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A study on international trade rules and organization

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Abstract: India is a founder member of the General Agreement on Tariffs and Trade (GATT) 1947 and its successor, the World Trade Organization (WTO), which came into effect on 1.1.1995 after the conclusion of the Uruguay Round (UR) of Multilateral Trade Negotiations. India's participation in an increasingly rule based system in the governance of international trade is to ensure more stability and predictability, which ultimately would lead to more trade and prosperity for itself and the 153 other nations which now comprise the WTO. India also automatically avails of MFN and national treatment for its exports to all WTO members.

Key words: WTO, negotiations, telecommunications,

Introduction

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. Essentially, the WTO is a place where member governments go, to try to sort out the trade problems they face with each other. WTO came into effect on 1 January, 1995 with the support of at least 85 founding members, including India. They deal with agriculture, textiles and clothing, banking, telecommunications, government purchases, industrial standards and product safety, food sanitation regulations, intellectual property, and much more. But a number of simple, fundamental principles run throughout all of these documents.

These principles are the foundation of the multilateral trading system. They spell out the principles of liberalization, and the permitted exceptions. They require governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted, and through regular reports by the secretariat on countries' trade policies. The WTO oversees about 60 different agreements which have the status of international legal text and consists of 29 individual legal texts. By promoting the "free trade" agenda of multinational corporations above the interests of local communities, working families, and the environment, the WTO has systematically undermined democracy around the world. It is clear that the W.T.O provides opportunities for countries to grow and realize their export potentials, with appropriate domestic policies in place.

As the world becomes more interdependent, no country can afford to isolate itself from the multilateral trading system without losing substantially in terms of market access and trade concessions. It is believed that the success of today's multilateral trading system will be measured against, (a) the ability of its dispute settlement system to diminish chances of unilateral measures, and (b) the adherence of its members to their obligations undertaken under the WTO agreements to achieve greater liberalization of international trade.

The dispute settlement system of the WTO has therefore been the focus of several scholarly studies and analysis. However, these have mostly underlined

the viewpoint of developed countries in trade and dispute issues. No parallel effort has been made by third world academics to present a third world perspective. This thesis seeks to fill the gap in the literature and attempts to highlight issues of concern to less developed countries ("LDCs", hereinafter is being used interchangeably with developing countries), pertaining to GATT/WTO dispute settlement system. It seeks to underscore the problems which LDCs encounter in relation to the operation of the WTO dispute settlement system.

The anti legalistic view articulated that the General Agreement was not a code of conduct per se but a commitment by Contracting Parties to deal with each other in trade matters so as to work out mutually accepted solutions to their disagreement. If that is the case, the nature and basic philosophy of GATT indicate that the system should be used only to the extent it facilitates negotiated settlement of trade disputes. It thus emphasizes that dispute resolution should not be coercive but voluntary and diplomatic based on the "normative force of agreed community of condemnation".1 Nonetheless,
it was argued that this force of "community of condemnation" was in fact the ability of powerful Contracting Parties in the GATT system to control the system. On the other hand, weaker countries might consider that the resolution of a dispute by negotiations in the GATT multilateral system had at least recognized their right to participate, on an equal footing in negotiations, without which might otherwise have participated because of their relative unimportance.

India is a founder member of the General Agreement on Tariffs and Trade (GATT) 1947 and its successor, the World Trade Organization (WTO), which came into effect on 1.1.1995 after the conclusion of the Uruguay Round (UR) of Multilateral Trade Negotiations. India's participation in an increasingly rule based system in the governance of international trade is to ensure more stability and predictability, which ultimately would lead to more trade and prosperity for itself and the 153 other nations which now comprise the WTO. India also automatically avails of MFN and national treatment for its exports to all WTO members.

India has to convent the globalization aspects for its advantages. In this context that a study of the problems of Indian agricultural sector for the purpose of formulating appropriate remedial strategies assumes high significance, particularly in view of the globalization pressures sweeping across the globe. Here my research study has a lot of role to identify the problems facing by Indian farmers in the era of WTO agreement and their solution for it.

