CHAPTER — 4

AN EVALUATION OF VARIOUS AGREEMENTS OF WTO AND THEIR IMPACT ON INDIAN ECONOMY
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This chapter explains in details the basic principles and main elements that have been elaborated through various provisions of WTO Agreements in different areas.

INTRODUCTION

The WTO agreements cover goods, services and intellectual property issues. They spell out the principles of liberalisation and the exceptions permitted. They include commitments of individual countries to lower customer tariffs and other trade barriers, and to 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 WTO laws in force and measures adopted, and through regular reports by the WTO secretariat on their trade policies. These agreements are often described as ‘rule-based’. But it is important to remember that the rules are actually agreements that governments have negotiated.1

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One of the most dramatic events that have taken place in later part of 20th century was culmination of GATT 1947 into WTO (The world Trade organization), which came into being on 1st January 1995. This WTO has set expectations high in various member countries regarding spurt in world trade where India has insignificant share in the pie - only 0.75% at the most, the share of Indian exporters is just a peanut in view of overall world market exports even in IT.

Since formation of WTO there have been regular meetings of Ministerial Conferences held once in every 2 years and 7 such meetings have taken place while world prepares for the Geneva meeting to take place from 15-17 December 2011, the eighth one.

It is a statistical fact that world trade has definitely grown since 1995 thereby giving indicators that international trade reforms do play important role in boosting economic development of various countries.

The WTO Agreements are a set of rules, which have to be followed by governments in formulating their principles and practices in the areas of international trade in goods and services and intellectual property rights. These agreements prescribe the rights and obligations of governments, which are enforceable within the multilateral framework. There is a general expectation of
cooperation in the exercise of the rights and dischargeable of obligations.² Towards this end, there are provisions for transparency of actions and availability of opportunity for consultation among members.

The main objective is to provide full competitive opportunity of trade at a global level among the WTO members following, which there are two principles, viz., the most-favoured-nation treatment (MFN) and the national treatment. The former essentially means the non-discriminatory treatment across the members of the world trade organisation, while the latter meant for the non-discriminatory treatment between the exporting and importing members themselves. MFN ensures equal competitive opportunities among various member countries within the WTO purview, while the national treatment ensures the opportunities between the exporting and importing members of the world trade organisation.³

However, generally, the goods exported to a country should have very free entry into that country; the WTO agreements permit modification of competitive opportunity by allowing imposition of tariff on an imported product. Besides, in certain situations, these

agreements also permit imposition of non-tariff measures to restrict imports.

The main elements of the WTO Agreements in respect of goods consist of disciplines regarding tariff and non-tariff barriers. There is a framework for reduction of tariffs and commitments on maximum levels of tariff on different products. Unlike the tariff which is generally allowed, there is no general permission for non-tariff measures. For example a member cannot generally prohibit the import of goods into its territory. There are specific preconditions for such non-tariff measures, and these can be taken only through prescribed procedures.

The WTO agreements lay down these conditions and procedures. For instance, a member may raise tariff or apply quantitative restrictions on import to safeguard its industry from a sudden surge of imports or it may take measures to reduce its imports, if it faces balance of payment difficulties. The conditions and procedures for such actions have been specified in the respective agreements.

To ensure continuance competitive opportunity, these agreements provide protection against unfair trade practices like, if a government grants subsidies to its exports or production or if a firm adopts predatory practice by unduly lowering the price of its
goods, i.e., by dumping its goods, members that are put to disadvantage, are able to take measures to offset the effects of these unfair trade practices.

Attention has also been given to special sectors, which have been facing special problems, e.g., agriculture and textiles. The former remained outside the scope of general disciplines, while the latter was covered by derogation from the disciplines. A beginning has been made to bring them into the fold of the general rules outlined in WTO agreement.

Finally the WTO agreements cover the area of trade in services and also the standards of protection to the intellectual property rights. And all these have been integrated within a common framework of enforcement through the dispute settlement process which is meant to ensure the protection of rights and the discharge of obligations of members.

The WTO Agreements are often called the WTO's trade rules, and the WTO is often described as "rule-based", a system based on rules. But it is important to remember that the rules are actually agreements that governments negotiated.4

4 -Understanding the WTO, Geneva: World Trade Organisation Information and Media Relations Division.2007
THE STRUCTURE OF THE WTO AGREEMENTS

The results of the Uruguay Round of Multilateral Trade Negotiations ends with a daunting 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 three broad areas of trade that the WTO covers viz., goods, service and intellectual property; dispute settlement; and reviews of governments’ trade policies.

These agreements are not static; they are negotiated from time to time and new agreements can be added to the package. Many of the agreements have been negotiated under the Doha Development Agenda, launched by WTO trade ministers at Doha, Qatar, in November 2001. In a nutshell the basic structure of the WTO agreements i.e., the six main areas are fit together under the umbrella of the WTO Agreement (goods, services, intellectual property, disputes and trade policy reviews) are shown in the figure 4.1
The World Trade Organization oversees some 30 diverse agreements that have the status of international legal texts. All these agreements have been signed and ratified by WTO member states on accession. Some of the most important WTO agreements include the General Agreement on Trade in Services (GATS), the Agreement on Agriculture (AoA), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT) just to name a few.5

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The WTO Trade agreements are broadly classified according to their nature as (i) **Goods**: These agreements specify which goods will be free of import duties or how much members are allowed to charge for certain goods. For certain goods, there are different rates for developed and developing countries. (ii) **Agriculture**: Agreements on goods include agricultural products, which is a particularly sensitive area. These agreements aim to help nations preserve their rural economies while at the same time facilitating international trade of agricultural products. (iii) **Services**: This is another difficult area to negotiate, since developing countries often are pressured to open their markets to competition from developed countries. It includes services such as banking and finance, telecommunications and air-transport services. (iv) **Intellectual Property Agreements**: on intellectual property protect the rights of artists, innovators or software writers. The aim is to prevent unauthorized use of copyrighted or patented material, industrial designs and trademarks. (v) **Other WTO Agreements**: Other agreements include non-tariff barriers to trade such as bureaucratic obstacles, standard and safety procedures, as well as special areas, which apply to some, but not all, WTO members.

The WTO agreements are multilateral agreements as the treaty to which three or more sovereign states are parties. Each party owes the same obligations to all other parties, except to the
extent that they have stated reservations, and, it is a treaty between a limited number of states with a particular interest in the subject of the treaty.6

The following are the important agreements that go into the emanated process of WTO negotiations

- General Agreement on Tariffs and Trade (GATT 1994)
- Agreement on Agriculture (discussed in 5th chapter)
- Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)
- Agreement on Textiles and Clothing
- Agreement on Technical Barriers to Trade (TBT)
- Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)
- Agreement on Trade-Related Investment Measures (TRIMs)
- General Agreement on Trade in Services (GATS)

THE GENERAL AGREEMENT ON TARIFFS AND TRADE (GATT)

The General Agreement on Tariffs and Trade (typically abbreviated GATT) was negotiated during the UN Conference on Trade and Employment and was the outcome of the failure of negotiating governments to create the International Trade

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Organization (ITO). GATT was signed in 1947 and lasted until 1993, when it was replaced by the World Trade Organization in 1995. The original GATT text (GATT 1947) is still in effect under the WTO framework, subject to the modifications of GATT 1994.7

The GATT appears to have contributed significantly to the growth of world trade. Eight successful rounds of MTNs on reducing barriers to trade have been concluded under the GATT's auspices. The volume of world trade grew at an unprecedented average rate of 8 per cent a year between the founding of the GATT in 1947 and the first oil shock in 1973. Although the annual rate of growth declined significantly during the period of adjustment to the two oil shocks to 3.7 per cent during the period 1973-80 and 4.3 per cent during the period 1980-90. It recovered to 6.5 per cent during the period 1990-99. In all periods, it still exceeded the rate of growth of world output. In fact, during the period 1954-90 as a whole, the volume of merchandise trade grew to nearly 15 times its level in 1950, while output grew to six times its level in 1950. Against this background, however, India's share of world trade declined from more than 2 per cent in the early 1950s to about 0.7 per cent in 2000.8

However, this share increased to around 1 per cent, showing a recovery path and thus volume India’s trade increased between 2000 and 2008. It is opined that India and other developing countries with inward-oriented development strategies have not taken full advantage of this growth in world trade have acted to counter some of the GATT’s trade-opening influence. In retrospect, it could be argued that the fact that the ITO did not come into existence was fortunate because it would have allowed developing countries to easily exempt themselves from trade agreements.

(The GATT and its existence and the impact have already been elaborated in the previous chapters of the dissertation).

THE AGREEMENT ON AGRICULTURE (AoA)

The Agreement on Agriculture forms a part of the Final Act of the Uruguay Round of multilateral trade negotiations has already been elaborated as it constitutes a separate objective of the study (see chapter 5).

AGREEMENT ON APPLICATION OF SANITARY AND PHYTO-SANITARY MEASURES (SPS)

There are widely different quality and safety norms for equally heterogeneous products across countries. The quality and safety of food products cannot be ascertained by sheer physical
inspection. It involves usage of sophisticated and advanced technology. Sometimes imperfections such as presence of carcinogens, pathogens or low level of toxins are difficult to detect at early stages. Due to these factors, free-market economy cannot solve the problems of food quality. Therefore along with AoA two other agreements viz., the Agreement on Sanitary and Phytosanitary Measures and Technical Barriers to Trade, aim to address these concerns.

The benefits of trade liberalization in the agriculture sector achieved by the Uruguay Round negotiations could be undermined by the protectionist use of SPS. The SPS agreement was negotiated to limit this danger and represents a useful instrument for this purpose.\(^9\) Considering the inherent imperfections in world food trade related to quality and safety issues, the need for a global mechanism and framework to address these problems was felt. In the absence of such mechanism, individual nations can impose non-tariff barriers to food trade against the concept of smooth, predictable and free trade flow. As different nations have different quality, safety and performance standards, WTO aims at the harmonization of these standards by the SPS agreement.\(^10\)

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The SPS Agreement, to which all WTO members are parties, explicitly recognizes that countries have the right to adopt regulations to protect human, animal, or plant life or health – including food safety regulations and measures to protect domestic crops, livestock, and poultry – and to establish the levels of protection from risk they deem appropriate. Starting from that premise, the SPS Agreement establishes a number of general requirements and procedures to ensure that governments adopt and apply SPS measures to protect against real risks rather than to protect local producers from import competition. The SPS Agreement also encourages harmonization of SPS measures among WTO members, where appropriate. Few of the examples for SPS measures were restrictions imposed by Japan on apples, cherries, nectarines and walnuts, quarantine requirement imposed by Australia for imports of salmon from Canada, EU prohibiting use of substances having hormonal action and eggs and poultry product from EC banned into USA.

