CHAPTER - II

MULTILATERAL TRADING SYSTEM: AN OVERVIEW

The World Trade Organization (WTO), established on 1st January 1995, is mandated to administer multilateral trade agreements negotiated by its members, pertaining to trade in goods (GATT), trade in services (GATS), and trade related intellectual property rights (TRIPs). The basic underlying philosophy of the WTO is that non-discrimination and global competition in international trade are conducive to the pareto-optimal welfare of all nations. The WTO is essentially not concerned with the behaviour of private business. It deals only with the actions of governments establishing disciplines on trade policy instruments such as tariffs, QRs, quotas, subsidies etc. Thus, the WTO is a regulator of the regulatory actions of governments that affect trade.

The earlier round of negotiations in Geneva (1947), Annecy (France) in 1949, Torquay (U.K) in 1951, the Dillon Round (1960-61), the Kennedy Round (1963-67), and the Tokyo Round (1973-79) dealt with mainly tariff reductions and disciplining non-tariff measures. The Uruguay Round (1986-94) led to a further liberalisation of international trade. In addition to policies affecting trade in goods, measures affecting investment, trade in services, and intellectual property were also negotiated.

The WTO embodies a rule-oriented approach to multilateral co-operation. This contrasts with what can be characterized as results-oriented approach viz. agreements on trade flows, market share, or international prices. Rule-oriented approaches focus not on
outcomes, but on the rules of the game and involve agreements on the level of trade barriers that are permitted as well as attempts to establish the general conditions of competition facing foreign producers in export markets. (Hoekman and Kostecki, 2001)

2.1. WTO: the Negotiating Forum

Negotiation is the driving force of the multilateral trading system. The WTO is essentially a permanent negotiating forum in which trade issues may be discussed and agreed upon against the background of the provisions of the various agreements already concluded. A fundamental concept used in GATT negotiations is reciprocity. Reciprocity is the practice of making an action conditional upon an action by a counterpart. Three basic principles apply in tariff negotiations: 1) such negotiations are to be on a reciprocal and mutually advantageous basis; 2) concessions are to be bound; and 3) they are to be applied on an MFN (Most Favoured Nation) basis (Article I of the GATT).

Tariff concessions mean tariff bindings. Tariff bindings are fundamental in the GATT context, because it is on the basis of claims that bindings have been violated that a member may initiate dispute-settlement procedures. Reciprocity criteria for non-tariff measures are more difficult to establish. In these instances, principles such as transparency and non-discrimination are adopted.

2.2. Trade in Goods

The customs tariff is in principle the only instrument of protection allowed under the WTO. There are two basic rules under the GATT with respect to tariffs. First, tariffs must be non-discriminatory (Article I). The main exceptions to the MFN rule apply in case of members of regional integration agreements, providing tariff preferences in favour of developing countries, or in case of confronting imports from a non-member country. Second, members are encouraged to bind tariffs. The tariff concessions in the form of
bound tariff rates are inscribed in each member’s tariff schedule (Article II). By binding its tariff, a member undertakes not to impose on a specific product tariff, which is higher than the bound tariff rate. Also, bindings have tended to be at or near applied rates.

Tariff escalation is closely related to the concept of effective protection. Tariff escalation exists if duty rates on raw materials and intermediates are lower than rates on processed commodities that embody the relevant inputs. This poses difficulty to generate value added at home, as the low tariffs on raw materials becomes a disincentive to value-added processing for exports. Tariff escalation was noticed in the case of natural-resource-based products like metal ores, minerals, forestry products, and fish and fishery products. As a result of the importance of these products for developing countries, a specific negotiating group was established in the Uruguay round to lower tariff barriers and reduce tariff escalation.

