CHAPTER II

OBJECTIVES, BASIC PRINCIPLES
AND FUNCTIONS OF WTO

2.1 OBJECTIVES

WTO is the largest, most comprehensive trade agreement in history. Some commentators believe the Agreement evidences, the progression of international law toward a global parallel with domestic legal systems. At the same time other commentators have voiced skepticism about the legal and practical significance of the new GATT/WTO rubs. In particular the repeated disappointments that multilateral trade agreements have brought developing countries cause some commentators to doubt the degree to which the Uruguay Round will improve prospects for these countries. It is still unresolved question that whether the doubts and disappointments withered away in a short time period or not.

The Members of the Agreement have recognized that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand and expanding the production and trade in goods and services, while allowing, for the optional use of the world's resources in accordance with the objective of sustainable development seeking both to protect and preserve the environment and enhance the means for doing so in a manner consistent with
their respective needs and concerns at different levels of economic
development.

Further they have recognized that there is need for positive
efforts designed to ensure that developing countries and especially
the least developed among them, secure a share in the growth in
international trade commensurate with the needs of their economic
development.

Members being desirous of contributing to these objectives by
entering into reciprocal and mutually advantageous arrangements
directed to the sustainable reduction of tariffs and other barriers to
trade and to the elimination of discriminatory treatment in
international trade relations are resolved to develop an integrated
more viable and durable multilateral trading system, encompassing
the General Agreement on Tariffs and Trade, the result of past
trade liberalization efforts and all of the results of the Uruguay
Round of Multilateral Trade negotiations.

2.1.1 SUSTAINABLE DEVELOPMENT

When we talk on free trade and sustainable development
these two concepts of first glance seem conflicting and paradoxical.
This conflict and paradox emergence due to their two diametrically
opposite philosophical backgrounds. Free trade is based on the
philosophy of libertarianism. While the environmental policy and
sustainable development demands populist authoritarianism.
Conflicts can and do arise where the same resources are subject to
both trade efforts to allocate and environmental efforts to manage
and maintain. This conflict must be reconciled persist yet many environmentalists still believe that the economic system including trade is the enemy and development experts still believe that the environment is not a fundamental part of the economy but rather a luxury to be added on later when and if it can be afforded.

The trade and environmental communities have different backgrounds and professional cultures. Economic principles such as efficiency and comparative advantage guide trade experts while environmental experts are informed more by biological sciences and ecological principles. Environmentalist appreciates to internalize environmental costs while trade strategists guide and denounce internalization of environmental cost.

The idea of sustainable development first proposed by Maltise ambassador Pardo in UN General Assembly of 1967 as a principle of common heritage of mankind. Which contended that there was a common heritage of mankind and this also required legal protection by the international community. This is based on the idea that natural resources such as the sea bed are not the fruits of the labour of present generations and thus that these resources can only be exploited with adequate consideration of the rights of future. The very theme of intergenerational equity is the sole, notion of sustainable development, particularly organised and developed by international agreements such as Stockholm Declaration on the Human Environment 1972 and United Nations Conference on Environment and Development Rio ole Juneiro-
1992. Yet the term sustainable development brought into common use by the Brundtland Commission in its seminal report 1987. Our common future which defines the term meeting the needs of the present generation without compromising the needs of future generations.

Reconciliation of legal relationships between trade and environment could not remain at odds, because there is no difference between the goals of development policy and appropriate environmental protection. Both must be designed to improve welfare. Ecology and economy are becoming ever more interwoven—locally regionally, nationally and globally into a seamless net of causes and of effects. So the GATT 1947 and the WTO both have organised this delicate relationship in balance of convenience tone.

2.1.2 PROTECT AND PRESERVE THE ENVIRONMENT

Although the issue of trade and environment was not directly included in the Uruguay Round of negotiations, yet certain environmental conclusions were addressed. As we now, towards the end of the Uruguay Round, a Ministerial Decision on Trade and Environment was adopted (April 1994), calling for the establishment of a Committee on Trade and Environment (CTE). A broad based mandate was agreed upon for the CTE, consisting of identifying the relationship between trade measures and environmental measures in order to promote sustainable development, and of making appropriate recommendations on whether any modifications of the provisions of the multilateral
trading system are required. The work programme of the CTE's is contained in the Decision and consists of a large number of issues than those previously addressed by the EMIT group.