Disturbing developments in the history of GATT was the partial break down of the special dispute settlement procedures governing the GATT's unfair trade practices. Two stand-alone Codes on Subsidies and Anti-dumping were adopted among many other codes. A Ministerial Council's recommendation of Kennedy Round called on the next found to "deal not only with tariff but also with non-tariff barriers". Subsequently, the Tokyo Round of Negotiations adopted two stand-alone agreements:
(i) Agreement on implementation of Article VI (or the Anti dumping Code), and (ii) Agreement on interpretation and

Application of Articles VI, XVI, and XXIII (or the Subsidies Code). Both of the agreements instituted committees, each of which adopted certain recommendations constituting an understanding on the manner by which parties intended to implement certain provisions of the code. Many reasons can be cited to justify the establishment of special procedures within the GATI dispute settlement system: (a) Since both the issues of anti-dumping and subsidies were issues of increasing concern to the world trading system, the establishment of special procedures allowed a better focus on these issues as well as alleviated the burden from the original system; 109 (b) It developed some sort of specialization by establishing special bodies to deal with unfair trade practices; and (c) To avoid the difficulties and obstacles of amending the General Agreement provisions.

ORIGIN OF GATT

In the 1930s, after the collapse of international trade, the need was felt to establish a new international economic institution. After World War II, it was recognized that an international trade organization which would supply the institutional framework for world trade was a necessary complement to the Bretton Woods institutions.

When the ITO failed to come into being, the General Agreement on Tariffs and Trade (GATT) which was designed to operate within the context of the ITO, emerged to fill the gap in international institutions.2 The GATT was not intended to be an organization but a multilateral treaty similar to the bilateral treaties which preceded it.3 It was drafted as a trade agreement or a contract with the limited purpose to protect the value of trade concessions. Besides, the GATT provided a legal framework for trade relations of its Contracting Parties as it articulates the most basic principles and the mode of resolving disputes.

With scarcely any institutional framework and a modest system of dispute settlement, the GATT would hardly have qualified as most likely to succeed. Nonetheless, the subsequent development of GATT has pushed it far beyond this initial image.

HISTORIC DEVELOPMENT

The (WTO) dispute settlement system is often praised as one of the most important innovations of the Uruguay Round. This should not, however, be misunderstood to mean that the WTO dispute settlement system was a total innovation and that the previous multilateral trading system based on GATT 1947 did not have a dispute settlement system.

On the contrary, there was a dispute settlement system under GATT 1947 that evolved quite remarkably over nearly 50 years on the basis of Articles XXII and XXIII of GATT 1947. Several of the principles and practices that evolved in the GATT dispute settlement system were, over the years, codified in decisions and understandings of the contracting parties to GATT 1947. The current WTO system builds on, and adheres to, the principles for the management of disputes applied under Articles XXII and XXIII of GATT 1947 (Article 3.1 of the DSU). Of course, the Uruguay Round brought important modifications and elaborations to the previous system, which will be mentioned later.1 This chapter provides a brief overview of the

historic roots of the current dispute settlement system.

Articles XXII and XXIII and emerging practices

The rudimentary rules in Article XXIII: 2 of GATT 1947 provided that the contracting parties themselves, acting jointly, had to deal with any dispute between individual contracting parties. Accordingly, disputes in the very early years of GATT 1947 were decided by rulings of the Chairman of the GATT Council. Later, they were referred to working parties composed of representatives from all interested contracting parties, including the parties to the dispute. These working parties adopted their reports by consensus decisions. They were soon replaced by panels made up of three or five independent experts who were unrelated to the parties of the dispute. These panels wrote independent reports with recommendations and rulings for resolving the dispute, and referred them to the GATT Council. Only upon approval by the GATT Council did these reports become legally binding on the parties to the dispute. The GATT panels thus built up a body of jurisprudence, which remains important today, and followed an increasingly rules-based approach and juridical style of reasoning in their reports.

