TRADE POLICIES AND PROMOTION STRATEGIES IN INDIA

Trade behaviour is not completely determined by trade policy; but policy prescription is a major weapon to influence volume, composition, direction and determinants of trade (Trebilock and Howse, 1996). Trade policies form an integral part of the overall economic policies of the government and reflect economic priorities to be fulfilled through intervention into the market. Therefore foreign trade was not left to the principles of market mechanism alone.

Before independence, India was a raw material exporting country. Since the commencement of planned development in 1951, India followed an inward-oriented policy. With the adoption of the import substitution industrialization (ISI) strategy in the second five-year plan, the inward orientation became obvious. Inward orientation was necessary in the early stages of development. The restrictionist policies pursued during the first plan were the legacy of the Second War.

The trade policy regime of India since independence has gone through three distinct phases, which clearly portray the shifting paradigm of policy approach from inwardness to openness (Dean Judith et. al. 1994; Leela, 1993; Singh, 1995; Varma, 1998; Satchit, 1999; Sen 2000; Debroy, 1998).
3.1. Age of structuralism

The first phase is known as the age of structuralism covering the first decade of planning – 1950 to 1960. The stress was on the development of basic and heavy industries. This was the period when export pessimism or export fatalism was prevalent among the development economists. Therefore import substitution was essential for the economy to become self-reliant. The first priority should be given to industrialization and export earnings will occur as a consequence of industrial growth. Due to the potential of a huge domestic market, exports need not be the ‘engine of growth’ for the economy, which may be relevant in the case of economies with limited domestic market. The export composition has its own limitations – traditional commodities have low-income elasticities and are susceptible to ongoing substitution towards alternative materials. The primary commodities, which constitute the bulk of export items of the developing countries like India, are subjected to secular deterioration in terms of trade. Import competition was restricted to protect domestic import-competing industries. This was required to manage Balance of Payments position, which requires control of imports. This was implemented by way of exchange and tariff policies and also by elaborate administrative mechanism – exchange control with quantitative trade restrictions. Imports were regulated by a rigid licensing system and were allowed on the principles of essentiality and indigenous non-availability.

3.2. Transition

The period covering early 1960’s to 1990 witnessed export promotion and import liberalization for export. In the earlier phase, there was import restriction and adoption of a number of measures for export promotion. The imports were, in general, highly restricted, though there was some liberalization since the mid 1980s. Further, many of the import liberalization measures were for export promotion. Export promotion efforts were officially
granted equivalent status with import substitution. During the third plan, the institutional framework for promoting exports was broadened and certain fiscal incentives like drawback of import duty and refund of excise duty and income tax concession were introduced. There was export promotion scheme providing import entitlement against exports in respect of a number of manufactured and processed products. A limited scheme of direct subsidies for certain products was also operated to promote exports of non-traditional products.

A major development soon after the Third Plan was the devaluation of the Indian rupee on June 6, 1966. The rupee was devalued by 36.5 percent, and export promotion schemes like import entitlement and cash subsidy were withdrawn and the import and industrial policies were liberalized with a view to removing bottlenecks in production.

The government in 1970 announced an Export Policy Resolution. The important policy instruments followed by the government were (i) import replenishment licenses (REP), (ii) cash assistance scheme, (iii) duty drawback, (iv) supply of inputs at international prices, (v) concessional export credit and insurance, and (vi) facilities for export marketing and publicity. This reflected a reversal of earlier policy of withdrawing incentives.

Since 1975-76 the government followed the policy of import liberalization, with a view to encourage export goods. There has been an increased emphasis on enhancing maintenance imports in order to promote capacity utilization of export-oriented industries. The important components of the liberalized import regime are Open General License (OGL), Import Replenishment (REP), Simplified procedures, Export Oriented Units (EOU), Free Trade Zones, Canalization, Direct foreign Investment, Joint Ventures and Foreign Collaboration.
The Exim policy of 1983-84 provided further impetus for exports by a number of incentives. The new regulations and tariff rates in the subsequent Exim policies indicate a move towards removing obstacles to efficiency and modernization.

3.3. Outward Orientation

Trade policy reform was made an integral part of the economic policy reforms, which were initiated since July 1991. This was actually motivated by the balance of payments crisis of the period, which necessitated liberalization of trade regime. The salient features of the trade policy reform have been the following:

Exchange rate adjustment: The rupee was devalued, to make the exchange rate more realistic and to encourage exports and discourage imports.

The role of subsidies in export promotion was substantially reduced by abolishing the Cash Compensatory Support (CCS). The import entitlement scheme for exporters known as replenishment license (REP) was modified as exim scrip, which was also later withdrawn. Import liberalization was promoted by substantially eliminating licensing, quantitative restrictions and other regulatory controls. There has been a considerable reduction in the import duties. As tariffs have been cut across the board, the average tariff rate came down from 127 percent in 1990-91 to less than 50 percent in 1995-96. There has been further reduction in subsequent years.