In the Uruguay Round, two sets of agreements were formulated: (1) Agreements on Technical Barriers to Trade; (2) Agreements on Sanitary and Phyto-Sanitary Measures (SPS). These Agreements deal with the measures to be taken by governments to protect human, animal and plant life along with domestic environment and health. Besides, agreements on the following had undergone some alterations having save bearing on environment and trade:

(i) Agreement on Agriculture: Under this agreement, WTO members are exempted from direct payments under environmental programmes (to reduce domestic support for agricultural production, subject to certain conditions,

(ii) Agreement on Subsidies and Countervailing Measures: These are being treated as non-actionable subsidy or government assistance to industry covering upto 20% of the cost of adapting existing facilities to new environmental legislation.

Thus, we find that, whilst developed countries were subjected to increased pressure from vocal environmental interest groups to reconcile what they perceived as 'incompatibilities' between trade and environmental policies, developing counties feared that environmental concerns would be addressed at the expense of international trade. In particular, fears that a new 'green'
conditionality would be attached to market access opportunities emerged. Within this context, certain parameters that have guided trade and environment discussion in the WTO are:

1. that the WTO is not an environmental protection agency, and that its competence for policy coordination in this area is limited to trade policies, and those trade-related aspects of environmental policies which may result in a significant effect on trade;

2. that GATT/WTO Agreements already provide significant scope for national environmental protection policies, provided these are non-discriminatory;

3. that secure market access opportunities are essential to help developing countries work towards sustainable development; and

4. that increased national coordination as well as multilateral cooperation is necessary to adequately address trade-related environmental concerns.

To address the complementarily between trade and environment, the WTO's role is to continue to liberalize trade, as also to ensure that environmental policies do not act as obstacles to trade, and that trade rules do not stand in the way of adequate domestic environmental protection. WTO members believe that GATT/WTO rules already provide significant scope for members to adopt national environmental protection policies. GATT rules impose only one requirement in this respect, which is that of non-
discrimination. WTO members are free to adopt national environmental protection policies provided that they do not discriminate between imported and domestically produced products (national treatment clause), and between products imported from different trading partners (most favoured nation clause). Non-discrimination is one of the main principles on which multilateral trading system has been founded. It is a principle, which guarantees secure and predictable access to markets, protects the economically weak from the more powerful, and guarantee consumer choice. From the point of view of the developing countries, where poverty is the number one policy preoccupation and the most important obstacle to environmental protection, the opening up of world markets to their exports is extremely essential. WTO members recognize that trade liberalization for developing country exports, along with financial and technology transfers, is necessary for helping developing countries generate the resources they need to protect the environment and work towards their sustainable development. As many developing and least-developed countries are heavily dependent on the export of natural resources for foreign exchange earnings, trade liberalization (consisting of tariff reductions, reductions of tariff escalation and of non-tariff barriers) is expected to contribute towards their improved allocation and more efficient use of resources, as also to enhanced export opportunities for their manufactured goods.
2.1.3 ELIMINATION OF DISCRIMINATORY TREATMENT

The objective of elimination of discriminatory treatment has two dimensions. There are Most Favoured Nation and National Treatment respectively. The essence of WTO is commitment on the part of each signatory to give all other signatories the MFN status.

(i) **MFN Rule**

The MFN rule requires that at the border, products made in Members' own countries are treated no less favourably than goods originating from any other country. Thus, if the best treatment offered to a trading partner supplying a specific product is a tariff of, say, 5% then this must be applied immediately and unconditionally to the imports of this good originating in all WTO Members. Because the initial set of contracting parties to the GATT was quite small (only 23), the benchmark for MFN is the best treatment offered to any country, including countries that may not be members of the GATT.

MFN means that goods of foreign origin circulating in the country should be subject to the same taxes, charges, and regulations that apply to identical goods of domestic origin. It is important to note that the obligation is to provide treatment 'no less favourable'.