2.3. Quantitative Restrictions

Despite the fact that GATT rules basically prohibit the use of QRs, governments use them to protect domestic import-competing industries. QRs have been particularly prevalent in trade in agricultural products, textile and clothing, and steel. Articles XI-XIV of GATT address QRs. Article XI prohibits them in principle. Article XII allows QRs to be used for balance-of-payments (BOP) reasons. The basic obligation imposed on members in Article XI-1 is to refrain from introducing or maintaining QRs. QRs are banned not only because of economic considerations, but also to prevent governments from circumventing tariff bindings. The GATT recognizes that QRs may be enforced by means of licenses. There is a separate Agreement on import licensing procedures. There are requirements to enhance transparency of licensing systems, publication requirements, the right of appeal against decisions, and the length of license validity.
2.4. Subsidies

Subsidies, and measures to counter their impact on trade, have been an important issue in the GATT system. Subsidization may pertain to import-competing industries or export industries that compete in international markets. A subsidy is deemed to exist if there is a financial contribution by a government. Members must notify their subsidy programmes to the WTO each year, giving information on the type of subsidy.

Three categories of subsidy are distinguished: non-actionable, prohibited, and actionable. Non-actionable subsidies are legal and may not be countervailed. They include all non-specific subsidies not benefiting a firm, industry, or group of industries. The allocation criteria should be neutral, non-discriminatory, economically based, and do not distinguish between sectors. Certain specific subsidies may be non-actionable. These include R&D subsidies, aid to disadvantaged regions, and subsidies to facilitate the adaptation of plants to new environmental regulations. All export subsidies are deemed specific - e.g. the provision of products or services for export production on more favourable terms than for domestically consumed goods, export credits and guarantees or insurance at premium rates which are inadequate to cover the long-term operating costs and losses of the insurer.

Actionable subsidies are permitted but may give rise to consultations, invocation of dispute-settlement procedures, or are countervailed, if they create adverse effects on a member. LDCs and countries with GNP per capita below USD 1000 are exempted from prohibition on export subsidies.

2.5. Technical Regulations and Standards

Product standards, technical regulations and certification systems are essential to international trade. Both standards and regulations are technical specifications for a
particular product. A standard is voluntary, usually being defined by an industry or by a non-
governmental standardization body. Technical regulations are mandatory and legally
binding, and are usually imposed in order to safeguard public or animal health, or the
environment. In developed economies, the number of standards far exceeds the number of
technical regulations. Certification systems comprise the procedures to be followed to
ensure that products conform to the relevant standard or regulation. Product standards are
usually under the direct control of firms and industries. Standards are often welfare
enhancing, as well as they could be trade impeding.

As standards can raise unit costs of production and transportation, they may inhibit
international trade, and in such cases, standards tend to become technical barriers to trade
(TBT). Diversity of standards among various countries may have a negative impact on
consumer welfare by restricting trade. Equally important are the procedures that are applied
to ascertain if a product satisfies mandatory standards. Conformity assessment procedures
(testing and certification) may be even more costly to a firm than the fact that standards
differ between countries. Products may be tested individually upon import, a time-
consuming and costly process, or, testing on a random sample basis.

2.5.1. WTO Rules on TBT

The WTO Agreement on Technical Barriers to Trade aims to ensure that mandatory
technical regulations, voluntary standards, and testing and certification of products do not
constitute unnecessary barriers to trade. The Agreement has three parts -
1) Disciplines dealing with the adoption of technical regulations and standards
2) Provisions dealing with conformity assessment, testing, and certification
3) Transparency provisions
The basic rule is that technical regulations should not be more trade-restrictive than is necessary to meet their legitimate objectives. The latter include national security requirements, the prevention of deceptive practices and the protection of human health or safety, animal or plant life and health, or the environment. Relevant international standards must be used as a basis for technical regulations, except for climatic, geographical, or technological factors. Technical regulations on product requirements should be in terms of performance rather than design or descriptive characteristics. A Code of Good Practice applies regarding the preparation, adoption, and application of standards.

Conformity assessment procedures are subject to MFN. If relevant guides or recommendations issued by international standardizing bodies exist, these are to be used, except for national security reasons or public health and safety. In principle, members are to use international systems for conformity assessment. The results of conformity assessment procedures in exporting countries must be accepted if these are equivalent to domestic ones. For this, consultations to determine equivalence of systems must be held. Accreditation by international standardizing bodies must be taken as an indication of the technical competence of a country. Members are to negotiate mutual recognition agreements for conformity assessment procedures and apply the MFN and national treatment principles while permitting participation of foreign certification bodies.

