WTO REFERENCER

BY Dr. Dhanpat Ram Agarwal, B.Com(Hons), LLB, FCA, Ph.d (Economics)

I. AN OVERVIEW OF WTO

World Trade Organisation is a member driven organization where decisions are taken by a process of negotiations amongst the member countries based on rules contained in the Agreement establishing WTO. WTO was established by 123 member countries who were contracting parties to GATT, on 15th April 1994 at Marrakesh and came into effect on 1st January 1995. It deals with international trade in goods, trade in services and trade in intellectual property rights.

Meaning of WTO

WTO or the World Trade Organisation is a legal body consisting of 148 member nations for multilateral trade agreements on goods and services including intellectual property rights. It deals with the rules of trade between member nations at a global level. It enjoys privileges and immunities similar to UNO, IMF and World Bank. The WTO came into existence out of negotiations, and all the decisions in WTO is the result of negotiations. The major part of negotiations are on the basis of the Uruguay Round and the Doha Development Agenda. The earlier organization was General Agreement on Tariff and Trade or GATT.

GATT

GATT or the General Agreement on Tariffs and Trade was set up on 30-10-47 by 23 founder member countries to deal with the issues on tariff restrictions on import and export of goods by member countries under a multilateral umbrella. Virtually it came into effect in 1st January 1948 with 23 founding members becoming the 'Contracting Parties'. This was one of the international institutions originally planned as International Trade Organisation (ITO) along with the other two Bretton Wood Institutions, namely IMF and World Bank. The Havana Charter, which promised to pave the way to ITO was rejected in 1948 because US particularly felt that global framework of commerce and trade may come in the way of its hegemony over global trade. GATT 1947 is now replaced by GATT 1994.

GATT 1947

The General Agreement on Tariffs and Trade of October 1947 was annexed to the Final Act of the Second Session of the Preparatory Committee of the UN Conference on Trade and Employment. It came into force in January 1948 as a provisional agreement and was the "contract" that provided the international trade rules until the end of the Uruguay Round in December 1993, when it became part of the WTO structure.

GATT 1994

GATT 1994 is one of the several Agreements establishing the WTO. It includes the provisions of the GATT 1947 before the entry into force of the WTO Agreement and protocols on tariff concessions, protocols of accession, decisions on waivers, several understandings and the Marrakesh Protocol to GATT 1994.

GATT Rounds

From 1948 to 1994, the GATT provided the rules for much of world trade, but throughout those 47 years, it was a provisional agreement till 1994.

The GATT trade rounds

Year	Place/Name	Countries
1947	Geneva	23
1949	Annecy	13
1951	Torquay	38
1956	Geneva	26
1960-1961	Geneva (Dillon Round)	26
1964-1967	Geneva (Kennedy Round)	62
1973-1979	Geneva (Tokyo Round)	102
1986-1994	Geneva (Uruguay Round)	123

In the early years, the GATT trade rounds concentrated on reducing tariffs. Then, the Kennedy Round in the mid-sixties brought about a GATT Anti-Dumping Agreement. The Tokyo Round during the seventies was the first major attempt to tackle non-tariffs barriers and to improve the system. The eighth, the Uruguay Round of 1986-94, was the latest and most extensive of all. It led to formation of the WTO and a new set of agreements.

Marrakesh Agreement

Marrakesh Agreement established the World Trade Organization on 15 April 1994, signed by participants in the Uruguay Round (1986-1993) during the Ministerial Conference in Marrakesh. All the WTO Agreements, including the GATS, TRIPS and DSU, are integral parts of the Marrakesh Agreement.

Agreements for Trade in Goods

The Agreements in Trade in Goods are regulated by the following 13 specific agreements as under:

(i) ---General Agreement on Tariff and Trade 1994
(ii) ---Agreement on Agriculture
(iii) ---Agreement on Sanitary and Phyto Sanitary Measures
(iv) ---Agreement on Textiles and Clothings
(v) ---Agreement on Technical Barriers to Trade
(vi) ---Trade Related Investment Measures
(vii) ---Anti-dumping Measures
(viii) ---Customs Valuation Methods
(ix) ---Pre-shipment Inspection
(x) ---Rules of Origin
(xi) ---Import Licensing
(xii) ---Subsidies and Countervailing-measures
(xiii) ---Agreement on Safeguards

Three Pillars of WTO

i. Most Favoured Nation

Most Favoured Nation is one of the essential ingredients of all the WTO agreements. It means that equal treatment has to be given to all the member nations by the other member nation in market access for any goods or services. For example if UK is allowing market access in any particular field of services to USA it has to give similar market access to India or to any other member country. In other words there cannot be any kind of discrimination amongst members of WTO.

ii. National Treatment

National treatment broadly means that the member countries should give equal treatment to domestic goods and services to those given to foreign goods and services. Similarly there cannot be different treatment to the legal entities whether they are of domestic origin or of foreign origin with certain limited exceptions. For example Article XVII on GATS deal with the National Treatment and mandates that members shall not discriminate against any other member in respect of supply of services and that it should be given the same and equal treatment as for domestic suppliers of the same or similar services.

iii. Market access

Market access is the most essential ingredient of the multilateral trade agreement under WTO. All the various agreements whether on Agriculture or on Services under GATS talk of market access. Market access means that each member country has to grant free access to market on the principle of most favoured nation for supply of goods without any kind of non-tariff barriers and subject to commitments for reduction of tariff on imports with an ultimate target of zero duty regime. There are some safeguards in the form of anti-dumping and countervailing duty with special provisions for developing countries and LDCs for less than reciprocity. However certain limitations or restrictions or regulations are allowed under GATS as per Article XVI on market access. Certain **exceptions** are provided in the following Articles of GATT for balance of payment and national security reasons as described below:

Article XII (GATT) Balance of Payment exception

Article XII of the GATT provides an exception to Article XI (which prohibits the use of quantitative restrictions (QRs) for all countries, allowing them to apply QRs when faced with balance-of-payments (BOP) difficulties to safeguard their external financial position.

Article XXI (GATT) (national security exception)

Member countries are allowed to use exemptions to GATT obligations where essential security interests are at stake. These may include disclosure of information, actions in pursuance of obligations under the UN Charter, and “any action” considered necessary for the protection of essential security interests. Security exceptions also exist in the GATS (Article XIVbis) and the TRIPS Agreement (Article 73).

Quantitative restrictions (QRs)

Quantitative Restrictions or QR is a kind of protection or a non-tariff barrier for import or export of goods. Although maintenance of quantitative restrictions (QRs) on imports is not permitted as per Article XI of GATT, the government can, if the situation so warrants, utilise the mechanism of raising the applied tariffs within the bound rates, if such a gap exists and take measures such as anti-dumping action, safeguard actions and imposition of countervailing duties.

