annual Report for the year 2000, India was the 2nd highest user of the Anti-dumping measures amongst all the WTO members.

- The reduction in export subsidies on Agriculture by developed countries if affected through the Agreement on Agriculture will make Indian agricultural exports more competitive in world markets.
  
- The commitment of certain developed countries under Agreement on Textiles and Clothing (ATC) to finally phase out the Textile Quotas as were being maintained by them under Multi Fibre Arrangement (MFA) by 1st January 2005 is a positive gain for Indian textile exports.

**Highest authority: the Ministerial Conference:** The WTO belongs to its members. The countries make their decisions through various councils and committees, whose membership consists of all WTO members. Topmost is the ministerial conference, which has to meet at least once every two years. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements.

Seven Ministerial Conferences have been held so far since the inception of the WTO and the eight one is due in December 2011 to be

held at Geneva. Several issues have been being discussed while some of them could be arrived at satisfactory conclusions and some still are elusive of solutions.

## **DEVELOPED Versus DEVELOPING COUNTRIES**

Under the WTO, developing countries now far outnumber the developed countries. Despite this fact, the developed countries still demonstrate superior bargaining power, as was seen in the Uruguay Round, where issues such as intellectual property rights and environmental regulations were codified into the WTO framework. Even though the developing countries have

also greatly benefited from their participation in the WTO, trade and environmental issues are two main points of divergence in interests between the developing and developed world.

### **Trade in Intellectual Property Rights**

Developing countries benefit from their participation in the WTO mainly by two means: preferential access to developed countries markets and exemptions from many WTO rules and mechanisms. The concept of 'special and differential treatment' (S&D) was introduced in the Tokyo Round to serve the interests of the many newly independent countries that joined the GATT. The argument behind S&D was to provide protection to the developing countries for their economic development programs. The developing countries also created the principle of "non-reciprocity" to avoid engaging in reciprocal reductions of trade barriers in order to protect their infant industries. The Differential and More Favorable Treatment, Reciprocity, and Fuller Participation of Developing Countries clause, also known as the "Enabling Clause," provided for such departures from GATT rules exempting developing countries from reciprocity requirements.

However, as some of the developing countries achieved greater economic growth, their larger markets became more attractive to firms from the developed countries. In fact, some of these countries, such as Taiwan and South Korea, even had large trade surpluses with the developed countries. This has encouraged the developed countries to pursue more aggressive strategies for opening up markets in the developing countries'. The developed countries also began to seek greater protection of their intellectual property rights. In fact,' the developed countries have insisted that Trade Related Intellectual Property Rights (TRIPs) play a large role in the WTO. This hurts those developing countries, which cannot afford patents and rely on unauthorized copying of developed countries' intellectual property for their "leapfrogging" development strategies. Developed countries control over 90 per cent of the world's patents.<sup>90</sup>

### **Environmental Regulations**

Another point of contention between the developed and developing countries is how to implement "sustainable development." Sustainable development is defined as, "the pursuit of economic growth and environmental protection simultaneously"<sup>91</sup> The developed countries often impose penalties, or even bans, on products from developing countries that are produced under environmentally questionable circumstances. The developing countries suspect that any

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<sup>90</sup> Esty, Daniel C., *Greening the GATT: Trade, Environment and the Future*. Washington

<sup>91</sup> D.C: Institute for International Economics. 1994p. 10.

environmental rules by the developed countries are simply ways to limit access to their markets. Thus, there is a wide divergence of opinion between the two groups of countries.

Unlike the developed countries, developing countries often have only two resources: cheap labor and abundant natural resources. The exploitation of these two resources is fundamental to their economic growth. Consequently, environmental degradation is considered unavoidable by the developing countries, which want to achieve higher standards of living for their citizens. In fact, countries that have weak or non-existent law enforcement of environmental standards have a competitive advantage in the global marketplace. Many developing countries argue that poverty is a greater problem than pollution.

Some even argue that the developed countries are attempting to keep their people perpetually poor and dependent by implementing environmental regulation as a means of "eco-imperialism." They claim that the developed countries became rich by exploiting their own natural resources, and now the developing countries should have the chance to do the same.

According to a recent study, processing activities tend to be less environmentally damaging than extraction activities.<sup>92</sup> The study found that in the production of aluminum, for example, the actual mining of the raw material (bauxite) produces 90 per cent of the wastes in total production, while accounting for only 10 per cent of the profits. This final stage of production, on the other hand, produces only 10 per cent of the wastes, while generating 70 per cent of all profits. Thus, many developing countries argue that it is unfair that they must bear the brunt of environmental pollution, while reaping only a small portion of the economic benefits. They argue that the developed countries should pay for, or at least share, the costs of environmental protection programs. Some developed countries have begun to focus on "carrot and stick" strategies to promote sustainable development. However, many developing countries have rallied against the developed countries' heavy reliance on "stick" measures, such as import penalties and bans, which have often failed to promote positive changes. Instead, the developing countries would like to see more

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<sup>92</sup> Schmidt-Bleek, F. and Wohlmeyer, H. Trade and the Environment; Report on a Study>.

"carrot" measures, such as joint environmental protection programs. Some have argued for a "Green Fund" consisting of contributions by developed countries for assisting developing countries in such programs or at least subsidizing their own abstention from production<sup>93</sup>

Others have argued for the subsidizing of the added expense of undertaking environmentally sound technologies on the part of the developing countries or the forgiving of debt in return for more environmental regulation. Although there are many differences between the interests of the developed and developing countries, the WTO should serve as a forum for the settlement of disputes between the two groups. As long as the WTO remains fair and profitable to its members, it should serve the interests of both developed and developing countries. The issues of intellectual property rights and environmental regulations should be discussed in the WTO. Harmonization of the interests of the developed and developing countries will be achieved through compromises on both sides.

## **CRITICISM OF THE WORLD TRADE ORGANISATION**

- The stated aim of the WTO is to promote free trade and stimulate economic growth. Critics argue that free trade leads to a divergence instead of convergence of income levels within rich and poor countries (the rich get richer and the poor get poorer).
- The issues of labor relations and environment are steadfastly ignored.
- On the other side, Khor responds that "if environment and labor were to enter the WTO system, it would be conceptually difficult to argue why other social and cultural issues should also not enter". Bhagwati is also critical towards "rich-country lobbies seeking on imposing their unrelated agendas on trade agreements.
- Committee (a "consultative board") that can be delegated responsibility for developing consensus on trade issues among the member countries. The Third World Network has called the WTO "the most non-transparent of international organisations", because "the vast majority of developing countries have very little real say in the WTO system"<sup>94</sup>

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<sup>93</sup> International Institute for Applied Systems Analysis and the Austrian Association for Agricultural Research: Laxenburg Austria, 1991.

<sup>94</sup> Ibid.

## LIMITATIONS OF THE WTO

However, it is important for the debate to be based on a proper understanding of how the system works

- The WTO dictates Policy.
- The WTO is for free trade at any cost.
- Commercial interests take priority over development, environment and over health and safety.
- The WTO destroys jobs, worsens poverty.
- Small countries are powerless in the WTO.
- The WTO is the tool of powerful lobbies.
- Weaker countries are forced to join the WTO.
- WTO is undemocratic.

