Chapter III

World Trade Organisation and Its Processes

Introduction

The WTO is the successor to a previous trade agreement called the General Agreement on Tariffs and Trade (GATT), which was created in 1948. The WTO has a larger membership than GATT, and covers more subjects. Nevertheless, it was GATT that established, multilaterally, the principles underlying this trading system. The change from the GATT system to the World Trade Organization (WTO) deals with the rules of trade between nations at a global or near-global level. WTO primarily deals with the agreement containing a set of disciplines on governments in three areas viz., i) international trade in goods, ii) international transactions in services, and iii) protection of intellectual property rights. And then there is mechanism for the enforcement of the rights and obligations in all these areas. The disciplines in the area of trade in goods are contained in GATT 1994 and in 12 other agreements, those in services are prescribed in the General agreement on Trade in Services (GATS), and the ones on intellectual property rights (Agreement on TRIPS). The enforcement of rights and obligation is through the Dispute Settlement Understanding (DSU) (Das, 1998).

The member countries are expected to implement the WTO agreements along three simultaneous tracks, viz., i) formulation of laws and procedures and establishment of institutions as stipulated at various measures and provisions within prescribed time frames, and iii) notification to the WTO about certain actions and measures from time to time. Formulation of laws and procedures is compulsory in some cases and discretionary in other cases. For example, it is essential for a country to have legislation and procedures on the protection
of IPRs as required by the Agreement on TRIPS. Similarly, it is essential to have laws and procedures in place for implementing the obligation on the entry of services into the country.

Above all, it’s a negotiating forum. It is a place where member governments go, to try to sort out the trade problems they face with each other. The first step is to talk. The WTO was born out of negotiations, and everything the WTO does is the result of negotiations. The bulk of the WTO’s current work comes from the 1986–94 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO is currently the host to new negotiations, under the “Doha Development Agenda” launched in 2001.

The main edifice of WTO is to primarily reduce the trade barriers across the globe or liberalize trade. But the WTO is not just about liberalizing trade, and in some circumstances its rules support maintaining trade barriers — for example to protect consumers or prevent the spread of disease. At its heart are the WTO agreements, negotiated and signed by the bulk of the world’s trading nations. These documents provide the legal ground-rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.

The system’s overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side-effects — because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be “transparent” and predictable. And it helps to settle disputes … This is a third important side to the WTO’s work. Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO
system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

**WTO Functioning**

The WTO is ‘rules-based’; its rules are negotiated agreements. The WTO agreements cover goods, services and intellectual property. They spell out the principles of liberalization, and the permitted exceptions. They include individual countries’ commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes. They prescribe special treatment for developing countries. They require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted, and through regular reports by the secretariat on countries’ trade policies. These agreements are often called the WTO’s trade rules, and the WTO is often described as “rules-based”, a system based on rules. But it’s important to remember that the rules are actually agreements that governments negotiated.

This is the result of decisions taken at Ministerial Conferences, in particular the meeting in Doha, November 2001, when new negotiations and other work were launched. Six-part broad outline WTO is a list of about 60 agreements, annexes, decisions and understandings. In fact, the agreements fall into a simple structure with six main parts: an umbrella agreement (the Agreement Establishing the WTO); agreements for each of the three broad areas of trade that the WTO covers (goods, services and intellectual property); dispute settlement; and reviews of governments’ trade policies. The agreements for the two largest areas — goods and services — share a common three-part outline, even though the detail is sometimes quite different. They start with broad principles: the General Agreement on Tariffs and trade (GATT) (for goods), and the General Agreement on Trade in Services (GATT) (The third area, Trade-Related Aspects of Intellectual Property Rights (TRIPS), also falls into this category although at present it has no additional parts). Then comes
extra agreements and annexes dealing with the special requirements of specific sectors or issues.

Finally, there are the detailed and lengthy schedules (or lists) of commitments made by individual countries allowing specific foreign products or service providers access to their markets. For GATT, these take the form of binding commitments on tariffs for goods in general, and combinations of tariffs and quotas for some agricultural goods. For GATS, the commitments state how much access foreign service providers are allowed for specific sectors, and they include lists of types of services where individual countries say they are not applying the “most-favoured-nation” principle of non-discrimination. Underpinning these is dispute settlement, which is based on the agreements and commitments, and trade policy reviews, an exercise in transparency. Much of the Uruguay Round dealt with the first two parts: general principles and principles for specific sectors. At the same time, market access negotiations were possible for industrial goods. Once the principles had been worked out, negotiations could proceed on the commitments for sectors such as agriculture and services.

Another group of agreements not included in the diagram is also important: the two plurilateral’ agreements not signed by all members: civil aircraft and government procurement. Further changes on the horizon, the Doha Agenda. These agreements are not static; they are renegotiated from time to time and new agreements can be added to the package. Many are now being negotiated under the Doha Development Agenda, launched by WTO trade ministers in Doha, Qatar, in November 2001. The WTO functioning takes place under the principles of the agreements endorsed along with resolution of the disputes if it arises on account of member countries reneging on their commitments in their country schedules. On the issue of transparency all members are routinely reviewed by the Trade policy committee which is published for further scrutiny.
Constitutional Structure

The main body of WTO law is composed of over sixty individual agreements and decisions. All of these are overseen by councils and committees at the WTO’s headquarters in Geneva; the WTO doesn’t have any local or regional offices. Large-scale negotiations, like the Doha Round, require their own special negotiating forum. At least once every two years, WTO members meet at the ministerial level. For the rest of the time, national delegates, who are usually diplomats and national trade officials, conduct the day-to-day work.

The Box Below shows the basic structure of WTO representative bodies. The main body of the WTO is the Ministerial Conference which is the supreme decision body of member countries with one country one vote system and overseen and guided by the General council which does the negotiations through regular and informal sessions.

Box 1 Structure of WTO
The other bodies like the council for trade in goods, services and intellectual property rights oversee the work on the individual areas.

**Principles of the trading system**

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. They deal with: agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards and product safety, food sanitation regulations, intellectual property, and much more. But a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system.

1. **Most-favoured-nation (MFN): treating other people equally** Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members. This principle is known as most-favoured-nation (MFN) treatment (see box). It is so important that it is the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (GATS) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO. Some exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group — discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate. But the agreements only permit these exceptions under strict conditions. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or
services from all its trading partners — whether rich or poor, weak or strong.

2. National treatment: Treating foreigners and locals equally imported and locally produced goods should be treated equally — at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these.

National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax. Freer trade: gradually, through negotiation lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed.

Since GATT’s creation in 1947–48 there have been eight rounds of trade negotiations. A ninth round, under the Doha Development Agenda, is now underway. At first these focused on lowering tariffs (customs duties) on imported goods. As a result of the negotiations, by the mid-1990s industrial countries’ tariff rates on industrial goods had fallen steadily to less than 4% but by the 1980s, the negotiations had expanded to cover non-tariff barriers on goods, and to the new areas such as services and intellectual property. Opening markets can be beneficial, but it also requires adjustment. The WTO agreements allow countries to introduce changes gradually, through “progressive liberalization”. Developing countries are usually given longer to fulfil their obligations. The whole principle of WTO was to build in
Predictability: through binding and transparency sometimes, promising not to raise a trade barrier can be as important as lowering one, because the promise gives businesses a clearer view of their future opportunities. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices.

The multilateral trading system is an attempt by governments to make the business environment stable and predictable. In the WTO, when countries agree to open their markets for goods or services, they bind” their commitments. For goods, these bindings amount to ceilings on customs tariff rates. Sometimes countries tax imports at rates that are lower than the bound rates. Frequently this is the case in developing countries. In developed countries the rates actually charged and the bound rates tend to be the same.