There are about 10500 items under import-export list of which 8000 items were in QR list before 1991. Today there are only about 500 items under QR on the ground of environment, security etc., and rest all items are under open general licence (OGL). In April 1997 there were 2700 items under QR list under Article XVIIIB of GATT 1994 which allowed it on account of balance of payment problems. However India lost a case in WTO dispute settlement body and was bound to phase out QRs from April 2001.

Bilateral agreements

Bilateral Agreements are between two sovereign nations on trade as per mutual co-operation between them. For example India may have individual bilateral agreements with USA, UK, Russia and similarly each individual nation may enter into such bilateral agreements with various countries on one to one basis and thus there can be plethora of such agreements. Sometimes there are different bilateral level agreements with the same country on different subjects.

Multilateral agreements

Multilateral agreement, on the other hand refers to an arrangement whereby all the member countries earlier under GATT and now under WTO agree on several agreements on different areas of common interest on the principle of most-favoured nation. However the multilateral arrangements are not in exclusion or in contradiction of bilateral agreements or even plurilateral agreements under regional trade agreements and all different types of agreements may co-exist.

Plurilateral Agreement

Plurilateral Agreements are those, which have been signed by only a group of WTO members as against Multilateral Agreements which are signed by all WTO members. After the Uruguay Round, there remained four agreements, originally negotiated in the Tokyo Round, which had a narrower group of signatories and are known as “Plurilateral agreements”. All other Tokyo Round agreements became multilateral obligations (i.e. obligations

for all WTO members) when the World Trade Organization was established in 1995. These four Plurilateral agreements are :

Trade in Civil Aircraft, Government Procurement, Dairy Products and Bovine Meat.

Regional Trading Blocs

Regional trading blocs are the organisations of several countries looking after their mutual economic interest. For example European Union or EU, North American free Trade Agreement or NAFTA, South Asian Association of Regional Co-operation or SAARC and ASEAN etc.

Prima facie, Regional trading arrangements or a customs union or free trade area would violate the WTO's principle of equal treatment for all trading partners ("most favoured nation"). However Article XXIV of GATT 1994 and Article V of GATS allows regional trading arrangements to be set up as a special exception, provided certain strict criteria are met. In particular, the arrangements should help trade flow more freely among the countries in the group without barriers being raised on trade with the outside world. In other words, regional integration should complement the multilateral trading system and not threaten it.

Article XXIV(GATT)

Article in GATT 1947 permits exceptions to the MFN principle when countries form free-trade areas (FTAs) or customs unions come together for deeper economic integeration, provided that the duties and trade regulations are not higher or more restrictive than prior to the formation of the FTA or customs union. Examples of such RTAs and FTAs are European Union, NAFTA, SAPTA etc.

OECD

The term OECD stands for Organisation for Economic Co-operation and Development. OECD is rich countries' club and deal with issues of their mutual concern. The members include USA, UK, GERMANY and FRANCE.

European Union (EU)

The term EU represents European Union, which had 15 members till recently but now has added 10 more and at present they are 25. The head quarter of EU is at Brussels the capital city of Belgium. EU is headed by European Parliament and has European Central bank. EU runs almost like federation of member countries in the Union and represents in international bodies separately including WTO.

The important members of EU include France, Germany, Italy, Spain and Sweden. Norway is not a member of EU.

Cairn group

This is a group of seventeen agricultural exporting WTO Members established during the Uruguay Round that promotes trade liberalization in trade in agricultural products.

It includes: Argentina, Australia, Bolivia, Canada, Chile, Colombia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

G – 21

Indian Commerce Minister Shri Arun Jaitley took the lead in forming alliances of the developing countries to negotiate and to do hard bargaining on Agriculture with the developed countries in Cancun. The so-called G21 which became very popular as G++ first started as G13 with the lead of India, Brazil, and Argentina with some other members from the cairns group. This group was formed immediately after announcement of Joint EC-US Paper on Agriculture on 13-08-2003.

G-21 Member Countries:-
Argentina, Bolivia, Brazil, Chile, China, Columbia, Costa Rica, Cuba, Ecuador, Egypt, Guatemala, India, Indonesia, Mexico, Nigeria, Pakistan, Paraguay, Peru, Philippines, South Africa, Thailand, Venezuela

WTO Structure

There is an Agreement establishing the world trade organisation. Article IV deals with structure of the WTO and spell out that 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 functions of the WTO and take actions 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 Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

Decision-making process

WTO decision-making is set out in Article IX of the Marrakesh Agreement. It requires the WTO to continue the GATT's practice of decision-making by consensus. Where consensus is impossible, voting may be used, with each member having one vote. Different situations under different agreements

call for varying majorities to carry a proposition. Green room diplomacy sometimes come in the way of transparency and the democratic pattern of decision making which needs to be taken care of.

Ministerial Conference

Ministerial Conference is the highest decision making body of the WTO. It is a world parliament on all trade-related issues, which are the subject matter of the WTO. It may also be termed as the highest legislature body of WTO empowered to take any decision by consensus with equal voting right to each member. According to WTO regulations there has to be one ministerial conference at the interval of every two years. At the end of each ministerial conference a declaration is made setting out the decisions taken and the process of its implementation.

Five Ministerial conferences (MC) have been held so far. The first was in Singapore in 1996 where certain new issues were raised more popularly known as 'Singapore Issues' and a new agreement was signed on information technology. The second MC was in Geneva in1998 where a new agreement was signed on E-Commerce. The third MC was held in Seattle 9USA) but no declaration was made as there was no consensus. The forth MC was in Doha in 2001 which gave birth to Doha Development Rounds. The fifth was in Cancun in 2003 but similar to Seattle members could not reach to any consensus and the meeting collapsed. The members later joined and a compromise was arrived through a package deal in July 2004. The Sixth MC is being held in Hongkong in December 2005. The MC is held at an interval of every two years.

Draft Ministerial Text

Draft Ministerial Text or DMT is the draft prepared by WTO Secretariat before the start of the Ministerial Conference and is circulated in advance to all the trade ministers of the member countries for their comments. After receipt of the DMT the concerned members send their comments or certain proposals for inclusion by modifying the DMT. Generally a second draft is prepared on the basis of suggestions received from various quarters of member countries and the same is again circulated a few days before the start of the ministerial conference.

The ministerial discussions start on various important issues as per the agenda set out in the DMT under various sub-groups as decided by the chairman of the general council and the director general of the WTO in consultation with the representatives of the member countries.

After the formal discussion in the ministerial conference the DMT is revised and it is circulated in the form of Draft Ministerial Declaration amongst the members.

Ministerial Declaration

A Ministerial declaration is the final document containing the decisions arrived at the Ministerial Conference for implementation of various issues relating to the WTO agreements on trade of goods and services including intellectual property rights. However due to failure of talks at Seattle and at Cancun no formal declaration could be issued. The Ministerial declaration has the same force as in various agreements of WTO and normally they are the roadmap for further discussions and negotiations in the meeting of General council and the future Ministerial Conference.

