Chapter Five

INDIA AND THE WTO

In the previous chapter, we have seen how India changed its economic path from that of a closed economy to an open economy desirous of integrating with the global economy. After that, came India's accession to the WTO in 1995. The present chapter aims to explore the debates surrounding India's accession to the WTO.

India acceded to the WTO despite domestic opposition. This poses a level of analysis problem for us in two spheres. The first is to examine how can legitimacy be obtained at domestic level for international obligations. Secondly how can our negotiating strategy reflect our ideological stances. These two vital questions will be addressed in the present chapter. The chapter also shows the impact of key WTO agreements on India. It gives an account of the changes brought about in the various sectors of Indian economy on account of the WTO regime.

It delineates the significant issues that are of concern to India. In doing so it brings out the main argument of the study as to the impact of a multilateral trading regime on a developing country like India. This is shown through the implication of crucial WTO agreements on India. It also seeks to examine how active India has been at the Dispute Settlement body and show cases some disputes and their resultant issues. It examines the stance India has taken in the various WTO meets with a view to establish whether India has been able to meet its policy objectives at the WTO. If not, then what is wrong with our negotiation strategy. It therefore links up Chapter Three and Chapter Four by first illustrating the issues before India as a developing country vis-a-vis the WTO and then by examining how domestic factors influence the policy making in a democratic country like India.

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The aim of the chapter is to provide empirical data through India’s various proposals to the WTO. In doing so, some of our broader theoretical concerns with regards to sovereignty, domestic constraints and interplay between various political actors are germinated which are then interwoven with the TRIPS agreement, in the next chapter. In examining the interface of India with the WTO, we touch upon the broader theoretical perspectives of adverse terms of trade of the South vis-a-vis the North, as expounded by Rauls Prebisch. We also see how trade relations of weak and strong states are regulated by regimes.

5.1 INDIA’S ACCESSION TO THE WTO

India was a founding member of the GATT (1947) and subsequently of the WTO in 1995. Though India had been a member of the multilateral trading regime, its ideological stances and inward-oriented policies had prevented any real benefits of free trade from accruing to its economy, as we have seen in the previous chapter. Moreover, under the GATT system, developing countries were not obligated to reciprocate the trade liberalisation undertaken by the developed countries. So India was able to maintain its quantitative restrictions and high tariffs under the GATT regime. After accession to the WTO, while India automatically started receiving the MFN treatment from all the WTO members for its exports, it was also required to reciprocate in matters of trade concessions. This meant additional pressures of reform to an economy already under transition, leading to harsh responses from stakeholders; which had not been present in India's engagement with the GATT.

i) India and the GATT

The GATT was born just two and a half months later after India achieved Independence. The detailed exposition in the preceding chapter
showed the inward-orientation of a state just out of Colonialism. It would have, therefore, been a natural choice for India to have stayed out of the GATT. Surprisingly, it didn't. But the reason for joining it was not economic engagement with the rest of the world; it was primarily political. The ideology of 'Non-Alignment' meant that the Indian government was keen to maintain ties with both the West and the East. The GATT provided the means for achieving such state of affairs in India's political economy. Besides, India was immediately able to find a position as leader of the newly decolonised members of the GATT, who were cautious of opening up their economies to the rest of the world. This position of identifying with the national interest of the other developing countries in order to obtain political goodwill and leadership continued till much later; but, as we shall examine later, such a stance does not necessarily pay off in multi-lateral trade negotiations.

India enjoyed a favourable balance of trade just prior to her independence. Being a debtor country, our exports were higher and ensured a favourable balance of trade. In 1942-43, our exports stood at Rs. 199 crores and imports at Rs. 107 crores. Our foreign trade was mainly with United Kingdom, which supplied us two-thirds of our imports, which consisted mainly of manufactured goods ¹

ii) Co-opting into the WTO Regime

We have already discussed how the inadequacies in the GATT and the changing global environment created the conditions for establishment of the WTO. Further, we have alluded to the observation that the WTO regime was built on the ideological considerations of 'Washington Consensus' and Global Public Good. The WTO also had a democratic framework that drew legitimacy from it principles and the Dispute Settlement Body. We have also identified how the gains from Uruguay Round Negotiations were perceived as being beneficial to the developing countries. These ideologies and organizational structure gave the WTO an equitable, fair and just status so that developing countries, convinced of their economic gains, became keen to join it.
In the previous chapter, we have discussed how the Indian government opted for economic reforms in its political economy and took a conscious decision for liberalising its economy in 1991. We have also referred to the point that the response of various actors in the Indian state to the reforms was largely unfavourable and negative. 1991 was also the year of the draft final act of the Uruguay round, popularly known as the Dunkel Draft.

We can term it a historic coincidence that the Dunkel Draft was introduced in the same year when the Indian economy was being systematically liberalized. This shows the linkage between the unit level and the systemic level changes that we referred to in our first chapter. In order to examine how India got co-opted into the WTO regime, it is important to first take a brief look at India's stance during the Uruguay Round.

**India at the Uruguay Round**

Indian Ambassadors played a significant role during the Uruguay Round. Though India espoused commitment to the multilateral trading regime, it was a prominent nation that offered resistance to most of the new agreements being offered at the Round. However, this reluctant strategy of India was sold with triumph at home. To put it in the words of the then Union minister of Commerce, Ram-Krishna Hegde, who stated at the 1Ind Ministerial conference of the WTO, in Geneva, May 18-20, 1998, that

"Over the years, our negotiators have played a prominent role in shaping the contours of the multilateral trading system as it exists today. We have contributed significantly to the successful conclusions of all trade negotiations. We have helped in various ways to reconcile seemingly irreconcilable position. We have participated effectively in the formulation of all major trade agreements. Since the formation of the WTO, our delegation has been active at all times in all deliberations and we have played a part in bringing difficult
negotiations to a satisfactory conclusion."

C. Raghvan also gives an account of how India along with Brazil, mobilised the developing countries against a new round in 1984 and how Arthur Dunkel succeeded in isolating them.\(^2\) He also says how India participated in the headhunt for the new Director General of the WTO in 1993 with the Indian Ambassador B.K. Zutshi conducting consultations with the other member-states of the WTO.

The most vehement resistance by India in the Uruguay Round came over the TRIPS agreement. The Indian delegation repeatedly emphasised that India had very strong reservations and would oppose attempts to revise existing Intellectual Property Conventions administered by the World Intellectual Property Organization. India’s Chief Negotiator, A.V. Ganeshan, even warned the U.S. and other industrial countries that they would be on a collision course if the Uruguay Round Negotiations were sought to be used to undertake an omnibus revision of existing international conventions of Intellectual Property Rights.\(^3\) We shall subsequently discuss that how the Indian delegation changed its stance, but the point here is that India was vocal in its issues of concerns at the UR. The fact that it shifted course and accepted the WTO package, speaks volumes for the political reality of the inequitable world in which we live and of the limited choices that developing nations have in the prevailing international trading system.