A country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. One of the achievements of the Uruguay Round of multilateral trade talks was to increase the amount of trade under binding commitments (see table). In agriculture, 100% of products now have bound tariffs. The result of all this: a substantially higher degree of market security for traders and investors.

The system tries to improve predictability and stability in other ways as well. One way is to discourage the use of quotas and other measures used to set limits on quantities of imports — administering quotas can lead to more red-tape and accusations of unfair play. Another is to make countries’ trade rules as clear and public (“transparent”) as possible. Many WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO. The regular surveillance of national trade policies through the Trade Policy Review Mechanism provides a further means of encouraging transparency both domestically and at the multilateral level.

Promoting fair competition: The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More
accurately, it is a system of rules dedicated to open, fair and undistorted competition.

The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.

Many of the other WTO agreements aim to support fair competition: in agriculture, intellectual property, services, for example. The agreement on government procurement (a “plurilateral” agreement because it is signed by only a few WTO members) extends competition rules to purchases by thousands of government entities in many countries. And so on.

**Encouraging development and economic reform:** The WTO system contributes to development. On the other hand, developing countries need flexibility in the time they take to implement the system’s agreements. And the agreements themselves inherit the earlier provisions of GATT that allow for special assistance and trade concessions for developing countries.

Over three quarters of WTO members are developing countries and countries in transition to market economies. During the seven and a half years of the Uruguay Round, over 60 of these countries implemented trade liberalization programmes autonomously. At the same time, developing countries and transition economies were much more active and influential in the Uruguay Round negotiations than in any previous round, and they are even more so in the current Doha Development Agenda.

At the end of the Uruguay Round, developing countries were prepared to take on most of the obligations that are required of developed countries. But the agreements did give them transition periods to adjust to the more unfamiliar and, perhaps, difficult
A ministerial decision adopted at the end of the round says better-off countries should accelerate implementing market access commitments on goods exported by the least-developed countries, and it seeks increased technical assistance for them. More recently, developed countries have started to allow duty-free and quota-free imports for almost all products from least-developed countries. On all of this, the WTO and its members are still going through a learning process. The current Doha Development Agenda includes developing countries’ concerns about the difficulties they face in implementing the Uruguay Round agreements.

The economic case for an open trading system based on multilaterally agreed rules is simple enough and rests largely on commercial common sense. But it is also supported by evidence: the experience of world trade and economic growth since the Second World War. Tariffs on industrial products have fallen steeply and now average less than 5% in industrial countries. During the first 25 years after the war, world economic growth averaged about 5% per year, a high rate that was partly the result of lower trade barriers. World trade grew even faster, averaging about 8% during the period.

Economic theory points to strong reasons for the link. All countries, including the poorest, have assets — human, industrial, natural, financial — which they can employ to produce goods and services for their domestic markets or to compete overseas. Economics tells us that we can benefit when these goods and services are traded. Simply put, the principle of comparative advantage” says that countries prosper first by taking advantage of their assets in order to concentrate on what they can produce best, and then by trading these products for products that other countries produce best.

In other words, liberal trade policies — policies that allow the unrestricted flow of goods and services — sharpen competition, motivate innovation and breed success. They multiply the rewards that result from producing the best products, with the best design, at the best price.

But success in trade is not static. The ability to compete well in particular products can shift from company to company when the market changes or new
technologies make cheaper and better products possible. Producers are encouraged to adapt gradually and in a relatively painless way. They can focus on new products, find a new “niche” in their current area or expand into new areas.

Experience shows that competitiveness can also shift between whole countries. A country that may have enjoyed an advantage because of lower labour costs or because it had good supplies of some natural resources, could also become uncompetitive in some goods or services as its economy develops. However, with the stimulus of an open economy, the country can move on to become competitive in some other goods or services. This is normally a gradual process. Nevertheless, the temptation to ward off the challenge of competitive imports is always present. And richer governments are more likely to yield to the siren call of protectionism, for short term political gain — through subsidies, complicated red tape, and hiding behind legitimate policy objectives such as environmental preservation or consumer protection as an excuse to protect producers. Protection ultimately leads to bloated, inefficient producers supplying consumers with outdated, unattractive products. In the end, factories close and jobs are lost despite the protection and subsidies. If other governments around the world pursue the same policies, markets contract and world economic activity is reduced. One of the objectives that governments bring to WTO negotiations is to prevent such a self-defeating and destructive drift into protectionism.

Agriculture and WTO: The original GATT did apply to agricultural trade, but it contained loopholes. For example, it allowed countries to use some non-tariff measures such as import quotas, and to subsidize. Agricultural trade became highly distorted, especially with the use of export subsidies which would not normally have been allowed for industrial products.

The Uruguay Round produced the first multilateral agreement dedicated to the sector. It was a significant first step towards order, fair competition and a less distorted sector. It was implemented over a six-year period (and is still being implemented by developing countries under their 10-year period), that began
in 1995. The Uruguay Round agreement included a commitment to continue the reform through new negotiations. These were launched in 2000, as required by the Agriculture Agreement. Another main principle which the WTO tried to correct was to reduce the distortion. Trade is distorted if prices are higher or lower than normal, and if quantities produced, bought, and sold are also higher or lower than normal — i.e. than the levels that would usually exist in a competitive market. For example, import barriers and domestic subsidies can make crops more expensive on a country’s internal market. The higher prices can encourage over-production. If the surplus is to be sold on world markets, where prices are lower, then export subsidies are needed. As a result, the subsidizing countries can be producing and exporting considerably more than they normally would. Governments usually give three reasons for supporting and protecting their farmers, even if this distorts agricultural trade: to make sure that enough food is produced to meet the country’s needs; to shield farmers from the effects of the weather and swings in world prices; and to preserve rural society. But the policies have often been expensive, and they have created gluts leading to export subsidy wars. Countries with less money for subsidies have suffered. The debate in the negotiations is whether these objectives can be met without distorting trade. “Peace” provisions within the agreement aim to reduce the likelihood of disputes or challenges on agricultural subsidies over a period of nine years, until the end of 2003 Agreement.

Domestic support: The main complaint about policies which support domestic prices, or subsidize production in some other way, is that they encourage over-production. This squeezes out imports or leads to export subsidies and low-priced dumping on world markets. The Agriculture Agreement distinguishes between support programmes that stimulate production directly, and those that are considered to have no direct effect. Domestic policies that do have a direct effect on production and trade have to be cut back. WTO members calculated how much support of this kind they were providing per year for the agricultural sector (using calculations known as “total aggregate measurement of support” or “Total AMS”) in the base years of 1986–88. Developed countries agreed to reduce these figures by 20% over six years starting in
Developing countries agreed to make 13% cuts over 10 years. Least-developed countries do not need to make any cuts. (This category of domestic support is sometimes called the “amber box”, a reference to the amber colour of traffic lights, which means “slow down”.)

Measures with minimal impact on trade can be used freely — they are in a “green box” (“green” as in traffic lights). They include government services such as research, disease control, infrastructure and food security. They also include payments made directly to farmers that do not stimulate production, such as certain forms of direct income support, assistance to help farmers restructure agriculture, and direct payments under environmental and regional assistance programmes. Also permitted, are certain direct payments to farmers where the farmers are required to limit production (sometimes called “blue box” measures), certain government assistance programmes to encourage agricultural and rural development in developing countries, and other support on a small scale (“de minimis”) when compared with the total value of the product or products supported (5% or less in the case of developed countries and 10% or less for developing countries). Export subsidies: limits on spending and quantities The Agriculture Agreement prohibits export subsidies on agricultural products unless the subsidies are specified in a member’s lists of commitments. Where they are listed, the agreement requires WTO members to cut both the amount of money they spend on export subsidies and the quantities of exports that receive subsidies.