Ministerial Declaration is the result of the discussions which take place on the basis of the Draft Ministerial text and after the final voting take place on the basis of the Draft Ministerial declaration.

Mini – Ministerial Rounds

Mini-Ministerial rounds are generally held at various places to discuss certain issues, which are the main agenda for the forthcoming ministerial conference. The objective is to achieve the deadline of earlier commitments and to arrive at certain consensus before the Ministerial so as to reduce the load and to reach concrete and meaningful decisions. Before the 5th Ministerial mini-ministerial rounds took place at Tokyo, Cairo and Montreal though it was unfortunate that due to rigidity of the developed countries on subsidy and lopsided views for more market access in developing countries that Cancun resulted into failure without any consensus.

Singapore Issues

These are the four issues identified in the Singapore Ministerial Conference in 1996. Three out of four i.e., except Trade Facilitation has been dropped from the Doha Development Agenda as per July 2004 Framework Agreement. All the four issues are briefly described as under :

1. Trade and investment

The trade and investment issue focuses on the idea of creating rules under which investors' rights would be protected from any interference by the host country.

2. Trade and competition policy

The trade and competition issue is essentially about the idea of creating rules that would require governments to enforce free competition among foreign and domestic companies.

3. Trade facilitation

Trade facilitation essentially relates to creating new rules that would require government to simplify and lower the costs of border customs transactions and procedures.

4. Transparency in Government Procurement

Transparency in government procurement would require governments to provide for publicly announced bidding exercises for government equipment purchases, and hence effectively allow foreign companies to compete with domestic ones in bidding for government contracts.

Information Technology Agreement

Information Technology Agreement or ITA was concluded at the Singapore Ministerial Conference in December 1996. At that time only 29 countries including EU members signed the declaration which fell short of the criteria of representing 90 percent of the world trade in IT by the participants latest by 01-04-1997. The original 29 signatories collectively accounted for only 83 percent of world trade in information technology (IT) products. However, in the ensuing months , a number of other countries expressed an interest in becoming participants in the ITA and notified their acceptance. Thus, the 90 percent criteria had been met and the ITA entered into force with the first staged reduction in tariffs occurring on 1 July 1997.The schedule for zero duty reduction for all countries was 01-01-2005.

Doha Development Agenda

Doha development agenda or the DDA are the decisions taken at the 4th Ministerial conference at Doha, Qatar in November 2001. Members have agreed for implementations for various issues relating to reduction or phasing out of agricultural subsidies and granting of special and differential treatment to developing countries for which work programme has been drawn and working groups have been formed for their timely implementation as per schedule or the deadlines fixed for each type of commitments or negotiations. The final deadline for all the work programme under DDA was 31-12-2004 but due to failure of Cancun proper stock taking exercise has remained unfulfilled and the director general and the chairman of the General council are working hard to meet the deadlines. The Geneva July package has set a clear cut road-map for the conclusion of the

DDA as per the revised framework agreement and the revised deadline is 31-12-2006.

July Package

The General Council of WTO had a meeting in Geneva between 27 to 31st July 2004 and succeeded to break the stalemate arising out of Cancun failure in the 5th Ministerial. It took into consideration the Ministerial Statement adopted at Cancun on 14 September 2003, and the statements by the Council Chairman and the Director-General at the Council meeting of 15-16 December 2003, The Council has adopted a framework agreement on various contentious issues on Agriculture, Cotton, Non agriculture market access and several development and implementations issues including the one on special and differential treatment to Developing Countries. The two major outcomes of July Package are firstly dropping out of all Singapore issues except the one on "Trade Facilitation" from Doha Development Agenda and on phasing out of Export Subsidies by EU on Agriculture. The members are supposed to arrive at final conclusions before the Sixth Ministerial to be held in Hongkong in December 2005.

Built-in Agenda

These are the issues on which WTO Agreements call explicitly for future negotiations, reviews or other work, illustrating the fact that although the Uruguay Round was concluded, an extensive work programme was left for the future. Written into individual WTO Agreements, the built-in agenda includes negotiations on agriculture and services, which have been started in 2001, as well as further work on geographical indications (TRIPS) and a review of the DSU. Some of these issues have become elements of the Doha Work Programme. Basic telecommunications, financial services and movement of natural persons under the GATS, were largely dealt with in the later 1990s.

Special and Differential Treatment

The underlying principle of the Uruguay Round Agreements is to create a fair and equitable multilateral trading system that leads to development and increasing incomes. The Marrakesh Agreement establishing the World Trade Organisation recognises, in its Preamble that relations between Member countries should be conducted with a view to "raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services…" The Preamble recognises further that "there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in

international trade commensurate with the needs of their economic development".

Generalised System of Preference (GSP)

International rules under which developed countries provide a margin of preference in the tariffs of developing country exports to developed countries as a means to increase their competitiveness. These preferences are non-reciprocal. Within these rules, agreed in UNCTAD in 1968 and entered into force in 1971, countries can design their own preference systems. Tariff reductions resulting from multilateral trade negotiations reduce the importance of GSP.

Participation of NGOs in Ministerial Conference

There are two types of NGOs, one represents the activist group and is out and out anti globalisation and opposes WTO in toto and the other is accredited by WTO through registration. The NGOs are referred to as civil societies. The activists remain outside the main venue of the ministerial conference and make their agitation openly. In Seattle as well as in Cancun their protest was remarkably visible but in Doha the activists were not allowed entry in the city due to strict security in the aftermath of 9/11 tragedy in World Trade Center. The accredited NGOs are basically think tank type and they ventilate their views through various publications, Seminars, discussions and participation in various news briefing and press conferences and also as observers in the main venue in certain sessions. There were about 900 registered NGOs of which almost 250 were from US alone and about 30 from India of which about 10 participated actively, in Cancun Conference.

Single undertaking

The term 'Single Undertaking' implies that either all or none. In other words it means that all different issues have to be resolved in toto as a single item of agenda and no piecemeal decision can be taken. In the context of 'Singapore issues' it was said that resolve all the four issues on investment, competition, transparency in Govt. procurements and trade facilitation at a time and it was not possible to resolve one and defer the others. However in July 2004 package the members have agreed for de coupling of these four issues and it has been agreed that only one issue of trade facilitation shall be discussed and resolved.

II. Salient features under Agreement on Agriculture

There are three pillars to the Agreement on Agriculture (AOA), namely, Domestic Support, Export competitiveness and Market Access. There are other issues of multifuntionalities or non-trade concern or development issues.