(ii) **Tariff Reduction**

The tariff reduction agreed upon by each Member shall be implemented in five equal rate reductions, except as may be
otherwise specified in a Member's Schedule. The first such reduction shall be made effective on the date of entry into force of the Agreement Establishing the WTO, each successive reduction shall be made effective on 1 January of each of the following years, and the final rate shall become effective no later than the date four years after the date of entry into forces of the Agreement, except as may be otherwise specified in that Member's Schedule. Unless otherwise specified in its Schedule, a Member that accepts the Agreement after its entry into force shall, on the date the Agreement enters into force for it, make effective all rate reductions that have already taken place together with the reductions which have been obligated to make effective on 1st January of the year following, and shall make effective all remaining rate reductions on the schedule specified. The reduced rate should in each stage be rounded off to the first decimal. For agricultural products, as defined in Article 2 of the Agreement on Agriculture, the staging of reductions shall be implemented as specified in the relevant parts of the schedules.

Tariff reduction will not happen overnight: it will be phased in a period of time, depending on the development status of the country concerned.

(iii) National Treatment

While the national treatment clause forbids discrimination between a Member's own nationals and the nationals of other Members, the most-favoured-nation treatment clause forbids
discrimination between the national of their Members. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided.

2.2 PRINCIPLES

The Members of WTO Agreement have recognized that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand and expanding the production and trade in goods and services, while allowing, for the optional use of the world's resources in accordance with the objective of sustainable development seeking both to protect and preserve the environment and enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development.

2.2.1 TRADE AND ECONOMIC ENDEAVOUR

Trade and economic endeavour is a mission to be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand and expanding the production and free flow of trade in goods and services. The endeavour connotes a great leap forward 'from Plan to Market' as suggested in 1996 by World Development Report. Such as fundamental change is taking place
in the world economy of present day-globalization. This change is being driven both by widespread adoption of market liberalization policies and by technological change that is fast eroding physical barriers to international transactions. Markets for merchandise trade are expanding, more and more services and becoming internationally tradable, and capital is flowing in quicker and increasingly diverse ways across countries and regions.

Closer economic integration highlights new opportunities as well as challenges. The increasing integration of developing countries into the global economic constitutes perhaps the most important opportunity for raising the welfare of both the developing and industrial countries over the long term. But the World Bank admonishes that the process of integration will not be without frictions. As the recent event in Mexico has shown, it will increase the complexity of economic management for developing country policy-makers. Globalization comes with liberalization, deregulation, and more mobile and potentially volatile cross-border capital flows, which means that sound macro-economic management commands an increasingly high premium. Penalties for policy errors rise.

Globalization thus requires closer monitoring and quicker policy responses at the country, regional, and global levels. The global outlook is, in general, bright but makes wide differences across regions and countries - for many, global optimism coexists
with local pessimism. Accelerating outward oriented growth in the poorest countries is a special challenge.

To end local pessimism and acceleration of the path of global optimism depends upon the following factors:

- Even where the institutional underpinnings of a market system are weak, consistent policies, including liberalization of markets, trade and the entry of new business, and reasonable price stability, can achieve a great deal;

- Country differences are important—"big bang" versus "gradualism" misses the point—what is required, are consistent reforms with a critical mass of support;

- Clear intellectual property rights are required for an efficient response to market processes and this will eventually require widespread private ownership;

- Major changes in social policies are needed to complement the move to the market to focus on relieving poverty, to cope with increased labour mobility, and to address the effects of reforms on the very young and the elderly; and

- Reforming legal and financial institutions, as well as government itself, is critical.