### **Challenges related to FTAs/Comprehensive Economic Cooperation Agreements (CECAs) in the absence of successful WTO negotiations:**

The proliferation of FTAs in the world is characterized as the ‘spaghetti bowl’ in which trade crisscrosses in a complex fashion between countries based on tariff differentials and complicated rules of origin. In recent years, India too is a part of many regional and bilateral groupings. While there are benefits from these FTAs for Indian exports, in some cases the benefits to the partner countries are much more, with net gains of incremental exports from India being small or negative. FTAs also lead to a new type of inverted duty structure with duties for final products being lower from FTA partners compared to duties for the previous-stage raw materials imported from non-FTA countries. This acts as a disincentive to local manufacturing which is not competitive against FTA imports because of the inverted duty structure phenomenon. For example, the normal customs duty on Indian TV sets is 10 per cent, but in the case of imports from Thailand and Singapore there is zero duty subject to the rules of origin requirement. There are similar issues even in agricultural items. For example, arecanuts or betel nuts have a basic customs duty of 100 per cent. But this duty is nil or at concessional low rate at different levels for imports from Sri Lanka under the Indo-Sri Lanka FTA and the South Asian Free Trade Area (SAFTA) agreement and from FTA partners like Myanmar, Bhutan, and



Nepal. This could affect some regions which depend mainly on cultivation of arecanuts for livelihood. Following the ban of some States on arecanut products, demand crashed. Allowing imports at concessional duties under FTAs for items that are banned by some States needs reconsideration. The policy challenge related to FTAs/CECAs should take note of specific concerns of the domestic sector and ensure FTAs do not mushroom. Instead, they should lead to higher trade particularly higher net exports from India.

### **Challenges related to services trade:**

Services trade is uncharted territory with plenty of opportunities and challenges. A more conducive environment for trade in services can be created by liberalizing FDI in services as FDI inflows and trade in services have a close relationship given the nature of intra-firm trade of multinational parent firms with affiliates; rationalizing taxes in services like shipping and telecom; going forward with totalization agreements; streamlining domestic regulations like licensing requirements and procedures, technical standards, and regulatory transparency which can help in the growth and export of services; and continuing with the focus on services in multilateral and bilateral negotiations. These, along with systematic marketing of services, collection and dissemination of market information by setting up a portal for services, streamlining the services data system, and a more focused, coordinated, and synchronized policy by the different agencies involved, could help the services sector make further strides

## **CHAPTER 5**

### **DISPUTES SETTLEMENTS AND AGREEMENTS**

#### **Dispute Settlement Body (DSB)**

The chief function of the WTO is multidimensional in nature. However, this research is mainly concentrates the effectiveness of the WTO-DSB in harmonizing the trade and environmental controversies. This is remarkably emphasized in the Preamble of the WTO and various covered agreements. The DSB is classified into two broad heads. Such as;

- (i) Dispute Settlement under the GATT System; and (ii) Dispute Settlement under the WTO.

#### **Dispute Settlement in GATT System**

Although, the GATT is a principal organ to regulate international trading system that could not effectively served to achieve its objectives. Hence, GATT Secretariat does not have any legal division.<sup>95</sup> Dispute settlement in GATT was revived in early 1970s, along with other a more rule oriented regime for international trade. Article XXII describes that each contracting party shall make representations regarding any matter embraced not only significant economic injuries but also principle could be used to establish or promote rules not laid down in the existing agreements.<sup>96</sup> The purposes of the GATT dispute settlement is two fold; (a) To reach a settlement acceptable to the parties and (b) To restore the balance of advantages to the parties. The GATT dispute resolution is not to gain strict compliance with GATT law.<sup>97</sup>

#### **Dispute Settlement in the WTO Syste**

Any policy measure of free trade will inevitably involve some conflict with environmental protection requirements in under national law which has the effect of restricting

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<sup>95</sup> Supra note 16.

<sup>96</sup> Supra note 32; Supra note 5, p. 157; Supra note 13, at 19.

<sup>97</sup> David M. Parks, GATT and the Environment: Reconciling Liberal Trade Policies with Environmental Preservation, 15 UCLA J. Envtl. L. & Pol'y (1996-1997) pp 151-184 at 158; Alison Raina Ferrante, "The Dolphin/Tuna Controversy and Environmental Issues: Will the World Trade Organisation's" Arbitration Court" and the International Court of Justice's Chamber for Environmental Matters Assist the United States and the World in Furthering Environmental Goals" 5 J. Transnat'l L. & Pol'y (1995-1996), pp 279-313 at 283.

trade in certain commodities. To reconcile the trade and environmental controversies at all level, the WTO Members have agreed to use the multilateral system for settling their WTO trade disputes rather than resorting to unilateral action.<sup>98</sup> Article 3.2 of the DSU is Rules and Procedure in “the dispute settlement system of the WTO is a central element in providing security and predictability to the multilateral trading system.” Under the pre-Uruguay Round rules, unanimity was required to reach such “consensus”<sup>99</sup> The WTO dispute settlement system is administered by the DSB and AB. One of the great strengths of the WTO is the system of compulsory binding dispute

settlement created by the Understanding on Rules and Procedures Governing the Settlement of Disputes adopted in 1994.<sup>100</sup> The WTO-DSB is neither self-contained nor static, although the jurisdiction of the DSB extends only to settle disputes involving trade and environment agreements including matters arising under the ‘covered agreements.’<sup>101</sup>

The environmental measures of national legislation/policy violate the provisions of GATT-WTO may challenge on environmental health and safety. There are parallel judicial institutions having compulsory proceedings, such as ITLOS.<sup>102</sup>

The dispute resolution process is broken down into four steps.

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<sup>98</sup> Article 23 of the WTO, Supra note 32; See also A Handbook on the WTO Dispute Settlement System, A WTO Secretariat Publication, (Cambridge University Press, London, 2004), p. 7; Steve Charnovitz, “The World Trade Organisation in 2020” 1 Journal of International Law and International Relations (2004) pp 167-189 at 173; Patricia W. Birnie, Alan Boyle and Redgewell, International Law and the Environment, (Third Edition, Oxford University Press, Oxford, 2009), p. 763-766.

<sup>99</sup> Armin Von Bogdandy and Ingo Venzke, “On the Functions of International Courts: An Appraisal in Light of Their Burgeoning Public Authority” 26 Leidan Journal on International Law (2013) pp 49-72 at 68.

<sup>100</sup> Hereafter the ‘DSU’. See also 1947 GATT, Articles XXII-XXIII and 1994 Agreement Establishing the World Trade Organisation, Annex 2, in WTO; William J. Davey, “The WTO Dispute Settlement System” Gray P. Sampson and W. Brandee Chambers (Eds.), Trade Environment and the Millennium, Second Edition, United Nations University Press and Bookwell (2002) pp145-174 at 145; See Gen. Petersmann, The GATT/WTO Dispute Settlement System, (The Hague, 1997), pp. at 40-64; Palmetier and Mavroidis, Dispute Settlement in the World Trade Organization : Practice and Procedure, (Second Edition, Cambridge University Press, Cambridge, 2004), pp at 2-24 ; Supra note 1 at, Ch.4.

<sup>101</sup> DSU, Arts. 2-3.; Tomer Broude, “Principles of Normative Integration and the Allocation of International Authority: The WTO, the Vienna Convention on the Law of Treaties and the Rio Declaration”, 6 Loy. U. Chi. Int’l L. Rev. (2008-2009), pp 173-207 at 174.