THE SCOPE OF SPS AGREEMENT

The SPS Agreement applies only to those governmental measures that may directly or indirectly affect international trade. If a measure has no trade effect or is imposed by a private company or trade association, the SPS Agreement does not apply to it. The
Agreement defines SPS measures as any measure that a WTO member applies:

- to protect animal or plant life or health within the territory of the member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organisms or disease-causing organisms;
- to protect human or animal life or health within the territory of the member from risks arising from additives, contaminants, toxins, or disease-causing organisms in foods, beverages or feedstuffs;
- to protect human life or health within the territory of the member from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; or
- to prevent or limit other damage in the territory of the member from the entry, establishment or spread of pests.

SPS measures include all relevant laws, decrees, regulations, requirements, and procedures including, among others: end product criteria; processes and production methods; testing, inspection, certification, and approval procedures; quarantine treatments, including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures, and methods of
risk assessment; and packaging and labeling requirements directly related to food safety.

**Appropriate Level of Protection**

As noted above, the SPS Agreement explicitly recognizes the right of WTO members to take SPS measures necessary to protect human, animal, or plant life or health. An important question is how much protection a member may seek against a particular risk when it adopts an SPS measure. Under the SPS Agreement, each member is free to choose its own “appropriate level of sanitary or phyto-sanitary protection.”

**Science Based Measures**

Once a WTO member has established its appropriate level of protection, the SPS Agreement provides that the SPS measures it takes to achieve that level of protection must be based on scientific principles, must not be maintained without sufficient scientific evidence, and may be applied only to the extent necessary to protect human, animal, or plant life or health. In cases where relevant scientific evidence is insufficient, a government may provisionally adopt SPS measures on the basis of availability. In such circumstances, WTO members shall seek to obtain the additional information necessary for a more objective assessment.
of risk and review the SPS measure accordingly within a reasonable period of time.

**Risk Assessment**

The SPS Agreement requires each member to ensure that its SPS measures are based on an assessment, as appropriate to the circumstances, of the risk that a particular substance or product, including a process or production method, poses to human, animal, or plant life or health.

**Unjustifiable Discrimination and Disguised Restrictions on Trade**

While each WTO member is free to choose the level of protection it considers appropriate, the SPS Agreement requires members to ensure that their SPS measures are not more trade-restrictive than required to achieve that level of protection, taking into account technical and economic feasibility. It also requires governments to avoid arbitrary or unjustifiable distinctions in the levels of protection in different situations if such distinctions result in discrimination against a good from another WTO member or constitute a disguised restriction on international trade.
Harmonization

The SPS Agreement calls for governments to base their SPS measures on international standards, guidelines, and recommendations developed by international standard setting organizations. The objective in promoting the use of international standards is to facilitate trade by harmonizing different members' SPS measures on as wide a basis as possible. The three recognized standard-setting bodies in the SPS Agreement are: (1) the Joint Food and Agricultural Organization of the United Nations (FAO)/World Health Organization (WHO) Codex Alimentarius Commission (Codex) for food safety; (2) the FAO International Plant Protection Convention (IPPC) for plant health; and (3) the World Organization for Animal Health, formerly known as the International Office of Epizootics (OIE), for animal health and zoos. A member may depart from an international standard, guideline, or recommendation if the member's measure is in accordance with the obligations of the SPS Agreement.

Transparency

The SPS Agreement requires WTO members promptly to publish all adopted SPS measures in a manner that enables other interested WTO members to become acquainted with them. The SPS Agreement also requires each member to maintain an enquiry
point that is responsible for providing relevant documents and answers to all reasonable questions from interested members concerning SPS regulations adopted or proposed in the member's territory. In addition, the SPS Agreement requires each WTO member to publish any proposed SPS measure that is not based on an international standard, guideline, or recommendation. Because that may have a significant effect on trade in order to provide other members with prior notice and an opportunity to comment on the proposal, except where "urgent problems of health protection" are involved.

**SPS Committee**

The SPS Agreement establishes a Committee on Sanitary and Phytosanitary Measures (SPS Committee) to provide a regular forum at the WTO for consultations about SPS measures that affect trade and to oversee the implementation of the SPS Agreement.11

The agenda for SPS Committee meetings varies, but several items appear regularly. Committee members routinely discuss matters related to how the SPS Agreement is being applied and implemented and specific trade concerns, such as pesticide residue level restrictions. Members also discuss and develop procedures and guidelines that help governments implement their obligations.

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under the SPS Agreement. All procedures and guidelines that the SPS Committee establishes must be adopted by consensus.

**Technical Assistance**

The SPS Agreement encourages all members to facilitate technical assistance to developing country members either bilaterally or through relevant international organizations, such as the Standards and Trade Development Facility (STDF) and the Inter-American Institute for Cooperation on Agriculture (IICA). The STDF is a joint initiative of the WTO, FAO, OIE, and WHO aimed at raising awareness on the importance of SPS issues, increasing coordination in the provision of SPS-related assistance, and mobilizing resources to assist developing countries enhance their capacity to meet SPS standards. The IICA is a specialized agency of the Inter-American System, whose purpose is to encourage and support the efforts of its member states to achieve agricultural development and well-being for rural populations.

**SPS AGREEMENT AND STRATEGIC IMPLICATIONS FOR INDIAN FOOD TRADE**

Generally, SPS measures dealing with food-related health and safety concerns have multiplied in developed countries. The growth of international trade in food products, both processed and semi-processed, has increased the prominence of these SPS
measures as regulatory trade barriers for these products.\textsuperscript{12} Although SPS and TBT agreements aim at fairer and rule-based international food trade, there are some discriminatory provisions favouring developed countries. These have strategic implications for Indian trade. India must have a strategy for negotiating and arriving at just and fair food standards for its exportable food products.\textsuperscript{13}

**THE AGREEMENT ON TEXTILES AND CLOTHING**

Apart from agriculture, textile and clothing is the only industry, which has a separate and independent agreement, multilaterally negotiated, under the aegis of WTO. This is hardly surprising considering the significant share of textiles and clothing in the international trade basket of several, especially developing countries. Indian textile and clothing industry contributes almost 4\% of national GDP, and 20\% of manufacturing value added. It also earns one-third of India's foreign exchange, and employs over 6.5 million persons directly as well as indirectly. It is the most important Indian industry, after agriculture.

The international trade in textile and clothing is being transformed significantly owing to the phasing out of the Multifibre Arrangement (MFA) era, and ushering in of the era of quota-free


\textsuperscript{13} *Ibid.*,
trade. This has jolted the entire pattern of global trade in textile and clothing from years of stupor, and each country/region has suddenly become busy preparing its own national/regional strategy for competitiveness in the new scheme of global trade. The Agreement in Textiles and Clothing (ATC) remains the principal driver of such a mammoth economic earthquake in this sector.

By adopting the Agreement on Textile & Clothing (ATC) the member countries have agreed to phase out restrictions maintained under the Multi-Fibre Arrangement within a period of 10 years i.e., by 1st January, 2005. The textile and clothing (T&C) sector is an important one in the Indian economy. Textiles and clothing items have been significant in India’s export basket, accounting for nearly 20 per cent of total exports during the 1990s. In 2003, T&C exports were the largest export group, accounting for 23 per cent of Indian exports (or $13 billion). In addition, this sector is the second largest generator of employment (35 million or around 10 per cent of the workforce), a significant earner of foreign exchange, and contributes 4 per cent and 14 per cent to GDP and value added in manufacturing, respectively (Ministry of Textiles, Annual Report 2003-04). India's position in the EU markets with a share of 7.93% and a negative growth rate of 8.86% was small in comparison to China which occupied over 41% market size with a

negative growth of 6.04% in 2009. The EU's overall T&C import registered a growth of 7.30% in 2008 and a decline of 11.87% in 2009. In the first 10 months of calendar year 2010, EU's overall imports of T&C have grown by 5.03% while India recorded a growth of 3.54% over the corresponding period in 2009. China & Turkey, the two largest exporters of T&C to EU have recorded growth of 6.45% and 6.56% respectively during same period.¹⁵

International trade in textiles and clothing is a classic exception to the objective of GATT¹⁶ - favouring liberalization of world trade - all along its history. After the end of Second World War, restrictions on cotton textiles began to be applied under Voluntary Export Restraints. At a GATT Ministerial meeting in November 1959, US Secretary of Treasury pointed out that sharp increases in imports over a brief period of time could have serious economic, social and political repercussions in the importing country. With commendable celerity, the Short Term Cotton Arrangement (STA) was soon concluded at the behest of US, in 1961, for a year. Textiles came to be acknowledged by GATT as a "special case". The STA was followed by Long Term Arrangement (LTA), which was in force from 1962 to 1973, which, in turn, was followed by the arrangement regarding international trade in

textiles, better known as Multifibre Arrangement (MFA). This was in force from 1 January 1974 to 31 December 1994. These arrangements set aside, for the sector, the rules and disciplines of Articles XI (General Elimination of Quantitative Restrictions), XIII (Non-discriminatory Administration of Quantitative Restrictions) and XIX (Emergency Action on Imports of Particular products); the principle of Most Favoured Nation (MFN) treatment was thrown out of the window.

While the arrangements began by restricting only cotton goods, they spread their tentacles to wool as well as man-made fibres, and in 1986, to practically every fibre in existence. Simultaneously, several countries subjected to quotas became 'addicted' to them, and quota traders emerged as a lobby often more powerful than the manufacturers themselves. Indian textile and clothing industry is a case in point. Thus, if meaningful liberalization of trade was to be achieved at the UR, the MFA (acknowledged as a derogation from GATT) had to disappear, and the rules applying to industrial goods had to be extended to textiles and clothing. It is against this backdrop that the Agreement in Textiles and Clothing (ATC) assumes significance. Specifically, ATC presents some definitive advantages over the MFA era, viz.,

17 Ibid.,
• It puts an end to the long life of MFA.

• It brings textiles and clothing at par with all other industrial products, and the sector ceases to be a "special case".

• It is self-destructive, since it definitively extinguishes on 31 Dec. 2004.

Quota Phase-Out Schedule in ATC

Quotas are being phased out using two mechanisms:

• At the start of each phase/ stage, a proportion of quotas is integrated immediately\(^{19}\) (column 3 in table 4.1 below)

• Remaining quotas, meanwhile, are increased each year at a faster rate of growth than applied in the previous phase (column 4 in table 4.1 below).

### Table 4.1: Schedule of Quota Integration under ATC

<table>
<thead>
<tr>
<th>Schedule of Quota Integration and Growth Uplift under the WTO Transition Phase</th>
<th>Stage</th>
<th>Timing</th>
<th>% of 1990 import volume integrated</th>
<th>% uplift on growth rates for remaining quotas</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Day 1 (1 Jan 1995)</td>
<td>16</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>II</td>
<td>37th month (1 Jan 1998)</td>
<td>17</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>III</td>
<td>85th month (1 Jan 2002)</td>
<td>18</td>
<td>27</td>
<td></td>
</tr>
<tr>
<td>IV (End of Transition)</td>
<td>121st month (1 Jan 2005)</td>
<td>49</td>
<td></td>
<td></td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td>100</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: G.K. Chadha, WTO and the Indian Economy.