The contracting parties to GATT 1947 progressively codified and sometimes also modified the emerging procedural dispute settlement practices. The most important pre-Uruguay Round decisions and understandings were:

- The Decision of 5 April 1966 on Procedures under Article XXIII;
- The Understanding on Notification, Consultation, Dispute Settlement and Surveillance, adopted on 28 November 19792;
- The Decision on Dispute Settlement, contained in the Ministerial Declaration of 29 November 19823;
- The Decision on Dispute Settlement of 30 November 1984.4

Weaknesses of the GATT dispute settlement system.

Some key principles, however, remained unchanged up to the Uruguay Round, the most important being the rule of positive consensus that existed under GATT 1947. For example, there needed to be a positive consensus in the GATT Council in order to refer a dispute to a panel. Positive consensus meant that there had to be no objection from any contracting party to the decision. Importantly, the parties to the dispute were not excluded from participation in this decision-making process. In other words, the respondent could block the establishment of a panel. Moreover, the adoption of the panel report also required a positive consensus, and so did the authorization of countermeasures against a non-implementing respondent. Such actions could also be blocked by the respondent.

Hence, the structural weaknesses of the old GATT dispute settlement system were significant even though many disputes were ultimately resolved. As noted in the late 1980s, when the Uruguay Round negotiations were ongoing, the situation deteriorated, especially in politically sensitive areas or because some contracting parties attempted to achieve trade-offs between ongoing disputes and matters being negotiated. This resulted in a decreasing

confidence by the contracting parties in the ability of the GATT dispute settlement system to resolve the difficult cases. In turn, this also led to more unilateral action by individual contracting parties, who, instead of invoking the GATT dispute settlement system, would take direct action against other parties in order to enforce their rights.4

Dispute settlement under the Tokyo Round "codes"

Several of the plurilateral agreements emerging from the Tokyo Round of Multilateral Trade Negotiations, the so-called "Tokyo Round Codes", for example the one on Anti-Dumping, contained code-specific dispute settlement procedures. Like the codes as a whole, these specific dispute settlement procedures were applicable only to the signatories of the codes, and only with regard to the specific subject matter. If the multilateral trading system before the establishment of the WTO was often referred to as a "GATT à la carte", this also applied to dispute settlement. In some instances, where rules pertaining to a specific subject-matter existed both in GATT 1947 and in one of the Tokyo Round Codes, a complainant also had some leeway for "forum-shopping" and "forum-duplication", i.e. choosing the agreement and the dispute settlement mechanism that promised to be the most beneficial to its interests, or launching two separate disputes under different agreements on the same matter.

In terms of how satisfactorily the dispute settlement system under these codes functioned, the record was less favourable than it was for GATT 1947, i.e. consensus was blocked quite frequently.

Major changes in the Uruguay Round

As part of the results of the Uruguay Round, the DSU introduced a significantly strengthened dispute settlement system. It provided more detailed procedures for the various stages of a dispute, including specific time-frames. As a result, the DSU contains many deadlines, so as to ensure prompt settlement of disputes. The new dispute settlement system is also an integrated framework that applies to all covered agreements with only minor variations.5

Arguably, it's most important innovation is that the DSU eliminated the right of individual parties, typically the one whose measure is being challenged, to block the establishment of panels or the adoption of a report. Now, the DSB automatically establishes panels and adopts panel and Appellate Body reports unless there is a consensus not to do so. This "negative" consensus rule contrasts sharply with the practice under the GATT 1947 and also applies, in addition to the establishment of panels and the adoption of panel and Appellate Body reports, to the authorization of countermeasures against a party which fails to implement a ruling.6

Other important new features of the (WTO) dispute settlement system are the appellate review of panel reports and a formal surveillance of implementation following the adoption of panel (and Appellate Body) reports.