<sup>102</sup> See the parallel ITLOS/WTO proceedings in Chile-EC : case concerning the conservation and sustainable exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean, ITLOS No.7, Order No.2000/3 (2000), and EC-Chile : Measures Affecting the Transit and Importation of Swordfish (WTO, 2000) (WT/DS193); see generally Alan Boyle, “The Environmental Jurisprudence of the International Tribunal for the Law of the Sea”, 22 IJMCL (2007), pp 369-318; Alan Boyle, “Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction” 46 ICLQ (1997), pp 37-54; Andrew J. Kelly, “The GATT Obstacle: International Trade as a Barrier to Enforcement of Environmental Conservation on the High Seas” 12 Fla. J. Int’l L. (1998-2000), pp 153-166; Tomer Broude, “Principles of Normative Integration and the Allocation of International Authority: The WTO, the Vienna Convention on the Law of Treaties and the Rio Declaration”, 6 Loy. U. Chi. Int’l L. Rev. (2008-2009), pp 173-207 at 183.

- Firstly, Members are encouraged to consult with each other and find a solution;
- Secondly, if the consultations fail, a Dispute Panel is formed and the case is litigated; -
- Thirdly, after the Panel renders its decision in a Report, the losing Member may seek review at the appellate level; and
- Finally, following a review by the Appellate Body, the decision becomes final .The first stage of dispute settlement process starts with consultations, which encourages speedy, informal resolution of disputes. If the mandatory consultations are not successful, a panel of trade experts from third party nations present their cases based on international law and the provisions of the GATT/WTO Agreements. Entire dispute resolution process of the WTO-DSB ought to occur within twelve months from establishment of Panel, including all appeals.

### **Phases of the Dispute Settlement Body**

- **Consultations:** Parties to a dispute are obliged to see if they can settle their differences. If consultations are not successful within 60 days, the complainant can ask the Dispute Settlement Body to establish a panel. The parties may also undertake good offices, conciliation or mediation procedures.<sup>103</sup>
- **The Panel:** The three member panel decides the case in a quasi judicial process. Where the dispute involves a developing country. One panelist is from a developing country. The panel report, circulated to all WTO members within nine months of panel establishment. Panel Reports may be appealed to an Appellate Body.<sup>104</sup> **Appeals:** The possibility of appealing a panel ruling is a new feature in the DSM as compared with GATT. Either party can appeal the ruling of the panel based on points of law. Appeals are heard by three randomly selected members of the Appellate Body and may uphold, modify or reverse the legal findings and conclusions of the panel in a report issued within 60 to 90 days.<sup>105</sup>

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<sup>103</sup> Ishita Chatterjee, “Trade Regulatory Measures for Sustainable Management of Resources”, 12 NYIA DEEP (2011), pp 32-38 at 35; see gen. Mary E. Footer, “Developing Country Practice in the Matter of WTO Dispute Settlement” 35 Journal of World Trade (2001), pp 55-98; see also Bernard Hoekman, Henrik Horn and Petros C. Macrodidis, “Winners and Loses in the Panel Stage of the WTO Dispute Settlement System” in Chantal Thomas and Joel P. Trachtman, (Eds.), Developing Countries in the WTO Legal System, First Edition, Oxford, (2009), pp 151-190 .

<sup>104</sup> See gen. Articles 4 and 5, Understanding the Rules and Procedure Governing the Settlement of Disputes, Annexure II of the WTO Agreement, 1994, Supra note 60.

<sup>105</sup> Arts. 6, Supra note 60.

- \* **Implementation:** The violating party is required to state its intentions on implementation within 30 days of the report being adopted by the DSB. If the party fails to implement the report within a reasonable period (Usually between 8 and 15 months), the two countries enter negotiations to agree on appropriate compensation. If this fails, the prevailing party may ask the DSB for permission to retaliate by imposing for example, trade sanctions, the level of which is subject to arbitration.<sup>106</sup>

The goal of the WTO-DSB is entailed the gradual minimizing of the levels of interference of national governments in international trade.<sup>107</sup> The relationship between the WTO system and other trade agreements is complex.<sup>108</sup> The complaining party has a duty to establish *prima facie* case of non-compliance, which shift the *onus proof* to show that the measure in question is nonetheless justified under the provisions of the GATT or any other covered agreements<sup>109</sup> Most importantly, Article 3(2) of the WTO-DSB expressly provides that the existing provisions of the ‘covered agreements’ are to be clarified ‘inaccordance with customary rules of interpretation’.<sup>110</sup> In interpreting WTO agreements the AB has followed the general rule codified in Article 31(3) of the Law of Treaties rules are applicable in the relations between the parties.<sup>111</sup> The philosophy of the multilateral trading system is the need to regulate the emerging global market place arised almost by logical necessity<sup>112</sup>

Decisions must be implemented by the parties within a reasonable period of time, normally not more than fifteen months from the date of adoption of a panel or AB Report.<sup>113</sup> In the event of non-compliance, a member can be subjected to sanctions in the form of compensation and suspension of concessions.<sup>114</sup>

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<sup>106</sup> Article 17, Supra note 60.

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Article 21, *ibid.*

<sup>108</sup> Stephen J. Turner, *A Substantive Environmental Right*, (Wolters Kluwer, The Netherlands, 2009), p. 186.

<sup>109</sup> Mitsuo Matsushita, “Governance of International Trade Under World Trade Organisation Agreements - Relationships Between World Trade Organisation Agreements and Other Trade Agreements”, 38 *Journal of World Trade* (2004) pp 185-210.

<sup>110</sup> Supra note 13, at 20.

<sup>111</sup> Articles 31-3 Convention on Law of Treaties, Vienna, 23 May 1969, 1155 U.N.T.S. 331, 8 ILM 679 (1969), (in force 27 January 1980); see gen. Sinclair, *The Vienna Convention on the Law of Treaties*, (Manchester University Press, Manchester, 1984), pp p115.

- <sup>112</sup> See gen. Boyle and Freestone (Eds.), *International Law and Sustainable Development: Past Achievements and Future Challenges*, (Oxford University Press, Oxford, 1999), Ch.3.
- Supra note 13, at 4.

<sup>113</sup> Arts. 21. Reports of the Panels and Appellate Body must be adopted unless there is a consensus against, Supra note 60.

<sup>114</sup> Art. 22. For an assessment of the effectiveness of WTO remedies, Supra note 60; see gen. Mavroidis, 11 *EJIL* (2000), 763

There are supporters and critics of the WTO-DSB, proponents describes that the GATT system of dispute settlement is relatively successful as an international dispute settlement mechanism.<sup>115</sup> The compulsory jurisdiction and dispute resolution procedures enhance the enforcement of the various rights set out in the covered agreements increase likelihood of compliance with WTO rulings.<sup>116</sup> The system of compulsory dispute settlement is viewed as a jewel in the crown of free trade under which the world has enjoyed more than unraveled economic growth and prosperity. Critics who argues that more powerful dispute resolution process undermines national sovereignty by giving authority to impose environmental, health and safety and other regulations of member nations.