Convertibility of the rupee – A scheme of partial convertibility of the rupee was introduced in March 1992, known as LERMS (Liberalised Exchange Rate Management System). Full convertibility on the current account was introduced in 1994 and steps for capital account convertibility were initiated. A new law was enacted for import export activities known as Foreign Trade (Development and Regulation) Act, 1992.
The Export-Import policy announced on March 31, 1992, gave the Exim policy, for the first time, validity for a period of five years and it coincided with the Eighth Plan Period (1992-97). The important objectives of the policy were stated as follows, (i) globalization of foreign trade (ii) enhancing the competitiveness of industry, agriculture, and services by improving export capabilities (iii) improving the quality and image of products abroad (iv) Boosting exports by giving more access to raw materials, intermediates and components (v) insistence on cost-effective import substitution and self-reliance (vi) reducing the importance of quantitative licensing and discretionary controls (vii) improving R&D and technological capabilities (viii) streamlining exim procedures.

Under the Exim policy, imports of capital goods under the EPCG (Export Production Capital Goods) scheme were allowed at a reduced level of duty of 15 percent. The export obligation was stipulated as 4 times of the CIF value of the imports. The EPCG scheme was also extended to the services sector. The Exim policy, since 1992, acknowledged that trade can flourish only in a regime of substantial freedom. It also recognized the need for reasonable stability of the policy, by making the duration of policy five years. The policy aims at simplification and transparency.

The EXIM Policy (1997-2002) coincided with the ninth plan and it sought to consolidate the gains of the previous policy and to further carry forward the process of liberalization. The principal objectives of the Exim policy were stated as the following -

1) To accelerate the country's transition to an internationally oriented vibrant economy with a view to derive maximum benefit from the expanding global market opportunities

2) To stimulate sustained economic growth by providing access to essential raw materials, intermediates, components, consumables and capital goods required for augmenting production
3) To enhance the technological strength and efficiency of agriculture, industry and services, thereby improving their competitive strength while generating new employment opportunities, and encourage the attainment of internationally accepted standards of quality

4) To provide consumers with good quality products at reasonable prices.

Exim Policy for the period 2002-2007 contains a comprehensive package to give a massive thrust to exports. The new policy removed all quantitative restrictions on exports. The policy was geared towards doubling India's present exports of USD 46 billion to more than USD 80 billion over the Tenth Five Year Plan by 2007. This envisaged a compound annual growth rate of 11.90 percent.

3.3.1. Salient features of the Exim policy 2002-07

Removal of QRs: All quantitative restrictions on exports were removed except for a few sensitive items. Only a few items have been retained for exports through the state trading enterprises.

No restrictions on agri-exports: The policy gave a major thrust to agricultural exports by removing export restrictions like registration requirement, minimum export price, or the requirement of export through the state trading regime. Transport assistance will be made available for export of fresh and processed fruits, vegetables, floriculture, poultry, dairy products and products of wheat and rice.

SEZs - To make Special Economic Zones internationally competitive, Overseas Banking Units were permitted in SEZs.

Continuance of Duty Neutralization Schemes: Various duty neutralization instruments for exports such as DEPB and all other schemes like Advance licenses, EPCG would continue without value caps.
Procedural Simplification: A series of procedural simplifications were announced. A new commodity classification for imports and exports would be adopted by the Central Board of Excise & Customs and the DGCI&S with the common classification to be used by DGFT and CBEC to eliminate classification disputes, thereby, reducing the exporter's transaction cost and time.

There are towns of export excellence or industrial clusters some of which have already become globally renowned manufacturing bases such as Tirupur for hosiery, Panipat and Ludhiana for woolens etc. Such cluster towns would be eligible for a number of benefits with a view to maximizing their export profiles and upgrading them to move in the higher value chain. Thus, common service providers in these areas will be entitled to the facility of EPCG scheme.

Though India has emerged as a global player in software, exports in hardware have been insignificant. The Electronic Hardware Technology Park (EHTP) Scheme is being modified to enable the sector to face the zero duty regime under the Information Technology Agreement (ITA-I) of the WTO.

A scheme for participation of states in the export endeavour, ASIDEX (Assistance to States for Infrastructure Development for Exports) was formulated.

3.4. Medium Term Export Strategy (MTES)

The Medium-Term Export Strategy for 2002-07 was announced in January 2002, according to which India's share in world exports should increase from 0.67 percent to 1 percent, up from $46 billion to more than $80 billion. The EXIM Policy 2002-07 aimed at accomplishing the 11.9 percent annual rate of growth in exports in USD terms.
The Ministry of Commerce formulated several export strategies from time to time that identified growth markets and products. The main strategies adopted for export promotion include the following:

1) Extreme Focus Products Strategy

The Ministry of Commerce carried out a detailed exercise in 1992 to identify export items for special and focused thrust. Thirty-five items were identified as Extreme Focus Products based on production capacity, export competitiveness, and world trade growth in these items.