The quota imposing member countries are, therefore, obliged to integrate at least 16 percent of their total volume of 1990 import of all textiles and clothing as on 1 Jan 1995, another at least 17% on 1 Jan 1998, 18 per cent on 1 Jan 2002, and finally the remaining 49% on 1 Jan 2005. The only other condition is that the surrendered products must include at least one category selected from each of the following four groups, viz., tops and yarn, fabrics, made-up textile products, and clothing.

IMPLICATIONS FOR INDIAN TEXTILE AND CLOTHING INDUSTRY

Very few industries are as ubiquitous as textile and clothing industry. As such, the intentions of the primarily importing countries of the developed world are still- as historically- protectionist. However, one big difference between yesteryears (MFA era) and the era of ATC is the explicit implementation of the "General Elimination of Quantitative Restrictions" (Art XI) that is enshrined in GATT 1994 through ATC. The protectionist tools, thus, of the WTO era has now changed, even though the intentions remain unchanged. This is evident in the scores of issues that have arisen during the actual implementation of the ATC by developed

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countries, notably the US and EU. They have followed the ATC in letter but not necessarily in spirit.21

India's Textiles & Clothing (T&C) export registered robust growth of 25% in 2005-06, recording a growth of US$ 3.5 billion over 2004-05 in value terms. Thus, they reached a level of US$ 17.52 billion and the growth continued in 2006-07 with T&C exports of US$19.15 billion recording an increase of 9.28% over previous year and reached USD22.15 billion in 2007-08 denoting an increase of 15.7% but declined by over 5% in 2008-09 with exports of USD 20.94 billion. During 2009-10, the exports of T&C increased by over 5.60% and reached the level of USD 22.42 billion. Thus exports of T&C have denoted an increase of 60.14% in the last five years (2004-05 to 2009-10). Indian T&C exports is facing various constraints of infrastructure, high power and transaction cost, incidence of state level cess and duties, lack of state-of-the-art technology etc. The details of India's textiles exports item-wise during the last three years and current financial year for the period Apr-September'10 is at table 4.2.

Table 4.2 India's textiles exports at a glance

<table>
<thead>
<tr>
<th>Item</th>
<th>2007-08</th>
<th>2008-09</th>
<th>2009-10</th>
<th>Variation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Rs. Crore</td>
<td>USS Mn</td>
<td>Rs. Crore</td>
<td>USS Mn</td>
</tr>
<tr>
<td>Readymade Garment</td>
<td>36497.79</td>
<td>9069.8</td>
<td>47112.77</td>
<td>10383.26</td>
</tr>
<tr>
<td>RMG of cotton including accessories</td>
<td>30357.95</td>
<td>7538.53</td>
<td>38522.72</td>
<td>8490.08</td>
</tr>
<tr>
<td>RMG of Man-made fibre</td>
<td>3912.26</td>
<td>972.21</td>
<td>4721.94</td>
<td>1040.68</td>
</tr>
<tr>
<td>RMG of other textile material</td>
<td>2249.74</td>
<td>559.07</td>
<td>3868.11</td>
<td>852.5</td>
</tr>
<tr>
<td>Cotton Textiles</td>
<td>27599.81</td>
<td>6858.63</td>
<td>21795.4</td>
<td>4803.52</td>
</tr>
<tr>
<td>Cotton raw including waste</td>
<td>8865.39</td>
<td>2203.07</td>
<td>2865.86</td>
<td>631.61</td>
</tr>
<tr>
<td>RMG of cotton including accessories</td>
<td>8578.73</td>
<td>2203.07</td>
<td>2865.86</td>
<td>631.61</td>
</tr>
<tr>
<td>Man-made textiles</td>
<td>12785.02</td>
<td>3177.11</td>
<td>15090.76</td>
<td>3325.88</td>
</tr>
<tr>
<td>Manmade staple fibres</td>
<td>1121.72</td>
<td>278.75</td>
<td>1172.07</td>
<td>258.3</td>
</tr>
<tr>
<td>Manmade yarn, fabrics &amp; madeups</td>
<td>11663.3</td>
<td>2898.36</td>
<td>13918.75</td>
<td>3067.58</td>
</tr>
<tr>
<td>Wool &amp; Woolen textiles</td>
<td>1783.13</td>
<td>441.13</td>
<td>2199.49</td>
<td>484.75</td>
</tr>
<tr>
<td>RMG of Wool</td>
<td>1409.55</td>
<td>350.28</td>
<td>1742.97</td>
<td>384.14</td>
</tr>
<tr>
<td>Woollen yarn, fabrics &amp; madeups</td>
<td>373.58</td>
<td>92.84</td>
<td>456.52</td>
<td>100.61</td>
</tr>
<tr>
<td>Silk</td>
<td>2646.75</td>
<td>657.72</td>
<td>3107.78</td>
<td>684.93</td>
</tr>
<tr>
<td>RMG of Silk</td>
<td>1093.67</td>
<td>271.78</td>
<td>1437.73</td>
<td>316.86</td>
</tr>
<tr>
<td>Natural silk yarn, fabrics &amp; madeups</td>
<td>1540.93</td>
<td>382.93</td>
<td>1664.82</td>
<td>366.91</td>
</tr>
<tr>
<td>Silk waste</td>
<td>12.15</td>
<td>3.02</td>
<td>5.23</td>
<td>1.15</td>
</tr>
<tr>
<td>Handloom Products</td>
<td>1252.81</td>
<td>264.85</td>
<td>2199.49</td>
<td>484.75</td>
</tr>
<tr>
<td>Textiles (excl. handicrafts, jute &amp; coir)</td>
<td>81312.5</td>
<td>20206.38</td>
<td>83906.2</td>
<td>19682.34</td>
</tr>
<tr>
<td>Handicrafts</td>
<td>5844.12</td>
<td>1452.28</td>
<td>4949.23</td>
<td>1090.77</td>
</tr>
<tr>
<td>Handicrafts (excluding handmade carpets)</td>
<td>2046.21</td>
<td>508.49</td>
<td>1384.19</td>
<td>305.06</td>
</tr>
<tr>
<td>Carpets (excluding silk)</td>
<td>3725.8</td>
<td>925.87</td>
<td>3060.37</td>
<td>772.77</td>
</tr>
<tr>
<td>Silk carpets</td>
<td>72.11</td>
<td>17.92</td>
<td>58.67</td>
<td>12.93</td>
</tr>
<tr>
<td>Coir &amp; Coir Manufacturers</td>
<td>644.87</td>
<td>160.25</td>
<td>608.7</td>
<td>150.02</td>
</tr>
<tr>
<td>Coir &amp; Coir Manufacturers</td>
<td>644.87</td>
<td>160.25</td>
<td>608.7</td>
<td>150.02</td>
</tr>
<tr>
<td>Jute</td>
<td>1319.36</td>
<td>327.86</td>
<td>1375.78</td>
<td>303.21</td>
</tr>
<tr>
<td>Jute covering of jute</td>
<td>317.56</td>
<td>78.91</td>
<td>251.63</td>
<td>55.46</td>
</tr>
<tr>
<td>Other jute manufactures</td>
<td>322.22</td>
<td>80.07</td>
<td>491.64</td>
<td>108.35</td>
</tr>
<tr>
<td>Jute yarn</td>
<td>215.14</td>
<td>53.46</td>
<td>216.92</td>
<td>47.81</td>
</tr>
<tr>
<td>Jute hessian</td>
<td>464.44</td>
<td>115.41</td>
<td>415.59</td>
<td>91.39</td>
</tr>
<tr>
<td>Total Textiles Exports (incl. handicrafts, jute &amp; coir)</td>
<td>89120.85</td>
<td>22146.78</td>
<td>96311.91</td>
<td>21226.34</td>
</tr>
<tr>
<td>% Textile Exports</td>
<td>13.59%</td>
<td>13.59%</td>
<td>11.46%</td>
<td>11.46%</td>
</tr>
<tr>
<td>India's exports of all commodities</td>
<td>64449.42</td>
<td>16293.89</td>
<td>80455.06</td>
<td>18529.36</td>
</tr>
</tbody>
</table>

Source: Foreign Trade Statistics of India (Principal Commodities & Countries), DGCI&S for export figures in INR and Department of Commerce - Exchange rate
A recent GATT report on developing countries reveals that textiles and articles of clothing are the most important industrial category among the third world countries’ exports accounting for 22% of the total. At present 4% of textile trade is integrated into GATT provision. Rest will be integrated over 10 years in four stages. (table 4.3)

Table 4.3 Forecast of Textiles & Clothing Industries Exports

<table>
<thead>
<tr>
<th>Phase</th>
<th>Year</th>
<th>New integration Percentage</th>
<th>Cumulative Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>1995-1997</td>
<td>12</td>
<td>16</td>
</tr>
<tr>
<td>II</td>
<td>1998/2010</td>
<td>17</td>
<td>33</td>
</tr>
<tr>
<td>III</td>
<td>2002-2004</td>
<td>18</td>
<td>51</td>
</tr>
<tr>
<td>IV</td>
<td>2005</td>
<td>49</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Vasudeva P K, India and World Trade Organisation: planning and development.

Thus 51% of the existing quota will come in the open market on January 1, 2004 and the remaining 49% quota is to be abolished in the 121st month of the Agreement.

However, the loss of opportunity in textiles could be made up in other goods. The liberalization of trade in goods brought about by the new treaty opportunities to India is the biggest gain and outweighs all the costs imposed by the treaty.

India’s current textile and garment exports of US are valued at over $1 billion. The new textile pacts India has signed with the US and European Union is notable for the end of one-way
concessions to India, and the new insistence on reciprocity. India has gained greater market access for its textiles, but has promised the same to others and bound its import duties on imported textiles. India has bound its tariff rates at 65-70% for fibres, yarn, fabric and clothing from the E.U. and the bound rate was expected to fall to 40% by 1998 and afterwards. The trend is unmistakable. The multi-fibre arrangement (MFA) is going to be phased out by 2005 enabling India and other third world countries free access to the markets of OECD countries.

Indian textile industry is currently receiving certain subsidies from the global market to aid itself to ride the tide of global economic crisis. Earlier in 2008, India’s exports of textile and apparel were $21 billion forming 3.4% of the global trade worth $612 billion. Due to global meltdown, during 2009, the country’s exports to EU and US fell as the demand slowed down in these countries. Concessions were given in the form of discounts on interest for loans, and incentives to help the textile and apparel sector. Indian Government has contributed subsidies and other measures, which has helped the country to enhance its production, making it to surpass the US, and becoming the world’s largest producer of cotton.