Domestic Support

Domestic support implies various kind of direct or indirect supports provided by the government to agriculture in their home country. This involves subsidies on input in the form of energy, irrigation, fertilizer, seeds or pesticides or it may involve indirect support in the form of research and development work for agriculture in general. These domestic supports are subject to certain restrictions and commitments for reduction or elimination of these subsidies and particularly those, which are of the nature of trade distortion. These subsidies are also subject to ceiling known as aggregate measures of support

AMBER BOX

All domestic support measures considered to distort production and trade (with some exceptions) fall into the amber box. It is defined in Article 6 of the Agriculture Agreement as all domestic supports except those described in the blue and green boxes. These include measures to support prices, or subsidies directly related to production quantities.

BLUE BOX

These are generally given to farmers of developed countries to limit the production because the home market is small and is given as a sort of unemployment allowance. Technically speaking this is the "amber box with conditions" — conditions designed to reduce distortion. Any support that would normally be in the amber box is placed in the blue box if the support also requires farmers to limit production. These are dealt in Paragraph 5 of Article 6 of the Agriculture Agreement.

GREEN BOX

The green box is defined in Annex 2 of the Agriculture Agreement. In order to qualify, green box subsidies must not distort trade, or at most cause minimal distortion. They have to be government-funded (not by charging consumers higher prices) and must not involve price support.

These are in the nature of programmes that are not targeted at particular products, and may include direct income supports for farmers that are not related to current production levels or prices. They also include environmental protection and regional development programmes. "Green box" subsidies are thus allowed without limits, provided they comply with the policy-specific criteria set out in Annex 2.

Aggregate Measure of Support

The trade distorting domestic support is measured in terms of what is called the "Total Aggregate Measurement of Support" (Total AMS), which is expressed as a percentage of the total value of agricultural output and includes both product specific and non-product specific support. The Agreement on Agriculture stipulates a reduction commitment of total AMS by 20 per cent for developed countries in 6 years (1995-2000) and by 13-1/3 per cent by developing countries in 10 years (1995-2004), taking 1986-88 as the base period. However, domestic support given to the agricultural sector upto 10% of the total value of agricultural produce in developing countries and 5% in developed countries is allowed. In other words, AMS within this limit is not subject to any reduction commitment. AMS deals only with trade distorting support i.e., Amber Box and does not apply to Green box and Blue box subsidies.

Development box

It is a proposed addition to the three categories of domestic support as already contained in the WTO Agreement on Agriculture and as stated above. Some developing countries have argued for flexibilities that would apply only to developing countries, to promote rural development and food security. These would include protection of staple products through exemptions from commitments, higher tariffs, and safeguards, in addition to a prohibition of the dumping of farm products by developed countries and the establishment of a food security fund. Similar to green box, "development box" would not be subject to reduction commitments.

Export subsidies

Export competitiveness implies that no export subsidies should be allowed on farm exports by the government of the exporting countries. Generally only developed countries especially EU provide this type of subsidies for which commitments had been made by them in Doha declaration for phasing out but no progress has been made on this account and this was also one of the measure point of dispute in Cancun ministerial. The current negotiations are on the basis of July 2004 Framework. The developed countries are asking for a trade-off with more concessions in tariff for more market access in the developing countries.

Peace clause

Provisions in Article 13 of the Agriculture Agreement deal with restrictions and or restrains in relation to agricultural subsidies committed under the agreement that cannot be challenged before Dispute Settlement Body. The sole idea of peace provisions was to reduce the likelihood of disputes on agricultural subsidies over a period of nine years from the date of creation of WTO. The deadline for the same has expired at the end of December 2003 paving the way for filing of cases with the Dispute Settlement Body against illegal agricultural subsidies.

TRQs (Tariff rate quota)

TRQ is a trading mechanism that provides for the application of a customs duty at a certain lower rate to imports of a particular commodity up to a specified quantity (in-quota quantity) and at a higher rate on imports of that commodity when it exceeds the in-quota quantity. Tariff quotas have been used extensively under the Agreement on Agriculture, particularly with products subject to tariffication i.e., in substitution of the non-tariff trade restrictions.

Multifunctionality

This concept recognises the multitude of functions served by a sector , particularly agriculture and the rural community. This is also referred to in the Agreement on Agriculture as "non-trade concerns". The principle has been sponsored by developing countries with high cost agriculture or with special rural development objectives. They point to environmental protection, landscape preservation, animal rights, rural development and employment, food security, traditional habits, etc., as reasons for taking a conservative view of trade liberalisation commitments.

Food Security

Food Security as defined by FAO is the physical and economic access for all people at all times to enough food for an active, healthy life with no risk of losing such access and as such is directly connected with livelihood in the developing countries. Basically it envisages national policy objective to ensure secure food supplies under all circumstances. Some WTO members believe that food security, at least in some basic products, must be assured through production in the domestic farm sector. Others consider that a flexible mix of domestic and foreign suppliers provides greater assurance. The difference of view affects attitudes to agricultural liberalisation in trade agreements.

Common Agriculture Policy

CAP is the common strategy of European Union for the common interest of all its members. There is one trade commissioner on behalf of EU to take part in WTO negotiations although the vote of the EU is equivalent to the number its of members.

III. Salient Features of NAMA Negotiations

Non Agriculture Market Access (NAMA)

The term NAMA was introduced in WTO terminology for the first time in DOHA Declaration. It refers to non-agricultural market access. In other words non-agricultural products include "industrial products" as also some other products like fish, rubber, jute minerals and ores etc. which do not specifically figure in the WTO Agreement on Agriculture. Generally this is one of the important agenda for ministerial discussion. Some negotiations are in progress for listing special products, which should be free of any kind of tariff.

Harmonised System (HS)

This is a standard to classify different internationally traded goods developed by the World Customs Organization. The nomenclature uses codes of up to six digits to classify both board categories of goods as well as highly differentiated products. Beyond the six-digit level, countries are free to introduce national distinctions for tariffs and many other purposes. Most tariff commitments are now made using the HS to allocate a duty to a product on a consistent basis.

Tariff

It is a duty levied on goods imported or exported from one country to another country. Although legitimate under the GATT/WTO, tariffs serve to make imports less competitive while raising revenue for the importing country. The word is often applied collectively to all the duties imposed in a market and thus to the tariff schedules of WTO members.

Tariff Bindings

These are known as Bound Tariff or the tariff rates of WTO members listed in national schedules. Once included in a schedule the duty rate is effectively frozen-or "bound". Article II of the GATT provides for the schedules of concessions. Applied rates of duty may, in reality, be lower than bound rates.

Bound rates

Bound rates are the upper ceiling of the tariff rates for each group of commodities for each member country. The concerned member has the liberty to fix any tariff rates for imports within the overall limits of bound rates.

Applied rates

The applied rates are the actual rates enforce for imports. Each member has to inform to WTO Secretariat about their agreed bound rates and the applied rates.

Non-Tariff Barriers

Non-Tariff barriers are impediments to trade other than tariff measures, Barriers such as quotas, import licensing system, sanitary regulations, prohibitions, etc. NTBs, unlike tariffs, do not operate through prices.