Thus, while in the UR developing countries were frustrated with the Market Access offers and felt the one sidedness of it (To quote B.K.Zutshi, "There is a deep imbalance in the exchange of concessions in the areas of interest to developing countries... in textile and agriculture. The developing countries are making larger offers in the areas of interest to the developed countries. It should work the other way round")\(^4\) it was also perceived that economic rationale demanded that it was better to be co-opted in the regime and then try to maximise the gains through negotiations, bargaining and coalition building rather than keeping out of the trading system and being
isolated on account of it.

To quote Zutshi, "The question of walking out of the WTO should not arise as we are not going to gain anything from the move. We are not a part of any regional trade arrangement which could keep our international trade going in case we quit the multilateral arrangement. Since we have no viable alternatives, we should try to maximise our gains within the WTO".  

During interaction with the researcher (on 13.3.2005), Zutshi reiterated that the gains from being a founder-member were immense and hence, even though India had to take on the onerous obligations of the TRIPS, it was perceived an economic need to be part of the WTO regime. The changed economic environment in the country (see Chapter Four) also provided a rationale for the membership of the WTO.

Responses: State and Civil Society

While the UR took eight arduous years to complete, it appeared that they were not adequate for the Indian government to spread awareness about the changes that would ensue from them. We have already noted that the economic reforms had evoked varying responses from India's civil society. India's joining of the WTO was seen by many stakeholders as succumbing to the forces of neo-imperialism. The responses of various actors of the Indian state and civil society to India's entry into the WTO were often strong and overwhelmingly negative. They reflected distinct perspectives that are discussed below.

There was widespread resentment in India against the Dunkel Draft in 1991. Over 250 members of Parliament issued a statement against extending the scope of trade negotiations. The then Chief Minister of West Bengal wrote to the Prime Minister demanding that the states be consulted before a decision was taken on the Dunkel Draft. In 1994, the then Chief Minister of Tamilnadu also demanded a conference of the Chief Ministers, to examine the implications
of the new treaty. The Left parties denounced the signing of the GATT treaty as being done in a most "autocratic manner" and organized an Anti-Dunkel Bombay march in October 1994 against the impending visit of Arthur Dunkel to India. Perhaps more significant was the Indian farmers' rally against the Dunkel Draft on 3rd March, 1993 which was indeed "Vox Populi Vox Dei". The rally was called the 'Seed Satyagraha' and its focus was the TRIPS Agreement, which it was felt, would rob the farmers of the right to save and reproduce seed. The charter of demands drawn up by the various farmers organizations stated the following:

"The meeting of farmers demands the total rejection of the Dunkel Draft text which is trying to invade the economic sovereignty of the country and further damage the human rights and dignity of the individual. This meeting also demands an amendment to the constitution of India making it mandatory on the part of the government to get all international agreements ratified by a majority of both houses of parliament and also of not less than one half of the states legislatures. The Dunkel Draft must be discussed in all States Legislatures."

Vandana Shiva became the voice of civil society with her campaigns against biopiracy and with her ideology of Anna-Swaraj. Her argument will be taken up in the next chapter in the context of the TRIPS.

In 1991, the formation of the Swadesh Jagran Manch (SJM) by D.Thengdi, showed the simmering discontent within the BJP over liberalisation. Their argument was built around selective globalisation. "Genuine liberalisation and hegemonic liberalisation can never go together. The Hindu concept of globalisation represents genuine globalisation". They espoused 'Swadeshi' as a means of bringing about economic reconstruction of the country. S.Gurumurthy's view that "the market is only one of the institutions of delivery and not the sole institution" became the base of the SJM. Similarly, Ashwini Mahajan called for quitting the WTO and stated that though the country had the resilience to survive outside the WTO but its leadership lacked the will to do so.
He opined that bilateral trade agreements are a better option. Moving away from such pragmatic needs, Gurumurthy spoke of the Indian philosophical and ideological roots. According to him, Indian civilization is a reactive civilization because it is influenced by Satwa. The clash with globalisation is going to generate an economic civilisational conflict. In the process, the Indian mind will generate its own native ideas.

The 'Azaadi Bachao Andolan' spearheaded a movement against 'Corporate Colonialism' and brought out a joint memoranda signed by over two million people demanding India's withdrawal from the WTO. Their argument was that the constant decline of Indian exports and increase in imports and consequent rise in its debt demonstrated the hollowness of the promise of export benefits as a result of the WTO membership. They lamented the rise of inflation, corruption and cultural degradation as a fall-out of the country's participation in the so-called "New Economic Order."

Similarly, in the BJP, Kusha Bhau Thakre said and demanded that India should opt out of the WTO as it could not afford to continue functioning under its umbrella and that it was unfortunate that the United Front Government had signed the WTO agreement without bothering about the negative ramifications on India's sovereignty and various sectors including agriculture, trade, commerce and industry.

Utsa Patnaik has argued that the costs of the 'free trade' instituted under loan-conditional trade liberalisation in India from 1991 and accelerated after the signing of the WTO are similar to those of colonial times. These costs relate to the reemergence of an inverse relation between agricultural exports and domestic food availability and to de-industrialisation, which in Keynesian terms means "export of unemployment of North to other countries of Third World". (from the first EMS Namoodiripad Memorial Lecture, February 16, 2000, N.Delhi)

It is evident that the government failed to build up a consensus regarding
its entry in the WTO. The kind of debate that took place, for instance, in the US Senate for ratification of the WTO Treaty did not occur at all in India despite its democratic traditions. Thus, if the fallacy of consensus at the systemic level is exposed by the way 'the WTO package' was imposed upon the developing countries, it cannot be denied that this fallacy exists at the unit level also.

Though there was no pressure on India to join the WTO, it did so. Presumably, because after embarking on the path of economic reforms, the policy makers were aware of India's potential to secure better gains from trade and a multilateral trading regime was the best means to procure those gains. As we have identified in Chapter Three, there were significant factors that made many developing countries join the WTO.

India fell prey to the same kind of fallacy that lured most of the developing countries - that the gains of better market access to the North would offset short-term costs of agreements like the TRIPS. But unfortunately, it did not happen this way. As the furore over joining the WTO continued, the Indian negotiators, too realised that they along with other Third World countries, had given more than they had got. As discussed in Chapter Three, this disillusionment grew among the developing countries over various agreements and issues. Before we focus on specific issues relating to India as a developing country and those that affect India's domestic sectors adversely, let us examine the broad changes brought about by the WTO regime.

5.2 CHANGES BROUGHT ABOUT BY THE WTO

India's accession to the WTO seemed logical against India's opening up of economy since 1991. After joining the WTO, it was imperative that further changes were reflected in the Indian economy in tune with the WTO commitments. The Trade Policy Review of India, 2002, provides the overall changes in the economic environment in the aftermath of the creation of the WTO.
The reduction in tariffs has been one of the significant changes of the WTO regime. India committed to make adjustment in tariff rates for 3373 commodities at 6-digit HS level. Out of this, in 1998-99 only 40 commodities showed higher applied tariff rates.\textsuperscript{15} The average annual MFN tariff rates of the Indian economy have declined continuously from 1993-94 to 1998-99, in almost all commodity groups. The structure of customs duty rates has also become simple. For non-agricultural goods, India undertook ceiling bindings of 40% ad valorem on finished goods and 25% on intermediate goods. Even in agricultural commodities, whereas the negotiated bound tariff rate for all agricultural tariff lines is 114.9%, in 2000-01 the average basic duty rate was 34.9%.\textsuperscript{16}

The protective regime of Quantitative Restrictions was already being dismantled at the time of joining the WTO (See Chapter Four). In compliance with the tariffication commitment, Quantitative Restrictions (QR) on 14 (out of 1429) tariff lines stood withdrawn with effect from April, 2000 while the remaining had to be lifted by March, 2001 (This later led to the QR case in the DSB). The list of the items in the Open General List was also significantly increased.