2) The 15 * 15 Matrix Strategy

The objective of the 15*15 strategy was to examine market diversification and commodity diversification. The 15 commodities and 15 countries matrix exercise was undertaken in 1995 using the data of mid nineties that indicated commodity and country basket for India's exports. It was observed that 15 countries and 15 commodities accounted for around 75 to 80 percent of India's exports. The matrix method was based on a predominantly supply side analysis and the revealed comparative advantages.

3) Focus LAC strategy

The Focus: LAC Programme aims at the Latin American region, with added emphasis on the nine major trading partners of the region. The FOCUS: LAC Programme aimed to focus on certain major product groups for enhancing India's exports to the Latin American region.

4) Medium Term Export Strategy (MITES)

The focus of the previous strategies was on the existing export products of India. It was required to review the import baskets of existing and potential markets and examine export competitiveness.
Export Objectives

India has set a target of achieving one percent of world trade by 2007. Thus world exports are assumed to grow at the historic level of around 4.6 percent till 2006-07. CAGR calculations are done to reach one percent of world trade by the terminal year of the medium-term, which is assumed to be $80.48 billion. India will have to increase exports at a CAGR of 11.9 percent in order to reach one percent of world trade.

MTES involves analysis of the three leading markets first – the US, the EU and Japan. First, the US market is analysed. Based on the examination of the import basket of the USA, the top 100 commodities of USA’s imports are identified and analysed for India’s competitiveness and the potential commodities are short-listed. Next, based on examination of India’s export basket to the USA, the top 100 import commodities of the US from India are analysed for India’s competitiveness and the potential commodities are short-listed. Next, the other markets, the EU and Japan are analysed in a similar manner. Finally, for all the three markets, the identified potential items are collated together and are grouped into product sectors.

Price Competitiveness

Price competitiveness is examined by comparing the unit value realisation of the commodities across the competing countries. In diamonds and jewellery items, though India is among the top exporters to US, its unit values are the lowest among top 10 exporters to US. This clearly shows that India is catering to the lower end of the market of these items and not the high value items. There should be strategy to move towards high value items in this sector. In cashew nuts, India’s unit values are relatively higher. Only UK and Venezuela have higher unit values. In many items in the marine sector, agricultural sector, pharmaceuticals, textiles, leather, engineering and some electronic items, India is
competitive, though in items like footwear and engineering goods, China and some Asian
countries are more competitive.

Product-group Identification

After the analysis of the three markets, other dominant markets were also examined, and the
following products were identified:

Engineering / Electrical / Electronics Textiles.

Gems & jewellery.

Chemicals & allied.

Agriculture & allied (including plantations and marine sector).

Leather and footwear items.

Other items (all other items besides the main categories named above).

The strategy combines an analysis of both demand and supply sides to help evolve a
comprehensive approach. It examines both the imports baskets of our major trading partners
(USA, Japan and EU) and India’s export basket and arrives at focus products and focus
markets for India. Identification of focus items is based on promoting items with high
potential in world demand besides existing high export items.

The MTES outlines the key strategic policies. These include maintaining price
competitiveness of our exports, strengthening trade-defense mechanism, provision of WTO-
compatible subsidies (non-actionable), attracting higher FDI for export-oriented industries,
introduction of a comprehensive VAT system to make tax rebates to exporters transparent
and comprehensive, further reduction in transaction costs, up-gradation of export
infrastructure, need for careful and well-thought out trade agreements (Free Trade
Agreements and Preferential Trade Agreements), strengthening and upgrading the
production potential and export-orientation of the SSI sector by developing SSI export
industry in a de-reserved future, flexibility in labour policy, enhancement of export credit, greater participation and involvement of states in trade negotiations, further encouragement to setting up of SEZs by making the incentive package more attractive, merging of all markets assistance programmes under a single Market Development Programme, improved dissemination of information and extension of regional focus approach to other regions like Africa etc. It further underlines the need for a radical strategy to promote service exports in which India has a comparative advantage.

"Surprisingly, the focus items in the three lists grouped into seven sectors conform to the country’s traditional items of exports, leaving out unconventional and new products of export interest. The issue of an appropriate exchange rate policy for export promotion assumes great importance in the WTO regime, where direct export subsidization is not generally permissible. The MTES has stated that the impact of rebate of taxes on overall export profitability is reasonably high which is due to the major proportion of indirect taxes. There is a contention that if import duties for inputs needed for exports are lowered, the issue of duty drawback related to tariffs would become less important. The policy has also suggested a differential interest rate regime for exports. This should be made consistent with WTO norms" (Srinivasan, 2002b).

