CHAPTER – 9

WORLD TRADE ORGANISATION
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WORLD TRADE ORGANISATION (WTO)

OVERVIEW

The World Trade Organization (WTO) is an international organization designed to supervise and liberalize international trade. The WTO came into being on January 1, 1995 and is the successor to the General Agreement on Tariffs and Trade (GATT), which was created in 1947 and continued to operate for almost five decades as a de facto international organization. The World Trade Organization deals with the rules of trade between nations at a near-global level; it is responsible for negotiating and implementing new trade agreements and is in charge of policing member countries' adherence to all the WTO agreements, signed by the majority of the world's trading nations and ratified in their parliaments. Most of the issues that the WTO focuses on derive from previous trade negotiations, especially from the Uruguay Round. The organization is currently working with its members on a new trade negotiation called the Doha Development Agenda (Doha round), launched in 2001. The WTO has 153 members, which represents more than 95% of total world trade. The WTO is governed by a Ministerial Conference, which meets every two years; a General Council, which implements the conference's policy decisions and is responsible for day-to-day administration and a director-general, who is appointed by the Ministerial Conference. The WTO's headquarters is in Geneva, Switzerland.
HISTORICAL BACKGROUND

The WTO's predecessor, the General Agreement on Tariffs and Trade (GATT), was established after World War II in the wake of other new multilateral institutions dedicated to international economic cooperation - notably the Bretton Woods institutions known as the World Bank and the International Monetary Fund. A comparable international institution for trade, named the International Trade Organization was successfully negotiated. The ITO was to be a United Nations specialized agency and would address not only trade barriers but other issues indirectly related to trade, including employment, investment, restrictive business practices and commodity agreements. But the ITO treaty was not approved by the United States and a few other signatories and never went into effect. In the absence of an international organization for trade, the GATT would over the years "transform itself" into a de facto international organization.

GATT Rounds of Negotiations

The GATT was the only multilateral instrument governing international trade from 1948 until the WTO was established in 1995. Despite attempts in the mid 1950s and 1960s to create some form of institutional mechanism for international trade, the GATT continued to operate for almost half a century as a semi-institutionalized multilateral treaty regime on a provisional basis.
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<tr>
<th>Name</th>
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<td>Geneva</td>
<td>April 1947</td>
<td>7 months</td>
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<td>Tariffs</td>
<td>Signing of GATT, 45,000 tariff concessions affecting $10 billion of trade</td>
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<td>Annecy</td>
<td>April 1949</td>
<td>5 months</td>
<td>13</td>
<td>Tariffs</td>
<td>Countries exchanged some 5,000 tariff concessions</td>
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<td>Torquay</td>
<td>September 1950</td>
<td>8 months</td>
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<td>Countries exchanged some 8,700 tariff concessions, cutting the 1948 tariff levels by 25%</td>
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<td>Geneva II</td>
<td>January 1956</td>
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<td>26</td>
<td>Tariffs, admission of Japan</td>
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<td>Dillon</td>
<td>September 1960</td>
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<td>Kennedy</td>
<td>May 1964</td>
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<td>Tariff concessions worth $40 billion of world trade</td>
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<td>Tokyo</td>
<td>September 1973</td>
<td>74 months</td>
<td>102</td>
<td>Tariffs, non-tariff measures, &quot;framework&quot; agreements</td>
<td>Tariff reductions worth more than $300 billion dollars achieved</td>
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<td>Uruguay</td>
<td>September 1986</td>
<td>87 months</td>
<td>123</td>
<td>Tariffs, non-tariff measures, rules, services, etc</td>
<td>The round led to the creation of WTO and extended the range of trade negotiations.</td>
</tr>
<tr>
<td>Doha</td>
<td>November 2001</td>
<td>not yet concluded</td>
<td>141</td>
<td>Tariffs, non-tariff measures, agriculture, labor standards, etc</td>
<td>The round is not yet concluded.</td>
</tr>
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MISSION AND PRINCIPLES

Mission

The WTO's stated goal is to improve the welfare of the people of its member countries, specifically by lowering trade barriers and providing a platform for negotiation of trade. Its main mission is "to ensure that trade flows as smoothly, predictably and freely as possible". This main mission is further specified in certain core functions serving and safeguarding five fundamental principles, which are the foundation of the multilateral trading system. The WTO/GATT system is founded on non-discrimination, with its twin faces of Most-Favoured-Nation and National Treatment principles.