### **Multilateral Trade Agreements Related to the Environment**

Trade measures in international environmental law have a long history. The 1933 London Convention controlled and regulated the import, export and traffic in certain trophies.<sup>117</sup> Liberalised trade policy measures under the GATT-WTO system is diametrically make transcending impact on territorial and political boundaries of states.<sup>118</sup> The WTO covered agreements also establish restrictions on international trade to achieve environmental protection objectives. The initial rounds of negotiation under the GATT did not focus on environmental concerns, with most parties delaying the dialogue on trade and Most of these measures pertaining to health, safety and the environment considered as impediments to international trade.<sup>119</sup> However, the three key agreements under the WTO umbrella related to environment and trade issues:

- The General Agreement on Tariffs and Trade (GATT);
- Agreement on Technical Barriers to Trade (TBT); and

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<sup>115</sup> Ernst-Ulrich Petersmann, "The Future of the WTO: From Authoritarian "Mercantilism" to Multilateral Governance for the Benefit Citizens" 6 *Asian J. WTO & Int'l L & Pol'y* (2011), pp 45-80 at 75; William J . Davey, "The WTO Dispute Settlement System" Gray P. Sampson and W. Brandee Chambers (Eds.), Trade Environment and the Millennium, (Second Edition, United Nations University Press and Bookwell, 2002), pp145-174 at 146; Tomer Broude, "Principles of Normative Integration and the Allocation of International Authority: The WTO, the Vienna Convention on the Law of Treaties and the Rio Declaration", 6 *Loy. U. Chi. Int'l L. Rev.* (2008-2009), pp 173-207 at 181; Thomas J. Schoenabum, "WTO Dispute Settlement: Praise and Suggestions for Reform" 47 *ICLQ* (1998), pp 647-658.

<sup>116</sup> Lowenfeld, A. F. "Remedies Along with Rights: Institutional Reforms in the New GATT" 88 *AJIL* (1994) pp 477-488 at 481; See also Report of the World Summit on Sustainable Development, Johannesburg, (2002) UN Doc. A/CONF.199/20, available at [ww.johannesburgsummit.org/html/documents/documents.html](http://ww.johannesburgsummit.org/html/documents/documents.html), last visted on 20.09.2012.

<sup>117</sup> . Lakshman D. Guruswamy, "Should UNCLOS OR GATT/WTO Decide Trade and Environmental Disputes?" 7 *Minn. J. Global Trade* (1988) pp 287-328 at 287; Supra note 40, p. 227.

<sup>119</sup> Convention Relating to the Preservation of Fauna and Flora in their Natural State, 8 November, 1933, ratified on 1935, entry into force 14 January, 1936.

- Agreement on Sanitary and Phytosanitary Measures (SPS).

Many other trade agreements have environmental impacts and environments provisions, and the issues they raise are discussed in various forums.

### **The General Agreement on Tariffs and Trade 1994 (GATT)**

GATT was accepted as an Annexure of the WTO.<sup>120</sup> Although various Articles of GATT, such as I, III, IX, XI and XX signify the environmental measure during trade negotiations;<sup>90</sup> Article XX considered as a core principle for discussion. This will help to understand the relationship and applicability of unilateral trade measure to conserve resources and ensure public health.

**Article - I** of GATT favours the Most Favoured Nation (MFN) rule. This requires parties to ensure that if special treatment is given to the goods or services of one country, they must be given to all WTO members. No one country should receive favours that distort trade.<sup>121</sup> The MFN has now also been extended to other potential barriers to trade. MFN has two major exceptions, such as: (i) relates to regional trade agreements. Where, states have adopted, preferential tariffs maybe established between the parties to these agreements; and (ii) for developing countries. GATT allows members to apply preferential tariff rates, or zero tariff rates, to products coming from these countries while still having higher rates for like products from other countries. This exception is designed to help promote economic development where it is most needed.

**Article - III** establishes the National - Treatment rule. This requires that the products of other countries be treated the same way as like products manufactured in the importing country. No-domestic laws should be applied to imported products to protect domestic producers from the (like) competing products. And imported products should receive treatment under national laws that “is no less favourable” than the treatment given to like domestic products.<sup>122</sup> Although the term “like” has not been specifically defined, the WTO-DSB has

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<sup>120</sup> Supra note 13, at 5; see gen. Supra note 3; see Raj Bhala, *Modern GATT Law - Treatise on the General Agreement on Tariffs and Trade*, (First Edition, Sweet & Maxwell, 2005), ch. 23; Patricia Birnie, Alan Boyle and Catherine Redgwell, *International Law and the Environment*, First Edition, Oxford, (2009), ch. 14; Dominic Gentile,

<sup>121</sup> This provision originated because states had different tariff levels for different countries, and it was designed to reduce or eliminate those differences.

<sup>122</sup> Defining “like products” has important environmental implications; Supra note 16.

several referred some criteria to help it do so.<sup>123</sup> These include the end uses in a given markets, the products, properties, nature and qualities.

**Article - XI** of GATT imposes Quantitative Restrictions and licences type of limit on measures that a party can take to restrict trade.<sup>94</sup> Quantitative Restrictions prohibits the use of quotas, import or export licenses, or similar measures related to the import or export of goods. This prohibition stems from the fact that such volume - based measures are more economically distorting than are price - based measures such as tariffs and taxes. Agricultural products currently benefit from an important exception to Article XI. These quantitative restrictive measures might conceivably lead to conflicts with the trade mechanisms in some MEAs.<sup>124</sup> However, till date these types of provisions in MEAs have never been challenged under trade laws.

### **Article XX The environmental exception “Chapeau”**

National governments are protect their national products and environmental can enact any number of legislation and adopt policies.<sup>96</sup> When a national environmental measures are inconsistent with trade rules the state must withdraw or modify the law within a reasonable time - usually within 15 to 18 months. Article XX of GATT may be interpreted as indirectly dealing with environmental protection.<sup>97</sup> However it allows for certain specific exceptions to the rules. The two exceptions most relevant for environment - related measures are the following:

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on International Trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures...

1. necessary to protect human, animal or plant life or health...
2. relating to the conservation of exhaustible natural resources if such measures are made effective in conjunctions with restrictions on domestic production or consumption;”

Article XX of GATT is elaborately analysed in the next Chapter under the Sub-head, Environmental Exceptions to International trade.

<sup>43</sup> <sup>123</sup> Schoenbaun. T., “International Trade and the Environment : The Continuing Search for Reconciliation”, 91 AJIL (1997), pp 268-313 at 291; Fiehiwot Wujira, “Non-Trade Concerns in Interpreting General Exception Clause of WTO Agreements” 4 Mizan L. Rev. (2010), pp 164-175.

<sup>124</sup> Supra note 32. Patricia W. Birnie, Alan Boyle and Redgewell, International Law and the Environment, (Third Edition, Oxford University Press, Oxford, 2009), ch 14.