CHANGES IN THE GATT

The GATT dispute settlement system has been developed through amendments based on customary practices and adopted by the GATT Council. The failure to establish the ITO invoked Article XXIX of GATT which required the

Contracting Parties to decide whether to amend, supplement or retain the GATT provisions.7

The first amendment was approved by the Contracting Parties in March l955 to modify Article XXII to authorize Contracting Parties in their institutional capacity to intervene in consultations, if the original disputing parties were unable to resolve the matter among themselves.8 Paragraph (2) of Article XXIII was also amended to provide authority for the Contracting Parties to authorize suspension of concession or other retaliatory measures where circumstances were serious enough to warrant such action. However, a Contracting Party whose concessions had been suspended could then withdraw from the Agreement by giving sixty days written notice.38 In the early 1950s the Contracting Parties developed the practice of referring disputes to a panel ofexperts. Initially, disputes were referred to the Chairman of a Working Party.40 In 1966 the Contracting Parties adopted procedures concerning use of the good offices of the Director General if the dispute involved LDCs who failed to resolve it through bilateral consultations.

Tokyo Round

The Tokyo Round of Multilateral Trade Negotiations (1973-1978) resulted in a major expansion of the activity and competence of GATT, this time not through amendment to the treaty text but through introducing a series of separate instruments, known as Codes, each of which was technically a stand-alone treaty. The interrelationship between the various Codes and the GAIT became increasingly complex as the development of "side Codes" gave rise to a variety of legal disputes among GATT parties. However, they broadened the scope of coverage of the GATT System.

In brief, the balkanization of the dispute settlement procedure in GATT after the Tokyo Round was a source of complexity, an increase in cost, and "forum shopping".

The last attempt at developing a more responsive dispute settlement procedure was in 1989 when the "GATT Dispute Settlement Rules and Procedures", (hereinafter the 1989 Improvements) was adopted. The 1989 Improvements has been considered as the first step towards a legalistic reform as it added more legal substance to the system basically by restatement of the customary practice. It also raised, for the first time, the possibility of settling GATT disputes through binding arbitration.

PRINCIPLES OF THE TRADING SYSTEM

The World Trade Organization (WTO) deals with the rules of trade between nations at a global or near-global level. Essentially, the WTO is a place where member governments go, to try to sort out the trade problems they face with each other. The first step is to talk. The WTO was born out of negotiations, and everything the WTO does is the result of negotiations. The bulk of the WTO's current work comes from the 1986-94 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO is currently the host to new negotiations, under the “Doha Development Agenda” launched in 2001.

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. They deal with: agriculture, textiles and clothing, banking, telecommunications,

government purchases, industrial standards and product safety, food sanitation regulations, intellectual property, and much more. But a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system.

Trade without discrimination

1. Most-favoured-nation (MFN): treating other people equally

Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.

This principle is known as most-favoured-nation (MFN) treatment (see box). It is so important that it is the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (GATS) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO.

National treatment: Treating foreigners and locals equally

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

Freer trade: gradually, through negotiation

Lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed.

Predictability: through binding and transparency

Sometimes, promising not to raise a trade barrier can be as important as lowering one, because the promise gives businesses a clearer view of their future opportunities. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable.

The Uruguay Round increased bindings

Percentages of tariffs bound before and after the 1986-94 talks

	Before	After
Developed countries	78	99

Developing countries	21	73
Transition economies	73	98

(These are tariff lines, so percentages are not weighted according to trade volume or value)

In the WTO, when countries agree to open their markets for goods or services, they "bind" their commitments. For goods, these bindings amount to ceilings on customs tariff rates. Sometimes countries tax imports at rates that are lower than the bound rates. Frequently this is the case in developing countries. In developed countries the rates actually charged and the bound rates tend to be the same.