PRINCIPLES

The WTO establishes a framework for trade policies, it does not define or specify outcomes. That is, it is concerned with setting the rules of the trade policy games. Five principles are of particular importance in understanding both the pre-1994 GATT and the WTO which are as follows:

1. **Non-Discrimination** - It has two major components: the most favoured nation (MFN) rule, and the national treatment policy. Both are embedded in the main WTO rules on goods, services, and intellectual property, but their precise scope and nature differ across these areas. The MFN rule requires that a WTO member must apply the same conditions on all trade with other WTO members i.e. a WTO member has to grant the most favorable conditions under which it allows trade in a certain product type to all other WTO members. "Grant someone a special favour and you have to do the same for all other WTO members."[24] National
treatment means that imported and locally-produced goods should be treated equally (at least after the foreign goods have entered the market) and was introduced to tackle non-tariff barriers to trade (e.g. technical standards, security standards et al. discriminating against imported goods).[31]

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

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

4. **Transparency.** The WTO members are required to publish their trade regulations, to maintain institutions allowing for the review of administrative decisions affecting trade, to respond to requests for information by other members and to notify changes in trade policies to the WTO. These internal transparency requirements are supplemented and facilitated by periodic country-specific reports (trade policy reviews) through the Trade Policy Review Mechanism (TPRM). The
WTO system tries also to improve predictability and stability, discouraging the use of quotas and other measures used to set limits on quantities of imports.

5. **Safety valves.** In specific circumstances, governments are able to restrict trade. There are three types of provisions in this direction: articles allowing for the use of trade measures to attain noneconomic objectives; articles aimed at ensuring "fair competition" and provisions permitting intervention in trade for economic reasons

**SALIENT FEATURES**

**Market Access**

This includes tariffication, tariff reduction and access opportunities. Tariffication means that all non-tariff barriers such as quotas, variable levies, minimum import prices, discretionary licensing, state trading measures, voluntary restraint agreements etc. need to be abolished and converted into an equivalent tariff. Ordinary tariffs including those resulting from their tariffication are to be reduced by an average of 36% with minimum rate of reduction of 15% for each tariff item over a 6 year period. Developing countries are required to reduce tariffs by 24% in 10 years. Developing countries as were maintaining Quantitative Restrictions due to balance of payment problems were allowed to offer ceiling bindings instead of tariffication. Special safeguard provision allows the imposition of additional duties when there are either import surges above a particular level or particularly low import prices as compared to 1986-88 levels. It has also been stipulated that minimum access equal to 3% of domestic consumption in 1986-88 will
have to be established for the year 1995 rising to 5% at the end of the implementation period.

**Domestic Support**

For domestic support policies, subject to reduction commitments the total support given in 1986-88 should be reduced by 20% in developed countries (13.3% in developing countries). Reduction commitments refer to total levels of support and not to individual commodities. Policies which amount to domestic support both under the product specific and non product specific categories at less than 5% of the value of production for developed countries and less than 10% for developing countries are also excluded from any reduction commitments. Policies which have no or at most minimal, trade distorting effects on production are excluded from any reduction commitments. Special and Differential Treatment provisions are also available for developing country members. These include purchases for and sales from food security stocks at administered prices provided that the subsidy to producers is included in calculation of AMS. Developing countries are permitted untargeted subsidised food distribution to meet requirements of the urban and rural poor. Also excluded for developing countries are investment subsidies that are generally available to agriculture and agricultural input subsidies generally available to low income and resource poor farmers in these countries.