The transparency disciplines relating to publication of regulations are contained in Article X of the GATT. Each member must establish 'enquiry point' to answer enquiries and provide documents on technical regulations, standards proposed and conformity assessment procedures.
2.6. Sanitary and Phyto-Sanitary Measures (SPMs)

Sanitary and Phyto-sanitary Measures (SPMs) are requirements that are imposed by governments to ensure the safety of products for human or animal consumption, or to safeguard the environment. Most governments establish minimum standards that products, plants, or animals must meet for entry to their territory. These norms are applicable equally to foreign and domestically produced goods, plants, or animals. However, differences in norms may act to restrict trade. SPMs can very easily be abused, if defined so strictly as to ensure that no product ever satisfies them. SPMs could be used to encourage local processing in cases where it has bound its tariffs.

An Agreement on the Application of SPMs was negotiated as part of the Agreement on Agriculture. SPMs include all relevant regulations and procedures, including product criteria, processes and production methods, testing, inspection, certification, and packaging and labelling requirements directly related to food safety. There is no requirement that members adopt SPMs. The Agreement simply establishes disciplines if members implement SPMs.

SPMs may not unjustifiably discriminate between members, be more trade-restrictive than required to achieve their objectives, or constitute a disguised restriction on international trade. They should be based on international standards, guidelines, or recommendations unless it can be proven with scientific evidence that an alternative is preferable. SPMs must be based on scientific principles, including an assessment of the risks to human, animal, or plant life or health. It must take into account risk-assessment techniques developed by relevant international organizations. SPMs may not be maintained without sufficient scientific evidence. In choosing an SPM, economic factors must be considered, including potential damage in terms of loss of production and cost of control in
the event of the spread of a pest or disease and the relative cost-effectiveness of alternative approaches to limiting risks. Members must accept the SPMs of other members as equivalent if same level of protection is achieved. Bilateral and multilateral agreements on recognition of the equivalence of specified SPMs are to be encouraged. Conformity assessment procedures are to be based on MFN and national treatment, procedures and criteria should be published, confidentiality should be respected, and appeals procedure established.

The Committee on SPMs grants developing countries specified, time-limited exceptions from meeting the requirements of the Agreement. An enquiry point must exist to provide answers to SPM-related queries from trading partners and to provide relevant documents. Deviations from international standards must be notified to the WTO Secretariat and also the objective and rationale of the proposed regulation.

2.7. Trade-related Investment Measures (TRIMs)

Trade-related investment measures (TRIMs) are policies used by governments to force foreign investors to attain certain performance standards, such as local content requirements and export performance requirements. If a country with a large market has high import tariffs, this may induce foreign firms to invest for local production (so-called tariff wall-jumping). The government may then impose TRIMs on such investments. TRIMs were one of the controversial topics on the agenda of the UR negotiations. Many developing countries were of the view that TRIMs were beyond the scope of the GATT, and that the GATT was not necessarily the appropriate forum for such an agreement.

However, the TRIMs agreement emerged as a compromise. All TRIMs that are inconsistent with the GATT must be notified to the WTO Secretariat, and members must
eliminate such measures within two, five, or seven years (for industrialized, developing, and least developed countries, respectively).

2.8. Agricultural Products

Agriculture is an area where reciprocity failed as a driving force of liberalization. Protectionist measures in agriculture were prevalent on a permanent basis by the end of the nineteenth century. One cause of this was the steady expansion of production in the US, which lowered world prices. This led to protection of existing producers and subsidization of exports. Production support policies had to be complemented by export subsidies to allow surpluses to be sold. This often led to trade conflicts.

The AoA deals with market access, domestic support, and export competition. On market access it was agreed that NTBs be converted into tariffs (tariffication), and reduction commitments to be undertaken compared to a 1986-88 base-period average. All agricultural tariffs are to be bound. The market-access package requires that at least five per cent of the market for commodities subject to tariffication be satisfied by imports.