Taking averages for 1986–90 as the base level, developed countries agreed to cut the value of export subsidies by 36% over the six years starting in 1995 (24% over 10 years for developing countries). Developed countries also agreed to reduce the quantities of subsidized exports by 21% over the six years (14% over 10 years for developing countries). Least-developed countries do not need to make any cuts. During the six-year implementation period, developing countries are allowed under certain conditions to use subsidies to reduce the costs of marketing and transporting exports. The least-developed and those depending on food imports Under the Agriculture Agreement, WTO members have to reduce their subsidized exports. But some importing
countries depend on supplies of cheap, subsidized food from the major industrialized nations. They include some of the poorest countries, and although their farming sectors might receive a boost from higher prices caused by reduced export subsidies, they might need temporary assistance to make the necessary adjustments to deal with higher priced imports, and eventually to export. A special ministerial decision sets out objectives, and certain measures, for the provision of food aid and aid for agricultural development. It also refers to the possibility of assistance from the International Monetary Fund and the World Bank to finance commercial food imports.

**Standards and safety:** Article 20 of the General Agreement on Tariffs and Trade (GATT) allows governments to act on trade in order to protect human, animal or plant life or health, provided they do not discriminate or use this as disguised protectionism. In addition, there are two specific WTO agreements dealing with food safety and animal and plant health and safety, and with product standards in general. Both try to identify how to meet the need to apply standards and at the same time avoid protectionism in disguise. These issues are becoming more important as tariff barriers fall — some compare this to seabed rocks appearing when the tide goes down. In both cases, if a country applies international standards, it is less likely to be challenged legally in the WTO than if it sets its own standards. A separate agreement on food safety and animal and plant health standards (the Sanitary and Phyto-sanitary Measures Agreement or SPS) sets out the basic rules. It allows countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail. Member countries are encouraged to use international standards, guidelines and recommendations where they exist. When they do, they are unlikely to be challenged legally in a WTO dispute. However, members may use measures which result in higher standards if there is scientific justification. They can also set higher standards based on appropriate assessment of risks so long as the approach is consistent, not arbitrary. And they can to some extent apply the “precautionary principle”, a kind of “safety first” approach to deal with
scientific uncertainty. Article 5.7 of the SPS Agreement allows temporary “precautionary” measures. The agreement still allows countries to use different standards and different methods of inspecting products. So how can an exporting country be sure the practices it applies to its products are acceptable in an importing country? If an exporting country can demonstrate that the measures it applies to its exports achieve the same level of health protection as in the importing country, then the importing country is expected to accept the exporting country’s standards and methods. The agreement includes provisions on control, inspection and approval procedures. Governments must provide advance notice of new or changed sanitary and phytosanitary regulations, and establish a national enquiry point to provide information.

The agreement complements that on technical barriers to trade. Technical regulations and standards Technical regulations and standards are important, but they vary from country to country. Having too many different standards makes life difficult for producers and exporters. Standards can become obstacles to trade. But they are also necessary for a range of reasons, from environmental protection, safety, national security to consumer information. And they can help trade. Therefore the same basic question arises again: how to ensure that standards are genuinely useful, and not arbitrary or an excuse for protectionism.

The Technical Barriers to Trade Agreement (TBT) tries to ensure that regulations, standards, testing and certification procedures do not create unnecessary obstacles. However, the agreement also recognizes countries’ rights to adopt the standards they consider appropriate — for example, for human, animal or plant life or health, for the protection of the environment or to meet other consumer interests. Moreover, members are not prevented from taking measures necessary to ensure their standards are met. But that is counterbalanced with disciplines. A myriad of regulations can be a nightmare for manufacturers and exporters. Life can be simpler if governments apply international standards, and the agreement encourages them to do so. In any case, whatever regulations they use should not discriminate. The agreement
also sets out a code of good practice for both governments and nongovernmental or industry bodies to prepare, adopt and apply voluntary standards.

Over 200 standards-setting bodies apply the code. The agreement says the procedures used to decide whether a product conforms with relevant standards have to be fair and equitable. It discourages any methods that would give domestically produced goods an unfair advantage. The agreement also encourages countries to recognize each other’s procedures for assessing whether a product conforms. Without recognition, products might have to be tested twice, first by the exporting country and then by the importing country. Manufacturers and exporters need to know what the standards are in their prospective markets. To help ensure that this information is made available conveniently, all WTO member governments are required to establish national enquiry points and to keep each other informed through the WTO — around 900 new or changed regulations are notified each year. The Technical Barriers to Trade Committee is the major clearing house for members to share the information and the major forum to discuss concerns about the regulations and their implementation.

**Textiles**: back in the mainstream Textiles, like agriculture, was one of the hardest-fought issues in the WTO, as it was in the former GATT system. It has now completed fundamental change under a 10-year schedule agreed in the Uruguay Round. The system of import quotas that dominated the trade since the early 1960s has now been phased out. From 1974 until the end of the Uruguay Round, the trade was governed by the Multifibre Arrangement (MFA). This was a framework for bilateral agreements or unilateral actions that established quotas limiting imports into countries whose domestic industries were facing serious damage from rapidly increasing imports.

The quotas were the most visible feature. They conflicted with GATT’s general preference for customs tariffs instead of measures that restrict quantities. They were also exceptions to the GATT principle of treating all
trading partners equally because they specified how much the importing country was going to accept from individual exporting countries.

Since 1995, the WTO’s Agreement on Textiles and Clothing (ATC) took over from the Multifibre Arrangement. By 1 January 2005, the sector was fully integrated into normal GATT rules. In particular, the quotas came to an end, and importing countries are no longer able to discriminate between exporters. The Agreement on Textiles and Clothing no longer exists: it’s the only WTO agreement that had self-destruction built in.

Integration: returning products gradually to GATT rules Textiles and clothing products were returned to GATT rules over the 10-year period. This happened gradually, in four steps, to allow time for both importers and exporters to adjust to the new situation. Some of these products were previously under quotas. Any quotas that were in place on 31 December 1994 were carried over into the new agreement. For products that had quotas, the result of integration into GATT was the removal of these quotas.

The agreement stated the percentage of products that had to be brought under GATT rules at each step. If any of these products came under quotas, then the quotas had to be removed at the same time. The percentages were applied to the importing country’s textiles and clothing trade levels in 1990. The agreement also said the quantities of imports permitted under the quotas had to grow annually, and that the rate of expansion had to increase at each stage. How fast that expansion would be was set out in a formula based on the growth rate that existed under the old

**Multifibre Arrangement:** Products brought under GATT rules at each of the first three stages had to cover the four main types of textiles and clothing: tops and yarns; fabrics; made-up textile products; and clothing. Any other restrictions that did not come under the Multifibre Arrangement and did not conform with regular WTO agreements by 1996 had to be made to conform or be phased out by 2005. If further cases of damage to the industry arose during the transition, the agreement allowed additional restrictions to be imposed temporarily under strict conditions. These “transitional safeguards” were not
the same as the safeguard measures normally allowed under GATT because they can be applied on imports from specific exporting countries. But the importing country had to show that its domestic industry was suffering serious damage or was threatened with serious damage. And it had to show that the damage was the result of two things: increased imports of the product in question from all sources, and a sharp and substantial increase from the specific exporting country. The safeguard restriction could be implemented either by mutual agreement following consultations, or unilaterally. It was subject to review by the Textiles Monitoring Body.

In any system where quotas are set for individual exporting countries, exporters might try to get around the quotas by shipping products through third countries or making false declarations about the products’ country of origin. The agreement included provisions to cope with these cases. The agreement envisaged special treatment for certain categories of countries — for example, new market entrants, small suppliers, and least-developed countries. A Textiles Monitoring Body (TMB) supervised the agreement’s implementation. It consisted of a chairman and 10 members acting in their personal capacity. It monitored actions taken under the agreement to ensure that they were consistent, and it reported to the Goods Council which reviewed the operation of the agreement before each new step of the integration process. The Textiles Monitoring Body also dealt with disputes under the Agreement on Textiles and Clothing. If they remained unresolved, the disputes could be brought to the WTO’s regular Dispute Settlement Body. When the Textiles and Clothing Agreement expired on 1 January 2005, the Textiles Monitoring Body also ceased to exist.