Given that India’s textile industry is highly competitive and subsidized, US remains concerned about the preferences extended
to it. As per the WTO review, Indian textile and apparel exports worth of billions of dollars that are currently receiving export subsidies might no longer qualify for the same. US have asked WTO to review the possibilities for India to get qualified for concessions regarding export subsidies in the textile and apparel sector. It asserts that there are reasons to believe that India has met with export competitiveness as defined in the SCM (Subsidies and Countervailing Measures) agreement for certain products. But, India believes that it cannot be challenged as most of the subsidies of textile exporters are short term.22

India's garment exports accounted for US $ 10.17 billion during the year 2008-09, giving it an enviable market share of 2.99%. India is the sixth largest exporter of readymade garments (RMG) with a 2.6% world market share. The industry supports 7 million people as part of its workforce, and aims to double this figure by 2011-12. The apparel sector alone contributes to 8% of India's total exports with exports recording a 1% growth over last year. By the year 2011-12, India expects to record a 15% growth in quantity and 20% growth in values.23

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India's domestic market has grown significantly in the past registering a Compounded Annual Growth Rate (CAGR) of 13%. Despite the demand slump, the domestic market is expected to grow by around 9-10% in the next 5 years. The Indian apparel market is moving away from the traditional segmentation to a much deeper and wider segmentation based on consumer needs. Also India's textile industry is seeing an increase in collaboration between national and international companies International apparel companies like Hugo Boss, Liz Claiborne and Diesel.

THE AGREEMENT ON TECHNICAL BARRIERS TO TRADE (TBT)

The TBT Agreement is designed to ensure that standards-related measures serve legitimate objectives, are transparent, and do not create unnecessary obstacles to trade. The TBT Agreement contains a comprehensive set of obligations for WTO members on the development and use of these measures. It establishes rules on developing, adopting, and applying voluntary product standards and mandatory technical regulations - as well as for the conformity assessment procedures (such as testing or certification) used to determine whether a particular product meets such standards or regulations. These rules help distinguish legitimate standards related measures from protectionist measures, and ensure that
testing and other conformity assessment procedures are fair and reasonable.\textsuperscript{24}

The TBT Agreement recognizes that WTO members have the right to take standards-related measures necessary to protect human health, safety and the environment at the levels they consider appropriate and to achieve other legitimate objectives. At the same time, the TBT Agreement imposes a series of rules regarding the development and application of those measures. For example, the TBT Agreement requires governments to develop standards-related measures through transparent processes, and to base these measures on relevant international standards (where effective and appropriate). The TBT Agreement also prohibits measures that discriminate against imported products or create unnecessary obstacles to trade. The TBT Agreement sets out a Code of Good Practice for both governments and non-governmental standardizing bodies to guide the preparation, adoption, and application of voluntary standards. The Code is open to acceptance by any standardizing body located in the territory of any WTO member.\textsuperscript{25}

\textsuperscript{24} Ronald Kirk, 2011 Report on Technical Barriers to Trade, Office of the United States Trade Representative, March 2011.

Transparency Obligations under the TBT Agreement

Each WTO-member country is required to notify all its new or amendments of existing TBT related standards/regulations including labeling requirements which are either not based on the relevant international standards or having significant trade effects (both positive and negative) or where no international standards/guidelines exist. Members are also obliged to notify such TBT measures to the WTO at an early appropriate stage and provide at least 60 days’ time for comment of other members so that changes, if any, based on such comments of other members can be accommodated before the standards/regulations are put in force.

The TBT Agreement requires WTO members to provide other members the opportunity to participate in the development of mandatory standards-related measures, which helps to ensure that standards-related measures do not become unnecessary obstacles to trade. In particular, the TBT Agreement requires each member to publish a notice in advance that it proposes to adopt a technical regulation or conformity assessment procedure. It also requires each WTO member to notify proposed technical regulations and conformity assessment procedures to the WTO so that other WTO members may comment on them in writing. WTO members are
required, without discrimination, to take into account these written comments, plus the results of any requested discussions of those comments, when finalizing their measures. In 2010 alone, WTO members notified 1,419 new or amended technical regulations and conformity assessment procedures to the WTO. Figure 4.2 shows the growth in notifications since 1995.

**Figure 4.2: Number of TBT Notifications since 1995**

![Chart showing the growth in TBT notifications since 1995.](chart)

Source: Various Annual Report of WTO

Article 13 of the TBT Agreement establishes a “Committee on Technical Barriers to Trade” to oversee the operation and implementation of the TBT Agreement. The TBT Committee is open to participation by all 153 WTO members. The TBT Committee is one of over a dozen standing bodies (others include the Committees on Import Licensing, Antidumping Practices, and...
Rules of Origin, for example) that report to the WTO Council for Trade in Goods. The activities of the TBT Committee are described in detail below.

In the light of rapidly changing food habits as well as the food basket, the agro-food and processing sectors need to be keyed into addressing such emerging challenges.26 In the decade of the 90’s, agriculture production that involved value addition to primary agricultural produce showed positive growth rate sin exports, while exports of primary agricultural produce declined rapidly. In 2003, share of primary agricultural produce in India’s export basket had declined to around 4.4 per cent while that of processed agricultural exports had increased to 7.9 per cent.

This trend has important implications for India agricultural sector. As food processing is expected to emerge as one of the largest sectors in India in terms of turnover, employment as well as export earnings,27 issues of global market access for Indian processed foods assume a very important dimension in India’s future economic diplomacy and trade strategy. As discussed before, it can be reasonably expected that tariff barriers to processed agricultural produce will come down substantially, given the trend in WTO agricultural negotiations. Thus, agricultural subsidies and

TBT will emerge as the two main areas of contention as they will be used as tools to protect domestic agriculture and deny market access.\textsuperscript{28}

**THE AGREEMENT ON TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS)**

The TRIPS Agreement, which came into effect on 1st January 1995, is to date the most comprehensive multilateral agreement on intellectual property. The areas of intellectual property that it covers are copyright and related rights (i.e. the rights of performers, producers of sound recordings and broadcasting organizations); trademarks including service marks; geographical indications including appellations of origin; industrial designs; patents including the protection of new varieties of plants; the layout-designs of integrated circuits; and undisclosed information including trade secrets and test data\textsuperscript{29}

The three main features of the TRIPS agreement are:

1. **Standards:** In respect of each of the main areas of intellectual property covered by the TRIPS Agreement, the Agreement sets out the minimum standards of protection to be provided by each member. Each of the main elements of protection is defined,

\textsuperscript{28} Ibid.,

\textsuperscript{29} - Impact of TRIPS on Pharmaceutical Prices, with specific focus on generics in India, *Final Report*, National Institute of Pharmaceutical Education & Research, Mohali, 2006. P.5
namely the subject-matter to be protected, the rights to be conferred and permissible exceptions to those rights, and the minimum duration of protection. The Agreement sets these standards by requiring, first, that the substantive obligations of the main conventions of the WIPO, the Paris Convention for the Protection of Industrial Property (Paris Convention) and the Berne Convention for the Protection of Literary and Artistic Works (Berne Convention) in their most recent versions, must be complied with.

2. **Enforcement:** The second main set of provisions deals with domestic procedures and remedies for the enforcement of intellectual property rights. The Agreement lays down certain general principles applicable to all IPR enforcement procedures. In addition, it contains provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures, which specify, in a certain amount of detail, the procedures and remedies that must be available so that right holders can effectively enforce their rights.

3. **Dispute settlement:** The Agreement makes disputes between WTO members in respect of TRIPS obligations subject to the WTO’s dispute settlement procedures.
In addition, the agreement provides for certain basic principles, such as national and most-favoured-nation treatment, and some general rules to ensure that procedural difficulties in acquiring or maintaining IPRs do not nullify the substantive benefits that should flow from the Agreement. The obligations under the agreement will apply equally to all member countries, but developing countries will have a longer period to phase them in. Special transition arrangements operate in the situation where a developing country does not presently provide product patent protection.

The TRIPS agreement contains a number of safeguards, which may be used to protect public health and promote competition, such as compulsory licensing and exceptions, which facilitate the marketing of generic drugs ("Bolar provision"). These safeguards can be used to mitigate the potential negative impact of the TRIPS Agreement on access to drugs. However, in order to use these safeguards, countries have to incorporate them in their national legislation.30

IMPACT OF TRIPS ON INDIA

The advent of WTO and TRIPS regime has done wonders for the Indian pharmaceutical industry. Under the protected pre-1995 regime, Indian pharmaceutical industry had been floating

30 Ibid., p.6
complacently without direction and with no sense of urgency. Only after the emergence of TRIPS on the horizon. Indian pharmaceutical industry woke up to the challenges of new intellectual property regime. Truly, the Indian pharmaceutical industry became part of the knowledge industry consequent to TRIPS.31

For the first time in many decades, the Indian pharmaceutical industry felt threatened in their home pitch. While a few visionary corporates like Dr. Reddy's started initiating action to face the challenge of product patent regime for early 1990s by setting up a Drug Discovery Programme, most others took their time to set up research facilities and innovative research programmes. However, the real action face has commenced post-2005. The intellectual property/patent awareness creation and absorption as well as keenness and enthusiasm for inculcating patent practice have largely helped the Indian pharmaceutical industry. To find a new born to set in motion, new strategies not only for survival, but also for continuing the trend or dominance that the Indian pharmaceutical industry has been showing for the last few decades.

While a reasonable good number of Indian pharmaceutical corporations have set up research facilities of global standard and

have initiated research programme for new Drug Delivery Systems and also in some cases for Drug Discovery Programme, the overseas pharmaceutical corporations (widely termed as 'MNCs') have not been as enthusiastic in the post TRIPS regime in India. Very few overseas pharmaceutical corporations expanded their research facilities substantially in India, post-1995. This could very well be understood and appreciated in the light of the following analysis of the emergence of TRIPS scenario as envisaged globally.

Indian pharma traditionally was against IPs in general in the 70's and 80's. The national sector was pro-non- branded generics and anti-trademarks in the 70's. The Indian dominance in the branded generics have made the national sector extremely pro-trademarks. Similarly, Indian National Sector was anti-patent in the 70's, patent practice by Indian National Sector has commenced post-TRIP. Once the India pharma industry starts participating in Innovative Research and Drugs Discovery Programmes, a day is not too far, that India may move to the forefront of patent advocacy and all related practices.\(^{32}\)

Another problem for developing countries agriculture arises out of TRIPS agreement that has made it mandatory for all member countries to accord protective intellectual property rights, which are internationally acceptable, among others to the inventors of

\(^{32}\) *Ibid.*
new seeds and plant varieties. For centuries farmers had been saving, exchanging, using and selling farm saved seed. Multinational seed companies have now started claiming patent rights over the seed produced through their research by introducing some new gene sequence. Developing countries fear that this will threaten their centuries old farm practices and make their agriculture dependent on these companies. TRIPS state that all countries should protect their plant varieties by patents or through a sui generis system. Developing countries should therefore develop their own sui generis system balancing the rights of plant breeders and local farming communities. The international Union for the Protection of New Varieties of Plants (UPOV) was developed as a sui generis system in Europe and is widely viewed as tilted in favor of plant breeders. There is a need to balance the provisions of TRIPS with that of Convention of Biological Diversity wherein the sovereign rights of nations over their genetic resources is recognized. Multinational companies are criticized for utilizing the biological resources of the developing countries without informed consent of their governments and communities. These companies are able to gain patents on their valuable resources by extracting the basic contents, introducing some change in the gene structure and getting patent rights. The original communities who
have been using such products may not get any information or share in the profits that subsequently accrue to the companies.