The domestic production support to agriculture as measured by an Aggregate Measure of Support is to decline relative to a 1986-88 base period. The members are required to enter their base-period AMS in their schedules, as well as the final bound commitment level for the AMS. All these levels are bound. The AMS includes expenditure on domestic subsidies as well as price-support policies such as administered prices, and therefore captures both border and no-border policies. In principle, it covers all support policies that affect trade. The AMS is aggregated over commodities and programmes. The AMS excludes programmes that support agriculture generally, income transfers that are decoupled from production, policies that contribute less than five per cent of the value of production, and direct payments under production-limiting programmes. The EU
compensation payments and the US deficiency payments were excluded. In contrast to the tariff reduction obligations, which apply at the tariff line, the AMS reduction requirement pertains to the sector as a whole, not on a commodity basis.

Export subsidies are to be reduced by 36 per cent in value terms and the volume of subsidized exports is to decline by 21 per cent from a 1986-90 base-period average. Developing countries need to reduce tariffs, support, and export subsidies by two-thirds of the levels, and have ten years to implement this. The AoA is general and systemic in nature, rather than commodity-specific.

2.9. Textiles and Clothing

Textiles and clothing was a major sector that was exempted from GATT disciplines. Being labour-intensive, developing countries acquired comparative advantage in textiles and clothing. The domestic industries in high-income countries began to lobby for restrictions. To legalize the use of QRs in trade in textiles, the industrialized nations sought a multilaterally negotiated derogation from the GATT rules, the MFA (Multifibre Arrangements).

The WTO stipulates that the MFA will be phased out, and trade in textiles and clothing will be integrated into GATT rules and liberalized, over a ten-year period. Integration means that GATT rules prohibiting QRs will be put into effect. Products covered by the agreement will be integrated in three stages and will be fully integrated by 2005.

2.10. Safeguards

Safeguard provisions allow for temporary suspensions of obligations under the agreements. They function as both insurance mechanisms and safety valves. They provide governments with the means to renege on commitments when the need arises.
2.10.1. Anti-Dumping Actions

Dumping is said to occur if the export price of a product is below the costs of production, i.e. when products are sold in an export market for less than what is charged in its home market for the same product. Dumping is not prohibited, but certain rules are to be followed by governments that seek to offset dumping. Duties may not be imposed if dumping margins are less than two percent, or level of injury negligible, or market share of a firm is less than three percent and cumulatively less than seven percent for exporters each supplying less than three percent.

2.11. Measures to Countervail Subsidies

Anti-subsidy procedures are allowed under Article VI of the GATT to ensure fair competition. There should be investigations to determine that imports have been subsidized and have caused material injury to domestic industry. Subsidies that have economy-wide impact (education, general infrastructure, basic R&D, regional disparities, income support) are permitted. Subsidies not in this 'green box' may be countervailed.

2.12. Trade in Services

The introduction of services on the MTN agenda reflects their increasing importance in domestic economies and international trade. As services are intangible, barriers to trade do not take the form of import tariffs. Trade barriers in services take the form of prohibitions, QRs, and government regulations. There may be limitations on the number of firms allowed to contest a market, or on the nature of their operations. The non-existence of tariffs as a barrier to trade complicates the negotiation process. It was very difficult to determine how concepts like National Treatment and MFN could be applicable to service sectors. Rather than focusing on the identification, quantification, and reduction of barriers,
subjective notions of sectoral reciprocity became the norm in service negotiations. This contrasts with the first-difference approach to reciprocity used in GATT tariff negotiations" (Hockman and Kostecki, 2001).

The GATS applies to measures imposed by members that affect the consumption of services originating in other member states (Article I). The agreement applies to all of the four modes of supply that are possible in exchanging services -
1) Cross-border supply
2) Provision involving movement of the consumer to the country of the supplier
3) Services sold in the territory of a member by foreign entities that have established a commercial presence and
4) Provision of services requiring the temporary movement of natural persons.

The core principle of the GATS is non-discrimination, as reflected in MFN and National Treatment rules. The coverage of MFN for each GATS member is determined by a negative list - it applies to all services except those listed by each member. The sectoral coverage of national treatment is determined by a positive list - it applies to all services except those listed in a member's schedule of commitments. National treatment applies only to the services inscribed in a member's schedule. It is defined as treatment no less favourable than that accorded to like domestic services and service providers.