Liberalization and Stabilization are two core areas of trade and economic endeavour. Liberalization decentralizes production and trading decisions to enterprises and households and directly address the two fundamental weaknesses of central planning: poor
incentives and poor information. Liberalization exposes firms to customer demand, the profit motive, and competition, and it lets relative prices adjust in line with true scarcities. Liberalized markets process information better than central planners, and when goods and services are traded freely, the price mechanism—Adam Smith’s invisible hand—matches demand and supply. Combined with supporting institution, cooperative markets unleash powerful process to force technological and organizational change. Whereas planned economies experienced low or negative overall productivity growth despite high capital accumulation, at least half of output growth in advanced market economies since World War II has resulted from productivity gains. Creating market is an investment in a more dynamic system of economic coordination that fosters long-run productivity gains. Creating market is an investment in a more dynamic system of economic coordination that fosters long-run productivity and output growth liberalization, by depoliticizing resources allocation, help governments cut subsidies to firms and thus facilitate economic stabilization.

The WTO policy embodies a 'rule-oriented approach' to international trade, which adjusts the domestic pressures to stronger international competition. Whereas WTO is required to be conscious to the fact that the process brings major benefits to the developing countries but holds important benefits to industrial countries. WTO constrains the freedom of governments to use specific trade policy instruments. Which influences the balance
between interest groups seeking protection and those favouring open markets in Member-Countries' domestic political marketplace.

The foreign trade policy-making process is generally torn by conflicting objectives of national interest groups, as well as by external considerations. Industry associations, labour unions, regional authorities, consumer lobbies, and government agencies all interact in determining the policy outcome. The WTO is somehow analogous to a mast to which governments can tie themselves. So as to escape the siren likes calls of various pressure groups. It is a mechanism through which the political market failure that is inherent in many societies; both industrialized and developing can be corrected at least in part, because engaging on liberalization commitments requires the compensation of affected trading partners.

2.2.2 NON-DISCRIMINATION

The principle of non-discrimination has two dimensions. These are Most Favoured Nation and National Treatment respectively. The essence of WTO is a commitment on the part of each signatory to give all other signatories the MFN status.

The MFN rule requires that at the border, products made in Members' own countries are treated no less favourably than goods originating from any other country. Thus, if the best treatment offered to a trading partner supplying a specific product is a tariff of, say, 5%, then this must be applied immediately and unconditionally to the imports of this good originating in all WTO
Members. Because the initial set of contracting parties to the GATT was quite small (only 23), the benchmark for MFN is the best treatment offered to any country, including countries that may not be members of the GATT.

MFN means that goods of foreign origin circulating in the country should be subject to the same taxes, charges, and regulations that apply to identical goods of domestic origin. It is important to note that the obligation is to provide treatment 'no less favourable'. A government is free to discriminate in favour of foreign products against domestic goods if it desires subject to, of course, to the MFN rule—all foreign products must be given the same treatment. 'No less favourable' does not mean identical treatment, as in many instances it is simply not possible to subject domestic and foreign goods to the same policy. For example, if in practice domestic production is taxed, a government cannot impose the same on foreign producers. It is restricted to taxing the foreign products that enter the country.

The tariff reduction agreed upon by each Member should be implemented in five equal rate reductions, except as may be otherwise specified in a Member's Schedule. The first such reduction shall be made effective on the date of entry into force of the Agreement Establishing the WTO, each successive reduction shall be made effective on 1 January of each of the following years, and the final rate shall become effective no later than the date four years after the date of entry into force of the Agreement, except as
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Tariff reduction will not happen overnight: it will be phased in a period of time, depending on the development status of the country concerned. The average tariff cut offered by developed economies worked out to be:

<table>
<thead>
<tr>
<th>Imports from all Sources</th>
<th>Average 38%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Imports from developing Countries (excluding least developing countries)</td>
<td>Average 32%</td>
</tr>
<tr>
<td>Imports from the least developed Countries</td>
<td>Average 19%</td>
</tr>
</tbody>
</table>


The developed economies have offered to reduce tariffs on US $464 billion of the US $612 billion of goods imported, which are
not already duty free. They have also doubled the share of industrial goods imports from developing countries that are to be exempted from all duties. Fully 45% of developing country industrial goods exports to developed countries are to be duty free.