**Services: rules for growth and investment** The General Agreement on Trade in Services (GATS) is the first and only set of multilateral rules governing international trade in services. Negotiated in the Uruguay Round, it was developed in response to the huge growth of the services economy over the past 30 years and the greater potential for trading services brought about by the communications revolution. Services represent the fastest growing sector of the global economy and account for two thirds of global output, one third of
global employment and nearly 20% of global trade. When the idea of bringing rules on services into the multilateral trading system was floated in the early to mid 1980s, a number of countries were sceptical and even opposed. They believed such an agreement could undermine governments’ ability to pursue national policy objectives and constrain their regulatory powers. The agreement that was developed, however, allows a high degree of flexibility, both within the framework of rules and also in terms of the market access commitments. GATS explained The General Agreement on Trade in Services has three elements: the main text containing general obligations and disciplines; annexes dealing with rules for specific sectors; and individual countries’ specific commitments to provide access to their markets, including indications of where countries are temporarily not applying the “most-favoured-nation” principle of non-discrimination.

**General obligations and disciplines: total coverage** The agreement covers all internationally-traded services — for example, banking, telecommunications, tourism, professional services, etc. It also defines four ways (or “modes”) of trading services: • services supplied from one country to another (e.g. international telephone calls), officially known as “cross-border supply” (in WTO jargon, “mode 1”) • consumers or firms making use of a service in another country (e.g. tourism), officially “consumption abroad” (“mode 2”) a foreign company setting up subsidiaries or branches to provide services in another country (e.g. foreign banks setting up operations in a country), officially “commercial presence” (“mode 3”) individuals travelling from their own country to supply services in another (e.g. fashion models or consultants), officially “presence of natural persons” (“mode 4”).

Most-favoured-nation (MFN) treatment Favour one, favour all. MFN means treating one’s trading partners equally on the principle of non-discrimination. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. (This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO.) MFN applies to all services, but some special temporary exemptions
have been allowed. When GATS came into force, a number of countries already had preferential agreements in services that they had signed with trading partners, either bilaterally or in small groups. WTO members felt it was necessary to maintain these preferences temporarily. They gave themselves the right to continue giving more favourable treatment to particular countries in particular services activities by listing “MFN exemptions” alongside their first sets of commitments. In order to protect the general MFN principle, the exemptions could only be made once; nothing can be added to the lists. They are currently being reviewed as mandated, and will normally last no more than ten years. Commitments on market access and national treatment Individual countries’ commitments to open markets in specific sectors — and how open those markets will be — are the outcome of negotiations. The commitments appear in “schedules” that list the sectors being opened, the extent of market access being given in those sectors (e.g. whether there are any restrictions on foreign ownership), and any limitations on national treatment (whether some rights granted to local companies will not be granted to foreign companies). So, for example, if a government commits itself to allow foreign banks to operate in its domestic market, that is a market access commitment. And if the government limits the number of licences it will issue, then that is a market-access limitation. If it also says foreign banks are only allowed one branch while domestic banks are allowed numerous branches, that is an exception to the national treatment principle.

These clearly defined commitments are “bound”: like bound tariffs for trade in goods, they can only be modified after negotiations with affected countries. Because “unbinding” is difficult, the commitments are virtually guaranteed conditions for foreign exporters and importers of services and investors in the sector to do business. Governmental services are explicitly carved out of the agreement and there is nothing in GATS that forces a government to privatize service industries. In fact the word “privatize” does not even appear in GATS. Nor does it outlaw government or even private monopolies.

The carve-out is an explicit commitment by WTO governments to allow publicly funded services in core areas of their responsibility. Governmental
services are defined in the agreement as those that are not supplied commercially and do not compete with other suppliers. These services are not subject to any GATS disciplines, they are not covered by the negotiations, and commitments on market access and national treatment (treating foreign and domestic companies equally) do not apply to them. GATS’ approach to making commitments means that members are not obliged to do so on the whole universe of services sectors. A government may not want to make a commitment on the level of foreign competition in a given sector, because it considers the sector to be a core governmental function or indeed for any other reason. In this case, the government’s only obligations are minimal, for example to be transparent in regulating the sector, and not to discriminate between foreign suppliers.

Transparency GATS says governments must publish all relevant laws and regulations, and set up enquiry points within their bureaucracies. Foreign companies and governments can then use these inquiry points to obtain information about regulations in any service sector. And they have to notify the WTO of any changes in regulations that apply to the services that come under specific commitments. Regulations: objective and reasonable Since domestic regulations are the most significant means of exercising influence or control over services trade, the agreement says governments should regulate services reasonably, objectively and impartially. When a government makes an administrative decision that affects a service, it should also provide an impartial means for reviewing the decision (for example a tribunal). GATS does not require any service to be deregulated. Commitments to liberalize do not affect governments’ right to set levels of quality, safety, or price, or to introduce regulations to pursue any other policy objective they see fit. A commitment to national treatment, for example, would only mean that the same regulations would apply to foreign suppliers as to nationals. Governments naturally retain their right to set qualification requirements for doctors or lawyers, and to set standards to ensure consumer health and safety. Recognition When two (or more) governments have agreements recognizing each other’s qualifications (for example, the licensing or certification of service suppliers), GATS says other members must also be given a chance to
negotiate comparable pacts. The recognition of other countries’ qualifications must not be discriminatory, and it must not amount to protectionism in disguise. These recognition agreements have to be notified to the WTO.

International payments and transfers Once a government has made a commitment to open a service sector to foreign competition, it must not normally restrict money being transferred out of the country as payment for services supplied (“current transactions”) in that sector. The only exception is when there are balance-of-payments difficulties, and even then the restrictions must be temporary and subject to other limits and conditions.

Progressive liberalization The Uruguay Round was only the beginning. GATS requires more negotiations, which began in early 2000 and are now part of the Doha Development Agenda. The goal is to take the liberalization process further by increasing the level of commitments in schedules. The annexes:

- International services are not all the same. International trade in goods is a relatively simple idea to grasp: a product is transported from one country to another. Trade in services is much more diverse. Telephone companies, banks, airlines and accountancy firms provide their services in quite different ways. The GATS annexes reflect some of the diversity.
- Movement of natural persons This annex deals with negotiations on individuals’ rights to stay temporarily in a country for the purpose of providing a service. It specifies that the agreement does not apply to people seeking permanent employment or to conditions for obtaining citizenship, permanent residence or permanent employment.
- Financial services Instability in the banking system affect the whole economy. The financial services annex gives governments very wide latitude to take prudential measures, such as those for the protection of investors, depositors and insurance policy holders, and to ensure the integrity and stability of the financial system. The annex also excludes from the agreement services provided when a government is exercising its authority over the financial system, for example central banks’ services.

Telecommunications The telecommunications sector has a dual role: it is a distinct sector of economic activity; and it is an underlying means of supplying other economic activities (for example electronic money transfers). The annex
says governments must ensure that foreign service suppliers are given access to the public telecommunications networks without discrimination. Air transport services Under this annex, traffic rights and directly related activities are excluded from GATS’s coverage. They are handled by other bilateral agreements. However, the annex establishes that the GATS will apply to aircraft repair and maintenance services, marketing of air transport services and computer-reservation services. Members are currently reviewing the annex.