Many of the GATS disciplines apply only to the extent that specific commitments are made. This is a consequence of the positive list approach taken for scheduling commitments. There are no general disciplines on subsidy practices, only subjecting to the obligations of transparency, MFN, and dispute settlement. There are a number of articles of a safeguard nature. Article X allows for industry-specific safeguard actions. Article XII on Restrictions to Safeguard the BoP requires that measures are non-discriminatory, temporary.
and phased out progressively as Bol situation improves. Article XIV provides legal cover to take measures to safeguard public morals, order, health, security, consumer protection, and privacy. DSB is responsible for disputes under GATS.

Specific commitments on national treatment and market access apply only to service sectors listed by members, subject to sector-specific qualifications, conditions, and limitations. As commitments are scheduled by mode of supply as well as by sector, these exceptions may apply either across all modes of supply or for a specific mode. Members also make horizontal commitments that apply to modes of supply, rather than sectors.

2.13. Intellectual Property Rights

Intellectual property (IP) can be defined as information with a commercial value. Intellectual property rights have been defined, as a mix of ideas, inventions, and creative expression on which there is a public willingness to bestow the status of property. IP protection contributes to more rapid public disclosure of inventions.

IPRs became trade-related for a number of reasons. Trade in goods embodying IP has increased substantially. The industrialized market economies contended that inadequate protection of IP in technology-importing countries reduced their competitive advantage in the high-technology area, due to trade in counterfeit goods. As technologies for duplication became more advanced and the reproduction of IP easier and cheaper, trade in goods embodying stolen IP became a contentious issue.

2.13.1. Negotiations on TRIPs

TRIPs was one of the more difficult issues on the UR agenda, both politically and technically. Many developing countries favoured disciplines on trade in counterfeit goods, but they opposed inclusion of TRIPs in the WTO agenda. The greater protection of IPRs would strengthen the monopoly power of multinational companies. It would detrimentally
affect poor populations by raising the price of medicines and food. Developing countries, led by India, argued that GATT was not the right place for setting and enforcing IP standards. The enforcement of IPRs in developing countries would entail adjustment costs. Hence a long transitional period is required to implement changes in domestic legislations. However, some elements of reciprocity emerged for a possible convergence of opinion. The developed countries sought strong standards, multilaterally agreed, with multilateral enforcement.

The TRIPs agreement became an integral part of the WTO. The areas of intellectual property that it covers are copyrights and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-design of integrated circuits; and undisclosed information including trade secrets and test data.

The Agreement establishes minimum substantive standards of protection, prescribes procedures and remedies which should be available to enforce rights, makes the general dispute-settlement mechanism to address TRIPs-related issues, extends principles such as transparency, national treatment, and MFN.

The TRIPs agreement include provisions for protection of geographical indications. The use of geographical indications that mislead consumers as to the origin of goods is to be prevented. Geographical indications for wines and spirits are given more effective protection.

As regards patents, at least twenty-year protection is to be provided for inventions, including processes and products. The permitted exclusions from patentability comprise plants and animals, other than microorganisms, as well as essentially biotechnological
processes. Plant varieties have to be given protection. This can be done either by patents or by a *sui generis* (special or more specific) system defined in applicable international conventions. Inventions may be excluded from patentability for reasons of morality, public order, or therapeutic, diagnostic, or surgical usefulness. There are detailed rules concerning compulsory licensing and government use of patents without the owner's authorization.

### 2.14. Developing Countries and the WTO

The concept of preferential treatment to developing countries existed from the start. There were two types of preferential treatments - preferential access to rich country markets through tariff preferences and exemptions from GATT rules and mechanisms. The 'Special and Differential Treatment' (SDT) was in operation in the GATT system. The value of SDT declined over time. As a consequence, the developing countries participated actively in the MTN, and engaged in a reciprocal exchange of concessions.

### 2.15. Regional Integration

Although non-discrimination is a fundamental principle of the WTO, there is explicit allowance for preferential trade agreements. Regional Integration Agreements (RIAs) may take several forms, depending on the degree of integration. Article XXIV allows such agreements as long as: (1) trade barriers after integration do not rise on average; (2) agreements eliminate all tariffs and other trade restrictions on intra-regional exchanges of goods within a 'reasonable' length of time; and (3) they are notified to the GATT.