Promoting fair competition

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

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

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

Encouraging development and economic reform

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

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

DISPUTE SETTLEMENT PROCESS

The operation of the (WTO) dispute settlement process involves the parties and third parties to a case, the DSB panels, the Appellate Body, the WTO Secretariat, arbitrators, independent experts and several specialized institutions. This chapter gives an introduction to the WTO bodies involved in the dispute settlement system. The involvement of the parties and third parties, the primary participants in a dispute settlement proceeding, has

already been outlined here. The precise tasks and roles of each of the actors involved in the dispute settlement process will become clear in the later chapter on the stages of the dispute settlement process.

Among the WTO bodies involved in dispute settlement, one can distinguish between a political institution, the DSB, and independent, quasi-judicial institutions such as panels, the Appellate Body and arbitrators.

Dispute Settlement Body (DSB)

Functions and composition

The General Council discharges its responsibilities under the DSU through the DSB (Article IV: 3 of the WTO Agreement). Like the General Council, the DSB is composed of representatives of all WTO Members. These are governmental representatives, in most cases diplomatic delegates who reside in Geneva (where the WTO is based) and who belong to either the trade or the foreign affairs ministry of the WTO Member they represent. As civil servants, they receive instructions from their capitals on the positions to take and the statements to make in the DSB. As such, the DSB is a political body.

The DSB is responsible for administering the DSU, i.e. for overseeing the entire dispute settlement process.

The DSB has the authority to establish panels, adopt panel and Appellate Body reports, maintain surveillance of implementation of rulings and recommendations and authorize the suspension of obligations under the covered agreements (Article 2.1 of the DSU). A later chapter on the stages of the dispute settlement procedure will explain exactly what all these actions mean. In less technical terms, the DSB is responsible for the referral of a dispute to adjudication (establishing a panel); for making the adjudicative decision binding (adopting the reports); generally, for supervising the implementation of the ruling; and for authorizing "retaliation" when a Member does not comply with the ruling.

The DSB meets as often as is necessary to adhere to the time-frames provided for in the DSU (Article 2.3 of the DSU). In practice, the DSB usually has one regular meeting per month. When a Member so requests, the Director-General convenes additional special meetings. The staff of the WTO Secretariat provides administrative support for the DSB (Article 27.1 of the DSU).

Decision-making in the DSB

The general rule is for the DSB to take decisions by consensus (Article 2.4 of the DSU). Footnote 1 to Article 2.4 of the DSU defines consensus as being achieved if no WTO Member, present at the meeting when the decision is taken, formally objects to the proposed decision. This means that the chairperson does not actively ask every delegation whether it supports the proposed decision, nor is there a vote. On the contrary, the chairperson merely asks, for example, whether the decision can be adopted and if no one raises their voice in opposition, the chairperson will announce that the decision has been taken or adopted. In other words, a delegation wishing to block a decision is obliged to be present and alert at the meeting, and when the moment comes, it must raise its flag and voice opposition. Any Member that does so, even alone, is able to prevent the decision.

However, when the DSB establishes panels, when it adopts panel and Appellate Body reports and when it authorizes retaliation, the DSB must approve the decision unless there is a consensus against it (Articles 6.1, 16.4, 17.14 and 22.6 of the DSU). This special decision-making procedure is commonly referred to as "negative" or "reverse" consensus. At the three mentioned important stages of the dispute settlement process (establishment, adoption and retaliation), the DSB must automatically decide to take the action ahead, unless there is a consensus not to do so. This means that one sole Member can always prevent this reverse consensus, i.e. it can avoid the blocking of the decision (being taken). To do so that Member merely needs to insist on the decision to be approved.

No Member (including the affected or interested parties) is excluded from participation in the decision-making process. This means that the Member requesting the establishment of a panel, the adoption of the report or the authorization of the suspension of concessions can ensure that its request is approved by merely placing it on the agenda of the DSB. In the case of the adoption of panel and Appellate Body reports, there is at least one party which, having prevailed in the dispute, has a strong interest in the adoption of the report(s). In other words, any Member intending to block the decision to adopt the report(s) has to persuade all other WTO Members (including the adversarial party in the case) to join its opposition or at least to stay passive. Therefore, a negative consensus is largely a theoretical possibility and, to date, has never occurred. For this reason, one speaks of the quasi-automaticity of these decisions in the DSB. This contrasts sharply with the situation that prevailed under GATT 1947 when panels could be established, their reports adopted and retaliation authorized only on the basis of a positive consensus. Unlike under GATT 1947, the DSU thus provides no opportunity for blockage by individual Members in decision-making on these important matters. Negative consensus applies nowhere else in the WTO decision-making framework other than in the dispute settlement system.