Tariff Escalation

This is a policy of charging higher tariff on processed goods as compared to raw material. For example tariffs on a manufactured product are high compared with those on the semi-processed goods and / or raw materials on which the product is based. Such escalation protects the domestic industry in the import market and discourages industrial diversification in the exporting country. The practice is considered to damage development prospects in poorer countries that are rich in basic commodities but lack processing or manufacturing capacity.

Tariff Peaks:

It refers to the policy of high tariff by developed countries on imports drom developing countries on certain special products which is essentially in contrast to the principles of special and differential treatment. While most tariffs on industrial products in advanced economies are very low-averaging below 5%, some individual products retain exceptionally high market protection-perhaps 15%-30% Examples are to be found in the textiles, clothing and leather products sectors-markets which are important to least-developed economies

Linear Tariff Cuts

This is one of the formula for harmonization of tariff under NAMA negotiation. Generally speaking it is an agreed set of tariff cuts based on reduction by a single percentage figure. This contrasts with other more complex formula-based approaches which may seek to harmonise duties or to deal with tariff peaks more severely than with low tariffs.

Swiss Formula

This is the most talked about formula for tariff cuts under NAMA negotiation. The original Swiss formula was adopted in the Tokyo Round to provide a consistent basis on which participants would calculate their tariff reductions. The formula had the effect of bringing existing high tariffs down more significantly than low tariffs, thus tending to harmonise overall. The developing countries are opposed to it because it put additional burden of stiff cuts in their tariff as compared to developed countries.

IV. General Agreement on Trade Related Services (GATS)

GATS deal with agreement on trade in services i.e., services relating to banking, insurance, information technology, telecom, health, education etc. There are 12 sectors and 161 sub-sectors of services covered under GATS. The agreement dealing with services provide four different modes of services across the borders from one country to another amongst member countries under Article 1 of GATS Agreement.

Mode-1 Cross Border supply of services: Under this mode the service provider and the service consumer stay in their respective countries and the services move from one country to another country through information technology or through the telecom services and they are popularly known as e-commerce or business process outsourcing (BPO).

Mode-2 Consumption abroad: Under this mode the services are provided in the home country of the service provider and the service consumer has to move from his home country to the country of the service provider and therefore this is known as consumption abroad. This type of services generally include tourism, health, education etc.

Mode-3 Commercial presence: Under this mode the service provider moves into the country of the service consumer through commercial presence by opening a branch office or through business collaboration in the form of joint venture abroad or by setting up a subsidiary company. The examples under this category are Citi bank operating in India through its various branch offices or various insurance companies operating in India or Infosys operating in USA through its branch offices.

Mode-4 Movement of natural persons: Under this mode the service provider is not a company but the individual himself moves from his home country to the country of the service consumer and therefore this mode is described as movement of natural persons. This involve issue of visa for temporary stay of the person and the member countries of WTO are thinking of issuance of GATS visa for specific types of services for which commitments are being made by them for free movement of natural persons on fulfillment of educational and other technical qualifications.

Most-Favored-Nation Treatment (Article II)

In respect to any measures covered by this agreement, each member is to accord services and service suppliers of an other treatment no less favorable than it accords to like services and service suppliers of any other country. There is a provision for exemptions to above provisions and a member can maintain MFN exemptions normally for 10 years.

Transparency (Article III)

GATS provide for publication of all relevant measures and their intimation to Council for Trade in Services. It also provides that request for specific relevant information from any member shall be promptly responded.

However, no member is required to provide confidential information, which impede law enforcement or is contrary to the public interest or which prejudice legitimate commercial interest of any enterprise, public or private.

Domestic Regulations

Article VI of GATS Agreement provide for harmonisation of domestic rules of member countries with regard to the following three aspects:-

i) Qualification requirements and procedures,

ii) Technical standards,

iii) Licensing requirements

The above regulations should have the following objectives:

(a) based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) not more burdensome than necessary to ensure the quality of the service;

(c) in the case of licensing procedures, not in themselves a restriction on the supply of the service.

Mutual Recognition Agreements (MRAs)

Article VII of the GATS agreement deals with the principles of mutual recognition of educational qualification for cross border supply of services. However MRA is a common phenomenon in all WTO agreements For example MRAs are used to recognise each others' product testing and certification procedures. MRAs are seen as a trade facilitation instrument, simplifying the clearance of products to be marketed overseas. Each party commits itself to accepting the reports of each other's conformity assessment authorities, designated laboratories and inspection bodies. In the context of services, The WTO's Agreement on Technical Barriers to Trade also encourages the acceptance of conformity assessments among members (Article 6).

Request/offer Approach of negotiation

It is a common approach for negotiation for sharing market access on services. Requests for market access on specified sectors for services are exchanged by trading partners. These are generally followed by initial offers, after which bilateral negotiations seek to find mutually advantageous results. Thereafter the member country submits national schdule of commitments as per agreed guidelines.

National Schedule

Each member nation is obliged under Article XX of GATS to set out a Schedule of Specific Commitments specifying

i) Terms, limitations and conditions of market access;
ii) Conditions and qualifications for national treatment;
iii) Undertaking relating to additional commitments;
iv) Where appropriate the time-frame for implementation of such commitments; and
v) Date of entry into force of such commitments.

The country concerned has to state the commitment for each sector of services clearly specifying the mode of services under which such sectors are opened. These commitments are made under a uniform format, which provides for sectoral commitments in vertical manner and mode of services in horizontal manner.

Progressive Liberalization

The provisions for Progressive Liberalisation are contained in Part IV and Article XIX of the Agreement on GATS. Unlike most of the Agreements, which became effective from 01-01-95 the agreement on GATS had a moratorium of five years and it came into force from – 1-01-2000 through successive rounds of negotiations. It is provided that the members shall achieve a progressively higher level of liberalization through negotiations on a mutually advantageous basis. There shall be appropriate flexibility for individual developing country members for opening fewer sectors, liberalizing fewer types of transactions, and progressively extending market access in line with their development.

V. Trade-Related Aspects of Intellectual Property Rights (TRIPS)

TRIPS deal with intellectual property rights (IPRs). It covers all types of IPRs including copyright, trademark, patents etc. The main features of TRIPs agreement include uniformity in Patent and other IPR regulation by all member countries. The distinguishing features of the TRIPS agreement is that it provides for granting protection for intellectual property rights. Especially it gives recognition to product patent also. The deadline for product patenting for all member countries is 1.1.2005 but for LDCs it is 1-1-2016.

Intellectual Property Rights

Intellectual property rights refer to the rights given to people over the creations of their minds. They usually give the creator an exclusive right over the use for a certain period of time.

Patents

Patent is one of the most important IPR under which protection is granted for an exclusive right to exploit an invention. The invention must be a product or a process that provides a novelty and must have commercial application. The owner of a patent is usually granted 20 years of patent protection.