## Agreement on Technical Barriers to Trade (TBT)

Technical standards on trade were identified during the Tokyo Round negotiations. Subsequently at the Uruguay Round, the TBT was adopted as a covered agreement of the WTO. TBT encourages the use of internationally agreed standards as a basis for technical regulations on trade.<sup>125</sup> The TBT covers all products traded between WTO members that include international standards, technical regulations, voluntary standards and conformity assessment procedures, which is mandatory. WTO members must ensure that technical regulations are not more trade restrictive than necessary to fulfil a legitimate objective, including protection of human health or safety, animal or plant life or health, or the environment.<sup>126</sup>

The TBT Agreement dictates when such barriers may be allowed and what conditions must be met.<sup>127</sup> The *ipso facto* presumption is that all the technical regulations must observe the necessity requirement. Technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective taking account of the risks.<sup>105</sup> The non discrimination obligation covers both options. WTO Members have to respect international standards, irrespective whether there is domestic production concerned by the standard in the regulating state. If a Member states adopts an international standard, a presumption established that, unless there is a proof of necessity, it does not create an unnecessary obstacle to trade. If internationally agreed standards are not followed by national regulations, a *prima facie* presumption that the standards are not unduly trade-restricting will arise. However, this does not mean that for a WTO Member to enact a technical regulation, it must have domestic production<sup>128</sup>.

International standards in the TBT Agreement promote participation in the work of international standardizing bodies. It applies fully to all government standards, including most levels of government. Non-governmental, non-mandatory standards are less strictly covered under what is called the code of good practice. The necessity requirement thus, covers not only cases where there is no domestic production concerned. In case a measure coming under the

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<sup>125</sup> A country wanting to use the environmental exceptions in Article XX has two hurdles to clear. It must first establish final justification by showing that the measure in question does not contravene the lead paragraph, or chapeau, quoted above, Carrie Wofford, "A Greener Future at the WTO: The Refinement of Jurisprudence on Environmental Exceptions to GATT", 24 Harv. Envtl. L. Rev. (2000), pp 563-592.

<sup>126</sup> Notifications transparency in developing the rules, the use of International standards when appropriate, and so on, *ibid*, p. at 16.

<sup>127</sup> Carlos M. Correa, "Implementing National Public Health Policies in the Framework of WTO Agreements", 34 Journal of World Trade (2000), pp 89-121 at 103.

<sup>128</sup> Elliot Staffin, "Trade Barrier or Trade Boon? A Critical Evaluation of Environmental Labelling and its Role in the Greening of World Trade" 21 Colum. J. Envtl. L. (1996), pp 205-286 pp at 237.

purview of the TBT is enacted and no domestic production exists, the regulating WTO Member will have to abide by the MFN obligation enshrined in Art 2.1 TBT

The TBT Agreement does not mention by name the standard-setting institutions, the standards of which it recognizes, except for some oblique references to the ISO. Art 2.4 TBT simply calls on countries to use international standards when they exist or their completion is imminent.<sup>108</sup> Furthermore, as already noted, while the TBT contains a definition of the terms standard and international body or system in Annex I, it does not actually contain a definition of an international standard. Legitimately one might ask the question whether all standards, irrespective of the decision mode should enjoy the same legitimacy and consequently, the same status in WTO law.<sup>129</sup> The legitimate objectives can have number of factors; for national security requirements, including the protection of human health or safety, animal or plant life or health, or health protection of environment. Legitimate objectives seems, however, that the fact that the GATT is a negative integration-type of contract. The necessity requirement has two elements: First, technical regulations should not be more trade restrictive than is necessary to achieve a legitimate objective. This exercise presupposes an analysis of the risks in case no regulatory intervention takes place; and

Second, WTO Members are, obliged to set aside technical regulations in the case that the circumstances that gave rise to their adoption no longer exist.

Art 2.5 TBT<sup>110</sup> and Art 2.9 TBT impose on WTO Members an *ex ante* transparency obligation. Art 2.12 TBT imposes the further obligation on WTO Members to allow a reasonable period of time between notification of their proposed technical regulation and its entry into force. In exceptional circumstances, Art 2.10 TBT explicitly exempts WTO Members from their obligations under Art 2.9 TBT and 2.12 TBT. TBT allows at the request of a party or on its own initiative a panel has the possibility of seeking the opinion of expert groups established for this purpose. A number of measures related to GMOs have been notified to the TBT Committee under this provision. Art 12.3 TBT explicitly requires that WTO Members take into account developing countries' interest when enacting technical regulations or standards. However, as with most provisions of this type, the obligation imposed is

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<sup>129</sup> Article 2.2 reads, Members shall ensure that technical regulations are not prepared, adopted or applied with a view to or with the effect of creating unnecessary obstacles to international trade. Technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective. Such legitimate objective are inter alia: national security requirements; the prevention of deceptive practices; protection of human health or safety, animal or plant life or health or the environment. In assessing such risks, relevant elements of consideration are, inter alia: available scientific and technical information, related processing technology or intended end-uses of products, Supra note 87.

essentially of procedural nature; assuming a WTO Members concerned can demonstrate that it effectively took into account the spill-over of its legislation on developing countries' exports during the preparation it will have been deemed in compliance with this obligation. Relevant international bodies are not specifically identified in the agreement but whose membership is open to the relevant bodies of at least all WTO members. Transparency provisions in the agreement require WTO members to notify other members of proposed technical regulations that may have a significant effect on international trade when there are no relevant international standards or when the proposed regulation is not in accordance with existing relevant international standards.

In *EC - Sardines*,<sup>130</sup> the WTO panel clarified that legitimate objective referred to in Article 2.4 of TBT must be interpreted in the context of Article 2.2 of SPS. The Appellate Body, referring to its case law under SPS, saw no reason to have a disparate treatment between SPS and TBT on the issue of the legal relevance of international standards.

#### **Agreement on Sanitary and Phyto Sanitary (SPS)**

SPS Agreement was adopted as one of the covered agreements of the WTO at the Uruguay Round negotiations. The SPS Agreement deals with standards “necessary” to protect humans, animals and plants from certain hazards associated with movement of goods.<sup>117</sup> The agreement recognizes the right of members to establish their own “acceptable level of protection,” such measures, *inter alia*, include sampling procedures, methods of risk assessment; packaging and labelling requirements directly related end product criteria to food safety. Any measure found consistent with the SPS Agreement will be presumed to conform to the Article XX of GATT. However, the SPS measures between members where identical or similar conditions prevail or a disguised restriction on international trade. The existence of international standards and guidelines do not prevent a member from introducing measures in a higher level of protection if there is scientific justification. In order to establish the scientific basis for any SPS measure, a Member state is required to carry out a risk assessment that takes into account “available scientific evidence” on relevant Product and Process Methods (PPMs).<sup>131</sup>

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<sup>130</sup> Trade Description of Sardines, WT/DS231/AB/R, 26 September, 2002; See also Jan Neumann and Elisabeth Turk, “Necessity Revisited: Proportionality in World Trade Organisation Law After Korea-Beef, EC-Asbestos and EC - Sardines”, 37 *Journal of World Trade* (2003), pp 199-233 at 211.

<sup>131</sup> Elisa Vecchione, “Is it Possible to Provide Evidence of Insufficient Evidence? The Precautionary Principle at the WTO” 13 *Chi. J. Int’l L.* (2012), pp 153-178 at 170; and *Supra* note 101 at 157.

Art. 2.2 of SPS describes that SPS measure is applied only to the extent necessary to protect human, animal or plant life or health. In parallel with the SPS measures can be enacted irrespective of whether or not there is domestic production.<sup>124</sup> This is solely based on scientific principles and is not maintained without sufficient scientific evidence, except as provided in Article 5.7.<sup>132</sup> Most countries enact measures in these areas to protect the environment on human, animal and plant health from:

- The risks from pests, diseases and disease - related organisms entering the country with the traded goods; and
- The risks from chemicals, fertilizers, pesticides and herbicides, toxins, veterinary medicines in foods, beverages or animal feed.