When the DSB administers the dispute settlement provisions of a plurilateral trade agreement (of Annex 4 of the WTO Agreement), only Members that are parties to that agreement may participate in decisions or actions taken by the DSB with respect to disputes under these agreements (Article 2.1 of the DSU).

With respect to the more operational aspects of the DSB's work, the Rules of Procedure for Meetings of the DSB9 provide that the Rules of Procedure for Sessions of the Ministerial Conference and Meetings of the General Council10 apply, subject to a few special rules on the chairperson and except as otherwise provided in the DSU. An important organizational aspect of these general rules is the requirement for Members to file items to be included on the agenda of an upcoming meeting no later than on the working day before the day on which the notice of the meeting is to be issued, which is at least ten calendar days before the meeting (Rule 3 of the Rules of Procedure). In practice, this means that items for the agenda must be made on the 11th day before the DSB meeting, and on the 12th or 13th day if the 11th day were to fall on a Saturday or Sunday.

Role of the chairperson

The DSB has its own chairperson, who is usually one of the Geneva-based ambassadors, i.e. a chief of mission of a Member's permanent representation to the WTO (Article IV:3 of the WTO Agreement). The chairperson is appointed by a consensus decision of the WTO Members. The chairperson of the DSB has mainly procedural functions, that is, passing information to the Members, chairing the meeting, calling up and introducing the items on the agenda, giving the floor to delegations wishing to speak, proposing and, if taken, announcing the requested decision. The chairperson of the DSB is also the addressee of the Members' communications to the DSB.

In addition, the chairperson has several responsibilities in specific situations. For instance, the chairperson determines, upon request by a party and in consultation with the parties to the dispute, the rules and procedures in disputes involving several covered agreements with conflicting "special or additional rules and procedures" if the parties cannot agree on the procedure within 20 days (Article 1.2 of the DSU). The chairperson can also be authorized by the DSB to draw up special terms of reference pursuant to Article 7.3 of the DSU. The DSB chairperson is further entitled to extend, after consultation with the parties, the time-period for consultations involving a measure taken by a developing country Member, if the parties cannot agree that the consultations have concluded (Article 12.10 of the DSU). In dispute settlement cases involving a least-developed country Member, the least-developed country can request the DSB chairperson to offer his/her good offices, conciliation and mediation before the case goes to a panel (Article 24.2 of the DSU). Lastly, the DSB chairperson is to be consulted before the Director-General determines the composition of the panel under Article 8.7 of the DSU, and before the Appellate Body adopts or amends its Working Procedures (Article 17.9 of the DSU).

The Anti - Dumping Code

The first anti - dumping code was negotiated in 1967 and renegotiated during the Tokyo Round. Perhaps the worst feature of the Code was that "it authorized governments to erect unfair burdensome investigations regimes that were a protectionist delight," which amounted to an administrative non-tariff barrier. The initiative for such action was normally to come from domestic producers who considered themselves injured or threatened with injury by dumping. The Code authorized investigations to determine the existence, degree, and effect of any dumping. Such investigation was to be normally conducted at the initiation upon a written request by or behalf of the industry affected. Two issues in relation to the investigation frequently attracted the consideration of various panels. The first was who initiates the procedure? A panel noted that "the procedure of almost all the production within such market would satisfy the definition of industry for the purpose of initiation". The executive can take action only on explicit attorney from the industry as any petition had to have the authorization or approval of the industry. The second was the determination of the existence of material injury or a threat of material injury to industry as well as to the causation between the dumping measure and the existence of the injury or the

threat. Since the "material injury" concept is elusive and ambiguous, there was a temptation for investigating bodies to determine its existence. That is why anti-dumping proceedings have increasingly been used as protectionist barrier to safeguard domestic industry.