Steps to an Agreement

The deficiencies and the imbalances in the WTO agreements and the problems in their implementation as well as the pressures on the new issues raise the question of why all this is happening at all. This leads us to an examination of the way in which the WTO functions. The manner in which the proposals are handled, the process of arriving at conclusion and agreements, the way the developing countries and the developed countries operate in the WTO, their strength and weakness etc have to be understood to know why the WTO has come to the present situation. This is very important to understand the different stakeholders can influence the rules and in turn improve the functioning.

Proposals to Conclusions

A country formally makes a proposals in the WTO by presenting a paper containing the proposal in the relevant body of the WTO, e.g. the General Council or the Council/committee handling the particular subject contained in the proposal. The country making the proposal makes a brief statement in a formal meeting of that body and introduces the paper, briefly summarising the proposal. If any country has a keen interest in the subject, either for or against it also makes a brief statement mentioning its own position. The chairman of the meeting announces that the statements have been noted, the proposal will be kept record and there will be consultation on it.
Thereafter the speed at which the proposal is handled depends a lot on the importance of the proposal and the strength of the country tabling it. The chairman of the relevant WTO body, with the assistance of the WTO secretariat arranges for the informal consultation among the interested countries. The sponsoring country, i.e. the one that has made the proposal also take the initiative to hold its own consultation with some countries to canvass support for the proposal. The sponsoring country, i.e. the one that has made the proposal also takes the initiative to hold its own consultations with some countries to canvass support for the proposal. The sponsoring country organises the consultations by inviting the main potential supporters and opponents to informal discussions. Its objective us naturally to consolidate its support and weaken the limit the opposition.

The consultation called by the chairman with the assistance of the secretariat are usually organised by the latter. A selection of the countries to be invited for consultation is made on the basis of an initial perception as to which countries will have a keen interest in the matter. A certain degree of subjective judgement is necessarily involved in this selection.

Generally in these small groups almost all the developed countries are represented one way or another, while only a few among the developing countries are present, leaving a very large number of them totally unrepresented.

The consultation continues for a long time over several rounds of discussion, depending on the complexity of the subject and the different interest of the countries in the subject. Sometimes some other countries also get invited if they have specifically expressed their interest in participating in the consultation and or it is apprehended that some country/representative is likely to express strong opposition when the subjects comes up for open meetings.

In case of important proposals, the chairman makes interim reports in the open meetings of the WTO body that he/she is continuing with the consultations. In some cases on some occasions, a brief summary of the issues being discussed may also be given.
Finally, when agreement is reached in the consultation the chairman announces it is open meeting of the WTO body and places it for approval or adoption by the body. It is usually approved, as seldom would a country like to hold up agreement at this state in the open meeting.

In this manner, agreements are reached in a small-group consultation and finally adopted by the WTO body. A large number of the developing countries are not present during the consultations they only get to see the proposal in the beginning and then the conclusion at the end. But even though they have not participated the final agreement is applicable to them. The rights and obligation involved in the agreement are binding on all countries, whether or not they have participated in the consultation process.

Sometimes the consultations are held in open-ended meetings, i.e. the date and time of the meeting are announced beforehand and any country can be present and speak up. In such open meetings various countries make statements on the issues; but serious work, e.g. in the form of drafting of conclusions etc rarely take place. This is done in more exclusive meetings with only a small number of countries present.

The developing countries face a severe handicap in this process. Conclusion is arrived at without their effective participation. Their inability to participate may be because there are only a very small number of negotiators in most of the developing countries missions in Geneva or also because most them are not invited to the really small groups of consultations where the especially serious negotiations on drafting the conclusion takes place. Even though there is no effective participation by a large number of developing countries, they are nevertheless bound by the obligation contained in the conclusion /agreements. This lack of consultation make the stakeholders cleverly bypass the full consultation and pass the resolution. Here the main stakeholders like the corporate sectors with special interest oppose or pass the procedures very easily with the help of media. Media plays as the deflectors and present things in a way that this manipulation is adequately covered and in raise issues
outside this main frame and the public interest issue remain submerged without proper attention.

The major developed countries start with a clear identification of their objective in the negotiations in a particular area. Then they take intense technical work in the preparation and supporting arguments. Side by side they cooperate closely among themselves in pursuing these proposals. Whenever there is a need they try to put pressures on the developing countries, often dividing the burden among themselves so as to be most effective and almost invariably they remain effective.

Disputes and Settlements

Since the WTO is a rule based trading regime, the dispute settlement system is its heart that pumps blood to the whole system. A rule based system will be dead if countries have no effective recourse when their rights are infringed. Dispute settlement system in the WTO is similar to a ‘court of law’ in a civil society. It comprises of multilaterally agreed rules and procedures that provide the means to countries to settle their trade disputes. Trade disputes arise when one country violates any of the agreed provisions of any WTO agreement and this violation impairs or nullifies the benefit that would have otherwise come to another country. For example, if country ‘A’ imposes a tariff rate on country ‘B’ which is more than the rate that it imposes on all other member countries of the WTO (Most Favoured Nation rate), then, ‘A’ is violating the Most Favoured Nation rule (this rule requires that a member country of the WTO should extend equal treatment to all member countries) and is impairing the benefits to ‘B’ by illegally restricting its exports. This will result in a trade dispute between ‘B’ and ‘A’. Now, ‘B’ can use the dispute settlement system to settle this dispute. Settling the dispute, in this case, will mean, ensuring that ‘A’ starts complying with the Most Favoured Nation rule and hence imposing the same tariff rate on ‘B’ that it is imposing on other member countries. This will stop the restriction of exports of ‘B’ to ‘A’ and hence restore the benefits to ‘B’, which were earlier impaired because of higher tariff being imposed by country ‘A’
Dispute settlement system of the WTO is significant in many ways:

1. Guarantor of Rights and Obligations - By providing the means to countries to settle their trade disputes, it acts as a guarantor for the rights and obligations of countries in the WTO. WTO characterizes a rule based multilateral trading regime. Countries in the WTO indulge in international trade for mutual benefits and gains based on agreed rules and procedures. For country ‘A’ to enjoy its right country ‘B’ has to fulfill its obligation and vice versa. In case of a country not fulfilling its obligation other member countries can challenge the action of this country in the dispute settlement body (DSB). The DSB will then ask this country to change its action and bring it in accordance with the agreed rules and procedures. Hence, the DSB enforces the rules of the WTO and maintains the sanctity of ‘rule of law’, which is the bedrock of the multilateral trading regime embodied in the WTO.

2. Provides stability and predictability – The DSB gives stability and predictability to the multilateral trading regime, as countries know that if their rights are infringed, then an effective recourse is available. This keeps countries interested in the system. Without effective dispute resolution machinery and proper enforcement mechanism a rule-based system will be less effective and countries will not have adequate faith in the system.

3. Protection against unilateral action - Since the DSB in the WTO comprises of multilaterally agreed rules and procedures to settle disputes, every trade dispute has to be settled according to the procedure established by law. No country can act unilaterally against any other country without going through the DSB.

In the early stages of the multilateral trading regime that formally came into existence after the adoption of the General Agreement on Tariffs and Trade (GATT) in 1948, countries did not pay much heed to the process of settling disputes that may arise in the course of conduct of international trade. The GATT text only had a semblance of dispute settlement by allowing a country
to complain if a benefit accruing to it was nullified or impaired. This complaint or the dispute was settled diplomatically and did not involve any judicial process. In fact, from 1950 to 1970, as one of the commentators has argued, the process of settling disputes was wrapped in layers of diplomatic vagueness and indirection. Hence, it is clear that in the early phases of the multilateral trading regime, the dispute settlement system was not functioning well, which in turn weakened the efficacy of the rule based trading regime.