3.4.1. Trade – Defence Mechanism

A lower tariff regime requires effective trade defence mechanism to provide protection to domestic industry, when it faces unfair trade practices. An elaborate anti-dumping investigation infrastructure has been put in place by the department of commerce. Except in very few suo moto cases, anti-dumping investigations are initiated at the behest of the aggrieved industry. The mechanism will have to be used effectively to counter unfair practices. Similarly, the safeguard duty mechanism will be applied wherever necessary.
3.4.2. Export - Related Subsidies

The WTO gives a list of prohibited, actionable and non-actionable subsidies. The only category of subsidies, which can now be considered non-actionable, is non-specific subsidies. Those subsidies, which are not enterprise-specific, or industry-specific or region-specific would come under the category of non-specific subsidies. Accordingly, the effort should be to give non-specific subsidies. Thus, the following subsidies can be termed as WTO-compatible.

a) Aid to SMEs (small & medium enterprises)

Non-specific incentive schemes are permissible irrespective of whether they are for export or for domestic consumption. These incentive schemes should be based on objective criteria to be non-actionable.

b) Subsidies in Agricultural Sector

In agriculture, there are no red or prohibited subsidies. Green subsidies are those which are permitted and to which reduction commitments do not apply. Amber subsidies include subsidies to which reduction commitments apply. Subsidies that have minimal trade distorting effects and do not have the effect of providing price support to producers are green subsidies. These include expenditure on agricultural research, structural adjustment, environment protection, and regional assistance.

In the case of amber subsidies, the following should be noted - There are flexibilities under AMS and India is considered to be having negative subsidies. Further green subsidies are exempt from inclusion in AMS and the de minimus for developing countries is ten percent instead of five percent. There are exemptions from reduction commitments in the case of general services, public stock holding for food-security purposes, domestic food aid, etc.
For export of agricultural products, the following types of subsidies are allowed.

1) Provision of subsidies to reduce the costs of marketing exports of agricultural products including handling, upgrading and other processing costs and the costs of international transport and freight.

2) Internal transport and freight charges on export shipments provided or mandated by governments on terms more favourable than for domestic shipments.

3.4.3. FDI and Exports

There is a positive link between FDI and manufactured export performance. There is a close correlation between FDI and export performance in the case of China. The FDI policy always favoured export-oriented industries over those seeking to exploit the domestic market with an exception of critical infra-structural sector such as telecommunication. The FIEs has a share of 41 percent in total exports in China.

3.4.4. Reduction of Transaction costs

Heavy transaction costs not only increase the price of the final export product but also result in inordinate delays in export fulfilment, affecting overall export competitiveness. Lower import duty for many items and replacing existing duty neutralization schemes with standard WTO compatible schemes can lower a major part of transaction costs. Also speedy implementation of EDI connectivity will be extremely important.

3.4.5. Availability of Export Credit

In the medium term, a differential interest rate regime for export, subject to its WTO compatibility, is crucial for sustained exports. RBI has stipulated that a minimum 12 percent of net bank credit should be channelled for financing export sector. Concessional export credit, that is compatible with WTO norm should be explored and implemented. Though export subsidy in the case of credit is a prohibited subsidy under WTO, India enjoys the
concession as its GDP per capita is below $1000. The term loans to EOU and export processing units should be treated as part of export credit – at present only working capital requirements of EOU are treated as constituting export credit.

3.4.6. Export Responsibility of State Governments

The export intensity of states varies widely, depending upon the resource endowment and the evolution of industrial clusters. The promotion of SEZ production in certain product and service categories are creating a new level-playing field for those states, which were not initially oriented to or ideally located for international business. Also, generation of income and employment through export activity can be an effective supplement to growth plan of the states. It is because of these imperatives that the Central Govt. has devised ASIDE (Assistance to States in Infrastructure Development for Exports), a scheme for export assistance to states.

3.4.7. Strategy of Export Growth through SEZs

Many countries, which in general follow a restrictive trade policy, have set up EPZs/EOUs/SEZs and similar variants. Macro-economic policies, which are more inward-oriented, create distortions reflecting an anti-export bias. It is not possible to upgrade the infrastructure at the national level within a short time. In such cases, EPZ and similar forms allow local up-scaling of infrastructure within the budgetary constraint.

The EOU scheme was introduced in 1981, and is complementary to the EPZ scheme. Now the existing EPZs are being converted to SEZs and SEZs are allowed in the private sector.

3.4.8. Services Exports

There is the need for a radical strategy to promote services exports in which India has a competitive advantage. Besides export of manpower i.e. service professionals, there is
a need to look into the long-term advantages of building a base for service exports. Promotion of both hardware and software has to be done simultaneously. India should negotiate for better market access for professionals at multilateral and bilateral levels, as this mode of supply of service is crucial for service exports.