**Developed Economies Duty Free Imports**

<table>
<thead>
<tr>
<th>% of total</th>
<th>Pre-Uruguay Round</th>
<th>Uruguay Round</th>
</tr>
</thead>
<tbody>
<tr>
<td>From all sources</td>
<td>20</td>
<td>43</td>
</tr>
<tr>
<td>From developing countries</td>
<td>22</td>
<td>45</td>
</tr>
</tbody>
</table>

Source: Ibid

Contrary to expectations at the starting of the Round, significant improvements have been achieved in markets access for industrial goods. The main achievements in industrial countries include the expansion of bindings (commitments on maximum tariffs) to cover 99 percent of imports, and the reduction of duty-free access from 20 to 43 percent of imports, and the reduction of the trade-weighed average tariff by 40 percent from 6.2 to 3.7 percent. For developing countries' exports to industrial markets the reduction in the average tariff is 30 percent, although labour-intensive manufactures (textiles and clothing, leather goods) and certain processed primary products (fish) are regarded as 'sensitive' and therefore have below-average tariff reductions.

While the national treatment clause forbids discrimination between a Member’s own nationals and the nationals of other Members, the most-favoured-nation treatment clause forbids
discrimination between the national of other Members. Each Member shall accord to the nationals of other Members treatment no less favourable than that it accords to its own nationals with regard to the protection of intellectual property, subject to the exceptions already provided in, respectively, the Paris Convention (1967), the Berne Convention (1971), the Rome Convention or the Treaty on Intellectual Property in Respect of Integrated Circuits. In respect of performers, producers of phonograms and broadcasting organisations, this obligation only applies in respect of the rights provided under TRIPs. Any Member availing itself of the possibilities provided in Article 6 of the Berne Convention shall make a notification as foreseen in those provisions to the Council for TRIPs. These exceptions, Member may avail themselves in relation to judicial and administrative procedures, including the designation of an address for service or the appointment of an agent within the jurisdiction of a Member, only where such exceptions are necessary to secure compliance with laws and regulations which are not inconsistent with the provisions of this Agreement and where such practices are not applied in a manner which would constitute a disguised restriction on trade.

National treatment and MFN constitute specific applications of non-discrimination, but as with non-reciprocity with which it is linked, the principle of national treatment in the IP conventions has indeed been a key element in maintaining the freedom of the Member-States of the conventions to maintain IP systems of their choice. Although the national treatment principle exists in both the
IP conventions and the GATT, but the former applies to persons and requires the same treatment between nationals and foreigners, while the latter applies to goods, and requires no less favourable treatment between national and foreign goods (leaving open the possibility that more favourable treatment might be provided to foreigners than to nationals). But the IP conventions do not provide any place to the MFN principle.

Herein, a question arises that whether the developing countries are being benefited from the MFN regime or plummeted in a disadvantageous position. Looking back to the history, developing countries always not only voiced for departure from MFN but succeeded to achieve Special and Differential Treatment (S & D) adopting a new Part IV of GATT, which defines non-reciprocity for developing countries. Due to which developing countries were not expected to grant tariff concessions and bound by tariff rules, instead being granted the privilege of free-riding. The Tokyo Round also resulted in a Framework Agreement, which included the so-called 'Enabling Clause'. Officially called Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries, it provided for departures from MFN or other GATT rules. The enabling clause created a permanent legal basis for the operation of the general system of preferences (GSP) established under UNCTAD auspices.

The GSP concept, which consists essential of tariff preferences being given, supposedly without strings attached, by all
developed countries to products of all developing countries, was controversial from the time that it first was introduced internationally in 1964. To its proponents, the GSP promised through 'trade rather than aid' to increase the exports and purchasing power of developing countries in the short-run and to diversify LDC economies in the long-run by encouraging the export of manufacture and semi-manufactured articles.

To its detractors, however, the GSP proposal threatened the delicately constructed GATT international trading system by undermining its cornerstone - the MFN. Ultimately, WTO trade system based on rule of law discarded the GSP system and strengthened the rule of non-discrimination.