Thus, India’s compliance on this account was disciplined. India’s schedule under GATS provides for specific commitments in various services like communications, financial services, tourism etc. The government made changes in investment and ownership polices to improve infrastructure in services. It also liberalised the FDI regime. It also participated in the Information Technology (IT) agreement and offered zero tariff rate on 217 IT related tariff lines by 2005. Since India enjoys comparative advantage in services, it is only in India’s interest to push for liberalization in this area.\textsuperscript{17}

While it can be said that India has steadily endeavoured to meet its WTO commitments, it does not mean that there was an end to the domestic opposition. Not only did the criticism on the surrendering of the government to
the WTO dictates continued but also, it started to reflect in the proposals that India put through at the negotiations. However, there was a growing realisation among the stakeholders within India's political economy that instead of opting out of the WTO, India as a developing country stood to gain if it could make proper use of the relevant mechanisms at the WTO in order to meet its developmental objectives. We, therefore, examine these proposals as well as specific issues of concern to India in the next sections of this chapter. Such an analysis is necessary for coming to a nuanced understanding and credible conclusion regarding the interface of India's political economy with the WTO.

5.3 CONTENTIOUS ISSUES

In Chapter Three, we have referred to issues of special concern to the developing countries, viz. Special and Differential Treatment, Administered Protection provisions, Implementation issues and the working of the Dispute Settlement Body. In this section, we analyse these issues in the context of India and examine the problem-areas as well as India's official stance.

i) Special and Differential Treatment (S&D)

As indicated earlier, the S & D treatment provisions for developing countries were incorporated into the various WTO Agreements to shield them against potential adverse trade impact on their political economies. However, these provisions are mostly in the nature of 'best endeavour' and are not legally binding. Moreover, they are in the nature of transition periods and technical assistance. There are almost 145 S & D provisions in the various agreements, but as we have seen, they have not had any effective impact on developing countries.

India has always been vocal in its demands for stronger S & D treatment. India along with 11 other developing countries, submitted a communication (WT/GC/W442) on 19th September, 2001 stating that the concept of S & D
treatment is a fundamental building block of the multilateral trading system and that it is essential as a recognition of inherent inequality of players in the multilateral trading regime. As the WTO agreements go far beyond the traditional border measures covered under the GATT, S & D treatment takes on even more significant overtures. With this view, India has called for a thorough review of the concept of S & D treatment based on the following guiding principles:

(i) the liberalisation of trade is not an end in itself, but the means to an end viz. economic growth and development.

(ii) Different levels of development achieved by members require different sets of policies to achieve economic growth and development

In order to institutionalise and rationalise the adoption and application of S & D provisions in the various WTO agreements, the WTO members should elaborate an umbrella agreement on S & D treatment which should include provisions reflecting the objectives of S & D treatment.

Some of the features of this proposed agreement should be as listed below:

(a) Convert all S & D treatment provisions into concrete commitments with a focus on addressing the constraints on the supply side of developing countries,

(b) S & D provisions to be made mandatory and legally enforceable by incorporating these commitments into country schedules, and

(c) Single undertaking should not apply to developing countries on an automatic basis

Based on the above considerations, India submitted specific proposals on various the WTO agreements at the Special Session of the Committee on Trade and Development held in April 2002. Some of them are listed below with a view to provide a general idea about India’s negotiating strategy:
Import Licensing Procedures

India calls for making it mandatory for the WTO members to give special consideration in allocation of new licences to importers who import products originating from developing countries and LDC members. Consideration shall also be given to ensuring a reasonable distribution of licences to new importers, taking into account the desirability of issuing licences for products in economic quantities.

In the context of Article 3.5(j) of the Agreement on Import Licensing Procedures, making the last section mandatory, would help developing countries, especially the least-developed ones, to increase their share in exports of products of export interest to them, as envisaged in the Preamble to the Marrakesh Agreement.

Sanitary and Phytosanitary Measures (SPS)

India wants larger time frames for compliance in Article 10.2 of the SPS agreement for developing countries to be made mandatory.

"Where the appropriate level of Sanitary or Phytosanitary protection allows scope for the phased introduction of new Sanitary or Phytosanitary measures, longer time-frames for compliance should be accorded on products of interest to developing country members so as to maintain opportunities for their exports."

India has sought changes in the provisions of Articles 9.2, so that market access opportunities to developing countries are not restricted because of sanitary or phyto-sanitary requirements of the importing members.

Similarly, in the light of the Doha ministerial decision and the need for longer time-frames for compliance for the developing countries, India has proposed that in Article 10.2 of the Agreement on the Application of Sanitary
and Phytosanitary Measures, the term "should" be read to express "duty" rather than mere exhortation. This could be clarified through an authoritative interpretation under Article IX.2 of the Marrakesh Agreement establishing the WTO. It is further proposed that the word "normally" in the first sentence of paragraph 3 of the Decision on Implementation-Related Issues and Concerns (WT/MIN(01)/W/10), be deleted.

**Settlement of Disputes**

In Article 4.10 the existing provision reads-"During consultation, members should give special attention to developing country members' particular problems and interests."

It is suggested that the word "should" be replaced with "shall" so as to make this S & D provision mandatory. The precise operational content of the phrase "give special attention" is not defined. This should be modified. Similarly, India has sought changes in Article 21.2. To make it "mandatory, effective operational and of value to the developing countries."

**ii) Administered Protection**

We have seen in Chapter Three that Administered Protection measures have been incorporated in the WTO and their use specially that of Anti-Dumping (AD) and Subsidies and Countervailing Measures (SCM) has been prolific. We have pointed out as to how developing countries have increased the use of these protectionist measures to protect their domestic constituencies. However, India has been frequently affected by AD measures. More than 15% of all final measures imposed in AD investigations were aimed at India.18

Some of the main points of India's proposal dated 11/10/1999 (WT/GC/W/354,355/) on Review of Anti-Dumping Agreement are as follows:
Operationalise and make mandatory the provisions of Article 15 of the Agreement on Implementation of Article VI of the GATT 1994 so that constructive remedies before applying anti-dumping duties against exports from developing countries could be explored;

- Raise the existing de minimis dumping margin of 2% to 5% for developing countries. The 5% de minimis condition should be applied not only in new cases but also in refund and review case;

- The threshold volume of dumped imports should be increased to 5% from existing 3% for developing countries. The stipulation that anti-dumping action can still be taken provided developing countries collectively account for more than 7% of the imports should be dropped;

- Increase substantial quantities test to at least 40% from existing 20%;

- More details on dealing with foreign exchange fluctuations during the process of dumping;

- Provisions dealing with the determination of the material retardation of the establishment of a domestic industry should be expanded;

- Include provisions in the anti-dumping agreement for presumption of dumping of imports from developed countries into developing countries;

- Amend the annual review provisions to check abuse of the anti-dumping measures;

- In order to prevent back-to-back investigation, no investigation should be initiated for a period of 365 days from date of finalisation of a previous investigation for the same product resulting in non-imposition of dumping

- The lesser duty should be made obligatory in imposition of anti-dumping duty against a developing country by a developed country; and

- Amend Article 2.2 to clarify that where sales on the domestic market
do not allow a proper comparison, the margin of dumping is determined by comparison with the export price to a third country and only when this is not representative should the export price be determined on the basis of the constructed value of the cost of the product in the country of origin.