### 2.16. Doha Development Agenda

The negotiating agenda of the WTO has expanded over time with inclusion of topics such as investment, competition, government procurement, trade facilitation, labour standards and environment policies. The first four are termed as 'Singapore Issues' as these topics were included in agenda at the second ministerial meet at Singapore (1997).
and investment are related, with increase in intra-firm trade and globalization of production. Competition policy can be defined as a set of rules and disciplines maintained by governments relating to agreements between firms that restrict competition, or to the abuse of a dominant position. Environmental concerns about the limits to growth and the rapid depletion of global natural resources called for environmental policies. It is alleged that environmental policies reduce the ability of enterprises located in countries with high standards to compete with those that operate in nations with low standards. The objective to include labour standards was to initiate discussions on the introduction of a Social Clause specifying minimum standards, as a pre-condition for market-access. The inclusion of these areas was strongly opposed by developing countries, on grounds that as these are non-trade issues, and even though trade-related, the WTO not being the competent forum to negotiate.

The Seattle Ministerial meet (1999) could not reach a consensus on many of these issues, and attempt to include labour standards was not agreed to by the developing countries. Therefore it was planned to reach a consensus at the Doha meet in 2001.

The declaration of Doha Ministerial is termed as Doha Development Agenda owing to emphasis to redress problems faced by the developing nations in the implementation of the WTO agreements. In agriculture, the negotiations would aim at improvements in market access, phasing out of export subsidies and reductions in trade-distorting domestic support. The development needs including food security, rural development, and non-trade concerns will be taken into account. Negotiations on Services will address the issue on movement of natural persons. In the market access for non-agricultural products, negotiations should aim to eliminate tariffs, including elimination of tariff peaks, tariff escalation and non-tariff barriers, on products of export interest to developing countries.
The TRIPS Agreement will be interpreted in a manner supportive of public health, by promoting access to existing medicines, research and new medicines. The extension of the protection of geographical indications to products other than wines and spirits will be addressed. The TRIPS Council should examine the relationship between the TRIPS Agreement and the Convention on Biological Diversity, the protection of traditional knowledge.

It was agreed to have a multilateral framework for transparent and predictable conditions for long-term cross-border investment. There should be further discussion on transparency, non-discrimination, and modalities for pre-establishment commitments based on a GATS-type, positive list approach, and exceptions and balance-of-payments safeguards. Any framework should consider the interests of home and host countries, development policies and objectives of host governments as well as their right to regulate in the public interest.

There should be discussion on interaction between trade and competition policy, provisions on hardcore cartels, modalities for voluntary cooperation and support for progressive reinforcement of competition institutions in developing countries through capacity building. As regards Government procurement, negotiations should be limited to the transparency aspects and will not restrict giving preference to domestic suppliers. Regarding trade facilitation, negotiations should ensure adequate technical assistance and support for capacity building for the developing countries.

2.17. India and the WTO related Issues

On negotiations on Agriculture, India submitted proposals with a view to safeguard food and livelihood security of large subsisting level farming community and to maximize export opportunities by a reduction in high tariffs and subsidies in developed countries.
India demanded higher commitments by developed countries in ‘mode-4’ of supply of services i.e. movement of natural persons. Under TRIPS, India proposed for extension of multilateral register for products other than wines and spirits.

2.18. Future of Negotiations

In the Cancun ministerial (2003) meet, disagreements emerged between the developed and the developing countries led by India, China, Brazil and South Africa. The developed countries were willing to consider only export subsidies and not domestic support policies like output and input subsidies. Of the four Singapore issues – multilateral rules on investment, competition policy, transparency in government purchases and trade facilitation – the most contentious was multilateral agreement on investment (MAI). The developing countries insisted on the options for allowing or discouraging foreign investment, were against having a uniform set of rules governing FDI for countries at different stages of development. At the most, post-establishment national treatment can be granted, which is already guaranteed by various provisions of TRIMs. The developing bloc achieved some gains in TRIPs. Patent rights can be violated for national interest. The countries with no manufacturing capabilities can import generic drugs from countries such as India on health emergencies.

The Cancun ministerial was a mid-term round review of Doha development agenda. There were clear divisions among the developed, the developing and the least developed nations and the process of negotiation became more complex.