2.2.3 RECIPROCITY AND SUBSTANTIVE REDUCTION OF TARIFFS

The principle of reciprocity is based upon the rule of the balance of rights and duties or obligations relating to facilitation of market access. It is a fundamental rule of Multilateral Trade Negotiations in the process of establishing the code of conduct, and is driven by a desire to limit the scope for free-riding that may arise because of the MFN rule. By requiring reciprocity, nations attempt to minimize free-riding. In the case of bilateral negotiations, this is done by a suitable choice of products on which concessions are offered and sought: in the case multilateral across-the-border negotiations, it is done by a suitable choice of products to be exempted from liberalization. Generally, nations are quite
successful in minimizing free-riding. If one country lowers its tariffs on another's exports, it can expect the other to lower its tariff in return. The other members required to make the same concessions, thus creating a 'virtuous circle' of liberalization is reciprocity.

The Kennedy Round connected the principle of reciprocity with the principle of Most Favoured Nation clause, negotiating the tariff concessions on a reciprocal basis. But the Kennedy Round could not overlook the desire of developing and least developing countries, as they were reminded of the burden of reciprocity and actively participating in the Round to retain a place for Special and Differential treatment to them. So, after the formation of Generalized System of Preference (GSP) by UNCTAD in 1964, Part IV in GATT adopted in 1965, granting of the developing countries discriminatory and non-reciprocal tariff reductions.

Unlike to the Tokyo Round the Uruguay Round or the WTO is a single undertaking i.e. all the agreements are to be observed by all members indiscriminately and reciprocally with the obligation of MFN. Reciprocity and MFN are interface of each other and the waiver of the obligation is an exceptional case. In the Uruguay Round, a major shift occurred in both the strategy and the tactics of developing countries. They participated actively in the MFN, and were willing to engage in a reciprocal exchange of concessions. At the same time, no additional S&D was sought in WTO; the main tactic in this regard was to negotiate longer transition periods and
technical assistance to implement negotiated agreements rather than to negotiate substantive exemptions.

The creation of the WTO does not mean that the non-reciprocity of S & D treatment is dead. Ending S & D was not on the Uruguay Round agenda. Indeed, the Punta del Este Ministerial Declaration explicitly stated that: Contracting parties agree that the principle of differential and more favourable treatment embodied in Part IV and other relevant provisions of the GATT ... applies to the negotiations ... Developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to trade of developing countries. S&D remains in WTO but not in the sense of substantive exemption but as long transitional facility and technical assistance which can be grouped under five headings:

(i) a lower level of obligations;
(ii) more flexible implementation timetables;
(iii) best endeavour commitments by developed countries;
(iv) more favourable treatment for least developed countries; and
(v) technical assistance and training.

The least-developing countries are not obliged to reduce tariff in the same rate as reduced by the developed or industrial countries. Article 1 of the Uruguay Round Protocol to the General Agreement on Tariffs and Trade 1994, requires to submit tariffs schedule in favour of the least-developing countries, on the day of
the entry into force of the Agreement Establishing the WTO. As fulfilling the requirement the developed counties have made a commitment to reduce their tariffs level contrary to the expectations of at the start of the Uruguay Round.

2.2.4 ENHANCEMENT OF PRODUCTIVITY

To compete in international market, enhancement of productivity and diversification of export is an immediate need. The World Bank study finds out that many slow-growing, lagging integrators rely on primary commodities for exports, but so did for exports, many countries that are now fast-growing, strong integrators. In fact, successful commodity reliant countries out performed manufactures exporting developing countries in terms of both growth and integration over the past ten years. The successful countries followed policies that enhanced their ability to invest and compete in international markets in primary commodities, and not just in manufactures, notably by strengthening the private sector, encouraging foreign direct investment, promoting the application of research and technology, and developing physical infrastructure.

Strengthening private sector implies privatization instead of state controlled economy, encouragement and protection of investors, development and liquidity of capital market, in other word, smoothening of structural adjustment and programme in a wide sense is a foundation stone in the direction of strengthening of private sector. yet, the structural adjustment programmes has an inherent contradictions which aim to lay a basis for renewed
growth by incorporating policies which reduce flexibility in the
domestic economy, including the capacity to cope with unforeseen
external changes, and which frequently trigger macro-economic
disorder. WTO strengthens private sector through TRIPs, TRIMs
and GATS. Similarly, WTO covers policies on foreign direct
investment, research and development, technology transfer, etc.
through TRIMs and TRIPs.