India needs to provide patent protection to its valuable export brands like Basmati Rice, varieties of mangoes, oranges etc. Traditional herbal and pharmaceutical knowledge needs to be documented and their link with community practices and ways of life established. Plant breeders rights legislation requires to be introduced which should be based on our own sui generis system.

WTO has been criticized for paying lip service to the concerns of developing countries in the field of agriculture while pursuing an agenda of developed countries. Under Article 20 of Agreement on Agriculture the review process to ascertain the progress made towards establishing a "fair and market oriented trading system in agriculture" started in the year 2000. In pursuance of this "built in agenda" many proposals have been submitted on the three pillars of market access, domestic support and export competition as well as to make more meaningful and enforceable the "special and differential treatment" provisions. Under pressure of an increasingly assertive civil society, anti-globalization movement that emerged. At the time of Seattle Ministerial Conference developed countries agreed to make more meaningful concessions According to Doha declaration a road map was provided for
agriculture negotiations. The deadline for agreeing on modalities was March, 2003 which has passed without any agreement.

WTO Ministerial Conference held at Cancun from September 10-14, 2003 had reportedly ended in failure. The issue of contention had been the insistence of developed countries on further negotiations on Singapore issues. Singapore issues also called “The New Issues” consist of cross border investment, competition policies, trade facilitation and government procurement. The developing countries led by India, Brazil and Malaysia had made it clear before the Ministerial Conference that negotiations on “The New Issues” should not proceed unless there is substantial progress on the ongoing “Doha Development Agenda” especially vis-à-vis removal of trade distortions in agriculture sector by developed countries.

It will be in the interest of India to voice the concerns of developing countries especially on TRIPS, SPS and special and differential treatment for developing countries. India should, however, work in close coordination with the members of Cairns group of countries,\[13\] which consists of powerful agricultural exporters like Australia and New Zealand, and try to improve market access to the markets of EU, Japan and USA. Now is the

\[13\] WTO, Guidelines for Arrangements on Relations with Non-Governmental Organizations, Decision adopted by the General Council, WT/L/162, 18 July 1996.
time that we should struggle to reap benefits of her comparative
advantage by removal of distortions in international agricultural
trade instead of indulging in just anti rich rhetoric. The developing
need to improve our production, storage, packaging, labeling,
testing, processing and marketing facilities on scientific lines to
pursue an export led growth strategy with adequate safeguards to
ensure that the benefits reach teeming millions of our poor who are
dependent on agriculture for their livelihood.

THE TRADE RELATED INVESTMENT MEASURES AGREEMENT
(TRIMs)

The Agreement on Trade Related Investment Measures
(TRIMs) is one of Agreements covered under Annex IA to the
Marrakech Agreement, signed at the end of the Uruguay Round
(UR) negotiations. The Agreement addresses investment measures
that are trade related and that also violate Article III (National
treatment) or Article XI (general elimination of quantitative
restrictions) of the General Agreement on Tariffs and Trade. An
illustrative list of the measures that are violative of the provisions
of the Agreement is annexed to the text of the Agreement. These
pertain broadly to local content requirements, trade balancing
requirements and export restrictions, attached to investment
decision making.
The Agreement requires all WTO members to notify the TRIMs that are inconsistent with the provisions of the Agreement, and to eliminate them after the expiry of the transition period provided in the Agreement. Transition periods of two years in the case of developed countries, five years in the case of developing countries and seven years in the case of LDCs, from the date of entry into force of the Agreement (i.e. 1st January 1995) are provided in the Agreement.

Trade Related Investment Measures (TRIMs) refer to a set of measures employed usually, but not exclusively, by developing countries, with a view to compelling or inducing MNCs to meet certain yardsticks of performance. This is common phenomenon in the developing countries, where governments often impose conditions on foreign investors to encourage investment in accordance with certain national priorities. Conditions that can affect trade-related investment measures (TRIMs) in order to allure foreign direct investment (FDI), governments often extend incentives which include fiscal incentives, like loans, tax rebates, provision of services on preferential terms, etc. as well as series of requirements or conditions designed to encourage the use of investment according to their developmental needs. These

requirements are in the form of local content requirements, and technology transfer or licensing requirements that sets the conditions for entry of investment into a host country. Such investment requirements which distort international trade in goods, in any way, are called trade related investment measures (TRIMs).36

**INDIA's NOTIFIED TRIMs**

As per the provisions of Art.5.1 of the TRIMs Agreement India had notified three trade related investment measures as inconsistent with the provisions of the agreement:

- Local content (mixing) requirements in the production of News Print,
- Local content requirement in the production of Rifampicin and Penicillin – G, and
- Dividend balancing requirement in the case of investment in 22 categories of consumer goods.

Such notified TRIMs were due to be eliminated by 31st December, 1999. None of these measures is in force at present. Therefore, India does not have any outstanding obligations under the TRIMs agreement as far as notified TRIMs are concerned.

Chapter 4

IMPACT ON INDIA AND OTHER DEVELOPING COUNTRIES

International investment flows have become an integral element of the global economy, and serve as a key engine of growth of economic prosperity in both developed and developing countries. Over the past two decades, there has been an increase in foreign direct investment (FDI) in the world economy, and the percentage rate of FDI incurred by developed countries in developing countries has grown especially fast. Many countries receiving FDI, however, have imposed numerous restrictions on investment that are aimed to protect and foster domestic industries, and to prevent the outflow of foreign exchange reserves. The source countries have also tried to protect and extract multinational companies (MNC) benefits in the host countries. Therefore, disputes between the countries have increased.

Provisions of WTO regarding TRIMs encourage foreign direct investment which leads to heavy competition with foreign companies. This endangers small-scale industries that have low competitive strength. Large scale industries capture a large size of market by giving better margins to dealers e.g., Uncle chips were very popular many years back but now a days Ruffle lays have captured the market because Lays company has given many incentives to cover their shelf space.
Chapter 4

India, the fourth largest economy of the world, is a small player in international trade, accounting for only about 1 per cent of the world trade but globalizing very fast.

**INCREASE IN THE FLOWS OF FOREIGN INVESTMENT:**

The post liberalisation period and after the formation of WTO the inflow of foreign direct investment (FDI) has increased from US $ 2144 million to US $ 22079 million in 2006-07.\(^{37}\) The overall foreign investment inflows in absolute terms increased from US$ 4892 million to US$ 8151 million in 2001-02 and further to US $ 29082 million in 2006-07.\(^{38}\) The ratio of foreign direct investment in the country to the exports increased from mere 0.6 per cent in 1990-91 to 13.4 per cent in 1999-2000 and further to 23.05 per cent by 2006-07. However, in the foreign investment inflows, share of FDI decreased from 95.05 per cent in 1990-91 to 27.53 per cent in 2003-04, but it increased later to 75.91 per cent in 2006-07.\(^{39}\)

The Annual flow FDI across the world is more than US $ 1000 billion. Out of this, India gets only $ 3-4 billion which is just 0.3-0.4 percent. Foreign investment is only 2-3 per cent of India’s capital formation. Foreign Institutional Investment’s share in BSE’s market capitalisation is only per cent or so. The table 4.4 shows

\(^{37}\) UNCTAD World Investment Reports 2006-07.
\(^{38}\) Loc. Cit.
\(^{39}\) Loc. Cit.
that total FDI inflow is just 0.8 per cent compared China's share 9.6 per cent\textsuperscript{40}

**Table 4.4: Foreign Direct Investment in Selected Asian Developing Countries**

<table>
<thead>
<tr>
<th>Countries</th>
<th>2003</th>
<th>2004</th>
<th>2005</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual FDI</td>
<td>Per cent</td>
<td>Actual FDI</td>
</tr>
<tr>
<td>China</td>
<td>53.505</td>
<td>9.59</td>
<td>60.630</td>
</tr>
<tr>
<td>Hong-Kong</td>
<td>13.626</td>
<td>2.44</td>
<td>34.032</td>
</tr>
<tr>
<td>Singapore</td>
<td>10.376</td>
<td>1.86</td>
<td>14.820</td>
</tr>
<tr>
<td>India</td>
<td>4.585</td>
<td>0.82</td>
<td>5.474</td>
</tr>
<tr>
<td>S Korea</td>
<td>3.892</td>
<td>0.70</td>
<td>7.727</td>
</tr>
<tr>
<td>Malaysia</td>
<td>2.473</td>
<td>0.44</td>
<td>4.624</td>
</tr>
<tr>
<td>Thailand</td>
<td>1.952</td>
<td>0.35</td>
<td>1.414</td>
</tr>
<tr>
<td>Philippines</td>
<td>0.491</td>
<td>0.09</td>
<td>0.688</td>
</tr>
<tr>
<td>Sri Lanka</td>
<td>0.229</td>
<td>0.04</td>
<td>0.233</td>
</tr>
<tr>
<td>Developing Countries</td>
<td>157.138</td>
<td>28.17</td>
<td>275.032</td>
</tr>
<tr>
<td>World</td>
<td>557.869</td>
<td>100.00</td>
<td>710.755</td>
</tr>
</tbody>
</table>


It is clear from the above table that the share of India's FDI in the total FDI of Asian countries stands comparatively very low.

**GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)**

The General Agreement on Trade in Services (GATS) is one of about 60 agreements and decisions reached at the conclusion of the Uruguay Round (UR) of the multilateral trade negotiations (1986-1994) and signed in 1994. A key agreement among these was the agreement that established the WTO, a common

\textsuperscript{40} Ibid.
institutional framework for the conduct of trade relations among members guided by the Uruguay Round. The organisation aims at promoting trade liberalization through a rule-based system founded on principles agreed upon by members. The WTO became the first global economic institution with capacity to legally enforce its agreements through the dispute settlement body with powers to authorize sanctions against violators.41

SERVICES TRADE

In recent years, the focus of services trade has shifted away from just facilitating trade in goods as the sector has emerged as an independent entity in itself with services trade in the four supply modes opening up new opportunities. The integration of telecommunication and computer technology has made virtually all services tradable across borders. Virtually all commercial services are now tradable across borders. The trend towards globalization, reinforced by liberalization policies and the removal of regulatory obstacles, has fuelled steady growth of international investment and trade in services.

WORLD TRADE IN SERVICES

The US$ 3.35 trillion world export of commercial services was dominated by the developed countries in 2009, with the

exception of India and China which were also among the top 12 exporters. As in the case of merchandise trade, India has improved its rank in commercial services trade. As per the latest ‘International Trade Statistics 2010’ brought out by the WTO in 2009, world export and import growth in services fell to (-)12 per cent in 2009.\textsuperscript{42} The decline was more or less similar in most of the major regions like North America, Europe, and Asia. Import growth in commercial services fell in the US, EU, and Japan and was at (-)9 per cent, (-)13 per cent, and (-)10 per cent, respectively. While India’s import growth and export growth of commercial services were at (-)9 per cent and (-)15 per cent respectively, those of China were at 0 per cent and (-)12 per cent respectively. While India ranks 21st in world merchandise exports in 2009 compared to China which is in first position, in commercial services exports it ranks 12th compared to China at fifth rank.\textsuperscript{43}

The three broad categories of commercial services, namely transport, travel, and other commercial services witnessed a decline in export growth in 2009 (table 4.5). Among top exporters/importers of services (with EU-27 taken as a single unit) India ranked among the first five countries in the export of other commercial services, computer and information services,

\textsuperscript{42} \textit{Services Trade, Economic Survey of India-2010-11}, p.170.