Similarly, India has pointed out various provisions in SCM agreement which need clarification and improvement.

The most serious imbalance in the SCM agreement is that the subsidies commonly used by developing countries for their industrialisation and development have been included in the prohibited or actionable category while those used by developed countries are in the non-actionable one. However, the same subsidies, which are now prohibited, were once used by the developed countries as tools for growth. This shows that these subsidies are required to strengthen the industrial sector in growing economies.

India's suggestions are contained in its various proposals of December 1999 and September 2001. Some of them are as follows:

- SCM Committee should clarify the term "major proportion of the total domestic production;"
- SCM Committee should recommend that while determining likeness of products as in Footnote 46 of the ASCM, investigating authorities should take into consideration the significance of the differentiated nature of the products even if they have closely resembling characteristic, among other things, through consideration on price comparison, substitutability and whether they are in direct competition,
- The SCM Committee should clarify the provisions of the ASCM in Annex I [(Item (h) and (i)], Annex II and Annex-III so that any remission, exemption or drawback of duties and import charges to the
extent of those levied on inputs consumed is not countervailed and only the amount of remission, exemption or drawback of duties and import charges in excess of these levied on inputs consumed may be treated as a countervailing duty;

- The SCM Committee should clarify that the addition of an amount of interest on the benefit conferred during the investigation period is not in conformity with the object and purpose of the ASCM,

- Alternatively, the Committee should clarify whether calculation of the interest amount on a notional basis instead of calculating it from the date when the benefit was conferred is a reasonable method of calculating interest,

- The SCM Committee should clarify that while determining the average useful life of the assets, the depreciation used for allocating the benefit should be based on the information available with the individual firms receiving the subsidy;

- The SCM Committee should clarify that for subsidy to be deemed to exist under Article 1.1 (a) (ii) of ASCM, the exporter concerned should have received the benefit of duty forgone or not collected,

- The investigating authorities should review Article 14 of the ASCM and recommend certain deductions from the subsidy amount while determining the level of countervailing duty. The Committee should also clarify that such adjustments as required by the countervailable scheme should be taken into account while determining the amount of subsidy,

- The investigating authorities should review the need for continued imposition of countervailing duty on request by an interested party which submits positive information regarding procedural mistake or a manifest error of appreciation committed by the investigating authorities,

- The SCM Committee should clarify provisions of Article 21.2 of the ASCM and recommend that investigating authorities automatically
adjust the countervailing duty corresponding to the subsidy margins for the schemes withdrawn,

- The SCM Committee should clarify that during a countervailing duty all information submitted by an interested Member which is verifiable and appropriately submitted within a reasonable period should be taken into consideration by the investigating authority. However, if a portion of the necessary information is not submitted within a reasonable period then for that portion of the information the investigating authority may resort to fact available under Article 12.7 of the ASCM,

- Revise Annex VII of the ASCM to cover all the WTO members included in the Low and Lower-Middle Income Category of the World Bank. Such developing countries whose per capita GNP falls below the top level of the Lower-Middle Income Category should again be entitled to the benefits available to Annex VII countries,

- Expand the scope of Article 8.1 of the ASCM to include export subsidies referred to in Article 3.1 refers to non-actionable subsidies,

- Allow aggregate and generalised rates of duty remission in case of developing countries even though individual units may not be able to establish the source of their inputs,

- Export credits by developing countries should not be considered subsidy so long as the rates are above LIBOR,

- Allow developing countries to neutralise the cost-escalating effect of taxes collected by government authorities at different levels i.e. the taxes such as sales tax, octroi, cess etc. which are not refunded, without these being termed as subsidies,

- Modify Article 11:9 of the ASCM to provide an additional dispensation for developing countries so that any subsidy investigation can be terminated immediately in cases where the subsidy provided by a developing country is less than 25% valorem instead of the existing de minimis of 1% now applicable to all Members,
• Any countervailing duty should be restricted only to that amount by which the subsidy exceeds the de minimis level in case of developing countries,

• Increase, the existing de minimis level of 3% for developing countries to 7%,

• Increase the number of calendar years for export competitiveness from 2 to 5. Export competitiveness for a developing country is reached when it attains 3.25% share of world trade in a product for 2 consecutive calendar years. India also says that an automatic re-inclusion clause should be added in Article 27.6 to enable developing countries to re-introduce export subsidies once the share of their export falls below 3.25%,

• A developing country should be excluded from Annex VII only if its per capita GNP continues above the critical level for a period of three years in a row,

• Allow developing countries to extend import substitution subsidy irrespective of the provisions of any other agreement, and

• Widen definition of "inputs consumed in the production process" to including all inputs, not just physical inputs which may have contributed to the determination of the final cost price of the exported products.

Developing countries also need to be provided a special dispensation as far as the provisions of Article 11.9 is concerned, so that subsidy investigations are started only if the subsidies being provided by developing countries are above a revised minimum threshold. Similarly the de minimis level for initiating countervailing action should also be increased.

Subsidies used by developing countries for development, diversification and up-gradation of their industry and agriculture are actionable under the Agreement. Article 8:1 of the Subsidies Agreement dealing with non-actionable subsidies should therefore be expanded to include subsidies referred to in
paragraph 3:1 of the Agreement when such subsidies are provided by developing country members, so that action cannot be taken against them either through the dispute settlement route or through the countervailing duty route.

This detailed overview of India's proposals in the area of Administered Protection is intended to show that India wants to take full use of the Protectionist safety valves in the WTO. While this approach is justified on the grounds of domestic political constraints, it shows that successive Indian governments are unwilling to overcome the mercantilist bias in their policy choices in the issue–area of international trade.

iii) Implementation Issues

At Doha, clear differences between the Developed and Developing countries emerged over 'implementation issues'. While the Developed countries wanted to expand the ambit of the WTO through a new round, the developing countries want the WTO to first resolve the problems in implementing the Uruguay Round Agreements. A new round would have implied inclusion of new issues like Investment, Competition Policy and Environment which would have imposed additional burden on developing countries.