In this scenario, some suggest selective form of trade
liberalization instead of uniform model of trade liberalization as
enhanced by WTO, which seeks alternative model to the uniform
model of trade liberalization. The alternative model proposes
following alternatives:

(i) Trade policy should be development-oriented, aimed on a
selective basis. As a tool of development, trade policy is not
necessarily synonymous with trade liberalization, and
success in liberalization per se is not a guarantee of success
in development.

(ii) Trade policy may vary from one country to another depending
on its particular needs, objectives and socio-economic
characteristics.

(iii) Building up supply capacity and improving productivity
requires selective government intervention in situations
where no market yet exists, or the market is segmented or
fails owing to the prevalence of dynamic externalities.
2.3 FUNCTIONS

The Article III of Agreement Establishing the Multilateral Trade Organisation/WTO has specified five specific functions of WTO. They are following:

2.3.1 ADMINISTRATION FUNCTIONS

Under this function the WTO facilitates the implementation, administration, operation, and advances the cause of objectives of WTO Agreement, Multilateral Trade Agreements and provides framework for the implementation, administration and operation of Plurilateral Trade Agreements. It provides a framework from the implementation of the results of negotiations, as may be decided by the Ministerial Conference.

2.3.2 PLATFORM FOR NEGOTIATIONS

WTO works as a platform where its Members joining their helping hands can advance negotiations among themselves concerning their multilateral trade relations in matter dealt under the WTO agreements and enlisted in its annexes. Members can use this platform for negotiation not only for the issues under WTO agreements but for new issues concerning multilateral trade.

2.3.3 EXECUTION

The WTO dispute settlement mechanism is a significant improvement over the GATT. It is a central element in providing security and predictability to the multilateral trading system. In fact, prompt settlement of trade disputes is essential to the effective
functioning of the WTO. Since its very inception, the WTO has received 100 trade disputes as on 19 August, 1997—in just a short span of a little more than two and a half years of existence. An attempt is made in this chapter to review the WTO dispute settlement mechanism as well as to analyse the disputes brought to the WTO.

**DISPUTE SETTLEMENT BODY**

The dispute settlement mechanism of the World Trade Organization is a central element in providing security and predictability to the multilateral trading system. WTO members have committed themselves not to be take unilateral actions against perceived violations of the trade rules. In fact, they have pledged to see recourse to the WTO dispute settlement system, and abide by its rules and procedures.

Under the WTO, there is a Dispute Settlement Body, which is the custodian of the Dispute Settlement System. The DSB has been empowered to establish panels (the panels are bodies set up for specific investigations), constitute Appellate Body, adopt panel and Appellate body Reports, exercise surveillance for compliance with rules and recommendations and authorize retaliatory measures in cases of non-implementation of recommendations.

The DSB has subsidiary bodies for investigations. These are:

(a) Working Groups,
(b) Panel,
(c) Permanent Expert Group, and
(d) Arbitration

These subsidiary bodies are responsible for investigation. They are supposed also to lubricate consultations, then mediate and arbitrate. Failing settlement they send their recommendations to the DSB and the concerned Council. The DSB gathers all information, calls in the Members for commutation then evaluates and finally recommends to the Overlooking Council.

**STAGES IN DISPUTE SETTLEMENT**

The following are the main stages involved in settling disputes under the WTO:

1. **Consultation**

The first stage of settling disputes is the holding of consultations between the members concerned. Consultation aims at a solution of the dispute mutually satisfactory. It is confidential and does not prejudice the rights of Members of further proceedings. When a request for consultation is made by a Member, it is replied promptly within 10 days and enter into consultation within 30 days from the date of request by the other Member. To ensure transparency, any request for consultations should be notified to the DSB in writing, providing the reason for the request, including identification of the measure at issue and the legal basis for the complaint.
In fact, the parties to the dispute discuss the problem among themselves. Many disputes are resolved at this initial stage. The Director-General acting as an ex-officio capacity may offer his good offices for conciliation or mediation in order to assist the Members to settle a dispute. If a dispute is not settled through consultation within sixty days of seeking such consultations, the complaining party may request for the establishment of a panel.