The story started to change after 1970 with slow but gradual movement from a diplomatic to a judicial way of settling disputes. However, this shift was not a major turnaround as the process was still haunted with some systemic problems. A major handicap in this shift was the power of a single country to block a particular ruling. The dispute settlement system, before the WTO came into existence, followed what is known as the ‘positive consensus’ rule. According to this rule any ruling given by the panel will be binding only if all the countries unanimously accepted it. Even if one country did not approve the report, it would not get adopted. Hence, the country that lost the dispute would often block the adoption of the report, as it would help its case. The system was still troubled with inordinate delay, as there was no time bound procedure that was followed. This also eroded the faith of countries in the dispute settlement system.

**Dispute settlement and the Changed system**

However, this rule was changed during the Uruguay Round (UR) of negotiations. The UR of negotiations converted the ‘positive consensus’ rule to a ‘negative consensus’ rule. Accordingly, the reports of the panel will be adopted unless or until all the countries unanimously decide not to adopt the report. In other words, one country or two countries or a group of countries cannot block the adoption of a report unlike the pre WTO era.

Hence, a turnaround of sorts in the process of settling disputes in the multilateral trading regime was brought about in the UR negotiations that led to the formation of the WTO. The culmination of the UR resulted in the adoption of an Understanding on Rules and Procedures Governing the
Settlement of Disputes (DSU), which, apart from adopting the ‘negative consensus’ rule, also established the Appellate Body (a permanent judicial body to hear appeals from the panels) and laid down an elaborate time frame for settling the disputes, allowing the countries to retaliate i.e. impose countermeasures if the violating country does not bring it measure in conformity with its WTO obligations (For a detailed account of the DSB please read the Trade Works section). This was a qualitative change. Since then the dispute settlement system of the WTO has worked well, as some numbers will suggest. In the first ten years of its existence about 300 cases have been brought to the DSB. This number is much higher than what the dispute settlement system under GATT had in 40 years. This indicates that countries have more faith in the present system in the WTO than what they had under the dispute settlement system under GATT. Apart from these numbers the other heartening fact is that in the last 10 years many smaller countries have won cases against powerful and rich countries like the US and the EC. In fact, the US has taken a very strong beating at the DSB of the WTO by losing majority of cases. The victory of smaller countries over the bigger powers has certainly played an important role in developing the faith of these countries not just in the DSB but also in the multilateral trading regime. All this will reveal that the heart is indeed healthy! (For a quick statistical snapshot of the DSB please look at Table 1).

Table 1: WTO Dispute Settlement Statistics (1995 – 2003)

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Source: Key Issues in WTO Dispute Settlement, Rufus Yerxa and Bruce Wilson (eds.), Cambridge University Press.
However, these numbers should not elude us from the other side of the story. The last ten years have also revealed certain weaknesses in the DSU. These weaknesses or limitations have necessitated a review of the DSU. Before we turn our attention to these weaknesses it is imperative to note that the original drafters through a ministerial declaration provided a built in mechanism for the review of the DSU within four years of its formation in 1995. This was a very wise move as nobody knew how the new system will work. According to this ministerial declaration the review was supposed to get over by 1 January 1999. However, this deadline was missed. Countries gave themselves an additional six months to complete the review. Nonetheless, history was repeated after six months with the deadline being missed once again. After this missed deadline it was only in 2001 in the Doha ministerial conference of the WTO that the countries met and agreed on another review agenda. This review agenda was a part of the overall agenda to launch a fresh round of negotiations. The only difference was that the review of the DSU was not part of the single undertaking. In other words, countries could conclude the review on the DSU independent of the review process of other WTO agreements. The deadline that countries agreed for completing the review of the DSU was May 2003 unlike the deadline for all other issues that was end of December 2004. However, as it always happens in the WTO, the May 2003 deadline was missed and the members gave themselves one more year. While it is important to remember that the chairperson of the DSU review process, Ambassador Peter Balas did circulate a text in an attempt to build consensus amongst the member countries, but in vain. This text came to be known as the Balas text (discussed later in the article). At the end of that one year in May 2004 countries found that there was no agreement regarding the changes that need to be made in the DSU and hence the deadline to finish the review was once again missed.

All these delays may make one sit up and ask why countries are not able to agree regarding the changes that need to be made in the DSU. Three reasons are responsible for this. First, there are sharp differences between developed and developing countries on many reform issues that will be discussed in this article later. Second, although the review of the DSU is not a part of the single
undertaking process, one should not forget that this review is taking place along with the negotiations on other WTO issues, which are perhaps more contentious such as agriculture, industrial tariffs etc. In fact, issues like agriculture are bread and butter issues for many developing countries. Hence, the limited negotiating capital and energies that many developing and least developed countries have is employed to negotiate a better deal on agriculture or market access in industrial sector. The focus on DSU is, relatively speaking, less and hence the process of reviewing the DSU is languishing. Third, and this reason is linked to the second reason, since there is no movement or agreement on agriculture or other contentious issues there is not enough political will or political urgency to complete the review of the DSU. Realistically speaking, one should not expect the review of the DSU to get over till countries are able to strike deals on agriculture and industrial tariffs.

Coming back to the actual examination of the heart of the WTO, certain problems have surfaced in the course of last 10 years of the functioning of the DSU. In fact, everyone thought that the heart was very healthy till the first heart attack that took place in 1998-99.

**Sequencing:** This is being referred to as the first heart attack of the WTO as it revealed a very important systemic lacuna that existed in the DSU. This lacuna is known as the ‘sequencing’ problem, which surfaced for the first time in a case between the EC and Ecuador.

The DSU allows a country to make a request for imposing countermeasures against another country that has been directed to bring its measure into conformity with the WTO obligations. There is no problem in allowing a country to make a request for imposing countermeasures. The problem emerges when a country makes this request while lack of compliance by the violating country has not yet been established. Hence, it leads to situations where request for countermeasures are made without the violation of the other country being fully established.

In this regard, a group of seven countries comprising of Argentina, Brazil, Canada, India, Mexico, New Zealand and Norway, popularly known as the G7
countries, have made a proposal arguing that the compliance proceedings should be first completed before the issue of imposing countermeasures arises. The Balas text also proposed that before the complainant country could seek the authorisation to retaliate, the compliance proceedings should be over i.e. it should have been found whether the other country has complied with the ruling of the panel or the AB.

The problem in fixing this lacuna is that the US, in its own wisdom, does not think that there is a ‘sequencing’ problem in the DSU. Hence, when one country is not even willing to admit that there is a problem, it is foolhardy to accept that country to negotiate for a solution that the G7 is offering.

**Retaliation:** The issue of imposing countermeasures, which many argue is a major strength of the WTO, also poses certain problems. Before one deals with the problems in the application of countermeasures it is imperative to remember that all the countries are expected to act in good faith when it comes to implementing the rulings given by the panel or the AB. In other words, countries are expected to abide by these rulings. It is only when a country does not abide by the ruling; the other country can impose countermeasures, which in the DSU are known as suspending the concessions. The imposition of the countermeasures is expected to make the other country comply and bring is measure in conformity with its WTO obligation. Thus, suspending the concessions is a last resort and is supposed to act as deterrent for counties to comply with the rulings. However, countries, mainly the US, have often not acted in good faith and have either not complied with the rulings or have complied after a long time. Hence, the issue of imposing countermeasures, the last resort has floated up on the scene. A second heart attack to the WTO happened when another systemic lacuna of the DSU was discovered. In a case against the EC; Ecuador was allowed to impose countermeasures since the EC refused to comply with the ruling. However, Ecuador did not retaliate, as it perhaps thought that retaliating against the EC would cause more harm than good. In such a scenario, where a country thinks that economically it does not make sense for it to retaliate because of a variety of reasons, the DSU is absolutely clueless about the way out. It may happen that the non complying
country may continue to keep its measure in violation of its WTO obligations and the affected country may not be able to do anything about it.