India has forcefully argued for addressing implementation issues under various WTO agreements. They are a major issue of concern for India's trade policy. India attaches considerable importance to find meaningful solutions to the implementation issues raised by the developing countries which essentially seek to address he asymmetries and imbalances in the Uruguay round Agreements, non-realisation of anticipated benefits, and non-operational and non-binding nature of special and differential provisions.19

India has articulated the view that the S & D provisions should be implemented fully. India has also highlighted other implementation issues relating to food security concerns vis-à-vis the AOA, imbalances in the TRIPS
agreement and in Agreements of Sanitary and Phytosanitary Measures and Technical Barriers to Trade. What was equally important was that these issues be addressed in a quick manner or the credibility of the WTO could be endangered. As stated by Murasoli Maran, the then Commerce and Industry Minister of India, "An impression is created that in matters of interest to developed countries, the work programme in the WTO gets accelerated whereas in areas where developing countries have a lot of interest, progress tends to be slow and halting," (Maran, Speaking at OECD Ministerial Council Session, May 16, 2002. Paris).

Accordingly, India wants the work programme on implementation issues to be given the highest priority.

India has also been opposed to expansion of the WTO Agenda and any inclusion of non-trade subjects like environment ad labour in a trade body like the WTO. It has also been against inclusion of the Singapore Issues in the WTO Agenda till an explicit consensus emerges. India remained rigid on this issue at Cancun, which we shall examine later. We will also examine later whether it is in India's interest to stick to such an obstructionist approach.

iv) Dispute Settlement Body

Since the establishment of the WTO, India has been involved in 29 disputes; as a complaining country in 16 disputes and as the country complained against in 13 cases. In addition India has also actively participated as a third party in various disputes. India has also requested consultations with the various WTO members.

The three most important cases against India were those relating to TRIPS, Quantitative Restrictions and Anti-Dumping usage.
The first case will be taken up in the next chapter. The case regarding Quantitative Restrictions (WT/DS/90) was brought in the DSB by the US in 1999. The complaint was that India's quantitative restrictions on imports of agriculture, textile and industrial products, maintained on the balance of payment crisis grounds were inconsistent with Articles XI.1 AND XVIII:II of GATT(1994). India justified its stance in accordance with Article XVIII:B of GATT(1994) but the WTO panel rejected its appeal. India then committed to phase out the QRs by March 2001 and complied accordingly. However, it is worth noting that India's argument that the panel by asking the IMF views about India's BOP situation had delegated its judicial function, did not reflect any merit and instead showed that we were opposing just for the sake of opposition. The case regarding extensive Anti-Dumping usage by India was brought on by the EU in December, 2003. The EU challenged the WTO consistency of the 27 Indian AD measures imposed against the EU from 1999 to 2003, on the grounds that the standards applied on the investigations by India are very low. (World Trade Scanner, No.38/17-23 December, 2003) This was perceived as a backlash to India's rigid stance at Cancun but nonetheless it brought home the fact that we are engaging in a substantial usage of AD measures.

India has also submitted a proposal on reform of DSU (TN/DS/W/47) dated 11th February, 2003, wherein India has sought tightening of DSU provisions to check discretionary power of panel and Appellate Body to seek or accept information from organization not party to the dispute. India has also sought more internal transparency in the working of the panels and Appellate Body. Some highlights of India's proposal are as follows:

- Fix a time limit of 60 days for notifying the terms of settlement to the DSB and the relevant Councils and Committees;
- Extend the existing terms of 4 years for the persons appointed on the Appellate Body to 6 years and prohibit reappointment;
- Give third parties uninfringeable rights of being heard by the Appellate Body and making written submissions. Such submissions
should also reflect in the Appellate Body report;

- A panel should be barred from accepting unsolicited information;
- A notice of appeal should as a rule identify issues of law covered in the panel report and legal interpretations developed by the panel in a way that they should be comprehensible to the other party and the third party;
- The Appellate Body should be barred from seeking or accepting information from any party other than the parties and third parties to a dispute;
- Any document, notes, information, etc other than case summaries, submitted by the Secretariat to panel should be promptly provided to the parties to the dispute as a rule. Parties' views on such documents, notes, information, etc. should necessarily be taken into account by the panel.

The above analysis shows that India takes its position as a developing country leader seriously. It has engaged in formulating proposals in almost all key areas of the WTO and while other countries may look up to India for technical expertise, the moot point is that our own national interest must remain paramount. Our proposals should be a reflection of policy suggestions that would fulfill our developmental goals rather than be a general pool for the developing countries as a whole. While alliances with like-minded member-nations are necessary, the Indian government must ensure more coherent and sector-specific proposals. The moot point is not to lose sight of our own national interest, while framing our overall trade strategy and working out our terms of engagement with the WTO.

5.4 SECTOR-SPECIFIC DOMESTIC CONCERNS

India's vulnerability in world trade emanates from the impact of the WTO regime on its crucial domestic sectors of political economy. While India as a
developing country may want to behave in a certain manner in the WTO club, its vital internal sectors compel it to argue its case in a different manner. In addition, we have to incorporate the voices from the civil society, which we shall examine in the next chapter. Clearly, the engagement with the WTO poses both challenges and opportunities to various stakeholders in India's political economy. This will become clearer as we take up three significant sectors of India economy - Agriculture, Textiles and Pharmaceuticals and examine the impact of the WTO agreements on them.

i) Agriculture

Agriculture remains one of the most significant sectors of India's economy as it contributes about 25% to the GDP of the country and provides employment to approximately 65% of the population. Yet India's share in the world market remains at less than 2%. The post-Uruguay Round experience has been a mixed one for agricultural trade in India. Traditionally, the agricultural sector has been shielded from foreign competition by tariffs and non-tariff barriers including quantitative restrictions. Thus, while the goals of self-sufficiency in food has been largely achieved, the WTO regime has meant major changes in the agriculture policy, including the removal of quantitative restrictions the WTO Agreement on Agriculture (AOA) contains three main parts dealing with market access, domestic support and export subsidy.

Market access for agriculture products is governed by a 'tariffs only' regime i.e. all NTBs as in existence before the agreement have to be conveyed into tariffs. This 'tariffication' was then to be followed by progressive reduction of tariff levels. The industrial countries had to reduce these tariffs by 36% over 6 years and developing countries by 24% over 10 years. Countries like India who had not converted their Quantitative Restrictions into tariffs were allowed to have ceiling bindings, which were not subjected to these reduction commitments. India had bound its tariffs at 100% for primary products, 150% for processed products and 300% for edible oils except for certain items
comprising about 119 tariff lines.

Domestic support measures are targeted largely at developed countries where the levels of domestic agricultural support has risen to extremely high levels. Domestic supports is decided into two categories viz., (a) support with no, or minimal, distortive effect on trade (often referred to as "Green Box" and "Blue Box" measures), and (b) trade distorting support (often referred to as "Amber Box" measures).

The trade-distorting domestic support is measured in terms of what is called the "total Aggregate Measurement of Support" (total AMS), which is expressed as a part of percentage of the total value of agricultural output and includes both product-specific and non-product specific support. Domestic support given to the agricultural sector upto 10% of the total value of agricultural produce in developing countries is allowed. In other words, the AMS within this limit is not subject to any reduction commitment.