Product Patent

Article 28 of TRIPS confers on the owner of a product patent an exclusive right to prevent third parties without his consent, from the acts of making, using, offering for sale, selling or importing that product. It authorizes the owner of a Process patent to prevent third parties without his consent, from the acts of using; offering for sale, selling or importing a product obtained directly by that process.

Process Patent

The TRIPs regulation provides for registration of both the product patent as well as a process patent under the new patent regime. Prior to this, product patent was not recognized and therefore the same product could be registered under different brand names with minor difference in the process of manufacturing the product. Section 5 of Indian Patent Act, 1970 did not allow product patent for food medicines or drug or chemical substances and only methods or process of manufacture was patentable. However from 1.1.2005, product patent has been allowed for pharmaceuticals, food items

and Agro-chemicals by deletion of Section 5 of the Patent Act, 1970 through the Third Patents (Amendment) Act, 2005.

Copyrights

The Berne Convention 1971 deals in details about the copyrights and Article 9 to 14 of TRIPS Agreement deal with member's obligation in relation thereto. Copyrights include the right of the author of computer programs and cinematographic works apart from the general work of art and literature. Article 12 provides for protection of copyrights for at least **fifty years**.

Trade marks

Trade Mark has been defined under Article 15 of TRIPS. It means any sign or any combination of signs capable of distinguishing the goods or services from those of other undertakings. The term of protection is for **seven years** and is renewable indefinitely.

The owner of a registered trademark has the right to assign his trademark with or without the transfer of his business.

Geographical Indications

'Geographical Indications' mean any indication which define the goods as originating in the territory of a country or a region or locality in that territory, provided a given quality reputation or other characteristics of the products is essentially attributable to its geographical origin. This means that the geographical indication has to indicate that a product of a particular origin has a certain quality or reputation or some other characteristics, which is essentially attributable to its geographical origin.

Industrial Designs

Design broadly refers to the features of shape, configuration, pattern or composition of lines or colours applied to any article by any industrial process or means, which is judged by eyes.

The provisions governing the rights are dealt in Article 25 and 26 of TRIPS Agreement. The owner of the protected industrial design shall have the right to prevent third parties from copying it in the sale or import of their articles. The duration of the protection is **ten years**.

Trade Secret

Article 39 of the TRIPS Agreement provides for the protection of undisclosed information of a commercially sensitive nature. Trade secrets with commercial value must be protected against breach of confidence, breach of contract, inducements and other acts contrary to "honest commercial practices". Furthermore, reasonable steps must be taken to keep the information secret. Governments must protect against unfair commercial use test data submitted to obtain marketing approval for new pharmaceutical or agricultural chemicals.

Disclosure of Information

Disclosure requirement with a particular relevance to patents. Although patent owners have exclusive property rights over their inventions, they cannot withhold technical Legislations of most countries require applicants for patents to disclose such information on the products or processes to be patented, enabling technically qualified persons to understand and use it for further research or for industrial application after the expiry of the terms of the patents.

World Intellectual Property Organisation (WIPO)

The World Intellectual Property Organisation (WIPO) with its head quarters located in Geneva was established by a convention of 14 July 1967, which entered into force in 1970. It has been a specialized agency of the United Nations since 1974, and administers a number of international unions or treaties in the area of intellectual property, such as the Paris and Berne Conventions.

Compulsory Licensing

Article 31 of TRIPS Agreement allows compulsory licensing It implies a special right or licence granted by the Govt. Authorities to companies or individuals other than the patent owner to use the rights of the patent — to make, use, sell or import a product under patent (i.e. a patented product or a product made by a patented process) — without the permission of the patent owner allowed under the WTO's TRIPS (intellectual property) Agreement provided certain procedures and conditions are fulfilled. For example: (unless there is an emergency) the person or company applying for a licence must have first attempted, unsuccessfully, to obtain a voluntary licence from the right holder on reasonable commercial terms, and adequate remuneration must be paid to the right holder.

The authorization granted under compulsory licensing must also meet certain requirements. In particular, it cannot be exclusive, and it must as a general rule be granted predominantly to supply the domestic market.

Convention of biological diversity'

The term "biodiversity" means the variability among living organisms from all sources and the ecological complexes of which they are part. It includes diversity within species or between species and of eco-systems.

Rio Earth Summit1992 gave official strength to CBD. The convention's three main objectives are the conservation of biological diversity, the sustainable use of its components, and the fair and equitable sharing of the benefits from the use of genetic resources.

Article 27 of the TRIPS Agreement defines the types of inventions, which have to be eligible for patent protection and those which can be exempt. These include both products and processes, and they generally cover all fields of technology.

Part (b) of paragraph 3 (i.e. Article 27.3(b)) covers biotechnological inventions. It is currently under review in the TRIPS Council, as required by the TRIPS Agreement. Some countries have broadened the discussion to cover biodiversity and traditional knowledge. The Doha Declaration has linked these issues.

Article 27.3(b) (TRIPS Agreement)

Article 27 of the TRIPS Agreement covers the subject matter of patents. It contains some exceptions to the basic rule of patentability. Some exclusions of particular interest to developing countries are covered in paragraph 3(b): plants and animals other than microorganisms and biological processes for the production of plants and animals. A final point that has led to much controversy is the provision (whose revision started as stipulated four years after the entry into force of the Agreement) that the protection of plant varieties can be provided by patents or by "an effective *suigeneris* system".

Protection of Traditional Knowledge

Traditional knowledge means a body of knowledge, practice technology and belief evolved over a period through adoptive processes and handed down through generations. It is done through cultural transmission within a community. It includes knowledge and belief associated with a biological resource. TRIPs Agreement does not provide any protection for traditional knowledge. However a Bill, namely, " Biological Resources, Traditional Knowledge and Expressions of Folklore (Protection & Regulation) Bill 2003 is under consideration by Govt. of India.

Exclusive Marketing Right

India's Patents Act, 1970 exempted "food or medicine or drug" from product patenting (Section 5). The concept of EMR was introduced through Patent (Amendment) Act, 1999 by insertion of Section 24(A) to 24(F) under which the right holder would have the exclusive right to market the products in India for a certain period solely on the basis of a patent granted in any other country and without any investigation by any Indian Authority into the patentability of such product. Product patenting for Inventories in Pharmaceuticals Chemicals and Biotechnological area during the transitional period.

VI. Issues Relating to Subsidies, Anti Dumping Duties and other Miscellaneous Issues

Agreement on Subsidies and Countervailing Measures The Agreement on Subsidies and Countervailing Measures is built on the Agreement on Interpretation and Application of Articles VI, XVI and XXIII, which was negotiated in the Tokyo Round of GATT negotiations.
Unlike GATT, the agreement contains a definition of subsidy and introduces the concept of a "specific" subsidy which would be subject to the disciplines set out in the agreement.