The other flaw in the retaliatory scheme is that countries that want to retaliate have to first retaliate only in the same good or sector that is the subject matter of the dispute. If retaliation in the same good or sector is not possible or will not lead to desired result it can retaliate in another good or sector. If even this is not possible the country could retaliate in any other agreement. Hence, if the dispute is on textiles, a country cannot retaliate on intellectual property rights (IPR) in first place. It can retaliate in IPR only if it is able to prove that the retaliation in textiles is not possible or will not lead to the desired result.

India has proposed that this step by step retaliatory process should be dismantled and the retaliating country should be allowed to retaliate in any sector or agreement without having to prove that the retaliation in the same sector or good will not lead to the desired result. This again has been challenged by the US.

**Post Retaliation:** A third heart attack to the WTO occurred when the DSU discovered another systemic shortcoming in a case between the EC and the US and Canada. In this particular case the US and Canada imposed sanctions against the EC, as it did not bring its measure in conformity with the WTO obligations. However, later the EC said that it has brought its measure in conformity but US and Canada refused to remove the sanctions. Hence, in such a scenario, where a country that initially did not comply with the rulings and hence allowed the other country to get authorisation to impose countermeasures, complies with the ruling at a later stage and the other country that has got the authorisation does not agree, the DSU is oblivious about what recourse needs to be adopted. This shortcoming could be called the ‘post retaliation’ trauma

**Other issues:** Apart from these three heart attacks; there have been certain cases of high palpitation that merit attention. One such palpitation issue that has been discovered is ‘remand’. The present rules of DSU allow the AB to hear cases in appeal form the panels. But the AB can only hear the appeal only
for legal interpretation of the WTO law and not for facts. Hence, no appeal to the AB could be made to clarify the facts of the case that the panel may have not established or overlooked and which may be central to that particular dispute. Thus if the facts are incomplete or not properly established which cripples the AB to complete its legal analysis, AB will not give any ruling and the only frustrating option left to the complaining country will be to seek the formation of a new panel. In order to overcome this shortcoming the G7 countries have proposed that if the AB finds that some facts are missing or have not been established the AB should be able to send back (remand) the case to the original panel. This proposal is also there in the Balas text although no agreement has been reached.

There is no doubt that the dispute settlement system of the WTO has worked well. However, there have been a few problems that have cropped up in the last 10 years is the delay in implementation which make it very slow. Cropping up of problems is not astonishing more is the delay more will be erosion of faith of countries especially developing countries from the DSU and also from the multilateral trading regime (Yerxa & Wilson, 2005).

**Cross Cutting Issues**

Free trade policies, and the institutions that implement them, are at a turning point. Once the concern of a handful of scholars and policymakers, trade institutions now draw mass public protests, such as the ones that took place last fall in Seattle at a meeting of the World Trade Organization (WTO). While the Seattle protesters had diverse aims and sometimes radical political philosophies, most voiced a complaint that one also hears from more mainstream critics: the WTO in its current form poses a serious threat to sovereignty and representative democracy within its member nations.' In a blinkered pursuit of free trade, an unaccountable WTO will block important programs that popularly elected national governments have adopted to promote the public welfare. Opponents voice particular concern about labour, environmental, health, and safety regulations. By invalidating these sorts of measures, opponents contend, the WTO not only will interfere with members’
ability to govern themselves as they think best, but will also place people around the world at serious risk.

Quite apart from the critics, some WTO members have made statements that hint at a potentially substantial expansion of the organization's authority. At present, the WTO lacks authority to formulate international regulations. It merely polices members' laws to ensure that these laws do not discriminate against foreign trade in violation of treaty obligations. In Seattle, however, the United States and some European countries suggested that the WTO should begin to develop international labour and environmental standards. WTO promotes the power of national democratic majorities by constraining the influence of protectionist interest groups. Indeed, by facilitating jurisdictional competition, the WTO, in conjunction with open capital markets, helps reduce the power of interest groups generally. In this way, the WTO makes national governments more responsive to their constituents' priorities, tastes, and development goals. In promoting both free trade and accountable democratic government, the WTO reflects many of the principles that inform federalism. The free trade regime, in conjunction with an open national capital markets, restrain special interests more broadly, making it more difficult for them to exact resources from state governments. Because of the declining costs of information and transportation, trade among nations offers unparalleled opportunities for economic growth. Nonetheless, given the structure of contemporary democratic governments, protectionist interest groups within a country can often use the political process to pursue policies that profit members of the group at the expense of the nation as a whole. If carefully circumscribed, the WTO can protect opportunities for private exchange while also strengthening democratic governance. Conversely, if the WTO is empowered to engage in substantive regulation, it will give leverage to interest groups - this time on a global scale - and thus restrict growth and undermine democratic sovereignty. Thus Free trade and democratic government face a common obstacle - the influence of concentrated interest groups. Because free trade creates wealth for each nation, one would expect national majorities to favour free trade policies over policies that benefit special interests at the majority's expense. Some industries within a nation, however, suffer because
of free trade, and owners and workers in those industries will agitate for protectionist measures that restrict imports. Such protectionist interest groups command disproportionate leverage in domestic politics, and their lobbies are often able to secure import restrictions, even though the overall common man suffers. The WTO and the trade agreements it administers act to restrain protectionist interest groups, thereby promoting both free trade and democracy. Since 1947, the General Agreement on Tariffs and Trade (GATT) has served as a framework for several global negotiating "rounds" in which signatories have agreed to substantial reciprocal tariff reductions. The regime of reciprocal tariff reductions has created incentives for exporters, who benefit from lower foreign tariffs, to lobby their governments for free trade policies. This mobilization of exporter interest groups serves to counteract the efforts of protectionist groups. GATT thus represents a familiar constitutional strategy for reducing agency costs. In such a strategy, a majority commits to political institutions that make it more difficult for the majority's agents in the legislative or executive branches to reward powerful interest groups with policies that benefit the groups at the expense of society as a whole. One measure of GATT's success in this regard is the decline in average world tariffs from approximately 40% when the agreement was adopted in 1947 to less than 5% at the beginning of the last decade. Reduced tariffs force protectionist interest groups to seek other import barriers. One typical approach is to lobby for measures that protect domestic industry covertly - measures that are ostensibly designed to serve labour, environmental, health, or safety goals, but that are really intended to impede competition from abroad. Covert protectionism presents a difficult dilemma: while interest groups should not be permitted to impose costs on citizens by erecting protectionist barriers in the guise of legitimate legislation, bona fide labour, environmental, health, and safety regulations might be necessary to protect against dangers that the market cannot address on its own. The WTO has begun to address this dilemma through its new adjudicative dispute settlement system, one of the organization's most important and controversial features. WTO's approach to the problem of covert protectionism - what we call the "antidiscrimination model" - reinforce democracy while advancing free trade. Thus WTO endorse the employment of an adjudicative system with limited
authority to resolve claims concerning discriminatory trade measures. This system has been questioned recently by politicians and academics who would prefer that the WTO adopt what we call the "regulatory model," which would authorize the formulation of global labour, environmental, health, and safety standards. Advocates have advanced various arguments in favour of the regulatory model. Some commentators believe the model would democratize the WTO by allowing it to balance environmental, labour, health, and safety values against free trade. Others argue that international rulemaking is necessary to prevent "races to the bottom" in which countries adopt suboptimal regulatory standards in order to attract and retain business in the global economy. Finally, some argue that global regulatory standards could help minimize covert protectionism by preventing nations from establishing rules solely through their own parochial processes. These arguments have given rise to various proposals, such as the United States's position at the Seattle conference that the WTO should become involved in setting global labour and environmental standards. Unlike the antidiscrimination model, the regulatory model would transform the WTO to the detriment of democratic sovereignty. By encouraging uniform rules that ignore the differing views and development levels of member states, centralized regulatory authority would impede, rather than facilitate, the exercise of representative government. Moreover, far from preventing races to the bottom, a regulatory function within the WTO would lead to less efficient regulation because interest groups would capture the organization and skew regulation in their favour. Indeed, because the WTO is even more remote from popular control than national regulatory agencies, interest groups would enjoy even more disproportionate leverage than they do in the domestic context. Ironically, the politicians and commentators who believe that the way to reform the WTO is to give it a greater role in formulating labour, environmental, health, and safety standards would create the very sort of unaccountable, antidemocratic organization that they oppose. Recent agreements, like those on Sanitary and Phytosanitary Measures (the SPS Agreement) and on Technical Barriers to Trade (the TBT Agreement), expressly provide for procedure oriented tests, wisely cabining the authority of WTO tribunals to devise their own approaches. Moreover, the WTO has interpreted GATT to apply democracy-reinforcing tests to ferret out
disguised discrimination. At the same time, the WTO has generally avoided making intrusive judgments about the substance of members’ labour, environmental, health, and safety goals.