A framework accord was reached in Geneva on July 31, 2004 to continue the Doha Development Agenda. As per the Geneva Accord, the developed countries including the EU and the US have agreed to the eventual elimination of all export subsidies and major cuts in domestic support to the farm sector. The three most contentious of the four
‘Singapore issues’ – investment, competition policy, and transparency in government procurement – are dropped. Only trade facilitation is retained. Even here, the extent and timing of entering into commitments shall be related to implementation capacities and infrastructure of developing countries. With regard to market access, the developing countries will be allowed to designate an appropriate number of products as Special Products based on the criteria of food security, livelihood security and rural development needs. A Special Safeguard Mechanism would be set up to counter sudden spurt in imports. As a trade-off, the developing countries have to agree to overall tariff reductions in respect of industrial products. The framework text has identified five areas for further negotiations: Agriculture, non-agricultural market access (NAMA), development issues, trade facilitation, and services.

2.19. Multilateralism and Regionalism

Though multilateral institutions and disciplines are being pursued and set up in a phased manner, a vigorous pursuit of regional agreements is also taking place. The sharp differences among members to reach agreements on various issues have been a major factor behind this movement. It is to be examined if regional agreements are building blocks or stumbling blocks to multilateral negotiations. It is also feared that emergence of regionalism will slacken the pace of multilateralism. According to Corden (1997), FTAs should act as supplement to the multilateral system. But often the pursuit of regionalism does not show up strengthening of the multilateral system. “Preferential treatment is becoming a reward for governments pursuing non-trade related objectives. Non-discriminatory, most-favoured nation (MFN) treatment – a fundamental principle of the WTO – is close to becoming exceptional treatment” (Srinivasan, 2005).
It is proposed that India should join trading blocks like ASEAN and help formation of SAFTA, a free trade area with SAARC countries. This is important in the backdrop of deadlocks in the multilateral trade negotiations and also emergence and expansion of regional trading groups. SAFTA will help in horizontal specializations towards optimal utilization of the synergies of the members for their mutual advantage. Intra-industry trade specialization will take place due to economies of scale and cost reduction. India should continue to pursue the dual strategy of joining regional blocs and continuing to be a proactive player at the WTO, bargaining hard in areas where it stands to gain the maximum (Ahuja, 2002b).

2.20. WTO and Development Dimension

A number of authors including economists, political and social activists have voiced concern about the likely impact and implications of WTO agreements on the developing economies (Veerendrakumar, 1996; Iyer, 2000, 2001, 2003; Alok, 2003a,b,c; Chandrasekhar and Ghosh, 1999, 2000, 2001a,b, 2002a,b, 2004; Sharma, 1999, 2000, 2001; Shiva, 1997, 2003;). According to them, though the WTO Agreements were negotiated on the development plank, there are asymmetries and in-built bias against the developing countries. The developing countries’ major interest has been in increased access to the markets of the developed countries. But tariff peaks and tariff escalations have delimited market access to the products of the developing economies. Tariff escalation discourages value addition and hinders generation of employment.

Under the AoA, the reduction in domestic subsidy was to be the beginning of progressive integration of agriculture into the trading system. But, the subsidy was never reduced, but was made compatible with the AoA. The total support to agriculture is almost double the level of agricultural exports from the developing countries. The farm support in
the EU was equivalent to 45 percent of the value of production. The AoA only helped to legitimise the huge protection.

While 80 per cent of the members are developing countries, the balance of power and initiatives favour the Quad comprising the EU, the US, Japan and Canada, accounting for 85 per cent of the world trade. Obviously the balance of power is uneven and needs to be tilted in favour of the developing countries (Gunaji, 1999).

The absence of the development dimension in the multilateral system has resulted in the marginalization of most of the developing countries. The SPS measures are increasingly posing a serious threat to the even limited market opportunities available for developing country exports. The application of stringent specifications and tough hygiene and food safety standards, much above even the CoLex standards, is tending to become a non-tariff barrier and another block to exports of many developing countries (Prabhu, 2002). Iyer (2000, 2001, 2003) has viewed a strong IPR regime as exploitative and it will increase the knowledge gap between the industrialized world and the developing countries. The IPR agreement should not have been introduced into the WTO Agreements, as it is not a trade issue. The agreement imposes heavy responsibilities on the developing countries. They are required to implement the provisions without any exception or relaxation. Even the complex patent laws will have to be enacted within a short period. The IPR regime is designed to protect the intellectual property of the type developed in the industrialized world and is biased against the undocumented intellectual property of the developing country members.