Three categories of subsidies

i. Prohibited Subsidies

The agreement deems the following subsidies to be "prohibited": those contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and those contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. Prohibited subsidies are subject to new dispute settlement procedures. The main features include an expedited timetable for action by the Dispute Settlement body, and if it is found that the subsidy is indeed prohibited, it must be immediately withdrawn. If this is not done within the specified time period, the complaining member is authorized to take countermeasures.

ii. Actionable Subsidies

The second category is "actionable" subsidies. The agreement stipulates that no member should cause, through the use of subsidies, adverse effects to the interests of other signatories, i.e**. injury to domestic industry** of another signatory, nullification or impairment of benefits accruing directly or indirectly to other signatories under the General Agreement (in particular the benefits of bound tariff concessions), and serious prejudice to the interests of another member. "Serious prejudice" shall be presumed to exist for certain subsidies including when the total ad-valorem subsidization of a product exceeds 5 per cent. In such a situation, the burden of proof is on the subsidizing member to show that the subsidies in question do not cause serious prejudice to the complaining member. Members affected by actionable subsidies may refer the matter to the Dispute Settlement body. In the event that it is determined that such adverse effects exist, the subsidizing member must withdraw the subsidy or remove the adverse effects.

iii. Non-Actionable Subsidies

The third category involves "non-actionable subsidies", which could either be non-specific subsidies, or specific subsidies involving assistance to industrial research and pre-competitive development activity, assistance to disadvantaged regions, or certain type of assistance for adapting existing facilities to new environmental requirements imposed by law and/or regulations. Where another member believes that an otherwise non-actionable subsidy is resulting in serious adverse effects to a domestic industry, it may seek a determination and recommendation on the matter.

Countervailing Measures

One part of the agreement concerns the use of countervailing measures on subsidized imported goods. It sets out disciplines on the initiation of countervailing cases, investigations by national authorities and rules of evidence to ensure that all interested parties can present information and argument.

Countervailing investigations shall be terminated immediately in cases where the amount of a subsidy is de minimis (the subsidy is less than 1 per cent ad valorem) or where the volume of subsidized imports, actual or potential, or the injury is negligible. Except under exceptional circumstances, investigations shall be concluded within one year after their initiation and in no case more than 18 months. All countervailing duties have to be terminated within 5 years of their imposition unless the authorities determine on the basis of a review that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury.

Least-developed countries and developing countries that have less than $1,000 per capita GNP are exempted from disciplines on prohibited export subsidies, and have a time-bound exemption from other prohibited subsidies. For other developing countries, the export subsidy prohibition would take effect 8 years after the entry into force of the agreement establishing the WTO.

Countervailing Duty

Countervailing duties have been defined under the Agreement on Subsidies and Countervailing Measures (SCM). It refers to the right of a member country to impose this duty if it is found that the exporting country is subsidizing its product by way of fiscal or monetary benefits.

It is a special duty levied for the purpose of offsetting any subsidy awarded, directly or indirectly upon the manufacture, production or export of any merchandise within the provisions of GATT 1994.

No countervailing duty shall exceed the amount of subsidy found to exist, calculated in terms of the value of subsidy per unit of the exported products.

Anti-Dumping Duty

Dumping is said to occur when the goods are exported by a country to another country at a price, which is below its normal price. The normal price or value is the comparable price at which the goods are sold in ordinary course in the domestic market of the exporting country. Dumping is an unfair practice, which can have a distortive effect on the international market.

Anti-dumping is a measure to rectify the situation arising out of the distortion created through dumping of goods. The use of anti-dumping measure is an instrument of fair competition as allowed under the WTO framework agreement. Thus it is measure to ensure competition and is not a measure of protection to domestic industry. It provides relief to domestic industry against the injury or harm caused by dumping by the unscrupulous exporting country.

Agreement on Anti-Dumping measures is in pursuance of imple-mentation of Article IV of GATT 1994. These measures have assumed a great deal of relevance in India especially in post-QR phase.

Multifiber Arrangement and Agreement on Textile and Clothings

(MFA) 1974-1994 Up to the end of the Uruguay Round, textile and clothing quotas were negotiated bilaterally and governed by the rules of the Multifiber Arrangement (MFA). This provided for the application of selective quantitative restrictions when surges in imports of particular products caused, or threatened to cause, serious damage to the industry of the importing country. The Multifiber Arrangement was a major departure from the basic GATT rules and particularly the principle of non-discrimination. On 1 January 1995 it was replaced by the WTO **Agreement on Textiles and Clothing** which set out a transitional process for the ultimate removal of these quotas and now ATC Agreement has fully merged with GATT 1994 with effect from 01-01-2005.

Sanitary and Phyto Sanitary Measures

Sanitary or Phyto Sanitary measures are allowed for protection of animal or plant life or health. These measures are applicable mainly for food items under Agreement on Agriculture. The agreement dealing with these measures provides that this protection should not be used arbitrarily and should not amount to discrimination.

Technical Barriers to Trade

It is part of several agreements signed in pursuance of Final Act embodying the results of the Uruguay Round of Multilateral Trade negotiations at Marrakesh on 15-04-1994. The details of the provisions are contained in Annex 1A to Multilateral Agreement on trade in goods.

The objective of this agreement is to ensure that technical regulations and standards including packing, marking and labeling requirements and procedures for assessment of conformity with technical regulations and standards do not create unnecessary obstacles to international trade. It is however important and is recognised that the standards should not be applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries.

Multilateral Agreement on Investment

Multilateral Agreement on Investment or MAI was a proposal for discussion amongst the OECD group of countries for free flow of capital and specially FDI but the same could not be implemented due to differences amongst them. The Singapore Issue in WTO also includes investment as one of the agenda but there are controversies as it leaves very limited policy space with the member country to decide the place and priority of investment, which is closely linked to development.

In Cancun this was one of the major areas of controversy on which there was no explicit consensus as adopted in Doha development agenda.

Rules of Origin

The agreement aims at long-term harmonization of rules of origin, other than rules of origin relating to the granting of tariff preferences, and to ensure that such rules do not themselves create unnecessary obstacles to trade. The relevance of this agreement is to determine the origin of a produce either on the basis of change in HS code due to manufacturing or on the basis of value addition of a minimum per cent. It is essential for FTAs and various other regional agreements.

The agreement sets up a harmonization programme, to be initiated as soon as possible after the completion of the Uruguay Round and to be completed within three years of initiation. It would be based upon a set of principles, including making rules of origin objective, understandable and predictable. The work would be conducted by a Committee on Rules of Origin (CRO) in the WTO and a technical committee (TCRO) under the auspices of the Customs Cooperation Council in Brussels.