**Export Subsidies**

The Agreement contains provisions regarding members commitment to reduce Export Subsidies. Developed countries are required to reduce their export subsidy expenditure by
36% and volume by 21% in 6 years, in equal installment (from 1986 –1990 levels). For developing countries the percentage cuts are 24% and 14% respectively in equal annual installment over 10 years. The Agreement also specifies that for products not subject to export subsidy reduction commitments, no such subsidies can be granted in the future.

FUNCTIONS OF WTO

World Trade Organization has following functions:

(1) World Trade Organization has to facilitate the implementation, administration, operation and objectives of Multinational Trade Agreements and shall also provide the framework for the implementation, operation and administration of plurilateral Trade Agreements.

(2) World Trade Organization has to provide the forum for negotiations among its members concerning their multilateral trade relations in matters dealt with under the Agreements.

(3) World Trade Organization has to administer the understanding on rules and procedures governing the settlements of disputes.

(4) World Trade Organization has to administer the “Trade Review Mechanism”

(5) World Trade Organization has to cooperate with IMF and IBRD and its affiliated agencies to achieve greater coherence in global economic policy making.

(6) The General Council has four major functions:

(a) To act as Dispute settlement Body
(b) To supervise on regular basis the operations of revised agreements and ministerial declarations relating to goods, services and TRIPS.
(c) To serve as a "Trade Facilitating Mechanism" 
(d) To establish Goods Council, Services Council and TRIPS Council as subsidiary bodies.

ISSUES AND CONCERNS

(a) **Implementation issues**: A good deal of discussions took place on this subject in Seattle, further to the extensive consultations held in Geneva earlier. The Working Group Chairman (Canada) came up with a final proposal (similar to what was mooted by the Secretariat) that meant a few immediate decisions at Seattle and establishment of a special mechanism to examine and make recommendations within one year and in any case by the Fourth Ministerial Session, on other implementation issues. The Chairman's text also proposed negotiations in respect of Anti-Dumping and Subsidies Agreements. While India and most other countries were prepared to go along with the Chairman's text, the US had reservations and was opposed to any negotiations on anti-dumping and subsidies and could, at the most, agree to a few (not all) of the issues raised by the Committee on Anti-Dumping and Subsidies respectively. No consensus could, therefore, emerge.

(b) **Agriculture Issues**: Mandated negotiations have to commence on 1.1.2000 on Agriculture. In the run-up to Seattle, however, the Cairns Group of countries supported by US sought to secure a more rigorous negotiating mandate that would speed up elimination/reduction of their export/domestic subsidies. EC, Japan, Norway
etc., resisted this to the very end. While EC appeared to display some flexibility on this issue, Japan put up stiff opposition on further inroads into elimination of domestic subsidies. As for India, our concerns relating to food security were adequately reflected.

(c) **Service Issues:** No substantive negotiation took place in Seattle as there was hardly any divergence of views on the draft text which adequately takes into account India's concerns.

(d) **Investment and Competition Policy Issues:** India, Malaysia, Hong Kong, China and Pakistan proposed the continuation of the study process launched at Singapore. EC and others stubbornly argued that they wanted negotiations to be launched right away. Given this, the talks broke off but a 'bridge proposal' which aimed at carrying forward the study process to prepare for negotiations to be launched by the Fourth Ministerial Conference began to take shape. While India, Malaysia, Hong Kong, China and Pakistan continued to oppose even the "bridge proposal", a number of other developing countries (including countries such as Zimbabwe, Sri Lanka and Egypt) showed inclination to agree to launch negotiations or to agree to the compromise proposal.

(e) **Market Access for non-agricultural items:** There was virtually no opposition for the launching of negotiations in this area except that a number of developing countries including ourselves pointed out the priority that we attached to the implementation issues and made it clear that agreeing to any text on this issue depended on progress in other areas. The text which evolved during the Green Room
consultations left open the modalities to be followed for the tariff reduction exercise although the APEC countries wanted a specific reference to their Accelerated Tariff Liberalisation (ATL) initiative. EU wanted a common tariff reduction method to be adopted for all countries while certain others preferred a formula approach to be the main methodology. While our concerns were largely met in the draft text, the US insisted on avoiding any reference to peak-tariffs saying it was a politically sensitive issue. Several developing countries, including us, however, firmly opposed the substitution of 'peak tariffs' by any other phraseology. This matter still needs to be resolved.