2. Establishment of a Panel

If no solution is found after 60 days, the complainant can ask the DSB to establish a panel. A request for the establishment of a panel is made in writing; it should contain full particulars of the case, consultations held and reasons for their failure. The DSB considers the request in a meeting and decides the formation of a panel. The panel is set up by the DSB in consultation with the disputing parties.

A panel is an expert team of which the function is to help the DSB to arrive at its ruling or recommendations. It should be composed of three or five panelists, which are selected by the Secretariat. They should not be opposed by any parties unless for compelling reasons. If a developing country Member so desires, in a dispute between a developing and a developed country, one panelist from a developing country must be included. The Members of the panel should have sound records of experience and professional competence. They should be selected on their reputation, their independence, diverse background and wide spectrum of
experience. They should serve in their individual capacity and not in their official position.

3. **Panel Examination**

   The panel, consisting of three or five independent experts chosen in consultation with the parties to the dispute, examines the complaint. Its final report contains findings and recommendations. The period in which the panel conducts its examination of the case should not exceed six months. In cases of urgency, including those relating to perishable goods, the time frame is shortened to three months. In no case should the period from the establishment of the panel to the circulation of the report to the Members exceed nine months.

4. **Adoption of Panel Report**

   The DSB adopts the panel report 60 days after it is issued. It (DSB) cannot consider the adoption of a panel report earlier than 20 days after it has been circulated to members. Members which have objections to the report are required to state their reasons in writing, for circulation before the DSB meeting at which the panel report will be considered.

5. **Appellate Review**

   A novel feature of the WTO dispute settlement mechanism gives the opportunity of appeal to either party in a panel proceeding. Any party to the dispute can appeal a panel's decision to the WTO Appellate Body. As a general rule, the appeal
proceedings are not to exceed 60 days but in no case shall they exceed 90 days. However, any appeal shall be limited to issues of law covered in a panel report and the legal interpretation developed by the panel.

A Standing Appellate Body (SAB) is set up by the DSB to hear all appeals. This Appellate Body is composed of seven persons - representative of the WTO membership. They are to be persons of distinction in the field of law and international trade, without attachment to any Member Government.

6. **Implementation**

Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure effective resolution of disputes to the benefits of all Members.

Thirty days after the adoption of the panel or the Appellate Body report, the party concerned must inform the DSB of its intentions with regard to the implementation of the recommendations. If it is impractical to comply immediately, the Member is given a reasonable period of time to do so. If it fails to act within this period, it is obliged to enter into compensation negotiations with the complainant. If no satisfactory compensation is agreed, the complainant may request authorization from the DSB to suspend concessions or obligations against the other party. The suspension of concession is thus the last resort, which an Aggrieved Member can call upon the relation.
Among the highlights of the WTO's record so far in dispute settlement are the following:

1. About one quarter of the disputes was resolved by the parties themselves at the initial consultations stage.

2. Members are actively using a new feature in the WTO procedures - the possibility of appeal with all the panel reports issued so far being brought to the Appellate Body for a final ruling.

3. The improved mechanism has enabled adoption by the Dispute Settlement Body (DSB) of all the six Appellate Body reports and the panel reports as modified by them that have so far been issued unlike the old GATT when adoption took time and a member of panel reports were never adopted at all.

4. The developing countries have become active users of the procedures - they have filed 31 cases and have been the subject of 37 complaints.

5. After the GATT 1994, the most often cited Agreements in these disputes are the Agreements on Sanitary and Phytosanitary Measures and on Technical Barriers to Trade with 20 cases.

2.3.4 ECONOMIC COHERENCE

WTO works with a view to achieve greater economic coherence in global economic policy making, cooperating as
appropriate, with IMF and World Bank.

The Conclusion that we have drawn is when the WTO took over from the GATT, it did not have the luxury of a relaxed beginning and a gradual build-up to its new and greatly expanded mandate.