Article 3.1 of SPS Agreement authorizes the WTO Members to use international standards or proceed unilaterally and enact their own SPS measures.<sup>133</sup> Art 3.3 recognises the autonomous right of Member states to establish deviating from international standard, if one of the following two conditions is met:

- if there is a scientific justification; or
- as a consequence of the level of sanitary or phyto-sanitary protection a Member determines to be appropriate.

Art 5.5 SPS requires consistency in the application of the concept of appropriate level of sanitary or phytosanitary protection.<sup>134</sup> To perform this test, three distinctive elements are prerequisite, such as,

- the Member imposing the measure complained of has adopted its own appropriate levels of sanitary protection against risks to human life or health in several different situations;
- to be shown is that those levels of protection exhibition arbitrary or unjustifiable difference in their treatment of different situations; and

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<sup>132</sup> Article 5.6, Supra note 87; Doaa Abdel Motaal, "Is the World Trade Organisation Anti Precaution?", 39 Journal of World Trade (2005), pp 483-501 at 497.

<sup>133</sup> Article 5.7 describes that relevant scientific evidence is insufficient, a Member may provisionally adopt SPS measures on the basis of available pertinent information, including that from the relevant international organisations as well as from SPS measures applied by other Members, *ibid.*

<sup>134</sup> Article 5, Supra note 87.

- that the arbitrary or unjustifiable differences result in discrimination or a disguised restriction of international trade.

Arts. 4 and 6 SPS reverse the *onus proof* and allow for WTO Members not parties to an agreement establishing equivalence across jurisdictions to profit from its extension. Annex B of SPS describes that Member shall notify changes in their SPS measures and shall provide information on their SPS measures. Art. 10 SPS contains the special and differential treatment-provision of the Agreement which, essentially, calls for exceptions and longer time-frames for compliance with SPS measures i.e., applicable only to developing countries.<sup>135</sup>

Assuming no domestic production WTO Members will have to respect the MFN aspect. This non-discrimination obligation is different from what enshrined in Arts I and

5 GATT.<sup>136</sup> WTO members are permitted to enact SPS measures where such evidence is insufficient only on a provisional basis i.e., precautionary principle.<sup>133</sup> Moreover, WTO Members must ensure that their measure are not more trade restrictive than necessary to

achieve their objectives. The legality of the SPS measures have repeatedly challenged in the WTO-DSB under Art. 11 of DSU.<sup>134</sup> The general rule in a dispute settlement proceeding requires a complaining party to establish a *prima facie* inconsistency with a provision of the SPS an “exception”. SPS measures also involving scientific or technical issues, chosen by the panel in consultation with the parties to the dispute during adjudication.<sup>135</sup> Deciding whether to have recourse to expertise is the panel's privilege; the SPS, however, contrary to the DSB, urges panels to have recourse to expertise when dealing with SPS covered issues.

The rationale for Arts 2.2 and 5.1 SPS the AB's view, the two provisions strike a balance between the promotion of world trade and the protection of life and health of humans. The Panel also made two important clarifications of the definition of risk: Firstly, that the risk must be identifiable, as opposed to a mere hypothetical possibility; and Lastly, it made clear that the risk envisaged in the body of the SPS is not just “laboratory risk” but a “real life risk” that takes into account behavioural factors. The Panel elaborates risk assessment as a two-step

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<sup>135</sup> Article 7, reads: Members shall notify changes in their SPS measures and shall provide information on their SPS measures in accordance with the provisions of Annex B. Annex B of the SPS describes transparency of SPS Regulations. It covers Publications, Enquiry Points and Notification Procedure, *ibid*

<sup>136</sup> Principle 15, *Supra* note 39.

Annex II of the Agreement establishing World Trade Organisation, *Supra* note 32.

process that “should(a) identify the adverse effects on human health (if any) arising from the presence of the hormones at issue when used as growth promoters in meat; and if any such adverse effect exist, evaluate the potential or probability of occurrence of such effect.

In *EC – Hormones*, the WTO-DSB categorically declared that SPS widely believed to be its embodiment. However, AB explains understanding of the *ratio legis* for Art 3.1 SPS and held that a requirement of absolute conformity of their regulatory interventions with the relevant international standard.<sup>137</sup> To reach this conclusion, the AB took the view that the intention of the parties was not to vest international standards with such broad powers:

*“...The precautionary principle is regarded by some as having crystallized into a general principle of customary international environmental law. We consider, however, that it is unnecessary, and probably imprudent, for the AB in this appeal to take a position on this important, but abstract, question...”*

The AB described that WTO Members have no obligation to express their appropriate level of protection in quantitative terms. However, some degree of precision is required, otherwise it will be impossible to observe whether they have respected other relevant SPS provisions. The AB also added that the measures appear to us important, nevertheless, to note some aspects of the relationship of the precautionary principle to the SPS Agreement.<sup>138</sup>

First, the principle has not been justified SPS measures that are otherwise inconsistent with the obligations of Members set out in particular provisions of that

Agreement.

Secondly, the principle explicitly recognizes that the right of Members to establish their own appropriate level of sanitary protection;

Thirdly, whether “sufficient scientific evidence” exists to warrant from perspectives of prudence and precaution where risks of irreversible; and Lastly, however, the precautionary principle does not, by itself, and without a clear textual directive to that effect in reading the provisions of the SPS Agreement.

In *Herring Salmon case*, the AB explained that violation of Art 5.5 SPS *ipso*

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<sup>137</sup> EC Measures Concerning Meat and Meat Products, WT/DS26/AB/R, WT/DS48/AB/R, 16 January, 1998.

<sup>138</sup> Article 3.1 Agreement on the Application of Sanitary and Phytosanitary Measures, *Supra* note 87.

*facto* entails a violation of Art 2.3 SPS. The AB observed that:

*u Discrimination between Members, including their own territory and that of others Members” can be established by following the complex and indirect route worked out and elaborated. However, it is clear that this route is not the only route leading to a finding that an SPS measure constitutes arbitrary or unjustifiable discrimination.*

There is also criticism that the Panel has misconceived the relationship between Articles I or II and Article XX of the GATTT 1994.<sup>140</sup> Doha Ministerial Declaration calls for the passage for a certain period between the enactment of measure and its entry into force so that foreign producers can adjust to the new regulatory reality and not be caught by surprise.<sup>139</sup>

### **The Committee on Trade and Environment (CTE)**

In the early 1990s, to sign the Final Act of the Uruguay Round, Trade Negotiations Committee that a program of work on trade and environment be developed along with recommendations on an institutional structure for its execution. In 1994, the ministers of the WTO General Council under Article IV took a decision to create the WTO Committee on Trade and Environment (CTE). The CTE has focused on identifying the relationship between trade and environmental measures, which was the first part of its mandate. The CTE’s mandate has been renewed at successive meetings of the Ministerial Conference.<sup>145</sup> The methods of functioning of the committee and the efforts taken by it for protection of environment are also dealt with. The terms of reference given to the CTE in Marrakesh are, in part:

- to identify the relationship between trade measures and environmental measures, in order to promote sustainable development; and
- to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system.”<sup>140</sup>

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<sup>139</sup> Canada Measures Affecting Exports of Unprocessed Herring and Salmon, Report of the Panel adopted on 22 March 1988 (L/6268 – 35S/98).