**Challenges in the WTO**

The fundamentals of the current GATT/WTO system are improper and inappropriate. The workings of the WTO system for the last 15 years have given rise to rising discontent and frustration among the large majority of the membership, especially developing countries. The reciprocity on the basis for the exchange of concessions is not appropriate in a multilateral system which has a large membership at vastly differing levels of development. This process of give and get implies get more if give more and get less if give less is thus an inbuilt mechanism for widening the gap between the rich and poor countries because those who can give go on getting more and more.

The main goal of the system is liberalisation of trade in goods and services. The main issue of subsidies given by countries is not bringing in fairness and is not bringing normal prices to prevail on account of the demand and supply situation which is distorting the trade and countries not willing to reduce the domestic support are carrying their dispensation violating the sanctity of the multilateral framework. The recent spurt in prices of food commodities and financial crisis is testimony to the fact that the WTO has in no way helped in reducing the prices. There is greater need to allow more consultation with all members and increased role of media to increase the participation. Improvements in the WTO rules will be required for i) incorporating the new elements of the basic structure, ii) restoring balance in the current grossly unbalanced rule structure. iii) incorporating S&D treatment for developing courtiers in times of need and conducting Ministerial conferences. There is need to restore the balance in the currently unbalanced situation to eliminate the negative discrimination against the poor and developing countries.

The trading system depends on both equal obligations to ensure openness and differential application to accommodate national public administration. We
can find many examples of this kind of embedded liberalism compromise in the WTO - in the Agriculture Agreement, for one example, tariffication and the rules on domestic support allow policy difference; for another example, the GATS is inherently a variable geometry system because 'specific commitments' are scheduled from the bottom up, and the Basic Telecommunications agreement’s 'Reference Paper' contains principles whose implementation differs from country to country. The essential task for negotiators living in conjunctural time in the Doha round is to remember that this principle allows the WTO to be a multi-tiered organization. Under a common set of principles, the details can differ for each member. The Doha Round may yet be a missed opportunity, if Members bargaining in incremental time know their interests yet cannot reach agreement. With so much ambiguity, it is very difficult to converge on consensus.

In this world of free trade, it is astonishing that the rich countries of the developed world spend billions a year to subsidize their agricultural sector, leading to chronic overproduction and dumping surpluses on global markets. These subsidies are not only detrimental to the poor farmers in developing countries, but are also, according to the theories of Smith, Ricardo, and Heckscher-Ohlin, a burden to the tax payers of the developed nations and global trade as a whole. It is widely expected that the whole world would be better off today if agricultural subsidies were eliminated completely. However, why do the rich countries like European Union and US today still subsidize their farmers to the tune of billions of dollars a year and cover it up through shifting boxes in WTO and avert the issue of distortion

Government through the support of large corporate houses by its choice of policies (subsidies), help firms and industries establish a national competitive advantage in the world economy. The paradox of agricultural subsidies is that it is hypocritical for European Union and US governments to preach the advantage of trade and markets and then erect obstacles in those markets where developing countries have a comparative advantage. The real challenge to the WTO is the new wave of regional and bilateral free trade agreements (FTA) already now increased in huge numbers. This has emerged as a threat to
the central role of the WTO as manager of the trading system and even to presage the fading of an era of multilateralism in trade relations. For others, it had been a call to revise long-held conceptions about the multilateral system to embrace a more complex world of networks of multilateral, plurilateral, regional and bilateral arrangements. In a world of deepening economic integration, the regulatory aspects of trade agreements have rapidly been assuming increasing importance. Indeed, the future progress of integration will be partly conditional on how successful governments are making mutual accommodation in their domestic regulatory networks to facilitate flows of trade and, investment and technology. As more countries began to see the advantage in widening their markets for exports through the negotiation of FTA this provided an additional incentive for others to follow suit. In accordance with the domino theory that Baldwin (2006) has so persuasively expounded, numerous countries feared that they faced possible costs to themselves in remaining aloof from these preferential arrangements WB (2005) report estimated the proportion of world trade conducted among countries that were partners in regional and bilateral agreements was around one third in 2002 and the number of arrangement increased appreciably since that date however the reason noted in the WB report and elaborated upon below that estimate grossly overstates the likely volume of trade conducted on preferential terms. This exclusion of the intra-trade conducted in the EU alone reduces the 2002 figures from one third to one fifth. Moreover there are several reason for scepticism about the practical significance of the preferential arrangement. For one that although a large number of agreements have been signed these have not always fully specified their programmes of reduction or eliminations or they have envisaged implementation spread out over long periods. Baldwin, 2006 likewise noted that the utilisation rate in the ASEAN FTA were very low, perhaps below 10 percentage. The point is that where preferential margins are small, the certification process itself can occur at costs for the exported that outweigh the benefit. The greater blame for the relatively low utilisation rates however is usually assigned to the production condition that exports will have to comply with the rules of the origin spelled in the PA. The agreements would be based on not on the reciprocal bargaining but on the recognition of collective interests (Baldwin, 2006).
The WTO centred trading system is coming under increasing strain and is becoming less able to advance its core business of trade liberalisation. This is not to say that its members no longer think that it is useful; its growing membership shows that states continue to feel it is a club in which they wish to participate and all agree that is its dispute resolution mechanism is vital. But its success has created significant technical and political problems which show little sign of abating. There are three core problems. First, the size of the membership has made decision making extra ordinarily difficult as the members have widely diverging interest and requirements. Moreover the institutional structures cannot adapt themselves to effective decision making under such conditions. After the debacle at Cancun Pascal lamy DG of the WTO described its procedures as medieval. Serious reforms of organisational decision making and its relationship to members priorities is required if the current round of negotiation is to overcome its current stasis (see (S.Ostry, 2003)). Second the current round of negotiations is in abeyance. This derives from the first problem but also from its expansion of the agenda to include not only the higher profile matters of development but also new trade related issues such as government procurement, environment and competition policy. These are seen to be far more intrusive than the traditional focus of tariffs and hence subject to much greater member state sensitivity. The success of the system in the longer run has derived from its capacity to deliver results and this is growing harder and harder to achieve. Third trade is more politically sensitive than even before and elite have greater incentive to protect some aspects while at the same time trying to open up other markets. This is leading many in the developed world to focus on other means to advance their trade aims because WTO as seen as unable to deliver the goods or might be the source of less desired outcomes. The most obvious consequence of this has been the rapid growth in PTAs which have become the focus for many developed and developing states trade liberalisation agencies. Rather than globalisation driving a global opening of markets via the WTO globalisation is increasingly encouraging a rise of preferential trade and seizing up the multilateral system. As this will points out the GATT/WTO system which was born in 1947 successfully completed eight rounds of negotiations in 57 years since 1979 only one successful round has been concluded. This hardly
evidence of globalisation fuelled cosmopolitan sensibility overcoming the entrenched power of vested national interests. (Bisley, 2007).