(f) Transparency in Government Procurement: There were broadly three proposals on this subject at the Seattle Ministerial. First, the Working Group should continue its work until the fourth Ministerial session. India and number of developing countries supported this proposal. Second, the Seattle Ministerial should mandate commencement of negotiations based on the elements that had formed the basis of discussion in the Working Group with the objective of concluding an Agreement at the latest by the Fourth Ministerial session. A number of developed and developing countries such as Brazil and South Africa supported this proposal. Third, the Ministers adopt at Seattle an Agreement on Transparency in Government Procurement based on the formulation proposed by the United States and the European Communities. After further discussions in the open-ended Seattle Working Group on Singapore issues and other issues, its Chairman gave his understanding that there was virtual consensus among Members present on the second proposal. He noted that India was the only Member present that stated that it could not join such a
consensus and urged India to reconsider its position. India had stated that it could only support further work in the Working Group aimed at arriving at a consensus on the elements of a Transparency agreement.

(g) **Trade and Environment Issues:** Developed countries, particularly EU, were very keen on negotiations on environment related issues to accommodate concerns of their civil society. They wanted environmental considerations integrated throughout the negotiations in the new Round ('mainstreaming') which will also dilute the focussed mandate of the Committee on Trade and Environment (CTE) to that extent. USA was further keen that Members right to set high environmental standards was not undermined by trade rules. US and CAIRNS Group countries also called for the removal of environmentally damaging subsidies such as agricultural subsidies and fishery subsidies that contributed to over capacity. Developing countries sought adjustments in the TRIPS Agreement for preservation of biological diversity and reward for traditional knowledge. The proposal to mainstream environment and dilute the role of CTE and the US proposal regarding environmental standards were opposed by some developing countries including India while there was considerable support for removal of environment-related subsidies. The TRIPS related proposals were supported by some, but there was no consensus.

(h) **Intellectual Property Issues:** Many members were willing to complete the negotiations on the establishment of a multilateral system of notification and registration of geographical indications for wines and possibly spirits, while there was an emerging consensus for an early decision on the ongoing discussions on inclusion
of other products for the higher level of protection as has been provided to wines under Art 23 of TRIPS. Other work programmes proposed to be launched at Seattle included a proposal to make recommendations to the Fourth Ministerial Conference on the scope for protection for traditional knowledge and folklore under the TRIPS Agreement, and review of Article 71.1, including enhancing the Agreement to respond to its objectives and principles as well as new developments elsewhere, and of Article 27.3(b) relating to life forms and plant varieties.

(i) **Other issues:** There were a few other issues which were less controversial. Subjects belonging to this category included E-commerce and trade facilitation. A proposal to set up a working group on transfer of Technology, supported by India also found wide support but was opposed by USA, while EC and some others preferred discussions on this issue within the Committee on Trade and Development. On the other hand, the proposed Working Group on Bio-technology, pursued by USA was hardly discussed because of strong opposition from many members, including India.

(j) Regarding transparency in the functioning of WTO, US and EU were keen for some kind of mechanism whereby civil society could participate in the WTO functioning, inter alia, through amicus curiae briefs in the trade dispute settlement mechanism. But this was sharply opposed by India and many other developing countries.

**PROVISIONS & IMPLICATIONS**

(1) Level of tariff reduction and export subsidies agreed are generally in consonance with reforms accepted by Government of India as recommended in the Chelliah Committee Report.
WTO has brought within its ambit the trade in textiles and clothing which was being covered by Multi Fibre Agreements. Multi Fibre Agreement is an elaborate system of quotas imposed by developed countries over exports from developing countries. This is one area where general philosophy of removal of non tariff barriers has been sacrificed to safeguard the interest of developing countries. Even items which under Multi Fibre Agreement were not under quota have been brought under ambit.