Disciplines in the area of Export Subsidies required developing countries to reduce, over a period of 10 years, (base period 1986-90) volume of subsidised exports by 14 percent in volume terms and 24 percent in budgetary outlays. Export subsidies of the kind listed in the Agreement on Agriculture, which attract reduction commitments, are not extended in India.

The reform made by the WTO agricultural agreement was perceived as adversely affecting India's political economy. The Peoples' Commission Report on GATT stated that "the 10% limit on domestic subsidies would discriminate against Indian agriculture, and have grave implications for poor resources farmers..."Devinder Sharma argued that even a slight tampering with our agricultural system will increase our dependence on the western world and would result in foods being used as a weapon against India."23

The concern that post AOA, a subsidy for Indian farmers would be no longer possible is misplaced because India is under no obligation under the
WTO AOA to reduce any of the subsidies given to farmers. This is because the total aggregate value of subsidies given to farmers like subsidies on fertilizers, electricity, seeds pesticides and cost of credit available to all crops as well as agricultural commodities is well below the ceiling prescribed in the Uruguay Round Agreement.

The concern about minimum market access is also misplaced. India in its schedule filed in the WTO at the time of signing the Uruguay Round, had indicated that it was not under any obligation to provide minimum market access, on account of being under Balance of Payment (BOP) problems. Even in the event of removal of Quantitative Restrictions (QRs) maintained on Balance of Payment grounds, during the implementation period, India would not be obliged to provide any minimum market access (Mishra, in Gandhi, 2003).

The hue and cry against AOA emanates from the fact that there is a basic difference between the way agriculture is treated in poor and rich countries. Thus while poor countries tax agriculture, rich countries subsidise agriculture. Since agricultural trade was in reality managed trade, it was inevitable that the reaction in civil society to support liberalisation in agriculture would be negative.

Besides, there is a clear divide between the developed nations on the issue of liberalisation in agriculture. The EU along with Japan, Korea etc. favours gradual reduction of tariffs whereas the Cairns group led by the US is in favour of complete elimination of export subsidies and substantial reduction in tariffs. The net food importing countries also oppose substantial reductions in export subsidies. India has adopted a two-pronged strategy to extract maximum benefit of AOA. While it favours time-bound and comprehensive phase out of export subsidies, deep cuts in domestic support and enhanced market access, it has also sought operationalisation and strengthening of S & D provisions for developing countries to ensure food security, livelihood and employment to farmers. India has, in this regard, submitted proposals in 1999
Main features of these proposals are as follows:

- Give developing countries due flexibility in the green box to address non-trade concerns such as food security and rural employment;
- Support provided by developing countries should be exempt from the AMS even if it falls outside the green box;
- If in the calculations of the AMS, product specific support is negative, the WTO members should be allowed to increase their non-product specific support by an equivalent amount;
- Imports by developed countries under TRQs should not be made conditional to absorption of domestic productions. Notifications submitted to the Agriculture Committee should include details on guidelines and procedures of allotment of TRQ.
- Revise the Marrakesh Ministerial Decision on Measures Concerning the Possible Negative effects of the Reform programme on Least-Developed and Net Food-Importing Developing Countries (NFIDCs) before 1 January, 2001 to ensure its effective implementation;
- Exempt support for enhancing domestic production for domestic consumption in food insecure countries from provisions of the Agreement on Agriculture. Food insecure countries should be identified on the basis of percentage of populations dependent on agriculture and the number and percentage of population which is undernourished;
- Provide greater flexibility for developing countries with predominantly rural agrarian economies to allow them to adequately address their non-trade concerns such as food security and rural employment;
- Provide flexibility to developing countries in areas of import restraint and domestic subsidy for the support of subsistence and small-scale farming;
- Allow developing countries with predominantly rural agrarian economies to use border measures and safeguard mechanisms as a
special and differential provision to minimise the harmful effect that possible surges could have on food security and rural employment;

- Define concrete and operational provisions for special and differential treatment of developing countries, taking into account the experience of developing countries in adapting to the present reform process, their level of economic development, the role of agriculture in their economies with a large rural population, the need for food security, as well as the vulnerability of the agriculture sector in developing countries;

- Limit domestic support (Green, blue and amber box taken together) provided by developed countries up to an appropriate proportion of the total value of agriculture production;

- Provide additional flexibility to developing countries as a special and differential treatment;

- Abolish TRQs forthwith. If they are to be continued for a short transition period, administrations of TRQs should be made equitable, non-discriminatory and transparent;

- Measures necessary to ensure food security for developing countries should be included in the green box;

- Time-bound phase out of all export subsidies by developed countries, exceptions should be allowed for developing countries to extend export subsidies under S & D provisions;

- Flexibility to predominantly agrarian countries should be provided in any tariff reduction so that they could protect the livelihood of rural populations from possible surges of imports,

- Support for maintaining enhanced domestic production for domestic consumption in food insecure countries should be entirely exempted from the provisions of the Agreement.
ii) Textiles and Clothing

Textiles and clothing is a sector wherein many developing countries enjoy comparative advantage. Thus, domestic industries in developed nations lobbied for and got high trade restrictions on imports and "by the early 1990s a global web of QRs existed."24 The UR agreement to abolish the Multi-Fibre arrangement (MFA) and its system of quotas was seen as an important victory for developing nations. It was hoped that with the death of this arrangement, the restricted exports of textile and clothing products from developing countries would receive a substantial lift. The ATC comprises nine articles and an Annex covering textiles and clothing products under section XI of the Harmonised commodity description and coding system. It is a set of guidelines, rules and procedures for the transitional period of 10 years to ensure smooth and progressive integration of the MFA provisions into the GATT rules. It establishes Textiles Monitoring Body (TMB) to supervise the application of the agreement. We have seen in Chapter Three how the quotas were to be lifted in a phased manner that suited the developed countries. However, studies such as those of Hertel and others (1996) and Harrison, Rutherford and Tarr (1996) had pointed out that South Asia would benefit significantly from this abolition - gains could be about US $2 billion per year.25 However, it was also clear that though additional opportunities would be created for developing countries, they would also be exposed to competition. Thus, the outcome for any individual nation would depend a lot on its policy response. A recent WTO study has assessed the impact of liberalisation in this sector.26 It states that the welfare gains to India after implementation of the ATC, would be three times as high if combined with domestic reforms. It is true that the government woke up late to this fact and started the domestic reforms in this sector with the Budget of 2003-2004 but industrial houses like Arvind and Reliance that planned in accordance with the WTO commitments are much better placed today to reap the gains from abolition of quotas.
An important case in this sector has been on US measures Affecting Imports of Woven Wool Shirts and Blouses from India (WT/DSB/M/33 25 June’1997) which ruled in favour of India that the US restraint on the said category violated the provisions of Articles 2 and 6 of the ATC.

India has also raised implementation issues in the textiles and clothing sector. They pertain to.