<sup>140</sup> Trade and Environment, GATT Ministerial Decision of 14 April 1994, 33 ILM 1267 (1994); Antweiler, Werner, Brain R. Copeland and M. Scott Taylor, “Is Free Trade Good for the Environment?” 91 American Economic Review, (2001), pp 877-908; Jennifer Schultz, The GATT/WTO Committee on Trade and the Environment-Towards Environmental Reform, 89 AJIL (1995), pp 423-439; Damdin Tsogtbaatar, “Trading for the Future: Environmental Dimensions of Global Trade”, 5 Int’l. Trade & Bus. L. Ann. (2000), pp 277-307 at 285; Thomas J. Schoenbaum, “International Trade and Protection of the Environment: The Continuing Search for Reconciliation”, 91 AJIL (1997), pp 268-313 at 277.

The CTE has an agenda of 10 items for discussion is as follows:

- o The relationship between trade rules and trade measures used for environmental purposes, including those in MEAs.
- p The relationship between trade rules and environmental policies with trade impacts.
- q (a)The relationship between trade rules and environmental charges and taxes.

The relationship between trade rules and environmental requirements for products, including packaging, labeling and recycling standards and regulations.

- r Trade rules on the transparency (that is, full and timely disclosure) of trade measures used for environmental purposes, and of environmental policies with trade impacts.
- s The relationship between the dispute settlement mechanisms of the WTO and those of MEAs.
- t The potential for environmental measures to impede access to markets for developing - country exports, and the potential environmental benefits of removing trade restrictions and distortions.
- u The issue of the export of domestically prohibited goods.
- v The relationship between the environment and the TRIPS Agreement.
- w The relationship between the environment and trade in services.
- x WTO's relations with other organizations, both non-governmental and inter-governmental.<sup>141</sup>

Although the CTE has done a lot of work to fulfil its mandate, many observers doubt its success. It has failed to go beyond the analytical stage, and produce concrete recommendations as to rule changes. In 1999 WTO high level symposium on trade and environment, the participants criticized the work of the CTE. CTE also make recommendations to modify the existing WTO provisions that modifications ensure that trade relations in achieving objectives of the concept of Sustainable Development. The entire work of the CTE in this regard focuses on two themes, viz., the linkages between MEAs and MTAs. The agenda of the CTE is carefully balanced to meet the concerns both developed and developing states. The balancing act also contributes to the difficulty in creating momentum on an agenda item where agreement may be much better and easier to reach. It should also be noted that there are

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<sup>141</sup> GATT Ministerial Decision, (1994), p. at 1267-69.



more specific committee under the WTO that deal with nearly all the matters in the CTE agenda. As a result, expectations about what CTE can achieve are least encouraging.<sup>142</sup>

Critics points to lack of recommendations from the CTE on how to deal with environment related issues. But unwillingness of many members, especially developing countries, to change WTO rules at this stage needs to be seen in the proper light to defend the CTE. For many developing countries, a change in existing set of rules may tip the existing equilibrium. This really prevents the CTE from making a progressive step. Thus the working of the CTE is limited by the lack of consensus of the WTO member-states. This has remarkably contributing the effectiveness of the conservation of resources that may lead to achieve the concept of Sustainable Development. Let us examine the Ministerial conferences of the WTO.

### **WTO Ministerial Conferences**

To reassure the mandate under the GATT-WTO on effective conservation of resources the WTO has organized number of Ministerial conferences under Article IV (1) of the WTO Agreement. The Ministerial Conference is composed of all the members. The task of the conference is to carry out the functions of the WTO and take necessary actions. The Ministerial Conference has the authority to take decisions on any of the matters under any of the Multilateral Trade Agreements. This part analyse the WTO Ministerial conferences at various level and its significance on environmental sustainability.

#### **(a) Singapore Ministerial Declaration, 1996**

The WTO Members met in 1996 for the first biennial meeting of the WTO at the ministerial level. The declaration brought new issues relating to investment, competition policy, trade facilitation and transparency in government procurement on the WTO agenda.<sup>143</sup> Developed countries also tried to bring on the agenda, the core labour standards which could not succeed against stiff resistance from developing countries. Ultimately it was agreed that labour standards were a matter for the International Labour Organisation(ILO) and that the WTO should have nothing to do with it. The conference rejected the use of labour standards for

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<sup>142</sup> WT/CTE/W/160/Rev.3 and TN/TE/S/5/Rev.1, 05-0613, 16 February, 2005, available at [http://www.wto.org/english/tratop\\_e/envir\\_neg\\_mea.e.htm](http://www.wto.org/english/tratop_e/envir_neg_mea.e.htm), last visited on 22. 05.2013.

<sup>143</sup> Article IV (1) reads there shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the function of the WTO and take necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral trade agreements, if so requested by a Members in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement, Supra note 32.

protectionist purposes and agreed that the comparative advantage of countries, particularly low wage developing countries, must in no way be put to question.<sup>144</sup>

#### **(b) Geneva Ministerial Conference, 1998**

Geneva Ministerial Conference was held in 1998 which commemorated the 50<sup>th</sup> anniversary of the GATT, the precursor of the WTO. At this meet, the ministers renewed their faith in the multilateral trading system. The conference welcomed the successful conclusion of negotiations of basic telecommunication and financial services. The implementation of the Information Technology Agreement was also taken note of. The declaration recognised its commitment to continue to improve efforts towards the objectives sustained economic growth and sustainable development.<sup>145</sup>

#### **(c) Seattle Ministerial Conference, 1999**

The Seattle Conference was held at a time when the mandate of the Uruguay Round resulting in the coming force of WTO, had to be reviewed in to two respects. Firstly, the Agreement on Agriculture in the Uruguay Round mandated a renewal of negotiations in year 2000, to advance the process of trade reform and Secondly, the review the entire process of implementation Uruguay Round Agreements. Production and process standards were the major challenge to the rules of the trading system that is considered as a central point in non discrimination. At the Conference, the EU called for clarification of the relationship between WTO rules and production process standards. The promised benefits to the developing states had failed to materialise and the commitments undertaken by the developed countries had been diluted significantly. Another dominant reason for the failure of the conference was the wide rift between the EU and the US on agriculture related subsidies.

#### **(d) Doha Declaration, 2001**

In November 2001, the Ministers of WTO members met at Doha, and took some important decisions. Following the failure of the Seattle conference in 1999, it was felt that the WTO needed a successful conference in order to avoid any negotiation of trade policies on regional basis. The Declaration, reiterated the themes enshrined in the preamble of the WTO

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<sup>144</sup> Para.4, *ibid.*

<sup>145</sup> Geneva Ministerial Declaration, WT/MIN (1998) Dec., Para. 1.2 and 4.