Trade Related Intellectual Property Rights (TRIPS) is another area which has attracted attention and criticism in India. TRIPS lay down norms and standards for seven types of intellectual property copy rights and related rights, trademark, geographical indications, industrial design, patents, undisclosed information of and layout design of integrated circuits. Out of these seven areas Indian laws on most are already in consonance with WTO requirements. Where there is variance as in the case of copyright, amendments were made in 1994 to the Copyright Act, 1957. This is important because in terms of Article 249 of TRIPS, a country is under no obligation to protect geographical indications which are not protected by domestic laws of the country of origin.

The real controversy is in respect of patents where the Indian Patents Act, 1970 varies widely with the requirements of TRIPS. TRIPS require patents to be made available for any invention whether product or process in all fields of industrial technologies. Indian Patents Act permits only process patents in invention relating to food, pharmaceuticals, agricultural chemicals and
chemicals. Similarly neither products nor process patent is allowed in the area of atomic energy. However, arising from a dispute between India and EU over patents of pharmaceuticals and agricultural chemicals India has been forced to abide by the ruling of the Dispute Settlement Body of WTO before April 19, 1999 to provide patent protection. Indian parliament passed the Patents (Ammendment) Bill in March, 1999 providing for exclusive marketing rights for pharmaceuticals and agrochemical products.

(5) Trade Related Investment Measures (TRIMS) require governments not to discriminate against foreign capital which should be given national treatment. This takes away India’s discretion to allow certain types of foreign investment (soft drinks, potato chips etc.) and this infringes on country’s economic sovereignty. But as liberalization includes wooing foreign direct investment, TRIMS requirement cannot be said to be ideologically antithetical to the national economic policies.

INDIAN RESPONSE

(1) India said that anti dumping investigation were being conducted strictly on the basis of anti dumping rules that were fully in accordance with WTO agreement.

(2) India further pointed that the actual trade affected by these measures was not significant. In totality, 39 measures against US and EU for instance accounted for less than 0.1 % of all of India’s imports.

(3) Responding to the queries on agriculture, India said various measures had been undertaken including removal of export restriction on agricultural
products and allowing free improvement of food grains. Further liberalization would depend upon how the trading partners committed themselves to reduction in export subsidies and domestic support.

(4) In textiles, India's said several initiatives had been undertaken including dereservation of readymade garments and technological up gradation.

(5) The slower phasing out of quota restrictions, tariff peaks in developed markets for quota items and repeated trade defense action were coming in the way of increase market access for developing countries like India.

(6) A number of initiatives has been taken by Government of India particularly in lowering of custom duties, deregulation in number of service sectors such as banking, insurance and telecom and liberalization of FDI regime

INFERENCE:

Despite the establishment of the WTO and the operation of the strengthened dispute settlement mechanism under it, the chances of strong trade powers resorting to unilateral measures cannot be ruled out. Indeed, recent examples indicate that these may increase in the future so as to put enormous strain on the multilateral trading system. The lack of a strong and unambiguous rejection of unilateral trade measures is also leaving scope for injudicious and 'activist' interpretation of rules. Already, reservations of some members have been placed on record in the Dispute Settlement Body regarding the Panel/Appellate Body process usurping the rights of Members by the so-called 'evolutionary interpretation' of rules. This trend may undo the delicate balance between rights and
obligations being constantly negotiated in the WTO. Hence, the WTO community needs to treat the issue of unilateral measures with the sense of urgency it deserves. Whatever will be the subject matter but the essential objective will remain the same i.e. use trading advantage and market power to unjustly change another country's policies/behaviour. For example, there is an attempt to give concessions under their GSP scheme subject to recipient governments committing to comply with certain environmental/labour standard norms. This is in violation of the "enabling clause" of GATT relating to GSP which clearly sets out that GSP must be non-discriminatory, non-reciprocal and generalised. But, by making the GSP selective in its application as mentioned above, it will be rendered both discriminatory and reciprocal.