1) Importing countries should apply growth-on-growth for stage 3 with effect from 1 January, 2002.
2) Transitional safeguards should be avoided.
3) Moratorium by importing countries on anti-dumping actions until 2 years after integration of textile sector into GATT.
4) Council for trade in goods should examine any change in rules of origin for its possible impact on market access of exporting countries.
5) New import restrictions should be reported to the Textiles Monitoring Body (TMB).

iii) Pharmaceuticals

The size of the Indian pharmaceutical market is around US $ 4.4 billion, about 1% of the global figure of around US $392 billion, with a projected growth to US $ 23 billion by 2010 and a market capitalization of about US $ 150 billion. The coverage growth in the last few years has been about 12%. It has also transformed itself from a net importer to a profitable exporter and employs approximately 3.3 million people in India. The number of manufacturing units has also grown from 2257 (in 1970) to 20,053 (in 2000). However, against this growth is the existence of the 15% to 25% substandard and counterfeit drugs that are on the Indian pharmaceuticals market.27 The TRIPS agreement was initially sold to the developing countries in the Uruguay round as a means to control trade in counterfeit and pirated goods. However, we have noted earlier
that the cost of implementing the TRIPS agreement far offset the gains. India, along with other developing countries was to bring about substantial changes in its patent laws to comply with the TRIPS agreement. It was correctly perceived that the introduction of the product patent regime in India by January, 2005, would imply a metamorphosis for the Indian pharmaceutical industry as it would have to gear up to face the onslaught of global competition from companies that would have patented for their chemicals and biotechnology products in India.

We shall take up the TRIPS agreement and its various ramifications on India for a detailed discussion in the next chapter. Here it would suffice to say that it is in the pharmaceutical sector that the TRIPS agreement will impose welfare costs in India and the government in tandem with the pharmaceuticals industry has to develop policies and mechanisms that serve to mitigate the most egregious effects of the TRIPS agreement.

5.5 **VOICE OF INDIA: FROM SEATTLE TO CANCUN**

We have seen that India played an active role during the UR negotiations and even thereafter. But it is more pertinent to know whether India's voice has made any significant impact on the working of the WTO. The analysis in the ensuing section highlights the negotiation stances of India through the various WTO meets.

i) **At Seattle: Hesitant Steps**

We have taken note of earlier that there was uproar on India's joining of the WTO. By the time of the Seattle meet in December, 1999, the atmosphere among various interest groups continued to be charged with negativity.

Just before the meet, the SJM co-convenor S Gurumurthy "urged the federal government to adopt a cautious approach in view of the developed nations' proposals for removal of Quantitative Restrictions on imports to the Third World countries and those on agricultural trade".28
On the other hand, as the government initiated the process of consultations with political parties and other major interest groups in the run-up to the Seattle conference, Central Trade unions representing over 40% of the country’s total work force expressed unanimous support for the governments’ stand to oppose any linkage of labour standards with trade at Seattle. They also supported the government on the need to ensure proper implementation of the existing agreements, particularly in regard to the special provisions for the developing countries. There was a compatibility of views in the Indian Industry on sectoral issues. At the time, the CII President Rahul Bajaj called upon the government for adopting a tough stand to protect national interest and opposed subsidies in the developed world. "The government must give up the Hindu way of negotiating as 99% of the Indian Industry want the country to remain a member of the WTO." 

The Government agreed to put pressure on the developed countries to reduce the level of subsidies in the agriculture sector. India also stressed the need for a review of the implementation process of the WTO agreements.

Consequently, at Seattle, India resolutely opposed linkage of trade with labour standards as well as non-trade issues and also emphasised India’s implementation concerns.

Prime Minister Mr. Atal Bihari Vajpayee in his statement in the Lok Sabha on November 30, 1999 made clear India’s basic position in the Seattle meet. He said that;

1. “We are not in favour of wide ranging new round of negotiations, often called the millennium Round.
2. We are opposed to relating with trade -
   a) Core labour standards
   b) Environmental issues
   c) Coherent global Architecture
   d) Investment Issues
e) NGO's involvement in the WTO negotiation and
f) Competition policy

3. We are prepared for a few new items being taken up for negotiations provided implementation issues arising from the Uruguay Round are also resolved to our satisfaction."

Although, as noted, the Seattle talks collapsed on precisely these issues, India hardly played an assertive role in those deliberations. This is a pointer to the fact that although our stance is at par with the public opinion in many developing countries, till Seattle, we could not consolidate our position and develop alliances.

ii) At Doha: The Lone Hand

"The only real loser in Doha was India. It achieved no obvious gains except for the dubious pleasure of delaying the close of the meeting."

Financial Times, Nov. 2001

The Doha agenda called for negotiations in four areas: trade liberalisation, trade and environment, the WTO rules in certain areas and the DSU. Most developing countries including India had vehemently opposed inclusion of trade and environment.

Though India faced hash criticism for its rigid stance, it succeeded in keeping the issue of labour standards out of the agenda. It also successfully achieved exclusion of the Singapore issues from negotiations. The declaration on the TRIPS agreement clarifying that members have the right to grant compulsory license can also be credited to India. Secondly, India also get concessions on a member of implementation issues
Though at the time of presentation of the draft declaration, "India stood well and truly isolated," India's threat to not agree to a consensus and to perhaps even pullout from Doha, led to the significant change that the Singapore issues would be taken up only after next ministerial conference by explicit consensus.

However, what emerged more stronger was the 'negative' label that stuck to India. By taking an extreme position and by public opposition of the launch of a new round by Commerce Minister Maran, India not only was termed 'obstructionist', but the newly agreed round – The Doha Development Agenda, became evidence of India's 'defeat'. India became an easy target of criticism. "It could have instead taken the high road by supporting trade liberalisation agenda unequivocally and positioning itself in favour of a round that focused on this central function of the WTO."32

In fact, prior to the Doha meet, there had emerged a view that India needs to be circumspect at Doha33 and accept the political reality that India can not deflect the course of events being increasingly dictated by Washington and Brussels "where the world's puissant bureaucracy holds sway." At least India could refrain from expressing itself against the launch of a new round at a time when the world's trade majors are determined to initiate one. In the ultimate analysis, "India's cannot be a voice in the wilderness when the rest of the world chimes into the tunes of the elephants."34 Thus, while the then Prime Minister Vajpayee stated that the rationale for India's insistence on not expanding the agenda of the next the WTO Ministerial Meeting "is shared by many developing nations and also by many people in the developed nations,"35 India got the most flak at the end of the Doha meet.

That India's fears were proved correct later, and the Doha Development Agenda turned out to contain everything but development, didn't cover the loss of image faced by India earlier.
We have already examined in Chapter Two as to how the Doha Development Round ran into rough weather. The Joint Statement of the NGOs\textsuperscript{36} and social movements denounced it as a development disaster because:

\begin{itemize}
  \item[a)] It did not make any significant progress on developing countries' implementation concerns.
  \item[b)] There was no real commitment to support the concept of food sovereignty.
  \item[c)] Does not resolve any of the negative consequences of the TRIPS agreement, including bio-piracy and prevention of the fulfillment of basic consumer rights.
  \item[d)] Launches negotiations for market access on industrial products which will pressurise developing countries to further reduce their tariffs.
  \item[e)] Facilitates the liberalization of natural resources such as water in the guise of eliminating barriers to environmental goods.
  \item[f)] Reduces and trivializes substantial development concerns as a matter of technical assistance.
\end{itemize}

The Indian Governments' position is not very different from the above. Yet, it is tragic that the world's largest democracy is unable to make its logical, pro-people and pro-development concerns a part of the multilateral trading regime. It is also cause for worry. And we shall take this further in our last chapter.