Agreement and the prior ministerial conferences including those held at Marrakesh, Singapore and Geneva.<sup>146</sup> The Declaration brought the process back on track. Regarding agriculture, it affirmed that all countries would work towards the reduction of export subsidies in agriculture, with a view to finally phrasing them out.<sup>147</sup> the willingness of the US and the EU on negotiations on Singapore issues concerning competition, investment, trade facilitation and transparency in government procurement were opposed to by the developing countries. At the end, the Declaration provided that with respect to these topics, negotiations would take place after the fifth session of the Ministerial Conference on the basis of a decision taken by a clear consensus at that session on the modalities of negotiations.<sup>148</sup>

The Doha Declaration made some concession to developing countries. At the Declaration 2001, the EU came up with a three pronged approach to the trade and environment agenda, viz, the WTO-MEA relationship, eco-labelling and the precautionary principle.<sup>164</sup> These issues reveal that the trade and environment agenda before the CTE is complex and puzzling. Implementation-related issues and concerns are listed in a separate ministerial decision. Close cooperation between MEAs Secretariats and WTO Committees is essential to ensure that the trade and environment regimes to develop coherently. WSSD's Joint Plan of Implementation is to be implemented within their mandates.<sup>149</sup>

### **(e) Cancun Ministerial Declaration, 2003**

The Fifth Ministerial conference of the WTO was held in September 2003, at the conference, the draft ministerial declaration, revised a second time, envisaged that negotiations on trade facilitation and transparency in government procurement would begin immediately after the Cancun meeting. The Declaration also emphasise that the mandate of the Trade and environment and environmental negotiations with similar milestones being reached in agriculture and non-agricultural market access. This Declaration made clear that the EU and the US were determined to disregard the Doha Declaration's stipulation that the explicit

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<sup>146</sup> WT/MIN (99), 30 November and 3 December, 1999.

<sup>147</sup> See submission by European Countries, "Classifying Relationship Between the Multilateral Trading System and Trade Related Provision of MEAs", WT/GC/W/3941/I 1/200, <http://www.wto.org/documents/me/submission.cc.rel.html>. visited on 29.12.2012.

Doha Ministerial Declaration, WTO Doc. WT/MIN (01)/Dec./1, paras 2 and 3.

<sup>148</sup> Doha Ministerial Declaration, WTO Doc. WT/MIN (01)/Dec./1, para 20, 23, 26 and 27.

<sup>149</sup> See "EU Formal Discussion Paper, the Non-Trade Impacts of Trade Policy", WT/GC/W/113/12/2002, <http://www.wto.org/documents/mc/discussion.ec.ag.pol.htm>, visited on 27-11-2011.

consensus of all members-states was required to begin negotiations on the Singapore issues. Negotiations on Singapore issues to be based on clear consensus, meant that each WTO member would be at liberty to take its own position on modalities that could prevent negotiations from proceeding until that member state was prepared to join.<sup>150</sup> India, leading the developing countries took the stand, that a majority of the membership of the WTO had rejected the launch of negotiations on these issues and sought a continuation for the clarification process. But the second revision of the draft declaration had utterly disregarded that fact.<sup>151</sup> This was a clear instance of the deliberate neglect of the views of a large number of developing countries and an attempt to thrust the views of a few countries onto many developing countries.

#### **(f) Hong Kong Ministerial Declaration, 2005**

The Sixth Ministerial conference of the WTO was held in December 2005, at Hong Kong.<sup>171</sup> The conference recommitted the commitment of paragraph 13 of the Doha Ministerial Declaration<sup>152</sup> and the framework adopted by the General Council on August 2004. Paragraph 13 of the Doha declaration describes that the commitment of the member state under Article 20 of Agreement on Agriculture.<sup>153</sup> The Declaration also recommits the paragraph 31 of the Doha Ministerial Declaration. Para 31 of the Doha Declaration emphasise that the enhancing mutual supportiveness between trade and environmental agreements.<sup>174</sup>

#### **(g) Geneva Ministerial Declarations**

The Seventh, and Eighth<sup>154</sup> Ministerial conference of the WTO was held in December 2009 and 2011 at Geneva. The general theme for discussion was the WTO, the Multilateral Trading System and the Current Global Economic Environment.<sup>155</sup> The Eighth Ministerial Conference of the WTO focuses with the following themes; such as importance of the Multilateral Trading System and the WTO, Trade and Development and Doha Development Agenda.<sup>156</sup> Since 2001, all the Ministerial Declaration of the WTO-CTE categorically reiterated the commitment of the Doha Declaration at para 31.<sup>157</sup> This has significantly proves

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<sup>150</sup> Para 11 and 6 of the Draft Ministerial Declaration, JOB/03/150/Rev. 2.

<sup>151</sup> Para 12, *ibid.*

<sup>152</sup> Para 4. Hong Kong, WTO Doc. WT/MIN (05)/Dec./1, 22 December 2005.

<sup>153</sup> Agreement on Agriculture, 15 April, 1994; 1867 UNTS 410.

<sup>154</sup> Para 31, WTO Doc. WT/MIN (01)/Dec./1

<sup>155</sup> WTO Doc. WT/MIN (11)/3, 14-16 December 2011.

<sup>156</sup> *Supra* note 177.

<sup>157</sup> Para 31, *Supra* note 163

that the mandate of the state to incorporate the various elements of the guiding principles to achieve environmental sustainability both for present and future generations.

## **CHAPTER 6**

### **CONCLUSION**

It is concluded the WTO helps in improving the conditions for market access and goods and services and also fair and equitable approach between and amongst the states in regulating trade practices. The organization structures of the WTO facilitate the implementation, administration and operation as well as to further the objectives of the WTO Agreements.

Most importantly, it is in India's interest to maintain the momentum of multilateralism. It is not a member of any regional trading bloc, and will thus lose out if the Doha meeting doesn't succeed, for the richer countries will aim at expanding their bilateral and regional trade relations, and also accelerate further protectionism. "As a member of the World Trade Organisation, India will continue to interact with other nations to further protect and promote our national interests. Towards this objective, Government shall prepare a well-thought out strategy in order to protect India's national interests and our gains from global trade are maximised."

Instead of various WTO kind of arrangement should prove itself as an emerging collective global economic leadership paving the way for translating the common interest in global growth into a practical and effective mechanism for solving our common economic problems together.

The above foregone study reveals that after the World War II, the Uruguay Round created a revolutionary framework for economic, legal and political cooperation. Every nation now needs an effective trading system, but especially so the small and poor. They have it. Everyone will also gain from the huge package of market access results even if they did not get every concession they were seeking from trading partners- it is the biggest market access deal ever negotiated.

Technically speaking the WTO will oversee the implementation of the rounds results, administer all the agreements in goods, services and intellectual property, and manage the unified dispute settlement system, but beyond these administrative functions, it will raise the political profile of trade a profile which has already been lifted greatly by the Uruguay Round. The WTO will have regular instead of occasional - direct ministerial involvement. It will have a clear mandate to act as a forum for further trade negotiations. Most of all it will complete the

transition from a trading system which largely restricted itself to policies at the border to one which also covers most aspects of domestic policy making affecting international competition in goods and services, as well as investment.

The challenges of new issues in world trade will be a major one for the WTO. The new organisation has to consider issues such as the links between trade and the environment.

WTO is a moonlight throwing focus on international business, guiding for easy settlement of world trade disputes and a ray of hope for the developing countries to have an access and to maintain kind relationship with developed economies, it further lightened load of tax barriers and trade barriers. It also gave equal treatment to all the countries in the world trade eliminating the so-called trade discrimination and attitude of the developed economies towards the developing and underdeveloped economies. Thus, World Trade Organisation stands for fastening multinational world trade.

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