\textsuperscript{43} \textit{Loc. cit.}
communication services, and personal, cultural and recreational services in 2009/2008 (table 4.5).

As per the WTO’s International Trade Statistics 2010, in 2009, all commercial services sectors were affected by the global crisis but not to the same extent. Transport services growth fell mirroring the fall in world trade. Financial services were severely hit due to the turmoil in the financial markets resulting in world exports of financial services declining by 15 per cent in 2009 though they began slowly to recover in the last few months of the year. Europe’s financial sector was the most affected by the economic crisis. The EU’s exports of financial services plummeted by 19 per cent, to US$ 133 billion in 2009. In the United States, the second largest world exporter of financial services, as well as in Hong Kong, the decline was by 7 per cent. At the start of 2010, there was an upward trend in exports of financial services.

Table 4.5: World export of commercial services trade by major category, 2008.

<table>
<thead>
<tr>
<th>Major Categories</th>
<th>Values (US$ billion) 2009</th>
<th>Annual Percentage change</th>
<th>2000-09</th>
<th>2007</th>
<th>2008</th>
<th>2009</th>
</tr>
</thead>
<tbody>
<tr>
<td>Commercial services</td>
<td>3350</td>
<td></td>
<td>9</td>
<td>20</td>
<td>13</td>
<td>-12</td>
</tr>
<tr>
<td>Transport</td>
<td>700</td>
<td></td>
<td>8</td>
<td>20</td>
<td>17</td>
<td>-23</td>
</tr>
<tr>
<td>Travel</td>
<td>870</td>
<td></td>
<td>7</td>
<td>15</td>
<td>10</td>
<td>-9</td>
</tr>
<tr>
<td>Other commercial services</td>
<td>1780</td>
<td></td>
<td>12</td>
<td>23</td>
<td>12</td>
<td>-9</td>
</tr>
</tbody>
</table>

Source: WTO Annual Reports 2010-11
Table 4.6: India’s sector-wise Rank and Share in World Exports /Imports of Services.

<table>
<thead>
<tr>
<th>Service Category</th>
<th>Rank</th>
<th>Share</th>
<th>Per cent Change</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009</td>
<td>2000</td>
<td>2009</td>
</tr>
<tr>
<td>Transportation Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>13</td>
<td>0.6</td>
<td>1.5</td>
</tr>
<tr>
<td>Import</td>
<td>13</td>
<td>2.1</td>
<td>4.2</td>
</tr>
<tr>
<td>Travel Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>14</td>
<td>0.7</td>
<td>1.2</td>
</tr>
<tr>
<td>Import</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Commercial Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>4</td>
<td>3.7</td>
<td>0.2</td>
</tr>
<tr>
<td>Import</td>
<td>8</td>
<td>2.4</td>
<td>0.8</td>
</tr>
<tr>
<td>Communication Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>4</td>
<td>0.6</td>
<td>4.3</td>
</tr>
<tr>
<td>Import</td>
<td>11</td>
<td>1.5</td>
<td>0.1</td>
</tr>
<tr>
<td>Construction Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>12</td>
<td>1.0</td>
<td>1.5</td>
</tr>
<tr>
<td>Import</td>
<td>13</td>
<td>1.5</td>
<td>1.7</td>
</tr>
<tr>
<td>Insurance Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>7</td>
<td>5.4</td>
<td>2.1</td>
</tr>
<tr>
<td>Import</td>
<td>7</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>7</td>
<td>2.1</td>
<td>1.8</td>
</tr>
<tr>
<td>Import</td>
<td>5</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Computer and Information Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>2</td>
<td>1.8</td>
<td>0.6</td>
</tr>
<tr>
<td>Import</td>
<td>4</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Business Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>6</td>
<td>0.6</td>
<td>0.6</td>
</tr>
<tr>
<td>Import</td>
<td>6</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Personal, Cultural and Recreational Services</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Export</td>
<td>5</td>
<td>7.7</td>
<td>9.4</td>
</tr>
<tr>
<td>Import</td>
<td>12</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>


Estimates for the first quarter of 2010 indicate recovery across all countries. Construction, the most dynamic sector in 2008, also saw its growth fall sharply. Computer and information services as well as royalties and license fees were more resilient. World exports of computer and information services decreased by 6 per cent in 2009, after record growth of 23 per cent in 2008. While exports of computer and information services fell by 9 per cent in
Europe and by 14 per cent in the CIS, in North America, they stagnated and in Asia, fell by 2 per cent. In 2009, world travel exports fell by 9 per cent, reflecting the worldwide drop in international tourism with tourist arrivals down by 4 per cent. The decline was most pronounced in Europe (-13 per cent), North America (-11 per cent), and the CIS (-22 per cent). Asian economies were less affected with a 3 per cent decline. World tourism is recovering rapidly with forecasts from the World Tourism Organization indicating that the number of international tourists will increase by 3-4 per cent in 2010.

In commercial services imports, India moved from 13th position in 2005 and 2008, to 12th position in 2009, with a 2.5 per cent share. The United States, the European Union, China, and Japan are the major importers of services in the world.

**GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)**

The General Agreement on Trade in Services of the World Trade Organization (WTO) came into effect in 1995, as a result of the Uruguay Round of multilateral trade negotiations. The key objective of GATS is to promote the progressive liberalization of trade in services as a means of achieving economic growth for all countries and the development of developing countries (Preamble of the GATS). It seeks to do this by applying to services trade the
basic rules of the WTO, with the necessary modifications to take into account the specific features and sensitivities of trade in services. While trade in goods has been governed by international trade rules since the General Agreement on Tariffs and Trade (GATT) came into effect in 1948, such an institution had never governed trade in services until GATS came into force. The drive to liberalize trade in services is strongly supported by global corporations and their associations, notably the US Coalition of Services Industries (US CSI).44

GATS covers trade in all commercial services, categorized by the WTO in 12 groups: business including professional and computer services, communication service like, postal, courier and telecommunication, construction and engineering services, distribution services, educational services, environmental services, financial (insurance and banking) services, health services, and other services not included elsewhere. The only two services not covered by GATS are air transport (although there are moves to bring them into the agreement)45 and services supplied in the exercise of government authority. The latter are defined as those neither provided in competition with other suppliers nor on

44 Ibid.
"commercial basis." Unlike trade in goods, there is no harmonized system of classification for services and countries have a wide discretion.46

In structure, GATS is complex, lacks clarity on some definitions (for e.g., commercial service and not more burdensome than necessary) and limitations of its provisions and its rules are still under development.47 It differs from most other WTO agreements in two major ways48

First, it adopts a bottom-up or positive-list approach that allows countries to choose which sectors to liberalize, and the extent and speed of liberalization of the chosen sectors. In addition, countries are allowed to attach conditions (such as employment and technology transfer), which are necessary for promotion of growth and development, to their liberalization commitments. This makes GATS one of the best-designed WTO agreements, being both a trade and investment instrument.

GATS requires each member country to lower barriers against foreign service providers, in the service sub-sectors committed by the member, and to commit never to raise the

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47 Ibid.
barriers in the future, failure of which the member could be forced to compensate the affected countries.

There are several provisions in GATS that make it favourable for developing countries:

Secondly, article IV on Increasing Participation of Developing Countries, which provides for the preferential treatment of developing countries.

Thirdly, article XIX (paragraph 2), which provides for the principle of progressive liberalization by developing countries in line with their development situation.

Fourthly, article-V, which allows countries in economic integration schemes to discriminate in favour of their partners so long as this is notifies to the WTO. GATS provisions, however, are in the nature of “best endeavor clauses” without any obligations on the part of members to implement them.

Lastly, negotiations proceed through a process of requests of, and offers for liberalization of specific sectors. The requests and offers are then taken up by bilateral bargaining between the countries involved

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Prior to the Uruguay Round, services were considered to offer less potential for trade expansion than goods, thanks to existence of technical, institutional and regulatory barriers. However, the development of new transmission technologies facilitating the supply of services (e.g. satellite communication, electronic banking, tele-education), the opening of monopolies in many countries and gradual liberalization of hitherto regulated sectors like transport, banking and insurance combined with changes in consumer preferences, enhanced the tradability of services. These developments increased international services flows and created a similar need for multilateral disciplines- as in the area of goods.

The GATS covers all internationally traded services with two exceptions: services provide to the public in the exercise of governmental authority and in the Air transport sector, traffic rights and all services directly related to the exercise of traffic rights. It recognizes the right of members to regulate the supply of services in pursuit of their own national policy objectives.

Most people’s eyes glaze with boredom at the mention of GATT (General Agreement on Trade and Tariffs), the international organization that has sought for four decades to promote freer world trade. If at all it sparks some emotion it tends to be in politically minded souls who see the Uruguay Round of GATT as a
forum where rich countries try to force unpleasant things on the poor.

Amid the panorama of inequities caused by the force of certain agreements, the major developed countries are pushing for the launch of fresh negotiations that could result in new WTO rules which add to the already onerous obligations of the developing countries and further undermine their developments prospects. It is called that, developing countries to resist these pressures wholeheartedly and insist instead that the myriad asymmetries in the existing agreements be remedied. This in turn, demands that they shed their previous passive stance and forge coordinated and consolidated positions within the WTO, for only with proactive cooperation the countries of the South can advance their interests in the multi-lateral trade.

As far as India is concerned, the country supports the need for reaching an agreement on disciplines on domestic regulation (DR) in the interest of enhancing market access in services, in particular in Mode 4. Hence, India is actively participating in the ongoing negotiations on domestic regulations (DR). Along with Chile, Mexico, Pakistan and Thailand, India has submitted a detailed proposal on 1 May 2006\textsuperscript{51} on the disciplining of quota review plan (QRP), which assumes particular relevance for effective

\textsuperscript{51} OECD, \textit{Room Document} 2006.
market access in Mode 4. This latest ‘Room Document’ is in continuation of an earlier document e.g. JOB(05)/50. India’s thrust is to ensure that the market access it gets in Modes 1 and 4 is not nullified by domestic regulations, but rather is complemented by it.\(^{52}\) However, while countries such as India are pushing hard for disciplines on qualification, licensing procedures, etc. the US’s prime focus is on the transparency in DR.

In services, India has been a demandeur. It has also offered substantial sectoral and modal coverage in its initial offer (January 2004) and the first revised offer (August 2005) of the ongoing services negotiation. At the Signaling Conference (July 2008) which was held on the sidelines of the Mini-Ministerial meeting, some further improvements were also conveyed. However, India’s offers / signals are conditional on receiving satisfaction in respect of its Modes 1 / 2 and Mode 4 requests.