3.5. Removal of Quantitative Restrictions (QRs)

India has been maintaining QRs for BoP reasons under provisions of the GATT. A consistent policy for gradual removal of restrictions on imports was followed since 1991 when the economic reforms were initiated. Tariff-line-wise import policy was first announced in March 1996, when import of 6161 tariff-lines out of total number of 10202 was freed. Consequent to improvement in BoP, import restrictions on 488 tariff lines were removed in 1996-97, 391 in 1997-98, 894 in 1998-99 and 714 in 1999-2000. The process of removal of import restrictions on BoP grounds has been completed with the removal of restrictions on remaining 715 items: in the EXIM policy announced on 31.3.2001. QRs are still being maintained on about 5 percent of tariff lines (538 items) as permissible under Article XX and XXI of the GATT on grounds of health, safety and moral conduct.

By 1997, India had successfully negotiated a mutually agreeable solution to phase out QRs taken on BoP grounds over a six-year period ending March 31, 2003. But when the Dispute Settlement Panel and the Appellate Body of the WTO ruled against India in a dispute filed by the US, India had to commit the removal of QRs before April 1, 2001. Thus by 2001, QRs on 9,363 tariff lines (at HS 10-digit level) have been dismantled.

3.6. Foreign Trade Policy 2004 -09

The name of the policy has been changed from ‘Exim Policy’ to ‘Foreign Trade Policy’ on 31st August 2004. The Foreign Trade Policy introduced on 31.08.04 is valid up to
31.03.09. The New Foreign Trade Policy 2004 – 2009 aims at doubling the trade in a span of five years. The main objectives of the Foreign Trade Policy are:

1) To double the country’s percentage share of global merchandise trade within the next five years;

2) To act as an effective instrument of economic growth by giving a thrust to employment generation.

The strategies include unshackling of controls, bringing down transaction costs, neutralizing incidence of all levies and duties on inputs used in export products, based on the fundamental principle that duties and levies should not be exported, avoiding inverted duty structures and ensuring that domestic sectors are not disadvantaged in the Free Trade Agreements/Regional Trade Agreements/Preferential Trade Agreements that will be concluded to enhance exports. DIII PB scheme would be continued until replaced by a new scheme to be drawn up in consultation with exporters. The export promotion schemes include special schemes for exports of fruits, vegetables and flowers, export of services (‘Served from India’ Scheme, and setting up of Export Promotion Council for Services), setting up of Free Trade and Warehousing Zone for creation of trade-related infrastructure, and special assistance to towns of export excellence. From Kerala, Kannur for handlooms and AEKK (Aroor, Ezhupunna, Kodanthuruthu and Kuthiathodu) for marine products have been notified as towns of export excellence.

The state governments are encouraged to participate in promoting exports of their states. Funds have been allocated to the states on the twin criteria of gross exports and the rate of growth of exports. It should be utilized for developing infrastructure for exports processing.
3.7. Trade Policy Reviews

Trade policy reviews are exercises, mandated in the WTO agreements, in which member countries' trade and related policies are examined. For each review, two documents are prepared: a policy statement by the government of the member under review, and a detailed report by the WTO Secretariat. The WTO's Trade Policy Review Body (TPRB) discusses these two documents. Trade policy review under the auspices of the WTO was done in June 2002, and it highlighted achievements in the implementation of liberal trade policies and also the problems faced by India in the external markets by way of various trade barriers.

3.7.1. Report by the WTO Secretariat

The Government has simplified the tariff, eliminated quantitative restrictions on imports and reduced export restrictions. The trade policy aimed at the creation and strengthening of enclaves such as export processing and special economic zones, which would "immunize" exporters from the constraints affecting the rest of the economy, such as infrastructure and administrative problems.

India provides MFN treatment to all WTO members. It has been a strong advocate of multilateral, rather than regional, trade initiatives and is party to few regional trading agreements. Efforts are nevertheless being made to strengthen regional agreements, such as the South Asian Association for Regional Cooperation (SAARC) and the Bangkok Agreement. India maintains bilateral trade agreements with several of its members, including Bangladesh and Nepal. There exists a free-trade agreement with Sri Lanka, in effect since 1 March 2000, under which India grants duty-free access for over 1000 tariff lines and a 50 percent margin of preference for the rest of the tariff, except for a negative list.
India's FDI policy has been liberalized. Investment is allowed in a greater number of sectors under automatic investment procedures, involving registration with the RBI.