CONCLUSION

The WTO, which was established in 1995, replaced the GATT with a much broader mandated. The GATT existed since 1947. The US and the UK were the main architects, though there were 23 members in the beginning of which 12 were those that are now called the developing countries. The GATT was essentially a framework for reduction of tariffs (customs duty) until 1979 (end of Tokyo Round of negotiation), when certain disciplines were elaborated in the non-tariff areas, like subsidy given by governments, dumping by firms, licensing in case of import control, valuation of customs duty at the time of import of a product, etc. As a result of the Uruguay Round of negotiations (1986-94), the WTO was created in the beginning of 1995 and the GATT was made a part of it. WTO members are negotiating further trade liberalization under Doha Development Agenda, launched in November 2001.

The highest decision making body in the WTO is the ministerial conference that meets at least once in two years. So far, these conferences have been in Singapore (1996), Geneva (1998), Seattle (1999), Doha (2001), Cancun (2003), Hong Kong (2005) and Geneva (2009). In between the ministerial conferences, functions of the ministerial conference are conducted by the General Council. There are councils for specific areas: Council for Trade in Goods for the implementation of agreements on goods, Council for Trade in Services for implementation of the GATS and Council for TRIPs for the implementation of agreements on TRIPs, and council for trade related investment measures (TRIMs). All the members of the WTO are members of all these bodies.

India has been a traditional exporter of raw agricultural products like spices. Export of raw products has resulted in huge loss to Indian economy. After GATT agreement and WTO membership, processed products manufactured as per international norms only offered at competitive prices, can be exported. However, our processed products mostly do not meet the international standards. India's share in over US$ 300 billion world trade in agricultural commodities is less than 1percent. Agricultural exports used to be of the order of 30.6 percent of the total exports during 1980-81, which came down to 19.4 percent by 1990-91. Currently, it is at about 16 percent due to rapid growth in other sectors as well. Processed fruit and vegetable products have considerable export potentials and if it is properly utilized, growers, processors, traders as well as national economy will benefit. It requires correct assessment of world market, high quality of raw produce, high quality of processed product and competitive production cost.

However, it remains to be seen, despite the constitution of the National Commission of Farmers, if the Government of India would be able to effect a paradigm shift from "GE Revolution to Ever-Green Revolution" with "water harvesting, soil health improvement, dissemination of new technologies, infrastructure development and application of science and biotechnology" and farmers welfare as

the pivotal points triggering the new model. India's agriculture, the backbone of the economy, has to be robust for the nation as a whole to survive and prosper. It is not possible to pick the countries that will lose or gain from TRIPS from the above indices. Their use lies in illustrating how wide national differences are in practically every aspect of technological and industrial performance.

Indian government should study the of China movement against US MNCs like Monsanto as China has taken a different route in ensuring that their agriculture does not succumb to the seed MNCs such as Monsanto. They have bought some crucial patents from smaller companies in Japan and other countries and have developed their own GM products. Bt Cotton and Bt rice in China are from their public sector scientific institutions and operating on the same principles that green revolution did.11

There is also much that LDCs can do themselves to improve their position in the WTO dispute system, (i) establish a joint service for legal expertise; (ii) undertake regular exchange of information and experience between the LDCs; and (iii) establish regular group consultations and reviews regarding the functioning of the dispute settlement system.

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[4] This is now excluded by Article 23.1 DSU. See the section on the Prohibition against unilateral determinations

[5] See section A single set of rules and procedures

[6] See section Decision-making in the DSB

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[11] Sreenath, Lalitha& M.R. Sreenath(2006), Impact of Post-TRIPS IP Regime on Indian Agriculture. *The Chartered Accountant.*