Agreement on Preshipment Inspection

Pre-shipment Inspection (PSI) is the practice of employing specialized private companies to check shipment details - essentially price, quantity, quality - of goods ordered overseas. It is generally practised by governments of developing countries, the purpose is to safeguard national financial interests (prevention of capital flight and commercial fraud as well as customs duty evasion, for instance) and to compensate for inadequacies in administrative infrastructures.

The agreement recognizes that GATT principles and obligations apply to the activities of pre-shipment inspection agencies mandated by governments. The obligations placed on PSI-user governments include non-discrimination, transparency, protection of confidential business information, avoidance of unreasonable delay, the use of specific guidelines for conducting price verification and the avoidance of conflicts of interest by the PSI agencies.

The obligations of exporting contracting parties towards PSI users include non-discrimination in the application of domestic laws and regulations, prompt publication of such laws and regulations and the provision of technical assistance wherever requested.

The agreement establishes an independent review procedure - administered jointly by an organization representing PSI agencies and an organization representing exporters - to resolve disputes between an exporter and a PSI agency.

Rules on Customs Valuation: Agreement on Implementation of Article VII (Customs Valuation)

The Decision on Customs Valuation would give customs administrations the right to request further information of importers where they have reason to doubt the accuracy of the declared value of imported goods. If the administration maintains a reasonable doubt, despite any additional information, it may be deemed that the customs value of the imported goods cannot be determined on the basis of the declared value, and customs would

need to establish the value taking into account the provisions of the Agreement. In addition, two accompanying texts further clarify some of the Agreement's provisions relevant to developing countries and relating to minimum values and importation by sole agents, sole distributors and sole concessionaires.

Trade Related investment Measures

The Agreement on Trade Related Investment Measures (TRIMs) is one of Agreements covered under Annex IA to the Marrakech Agreement, signed at the end of the Uruguay Round (UR) negotiations. The Agreement addresses investment measures that are trade related and that also violate Article III (National treatment) or Article XI (general elimination of quantitative restrictions) of the General Agreement on Tariffs and Trade. The restrictions on investment measures pertain broadly to local content requirements, trade balancing requirements and export restrictions, attached to investment decision making.

As per the provisions of Art. 5.1 of the TRIMs Agreement India had notified three trade related investment measures as inconsistent with the provisions of the Agreement :

- Local content (mixing) requirements in the production of News Print,
- Local content requirement in the production of Rifampicin and Penicillin – G, and
- Dividend balancing requirement in the case of investment in 22 categories consumer goods.
- Such notified TRIMs were due to be eliminated by 31st December, 1999. None of these measures is in force at present. Therefore, India does not have any outstanding obligations under the TRIMs agreement as far as notified TRIMs are concerned.

Agreement on Import Licensing Procedures

The agreement strengthens the disciplines on the users of import licensing systems - which, in any event, are much less widely used now than in the past - and increases transparency and predictability. For example, the agreement requires parties to publish sufficient information for traders to know the basis on which licences are granted. It contains strengthened rules for the notification of the institution of import licensing procedures or changes therein. It also offers guidance on the assessment of applications.

With respect to automatic licensing procedures, the agreement sets out criteria under which they are assumed not to have trade restrictive effects. With respect to non-automatic licensing procedures, their administrative burden for importers and exporters should be limited to what is absolutely

necessary to administer the measures to which they apply. The agreement also sets a maximum of 60 days for applications to be considered.

Agreement on Safeguards

Article XIX of the General Agreement allows a GATT member to take a "safeguard" action to protect a specific domestic industry from an unforeseen increase of imports of any product which is causing, or which is likely to cause, serious injury to the industry.

All existing safeguard measures taken under Article XIX of the General Agreement 1947 shall be terminated not later than eight years after the date on which they were first applied or five years after the date of entry into force of the agreement establishing the WTO, whichever comes later.

The agreement lays down time limits for all safeguard measures. Generally, the duration of a measure should not exceed four years though this could be extended up to a maximum of eight years, subject to confirmation of continued necessity by the competent national authorities and if there is evidence that the industry is adjusting. Any measure imposed for a period greater than one year should be progressively liberalized during its lifetime.

Safeguard measures would not be applicable to a product from a developing country member, if the share of the developing country member in the imports of the product concerned does not exceed 3 per cent, and that developing country members with less than 3 per cent import share collectively account for no more than 9 per cent of total imports of the product concerned.

Dispute Settlement Mechanism

The dispute settlement mechanism is laid down in the 'understanding of rules and procedures governing the settlement of disputes'. The mechanism will apply not only to disputes arising out of the Agreement but also to consultations relating to settlement of disputes between the members concerning their rights and obligations. Art. 2 of this understanding provides for establishment of a Dispute Settlement Body (DSB). The Dispute Settlement Body is an independent body represented by various member countries and gives judgment on trade related disputes amongst the member countries.

There is an Appellate Body consisting of permanent seven-members. Appellate Body is set up by the Dispute Settlement Body and broadly represents the WTO membership. Members of the Appellate Body have four-year terms. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.

Dispute Settlement Body (DSB)

WTO body responsible for overseeing dispute settlement. The DSB is composed of representatives of each WTO member meeting together. It has the authority to administer the rules and procedures of the DSU. Thus disputes between members are referred to the DSB (DSU Article 2.1).

Dispute Settlement Understanding (DSU)

Uruguay Round agreement setting out new system for resolving disputes in the WTO. It is a short form of the "Understanding on Rules and Procedures Governing the Settlement of Disputes" (Annex 2 of the WTO Agreement). The DSU provides the rules for resolving conflicts between members arising under the covered agreements.

Retaliation

It means withdrawal of concessions or trade benefits by one member from another for damage suffered due to violation of WTO established rules and regulations. DSU Article 22 allows for retaliation in the event that a member fails to bring a measure subject to a dispute settlement challenge into compliance with WTO obligations. A right to withdraw concessions also exists in the WTO safeguards Agreement.

Cross-retaliation

This is a very effective tool for retaliation for non-implementation of a DSB ruling, which takes the form of a suspension of concessions or other obligations in areas other than that in which the original measure applied. The Dispute Settlement Body (DSB) can authorise a complainant to retaliate (withdraw concessions) where the respondent fails to implement a DSB ruling or recommendation and where it has not provided appropriate compensation. Article 22 of the DSU favours retaliation in the same sector(s) or, if not, at least under the same covered agreement. However, if such action is not practicable or effective, retaliation can take place under other covered agreements-and that is why it is known as cross-retaliation.

Bibliography and References

The Legal Texts. The Results of the Uruguay Round of Multilateral Trade Negotiations. (World Trade Organisation)

World Trade Organisation (WTO) and India. (Prof. Shyamal Banerjee)

Aitic, Agency for International Trade and Co-operation; Glossary of Commonly used International Trade Terminology with Particular Reference to the WTO.

Agriculture and WTO the Creating a Trading system for Development. (Merlinda D. Ingco and John D. Nash).

www.wto.org.

X