In India too, there was criticism of the way India negotiated. While it entered the Doha meeting with strong statements that the WTO is not a global government, Mr. Maran's resistance was not as successful as it should have been. In fact, as Prakash Karat, CPI(M) has stated India lost its credibility in creating a bloc of resistance or leading other countries. "In Doha we tried to live up to our past image of a unifying force but we have not been successful in our efforts."\textsuperscript{37}
iii) Cancun Fails but India Succeeds?

Though the Cancun talk could not result in successful conclusion of negotiations (See Chapter Three), India played a more assertive role and greatly enhanced its bargaining capacity by playing a leading role in G-22. Back home, the BJP hailed India’s stand, “by forgoing two separate and influential alliances, on agricultural subsidies and Singapore issues at the WTO summit in Cancun, India had emerged as the leader of the developing countries.” The Minister of Law and Commerce Mr Arun Jaitley’s tough and skilful negotiating stance played an instrumental role, specially in deciphering the interpretation of ‘explicit consensus’ regarding Singapore issues. He also criticized the lack of internal transparency in the WTO’s decision making process.

His statement focused on India’s concerns on achieving developmental goals through trade liberalization:

“The developing countries participate in the multilateral trading system in the hope that this would lead to their economic development and not because trade liberalization is an end in itself.”

Although the Cancun meet, did not ensure better gains for India, it did mark a welcome change in India’s negotiating strategy is a welcome one. However, a more proactive approach is still required. For instance in Agriculture, though India had proposed introducing restrictions on imports to safeguard the interests of farmers, the Harbinson Draft ignored this. India expressed its criticism on the Harbinson draft, but it should have presented an alternate farm draft at the WTO.

Wadhwa has laid down post-Cancun agenda for India which should be more positive and proactive and should “identify and articulate their concerns with the asymmetries creeping into the multilateral trading system and seek
their redressal with effective coalition building.\textsuperscript{42}

Matoo and Stem have also suggested the following reforms as a capacity building agenda for India:\textsuperscript{43}

1. There is a need to improve implementation of supportive measures under multilateral environment agreements and to examine to what extent the multilateral trading system can help remove possible obstacles to better implementation.

2. There is a need to examine the consistency of TRIPS provisions and the Bio-diversity Convention, especially in the areas of biological resources and traditional knowledge system.

3. There is a need to strongly resist unilateral measures on the grounds that all unilateral measures that are extra jurisdictional and based on non-product related process and production methods would fail the chapeau test of GATT Article XX. A comparative evaluation of the WTO jurisprudence in this context would be useful. India's Ministry of Commerce has begun discussion groups on the evolution of the WTO law in this field, but India needs to generate public awareness of these issues and to develop a media strategy.

4. Implementation of TRIPS Articles 67 and 66.2 on transfer of technologies to developing countries and to the least-developed countries is needed.

5. A mechanism should be devised under the existing code of good practices for voluntary measures to avoid the use of trade-discriminatory measures based on PPM-related requirements.

6. There is a need to build consensus on certain concepts to be considered in developing and implementing newly emerging environmental measures with trade effects, particularly for India.

7. It may be necessary to examine whether differential treatment for small and medium-size enterprises (SMEs) is available within the existing framework of the WTO rules, because a large proportion of India's exports comes from SMEs.
The above discussions show that the reaction of various actors in the Indian state and civil society to joining the WTO has been varied but immense. There was no consensus about India's accession to the WTO. This led to ill informed opposition rather than a constructive approach at formulating a better negotiating strategy. This had an adverse effect on our bargaining capacity, as we shall discuss in the next chapter.

There is still a need for more awareness and consensus on key issues. While concerned sectors have to come forward with detailed strategy, civil society can also play a vital role in bridging this gap.

We also see that our negotiators have not take a consistent stance. Domestic power play among stakeholders in India's political economy has led to policy shifts that were manifest during the WTO negotiations. As a consequence, India's negotiating position remained weak and India was not able to garner support for our proposals at the various meets.

The extensive use of Anti-Dumping duty indicates the tendency on part of the Indian state in making use of protectionist provisions, ostensibly to fulfill national interest. It should be ensured that this is not used to satiate narrow and vested sectoral interests, for then it erodes our moral authority and we lose the locus standi to take the developed countries to task for the same.

The detailed analysis of the WTO meets shows that though our concerns were valid but till Cancun we could not make any perceptible difference at the WTO. This is clearly brought out at the Doha meet. It is, therefore, important to recognize that it is vital to embark on a capacity-building agenda that will equip us fully to harness support for better deals in the forthcoming WTO negotiations. Our own negotiating strategy, hus, needs reform.
In the final analysis, the interface between India and the WTO borders on the theoretical premise of 'Reverse Colonization'-where the periphery seeks to influence the center in order to meet its own objectives. Though its outcome is still not discernible, it can provide a possible building block for the future.
CHAPTER NOTES


7. See *Political Significance of Anti-Dunkel Bombay March*, Article available at Redstar, October, 1994.


10. See his interview with Shobha Warrirer, at www.rediff.com, April 8, 2003

11. See *The Tribune* March 4, 2001


14. See his statement, June 22, 1998 available at rediff.com

15. See Rajesh Mehta, *Tariff and Non-Tariff Barriers of Indian economy, A profile*, Research and Information System, N.Delhi, 1999


17. Chaddha ibid
18. See Mitali Das Gupta "Shaping the WTO Anti-Dumping Agreement" A Developing Country Perspective in the Foreign Trade Review.


22. This section draws from R K Mishra's article, "The WTO Agreement on Agriculture (AoA) and Agricultural Crisis in India, in 'Globalised Indian Economy: Contemporary Issues and Perspectives,' (2003) Gandhi Jagadish P.

23. Quoted in S.Bhandari, "World Trade Organization and Developing Countries", 1998


27. See P Ganguly, "The Pharmaceutical Industry in India", in Pharmatech 2003.


29. See Rediff on the Net Business Report, November 15, 1999


31. See Arvind Panagariya, "India Arrives at the WTO," The Economic Times, November 21, 2001

32. Ibid

33. See G Srinivasan's article, June 22, 2001, Financial Daily, The Hindu Business line

34. See Frontline, December 7, 2001

35. See his statement on August 20, 2001, available at www.tradewatch.org
36. Over 141 organizations (including organizations such as NWGP, RFSTE from India) were signatories to this statement, on January 26, 2002, available at Third World Network.

37. See his interview, Frontline, December 7, 2001


39. See The Economic Times, 16 September, 2003 on ‘the rise and rise of Jaitley’.


42. See C.D. Wadhva’s paper "Post Cancun WTO perspectives India’s Negotiating position as a developing country, 2003.

43. Mattoo, Stern, supra note 25, p. 320.