A major development in trade policy was the removal of all import restrictions maintained for BoP reasons. As a result, the customs tariff has become the main form of border protection. Tariffs are relatively high, but the average applied MFN rate fell from 35.3 percent to 32.3 percent between 1997/98 and 2001/02, as the peak rate of tariff is reduced from 35 percent to 30 percent. The tariff shows substantial escalation in some sectors, especially for paper and printing, textiles and clothing, and food, beverages and tobacco. The government announced to lower the tariff to two tiers — 10 percent for raw materials, intermediates and components, and 20 percent for final products. In addition to tariff, importers must pay additional and special duties on a number of products.

As a result of additional bindings taken by India in the WTO, the share of tariff lines that are bound has increased. The average (final) bound rate is 50.6 percent, higher than the applied MFN rate; this gap provided ample scope for applied rates to be raised on a few agricultural products.

India has become one of the major users of anti-dumping measures, with some 250 cases initiated since 1995. Certain imports, such as automobiles and natural rubber, may enter only through specified ports. Similar restrictions relating to entry through certain ports have been removed on 300 sensitive items previously subject to import restrictions; imports of these products continue to be monitored. Export and import prohibitions are maintained mainly for health and security reasons.

Policy in the agriculture has been guided by domestic supply and self-sufficiency considerations. Thus, the sector is shielded through controls on imports and exports including tariffs, state trading, export restrictions and, until recently, import restrictions.
With the removal of import restrictions, tariffs on several agricultural products have been raised. As a result, the overall average MFN tariff for agriculture has risen from 35 percent in 1997/98 to 41 percent in 2001/02.

Textiles and clothing account for around 30 percent of India’s total merchandise exports. Exports are mainly to the EU and the US, both of which maintain restrictions under the Agreement on Textiles and Clothing (ATC). In preparation for the removal of such restrictions, and to improve the sector’s competitiveness, a number of measures have been taken. These include removal of some textiles and clothing products from the list of items reserved for small-scale sector, and removal of foreign equity restrictions. The new Textiles Policy also acknowledges the need to restructure, or close down, non-viable units, while ensuring adequate compensation for displaced workers.

3.7.2. Trade Barriers in the External Market

The report submitted by the government narrated a detailed account of the impediments to the growth of India’s international trade. New tariff barriers faced by Indian products in various overseas markets are severely constraining exports. These barriers include: (i) restrictive import policy regimes (import charges other than customs tariff, quantitative restrictions, import licensing, customs barriers); (ii) standards, testing, labelling and certification (including phytosanitary standards), which are set at unrealistic high levels for developing countries or are scientifically unjustified; (iii) export subsidies including agricultural export subsidies, preferential export financing schemes etc; (iv) barriers on services (visible and invisible barriers restricting movements of service providers, etc.); (v) government procurement regimes; and (vi) other barriers including anti-dumping and countervailing measures.
Quantitative restrictions, especially in the textiles area, were one of the most important of the non-tariff barriers affecting India's trade. Another problem in the area of textiles exports was unilateral changes introduced by certain trading partners in their rules of origin. These changes have adversely affected exports of textiles and India's rights under the ATC including the full utilization of quota. Repeated anti-dumping investigations on the textiles products like cotton fabrics and cotton bed linen, in which India enjoys a measure of comparative advantage, had a debilitating effect on the Indian textiles industry and exports.

As regards market access for textile trade, there is an increasing tendency to enter into bilateral pacts for conferring selective liberalization of quotas. The tariff preferences have been extended bilaterally, which are to be provided to all developing countries on a non-reciprocal basis. There is also a growing regionalization of textile trade on account of formation of Free Trade Areas and Preferential Trading Arrangements. Such localization of world textiles trade is adversely affecting India's textile trade.

In the past, there was no adequate exportable surplus in agricultural commodities. Presently, there are surpluses of wheat, rice, sugar, steel, cement, textiles and consumer durables. But these commodities are priced out of the international markets. The problems facing the exporters have been compounded by the poor quality of infrastructure, including bad roads, inadequate berthing and handling capacities at ports, high cost of domestic and imported inputs including finance, erratic power supplies and frequent load shedding, bureaucratic and procedural delays. All these result in high transaction costs.

3.8. The WTO-compliant Legislations

There are protests from trading partners that some of the export incentives in India are WTO-incompatible. The WTO pointed out that a host of major export-promotion schemes, such as duty drawback and DEPI3 contravene the agreement signed by WTO members. All
these have to be either renounced or repackaged. WTO-compatibility should be a major criterion before introducing any export promotional schemes. As such there should be measures to improve infrastructure, quality of export products, faster clearance of export consignments, and making credit available at reasonable rates.