The multilateral trading system should allow the necessary flexibility to accommodate the concerns and aspirations of countries at different stages of development and there should be an effectual balance between liberalization and particular development requirements. Any agreements that limit technology transfers to developing countries,
whether through higher prices or through restricted IPR regimes, would become a major hindrance to economic growth in developing countries (Wickramasinghe, 2002).

The measures of contingent protection such as anti-dumping measures, countervailing measures and various escape clause provisions on the international trade were meant by the WTO for corrective purposes and not as tools of commercial policy. Yet, the sharp increase in the number of petitions filed under such provisions and the lack of transparency of the related rules and decisions raise the doubt whether the mechanism is being diverted for protectionist purposes. An analysis of antidumping regulations and practices shows that there are loopholes in dumping determination and injury assessment procedures. Econometric evidences indicate that the injury determination is prone to the influence of political economy variables such as lobbying efforts (Tharakan and Kerstens, 1998).

The SPS Agreement allows too much latitude in adopting SPS measures, allowing importing countries to impose measures that impede imports, no matter how unlikely or how inconsequential the risks involved. In addition, SPS standards sometimes diverge considerably across importing countries, meeting standards costly and cumbersome for exporters. The time between the notification of new SPS measures and their application is normally too short for countries to be able to respond in an effective and appropriate manner Chandra (2002).

The process of multilateralism is being increasingly threatened by trade-distorting practices such as imposition of anti-dumping duties. The ultimate impact of imposing anti-dumping duties is to undermine the welfare effects of free trade, encourage inefficiencies in production and in the process hurt consumers in duty imposing countries. Many developing countries find the process of investigation on dumping expensive and cumbersome. As per
the extant provisions, authorities can impose duty amount equal to the full extent of the margin of dumping and, thereby provide additional protection to domestic industry. Article 9.1 should be amended to make it mandatory for imposing less duty if that is adequate to remove injury to domestic industry rather than leaving it to the discretion of the importing country (Ahuja, 2002a).

The ongoing attempt to harmonise and strengthen the intellectual property protection (IPP) regimes worldwide appears to be adversely affecting technological activity in the developing countries by choking the knowledge spillovers from industrialised countries to developing countries. The implementation of the provisions of the TRIPs Agreement threatens poor people’s access to and affordability of life-saving drugs by pushing up their prices. A cooperative attitude should emerge between the biotechnology-rich developed countries and the gene-rich developing countries (Kumar, 2003a; Sharma, 1995).

In the case of farm subsidies provided by the developed countries amounting to USD 320 billion per annum, there are provisions to thwart reduction in government support. Farmers in the EU and US derive benefits from Amber Box subsidies if they produce more, from Blue Box subsidies that give incentives to limit production, and from Green Box subsidies in the name of environment and livestock protection. The Geneva package provides for capping of Blue Box support to five percent of value of agricultural production. But a member that has placed a large percentage of trade-distorting support in the Blue Box need not make a disproportionate cut to bring it to five percent of production. As there is proposal to review Green Box, the developed countries may shift support under other heads to the Blue Box (Naik, 2004).

There are criticisms against expanding the horizons of the multilateral system. The ‘widening and deepening’ of the international trade agenda would lead to surrender of
national sovereignty. The objective of bringing non-trade issues under the ambit of the WTO is the availability of trade sanctions under the Dispute Settlement Procedures of the WTO. Compliance with the environmental, health and sanitary requirements in developed country markets make developing country exports more expensive. The new disciplines like investment, competition policy etc. are not directly trade-related. It is said that new investment policies will attract more investments to the developing countries. But it will minimize the rights and authority of the developing countries to guide and regulate foreign investment in their own national interests. It is apprehended that the competition policy is being pushed not to promote competition, but to protect the interests of MNCs against action by host countries.

There should be a financial window to address the burden of cost to developing countries to engage in negotiations and to meet adjustment costs of transition to the new trade order.