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**Notes:**

* 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”)

Chapter 4

The services negotiations at the WTO have been rejuvenated after the G-20 Meeting. Substantive interest has been evinced by all members to intensify the negotiations to make use of the limited window of opportunity (2011) to conclude the negotiations.

As a part of the plurilateral* process (where more than two countries are involved), 22 plurilateral groups have been formed at the WTO in service sectors/modes. India is the coordinator of the plurilateral requests in Mode 1 (cross-border supply) and Mode 4 (Movement of Natural Persons) - the core areas of its interest in the services negotiations. India is also co-sponsor of plurilateral requests in computer and related services (CRS) and architectural, engineering and integrated engineering services.

India has shown considerable movement from Uruguay Round commitments to revised offers; however, its primary requests in Modes 1 and 4 have not been addressed by key developed countries. Some of the major developed country members have shown little or no movement in their Mode 4 offers which is a major cause of concern to India.

*A plurilateral agreement implies that WTO member countries would be given the choice to agree to new rules on a voluntary basis. This contrasts with the multilateral WTO agreement, where all WTO members are party to the agreement.
The US and other developed countries such as Australia are trying to introduce a new approach to services negotiations by way of the clustering initiative. India has opposed this cluster approach on procedural as well as substantive grounds.

The lack of progress in services under the Doha Round is not due to problems with the approach of negotiations but because of lack of political will, inadequate response from developed countries in sectors and areas of export interest to developing countries, and little movement in agriculture and NAMA.

One of the areas of crucial interest to India is development of disciplines in domestic regulations (DR) involving qualifications and licensing requirements and procedures without which Mode 4 access gets severely impeded. Negotiations on this subject are proceeding on the basis of the Chairman’s text of March 2009. In order to take the negotiations forward, a fresh round of offers would need to be tabled at the WTO by member countries. A timeline for the submission of the second revised offers in services would be decided after a breakthrough is achieved in agriculture and NAMA. An ambitious outcome in services has to be an essential part of any breakthrough package. India has repeatedly stated that any future work in services must be anchored in Annex C of the Hong Kong Ministerial Declaration. Members need to spell out clearly how they intend to meet the modal objectives outlined
in Annex C. In particular, developed countries need to provide clear signals of market openings in sectors and modes of interest to developing countries, particularly in Modes 1 and 4.\textsuperscript{53}

**INDIA'S SERVICES TRADE**

India and China are the two important developing countries which are making rapid strides in the services trade sector. However, the pattern of growth of the different services in India differs from that of other countries. While other commercial services is the major category for most of the top service exporters, in the Indian case its share is proportionately higher than in that of others at 77.4 per cent in 2008 compared to 56.5 per cent for the USA, 54.8 per cent for the EU, 45.9 per cent for China, and 60.6 per cent for Japan.\textsuperscript{54} Thus, this category containing many dynamic services is important for India. The share of travel at 11.5 per cent is relatively lower than in most other countries. The shares of the US and China are more than double that of India. Even in transportation, India's share is less than half that of many leading exporters of services, partly reflecting India's lower volume of merchandise trade and partly the relatively lower participation of India's shipping sector in India's export trade. Thus the composition of services exports highlights the need to pay special

\textsuperscript{53} WTO Negotiations and India, Economic Survey of India 2010-11, Govt. of India.
\textsuperscript{54} Ibid, p. 171
attention to developing shipping and travel services in India. The composition of India’s imports compared to other service trading countries also shows the relatively higher importance of other commercial services particularly in 2009-10.

**INDIA’S SERVICES EXPORTS**

India is moving towards a services-dominated GDP growth with a 10 per cent CAGR for services which is higher than the 6.7 per cent for non-services during 2004-05 to 2009-10. The share of services in India’s GDP at factor cost (at current prices) increased rapidly: from 30.5 per cent in 1950-51 to 55.2 per cent in 2009-10. If construction is also included, then the share increases to 63.4 per cent in 2009-10. Between 2000 and 2005 also, India’s services exports grew at an average annual rate of as high as 33 per cent.55 As a result of sustained high growth in services exports, India’s share in world export of services has more than trebled from 0.6 per cent in 1995 to 1.9 percent in 2004.56 The relative ranking of India as an exporter of commercial services has also improved significantly from 34 in 1995 to 15 in 2004 and 10 in 2005. It is also moving towards a services-dominated export growth with a CAGR of 16.7 per cent for services during 2004-05 to 2009-10 (the

56 The corresponding share of India in the global merchandise exports was 0.8 per cent in 2004.
CAGR was 28.7 per cent during 2000-01 to 2006-07 which is slightly higher than the 16.4 per cent for merchandise exports during the corresponding period. Services exports reached US$ 106 billion in 2008-09 with a moderate growth of 17.3 per cent over the previous year. As a result of global recession, they declined to US $ 95.8 billion in 2009-10 with a negative growth of (-) 9.6 per cent. The miscellaneous item of services exports with a nearly three-fourths share of total services exports, slightly improved its share in the first half of 2010-11 with a growth of 28.2 per cent. The share of software services declined to 45.7 per cent in the first half of 2010-11 from 50.8 per cent in the corresponding period of 2009-10. This was a result of moderate growth of 14.7 per cent in the first half of 2010-11 and the revival of non-software services exports. Non-software services exports which had registered a high negative growth of (-)41.2 per cent in 2008-09 increased their share to 29.5 per cent with the high growth of 56.9 per cent. The revival of this sector which had a CAGR of 33.9 per cent during 2000-01 to 2007-08 is a good sign, though it is partially due to the base effect. The increasing share of business services in non-software services exports is noteworthy. Both business services and financial services exports registered very high growth of 111.4 per cent and 64.9 per cent. More than the base effect, this was due to the revival of these exports, following global recovery (table 4.7).
Chapter 4

The fall in share of travel services from 21.5 per cent in 2000-01 to 11.4 per cent in the first half of 2010-11 is a cause of concern. This reflects the fact that we have not yet tapped the vast tourism potential of India.

Table 4.7: India's Exports of Services

<table>
<thead>
<tr>
<th>SL No</th>
<th>Commodity Groups</th>
<th>Percentage Share</th>
<th>CAG R 2000-01 to 2007-08</th>
<th>Growth Rate*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>April-September</td>
<td>2000-01 to 2007-08</td>
<td>April-September</td>
</tr>
<tr>
<td>1</td>
<td>Travel</td>
<td>21.5</td>
<td>12.4</td>
<td>11.5</td>
</tr>
<tr>
<td>2</td>
<td>Transportation</td>
<td>12.6</td>
<td>11.7</td>
<td>11.6</td>
</tr>
<tr>
<td>3</td>
<td>Insurance</td>
<td>1.7</td>
<td>1.7</td>
<td>1.8</td>
</tr>
<tr>
<td>4</td>
<td>GNIE</td>
<td>4</td>
<td>0.5</td>
<td>0.5</td>
</tr>
<tr>
<td>5</td>
<td>Miscellaneous</td>
<td>60.3</td>
<td>73.8</td>
<td>74.7</td>
</tr>
<tr>
<td></td>
<td>a) Software Services</td>
<td>39</td>
<td>51.9</td>
<td>50.8</td>
</tr>
<tr>
<td></td>
<td>b) Non-software Services of which:</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>i) Business Services</td>
<td>21.3</td>
<td>21.9</td>
<td>24</td>
</tr>
<tr>
<td></td>
<td>ii) Financial Services</td>
<td>2.1</td>
<td>3.9</td>
<td>4.2</td>
</tr>
<tr>
<td></td>
<td>iii) Communication Services</td>
<td>7</td>
<td>1.3</td>
<td>1.7</td>
</tr>
<tr>
<td></td>
<td>Total Services Exports</td>
<td>100</td>
<td>100</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Calculations based on RBI data. Note: * Growth rate in US dollar terms. GNIE= Government not included elsewhere.

INDIA’S SERVICES IMPORTS

Imports of commercial services have become important in recent years reaching US$ 52 billion in 2008-09 and US $ 60 billion in 2009-10. But it had low growth of 1.1 per cent in 2008-09 and moderate growth of 15.3 per cent in 2009-10 (table 4.8).
Business services are the most important category of services imports, followed by transportation and travel. Import growth of business services declined by (-)7.5 per cent in 2008-09 picked up by 17.8 per cent in 2009-10. It grew robustly at 62.9 per cent in the first half of 2010-11. Import growth of transportation and travel which fell in 2009-10 turned positive in the first half of 2010-11. Financial services imports grew by 68 per cent.

**Table 4.8: India’s Imports of Services**

<table>
<thead>
<tr>
<th>SL No</th>
<th>Commodity Groups</th>
<th>Per centage Share</th>
<th>CAGR 2000-01 to 2007-08</th>
<th>Growth Rate*</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>April - September</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2000</td>
<td>1 Travel</td>
<td>19.2</td>
<td>15.6</td>
<td>17.8</td>
</tr>
</tbody>
</table>

- 1 Travel 19.2 15.6 17.8 14 18.6 1.8 -0.9 -9.9 15.6
- 2 Transportation 24.4 19.9 20.3 18.4 18.3 11.3 -6.9 29.4 31.2
- 3 Insurance 1.5 2.1 2.7 1.9 24.7 8.3 13.8 22.9 6.3
- 4 GNIE 2.2 0.9 0.9 1 2.4 111 33.7 13.2 49.4
- 5 Miscellaneous 52.6 61.5 58.3 64.7 21.1 -4.8 32.5 9.2 63.1
  - a) Software Services 4.1 2.4 3.4 3.2 28.2 23.6 42.7 53.4 39.9
  - b) Non-software Services of which: 48.6 59.1 55 61.5 20.4 -2.4 40.1 18.9 64.5
    - i) Business Services 7 30.1 32.1 35.5 48.9 -7.5 17.8 10.9 62.9
    - ii) Financial Services 13.5 7.7 8.1 9.1 6.8 -5.6 56.9 24.2 68
    - iii) Communication Services 0.9 2.3 2.4 1.4 31.4 26.5 24.6 13 14.2
- Total Services Imports 100 100 100 100 19.8 1.1 15.3 4.7 46.9

Source: Calculations based on RBI data. Note: *Growth rate in US dollar terms. GNIE = Government not included elsewhere.
BALANCE OF TRADE IN SERVICES

There is growing concern about a high merchandise trade deficit coupled with inflation derailing the growth momentum. However the less known fact is that the falling services trade surplus is adding to the woes on the current account deficit front, instead of acting as a cushion as was the case earlier. Services trade surplus which increased steadily in this decade to reach US$53.9 billion in 2008-09, fell drastically in the global crisis year of 2009-10 to US$ 35.7 billion. This was caused by the collapse in exports of non-software services, particularly business services, the slow growth of software services, and the rise in import of non-software services, particularly business and financial services. The low service trade surplus situation continued in the first half of 2010-11. This was due to the sudden rise in imports of non-software services, particularly business and financial services which overshadowed the rise in exports of business and financial services. If this situation continues in the second half of this year and coming years, then we have to reconcile to the fact that the hitherto extra cushion provided by the services sector for trade balance will not be available. The impact on growth of the rising import of business and financial services also needs to be evaluated (see table 4.9).
Table 4.9: India’s Exports, Imports and Balance of Trade in Services

(US $ billion)

<table>
<thead>
<tr>
<th>Year</th>
<th>Exports</th>
<th>Imports</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>2000-01</td>
<td>16.3</td>
<td>14.6</td>
<td>1.7</td>
</tr>
<tr>
<td>2001-02</td>
<td>17.1</td>
<td>13.8</td>
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Source: Reserve bank of India.