3.8.1. Protection of Plant Varieties and Farmers’ Rights Act, 2001

India like many other developing countries is home to a rich variety of genetic resources. This natural wealth includes many varieties of crops that indigenous communities have developed over the centuries. Indian farmers continue these traditions, developing seed by careful identification and propagation. The varieties that have emerged contain a unique pool of genes well adapted to local conditions. The Government recognized that the current international legislation for the protection of plant varieties, (UPOV Convention 1991) although meeting the needs of plant breeders did not meet the needs of traditional and subsistence farmers. After many years of consultations with industry, NGOs and farmers, the Government introduced the Protection of Plant Varieties and Farmers’ Rights Act, 2001, (PPVFR). The Act aimed at fulfilling the countries’ commitment under Article 27.3(b) of TRIPs to provide protection of plant varieties either by patents or through an effective sui generis system or by any combination thereof.

On plant and seed varieties, the WTO agreement does not require that these have to be protected through a system of patents. They have to be protected through a patent system or a sui generis system (a system standing on its own) or through a combination. There are three sets of people whose interests are involved – plant breeders, farmers and researchers. In a complete system of patent protection, farmers and researchers would have to pay royalties to plant breeders every time a protected variety of seed was used, regardless of the use. Through a sui generis system, one can stipulate that royalties will be paid only when
such seeds are used for commercial purposes and royalties will not be paid if such seeds are used for non-commercial purposes. Non-commercial uses can be holding seeds for next year's sowing or across-the-fence exchanges among farmers. India opted for the *sui generis* system.

The legislation contains measures to protect plant varieties developed through public and private sector research and developed and conserved by farmers and traditional communities. It provides legal rights to farmers to save, use, share or sell their farm seeds and stimulates plant breeders and researchers to develop new and improved varieties. The Act ensures that farmers will be treated like commercial breeders and receive the same kind of protection. It prescribes the establishment of the Plant Varieties Protection Authority that registers the new varieties developed by breeders and farmers and also ensures fair and equitable benefit sharing and financial compensation.

The Act enshrines the rights of farmers as breeders, farmers as conservators and farmers as cultivators, into law. Farmers who develop new strains through selection and breeding have the same rights as any professional breeder. Farmers will be able to save, use, re-sow, exchange or share or sell their farm produce, including seeds. However, they cannot sell branded seeds.

3.8.2. Biodiversity Act, 2002

The biodiversity Act aimed at putting in place a mechanism for realizing the country's sovereign rights over its biological wealth and traditional knowledge about its use. This is to be implemented through a three-tier system of administration – at the national, the state and the local level. It proposes creation of National Biodiversity Authority (NBA), complemented by State Biodiversity Boards and local level Biodiversity Management Committees. Any non-resident Indian, foreign national or a company with foreign equity
will have to obtain the permission of these bodies for carrying out bio-prospecting, research or commercial utilization of the country's biological or traditional knowledge base. The Act states that no Indian or foreigner can apply for a patent or any intellectual property right (IPR) anywhere for any invention based on any research or information on a biological resource obtained from India without the permission of the NBA. This helps to prevent controversies such as the ones that erupted over the patenting of neem and turmeric (Rao, 2001; Rao, 2002; Chauhan, 2003). It is these controversies that brought the significance of the biodiversity legislation into public discussion and these clauses are incorporated. The overall mandate is to meet the three-fold objectives of the Convention on Biological Diversity (CBD) - conservation of biodiversity, promoting its sustainable use, and equally sharing the benefits arising from its use with the communities, which preserved the natural and the cultural resources over generations. For India, the biodiversity legislation is significant as the country is rich in biodiversity (Ghosh, 2000; Guha and Ghosh, 2001).

3.8.3. Amendments to Patents Act, 1970

According to the dictates of TRIPS, India had to amend its patent laws in two phases. The first phase included the provisions for filing product patents and the grant of exclusive marketing rights (EMR) for five years from the date of such grant for product patents filed after January 1, 1995, if and when all the necessary conditions for the grant of EMR are satisfied. In the second phase, the full amendment of the 1970 Patents Act that would meet the country's obligations under TRIPS had to be completed by 2000. The full implementation of an internationally compatible Act needs to be done by January 1, 2005.

The transition to a product patent regime does not have to take place immediately. One year is granted as a general exemption, developing countries have additional four years and five years more are granted to countries that have to change their legislation. So India
was obliged to make TRIPS-compliant legislation by January 2005. However, from 1 January 1995, India was obliged to accept applications for product patents and grant Exclusive Marketing Rights (EMRs) for five years to such applications. Three conditions have to be satisfied before grant of EMRs. There has to be a valid patent (post January 1995) in a WTO member country and marketing approval must be obtained in a WTO member country and marketing approval must be obtained in India. The applications for product patents will go into mailbox and will be opened up in January 2005 or whenever India decides to move to a full-fledged products patents, to establish right of property.

The Patents (Amendment) Ordinance, 2004, effective from January 1, 2005, has brought into effect India’s obligations under the TRIPs agreement to introduce product patents including in the sectors like foods, drugs and agrochemicals. The patent term of 20 years will commence from the date of the application. The patent infringement proceedings can be instituted only after a patent has been granted. In respect of pharmaceutical product patent applications made after January 1, 2005, rights and privileges accrue to a patentee upon publication of the patent application by the authorities in the patent journal during the examination process, though any infringement proceedings can only be instituted after the patent has been granted.

Debroy (2001) has allayed fears that new patent regime would result in increase in prices of medicines. ‘Cross-country experience has robust results that transition to product patent regimes leads to increased investments in R&D, Japan in the late 1970s being a case in point. There is also a strong correlation between better intellectual property protection and foreign direct investments (FDI) in the pharmaceutical sector. The point is that competition and increased R&D expenditure tend to keep prices low in the long run, irrespective of transitory price increases in the short run’. 

The TRIPS Agreement prescribes minimum standards of protection for geographical indications (GIs) and additional protection for wines and spirits. The higher status for wines and spirits generated controversy. There were demands for additional protection to other goods and products from a number of countries including India. India took legislative measures by enacting the Geographical Indications of Goods (Registration and Protection) Act, 1999 along with the Geographical Indications of Goods (Registration and Protection) Rules, 2002. The legislation aims to protect GIs and will be model for other countries.

3.9. Trade Policy within the Context of the WTO

The WTO agreements oblige the members to display greater transparency and predictability in many areas of trade policy. They have to give advance notification of changes in rules regarding import systems and subsidy programmes. The WTO provides the possibility of assuring direction of trade reforms. This can be done through consolidation processes, safeguard agreements, subsidies, etc (Mikic, 1998). The WTO is different from the new regional agreements such as NAFTA and the EU, which involves greater policy harmonization and gives the economic authorities considerable latitude. In the area of services, NAFTA provides for the liberalization of all services, with very few exceptions. The WTO liberalizes only the services offered as a result of the negotiations effected. Thus there is the possibility of maintaining discretion simply by not enrolling a service sector within the structure of the GATS.

The Uruguay Round marked the end of the negotiations centered on trade policy as applied at the national border level. As tariffs went down to lower levels, trans-border instruments assumed growing importance. The WTO went far beyond negotiations on border measures, by incorporating into the negotiations such matters as intellectual property
rights, investment measures and the provision of services. This evolution changed the whole concept of trade policy, which is now increasingly all-embracing. It now includes domestic policy measures and instruments, which were previously outside the scope of international negotiations. Thus, the conventional distinction between trade policy and economic policy has been wiped out, obliging governments to discuss a growing number of domestic policies with their trading partners.

Analytical studies by many authors have focused on the new obligations on the governments of the developing economies to build up institutions, infrastructures, regulations and standards to cope with the global challenges in the trade front. This requires technical and financial investment.

Kirmani (1997) has analysed the changing role of trade policy in the new environment. Traditionally, trade policy was to affect resource allocation and to provide a certain level of protection to domestic producers. Today many more motivations are emerging - competition policy, investment, labour standards, environment and human rights. It is debatable whether linking these with the use of trade instruments is an appropriate way to proceed. Moreover, such multiple purposes for the trade policy instrument will increase the risk of its abuse by protectionists.

'International undertakings form a frame of reference in which trade policies must operate. Efforts should be made to ensure that the subsidies granted do not give rise to a demand for countervailing measures, by checking their compatibility with the lists of permissible and actionable subsidies or, alternatively ensure that subsidies remain within the de minimis provisions, both with regard to the value of the product and its share in the export market. It will be necessary to replace the traditional physical transfers with State
support for activities which are marked by heavy externalities or generic activities which enjoy greater freedom from countervailing or anti-dumping measures' (Tussie, 1999).

'For the advanced countries whose systems are compatible with international conventions, the WTO brings no more than an obligation to apply their domestic regulation fairly at the border. But the developing-countries that apply their own indigenous standards have the additional obligation to apply internationally sanctioned standards in their domestic economies. Exemptions from domestic rules and exemption from the need for reciprocal trade liberalisation merely exacerbate the difficulties of pursuing satisfactory policies at home. Instead, technical assistance by way of training and capacity building should be provided' (Finger, 2002).

'It will need much higher level of infrastructure and policy support from the government. It will need adequate and assured power supply at reasonable price, better rail and road connectivity and modern cargo handling facilities at ports so that the current high transaction costs come down' (Naik, 2004). 'A fundamental question India must face is how it can harmonise its national developmental strategies and global processes and disciplines and bring about a synergy among and within the different sectors of global economy which clearly impact India's development aspirations' (Prabhakaran Nair, 2005). With the negotiation agenda of the multilateral trading system encompassing both trade-related and non-trade areas, trade policies of the nations have to address the problems of compatibility of domestic systems for their gradual integration with international standards.