POLICIES AND BARRIERS TO TRADE IN SERVICES

In the light of the global recession, some measures were taken to help the services sector. These include extension of sunset clauses for Software Technology Parks of India (STPIs)* and export-oriented units (EOUs) up to 2010-11 and doubling of duty free entitlement to hotels under the ‘served from India’ scheme. A coordinated and synchronized effort is needed towards the services sector as at present services activities are dispersed and fall within the purview of different departments of the Government. There are also many barriers to trade in services.

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*A statutory provision providing that a particular agency, benefit, or law will expire on a particular date, unless it is reauthorized by the legislature.
These include the State-level licensing and the 'Buy American' provisions in the case of business services and IT services in the US; the requirement of the Office of the Comptroller of Currency (OCC) in the US and some State banking supervisors to maintain 'asset pledges' in addition to the paid up capital they maintain in their home country in the case of financial services; the fragmentation of the US insurance market into 56 different jurisdictions and direct discrimination on a number of fronts; restrictions in the case of transport and related services and the recent protectionist policies in the US and other economies that deny market access to other countries. There is need to negotiate at bilateral and multilateral levels for the removal of the market access barriers to trade in services.

**IMPLICATION OF GATS ON INDIA**

The growth of the services sector in India has outpaced aggregate GDP growth from mid 1980s. As a result of this, the share of services in GDP has been rising and is now expected to be around 47% to the GDP as against 29% for industry and 24% for agriculture. The World Trade Organization (WTO) Agreements on services is of substantial interest to the world economy as it has the potential to strengthen economic reforms, to stimulate investment and capital mobility worldwide, and to create an
institutional framework accounting and financial services transactions. Members of the WTO that participated in the multinational trade negotiations made some specific market access commitments in professional services.

Interestingly, since 1991, the growth rate of the accounting and financial services sector including accounting has outpaced the growth rate of other components of the service sector viz. trade, hotels and restaurants; transport, storage, communication; community and personal services. The growth rate and privatization of financial sector in India provide an incentive of services being dealt with under the GATS. As a matter of fact, the General Agreement on Trade in Services commitments consolidates economic sector reform in a binding multilateral framework.57

India’s negotiating position on services has undergone a paradigm shift since the Uruguay Round (UR). During the UR, India had a clearly defensive stance on services. The country was one of the prime opponents of the inclusion of services in the ambit of the multilateral trade negotiations.

It was apprehended that any concessions gained in traditional sectors like agriculture or textiles would be offset by the opening up of the protected and government dominated services,

such as, banking, insurance, and telecommunications. However, India has emerged as a leading proponent of the services trade liberalisations at the multilateral arena. The sea-change in India's approach towards trade and investment liberalisation in services may be attributed partly to the growing importance of the services sector in India's economy and its trade and investment flows in the recent years. India's services sector recorded an average annual growth rate of 9 per cent in the 1990s, while India's GDP grew at an average annual rate of 7.5 per cent during the same period. The average growth rate of services attained a still higher mark during the last five years e.g. 8.6 per cent. According to the latest RBI Annual Report, in 2005-06, the services sector has recorded a growth rate of 10.3 per cent, contributing almost three-fourths of the overall real GDP growth of India. The share of the services sector in India's GDP has increased consistently over the years from a mere 38 per cent in 1970-71, the share of services (including construction) in the overall GDP of the economy went up to 54 per cent in 2000-01 and crossed the 60 per cent mark in 2005-06. Notably, the rising share of the services sector in India's GDP is in line with the general pattern of growth observed in the developed and in some of the emerging market economies. As an

60 Ibid. p.11
economy matures, the share of services in its GDP is likely to increase consistently. To begin with, the share of services generally increases along with an increase in the share of industry. Thereafter, the services share grows more rapidly, accompanied by a stagnant or declining share of the industrial sector. Consistent with this trend, India's growth experience has also been characterised by a decline in the share of agriculture in its GDP and an increase in the shares of industry and services of particular note are the changes during the 1990s, when the share of services in India's GDP climbed by about 8 percentage points, while that of industry remained constant.\textsuperscript{61} The services sector is increasingly contributing to India's trade flows. During the 1990s, with an average annual growth rate of 17.3 per cent for services exports, India occupied the top most rank among all countries of the world (in terms of growth of services exports).

FDI in services in India has grown significantly in the recent past. In tune with the economic reform and liberalisation exercise undertaken by the country since the early 1990s, many hitherto closed and public sector-dominated services have been opened up to FDI in varying degrees and in varying forms. For the most part, the ceiling on foreign equity participation has also been gradually

As revealed by World Bank (2004), FDI in services has been growing more rapidly than FDI in manufacturing in India as a result of the deregulation and liberalisation of important services, such as, banking, insurance, and telecommunications. The above discussion reveals that since the 1990s, India’s services exports have grown faster than its services output, which reflects a strong outward orientation of the services sector in India in the recent past.

The most impressive growth in services exports has been recorded by the Information Technology (IT) sector, which itself has demonstrated an unambiguous outward orientation with the lion’s share of its revenues being generated from exports. According to NASSCOM statistics, Indian Information Technology Information Technology Enabled Services (ITITES) industry has consistently registered remarkable double-digit growth in the recent past and is expected to exceed US$36 billion in annual revenue in 2005-06. The industry has recorded a compound annual growth rate of over 8 per cent since 1999-00. Over the same period, the industry's contribution to the national GDP has risen from 1.9 per cent in 1999-00 to a projected 4.8 per cent in 2005-06. IT services account for the lion's share of the Indian IT-ITES industry,

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62 Ibid.
63 NASSCOM is the acronym for the National Association of Software Services Companies - the representative industry body in India.
contributing over 47 per cent of the total industry revenue in 2004-05. The revenue situation of the Indian IT industry in the recent years, with a sectoral break-up as per the latest NASSCOM classification\textsuperscript{64} is reported. Export earnings accounted for 64 per cent of the total IT-ITES aggregate in 2004-05. IT-ITES exports from India grew from US$13.3 billion in 2003-04 to US$18.2 billion in 2004-05. While the software and services exports (excluding hardware) are projected to grow at 32 per cent in 2005-06, it is estimated that the total IT-ITES exports from India will exceed US$23.9 billion this year. According to a report by NASSCOM and McKinsey, exports of IT-related services from India reached to US$57 billion by 2008-09.

Apart from software services, India also has a comparative advantage in a wide variety of other professional and business services, including health, engineering, accountancy management, etc. Indian professionals in these diverse categories of services accounted for nearly half of all H-1B visas granted to foreigners in the US in 1999.\textsuperscript{65} India has been a major supplier of skilled manpower in services such as, IT, health, and engineering, to markets other than the US as well. The other key destinations

\textsuperscript{64} CII, Changing Landscape and emerging trends Indian IT/ITeS Industry, Confederation of Indian Industry, 2009-10.
include Canada, the UK, Germany, Austria, Singapore, and Japan. India has also emerged as an important source country for low and semi-skilled service providers, mainly to the Middle East and increasingly to South East Asia. A large chunk of low and semiskilled workers from India are engaged in a wide range of occupations in these countries including construction workers, production workers, transport equipment operators, domestic help, nurse's aides, craftsmen, technicians, etc. India has emerged as a leading outsourcing destination not only in terms of the volume and range of services delivered, but also in terms of its firm-level capabilities. About 60 per cent of the Fortune 500 companies of the world are already outsourcing their work to India. These include multinational companies like GE, Intel, Microsoft, HSBC, Accenture, IBM, etc. According to AT Kearney (2004), India was the most attractive destination for offshore outsourcing in 2004. India's attractiveness as an outsourcing destination is primarily attributable to its labour cost advantage.

The vast pool of skilled and relatively cheap labour in India enables the outsourcing companies to perform routine to complex operations at a fraction of the cost they would incur in the developed countries and also enables them to scale up their operations easily. It is estimated that the net savings from offshore outsourcing to India range from 40 to 60 per cent for the developed
country firms, after accounting for costs of telecom, overheads, remote management, and transaction costs. It may be noted here that the labour cost advantage of developing countries including India is expected to remain at least over the next twenty to thirty years, given the demographic trends and a rising demand-supply gap for services in the developed countries. With a massive human resource base, a large proportion of young people and a strong foundation in technical education, India is well positioned to capitalise on the worldwide potential in the knowledge economy and the services sector is expected to remain a key driver of economic growth in India. However, there remain numerous barriers in the key developed country markets of India’s interest, which impede the realisation of India’s true potential in the services trade. In the case of intellectual properties (IPs), India maintains the qualification requirements and the need to obtain registration with the professional body, wherever necessary. However, for IPs who travel to India for the purpose of performing services contracted between them and some Indian clients, there is now the possibility of getting an extension of up to three months on the duration of stay, over and above the initial period of twelve months (which was granted by India under the IO itself).
CONCLUSION

The Indian economy has experienced a major transformation during the decade of the 1990s. Apart from the impact of various unilateral economic reforms undertaken since 1991, the economy also had to reorient itself to the changing multilateral trade discipline within the newly written GATT/WTO framework. The unilateral trade policy measures have encompassed exchange-rate policy, foreign investment, external borrowing, import licensing, custom tariffs, and export subsidies. The multilateral aspect of India's WTO commitments is regarding trade in goods and services, trade-related investment measures, and intellectual property rights.

After analyzing of the economic effects on India and other major trading countries/regions of the Uruguay Round (UR), trade liberalization and the liberalization that might be undertaken in a new WTO negotiating round. India's welfare gain is expected to be 1.1% ($4.7 billion over its 2005 GDP) when the UR scenarios get fully implemented. The additional welfare gain is an estimated 2.7% ($11.4 billion) when the assumed future WTO round of multilateral trade liberalization is achieved.

It is expected that resources would be allocated in India to the labor-intensive sectors such as textiles, clothing, leather and
leather products, and food, beverages, and tobacco. These sectors would also experience growth in output and exports. Real returns to both labor and capital would increase in the economy. However as mentioned above in the analysis of each agreement there is a serious and urgent need to re-look into the strategies followed by individual firms in the changing context of increasing competition and opened markets. As said, time and again, there is no reversal of agreements, so what is required is to make internal policy changes at macro and micro level to suit the changed external environment under multilateral trading arrangements.