

## 8. WTO

**Objective of WTO:** To set rules on international trade which would help in the growth of world trade freely, fairly and predictably.

**Structure of W.T.O :**

- (a) **Secretariat:** Geneva
- (b) **Ministerial Conference :** The top decision making body. This meets once in two years. Decisions by the ministerial conference are by consensus.
- (c) **General Council of WTO, Geneva :** it is made up of ambassadors / delegates of various countries to WTO.

The General Council functions as a Trade Policy Review Body and also a Dispute Settling Body. The General Council includes a) The Goods Council b) The Services Council c) The IPR Council.

**Birth of WTO :** It is a successor of GATT with a much wider membership and covering more areas of international trade. The last round of GATT negotiations was the Uruguay Round held between 1986 and 1994. (Launched In Punta del Este, Uruguay, 1986 ). The Uruguay round led to 60 new agreements (i.e., on 60 new areas of world trade, legally binding international rules governed by WTO have been framed ). The member countries of GATT met in Marrakesh, Morocco, in 1994 and issued the Marrakesh Declaration which signified the end of the Uruguay Round of GATT and the declaration, also named the W.T.O. as the successor body to GATT. The Uruguay Round adopted the Dunkel' Treaty (Which includes all the new agreements concluded as part of the Uruguay GATT including agreements"like TRIPS\_ and GATSQ.

**Principles Of WTO :** The WTO agreements are based on some fundamental principles. These are 1. Most Favoured Nation (MFN) principle - member countries are not to discriminate between themselves in International trade. If a country gives favourable treatment to some other member country, then it must be extended to all member countries. The exceptions to MFN are preferential treatment within regional trade agreements, including free trade areas, customs unions

and also preferential treatment to developing countries under the principle of Special and Differential Treatment. The Generalized System of Preferences (GSP) are an exception to MFN. Under this, ICs can lower import duties preferentially for imports from PC's. The MFN is provided for under Article 1 of WTO for goods, Article II under GATS of WTO for services and Article 4 under TRIPS Agreement of WTO.

**National Treatment:** This declares that members cannot discriminate between domestic and foreign in terms of products, services and nationals. National treatment applies to internal measures (unlike cross-border or external measures). Internal measures could be domestic taxes and domestic laws, regulations affecting internal sale transportation or use of products. The purpose of national treatment is to remove hidden domestic barriers to imported products, services or foreign nationals. However there are some exceptions to national treatment like government procurement, subsidies to domestic producers or internal price control measures.

**Predictable and Open Trade:** Member countries are to eliminate or reduce obstacles to trade and also should not apply measures affecting trade arbitrarily. This will be done by lowering trade barriers.

**Transparency :** Member countries to inform WTO about their trade regulations to allow other member countries to be familiar with their trade rules.

**Special and Differential Treatment of Developing Countries:** Developed member countries can provide preferential treatment to Developing Countries and LDC's to participate in trade and benefit from it. Developing countries and LDC's are allowed less liberal rules than Industrialized countries.

**Important Concepts of WTO Trade Rules**

1. **Dispute Settlement :** The General Council of WTO functions-as Dispute Setting Body. (GATT had no dispute settlement process). The unique principle-in DSB of WTO is that the rulings given by DSB have to be accepted unless there is.



consensus among all members against its adoption. WTO requires 60 days of consultations between disputing parties to resolve the dispute, failing which, a disputes panel is set up.

2. **Trade Remedies:** Member countries are allowed trade remedies and depart from WTO rules to remedy an unfair trade situation. These are

(i) **Anti - dumping measures -** members can resort to anti-dumping measures against a product being dumped in their country. (Dumping is sale by a country in another at a price which is less than cost of production or less than sale price in its own market). The anti dumping measures usually take the form of anti-dumping duties which neutralize the dumping margin.

(ii) **Applying counter-vailing measures like counter - vailing duties**

(iii) **Resorting to safeguard measures to protect injury to domestic producers due to dumping.**

3. **Tariff Bindings :** All member countries are to indicate the maximum' import duty that they would levy on, 10,000 products in harmonized schedule of WTO. However, the actual import duties could be less than the bound tariff.

4. **Tariff Rate Quotas :** These refer to less import duties for a given product upto a limit (the quota) to allow greater volume of import that product. However above the limit (the quota) a higher or normal import duty is levied.

5. **Plurilateral Agreements :** These are agreements between WTO members who have say of more than 80% in world trade and these agreements are open to all others.

6. **Multilateral Agreements :** These are agreements between 25 WTO members and are binding on these countries only.

7. **Regional Trade Agreements / Arrangements :** These are allowed under article 24 of GATT (where GATT 1994 is part of WTO)

8. **Special Products and Special Safeguards :** Special products are either agricultural products of industrial products of particular importance to

DC's which seek to protect domestic agriculture and manufacturing. The Hong Kong Ministerial Meet of WTO in December 2005 allowed DC's to name special products and also allows special safeguard mechanisms (SSM). The SSM allow member countries to raise import duties above the bound tariff on the import of a particular agro product if there is sudden surge in import of that product into the country. The SSM are available to DC's and LDC's. The SSM agreed to at Hong Kong provides for SSM based on both price and volume triggers i.e. or sudden surge in imports. Developing countries have also been allowed at Hong Kong Ministerial to name some special products in industrial goods which will remain outside the import duty cuts proposed under NAMA.

9. **Safeguard Duties :** These are import duties levied by the importing country when imports (due to WTO obligations or rules) have caused or threaten to cause serious injury to domestic producers of similar products. Hence the importing country can withdraw the WTO obliged import duty to protect its domestic producers temporarily. However the importing country is expected to provide compensation by offering some other concession.

10. **Quantitative Restrictions :** The WTO members are to eliminate Quantitative Restrictions (QR's) like imposing physical quotas on quantity of imports or banning imports. These non- tariff barriers can be resorted to in exceptional circumstances under WTO rules such as vulnerability of BoP or critical shortage of food etc. But these are to be for a specific period of time.

#### **Trade Policy Review Mechanism. (TPRM):**

This was agreed to, in the Uruguay Round. The TPRM reviews the member countries domestic trade policies and practices to enable the other members to understand these policies, to provide the feedback to the member reviewed and to determine if these are in harmony with WTO rules. The TPRM helps the developing countries and LDC's to adjust their domestic policies in compliance with WTO agreements; The TPRM is



carried out by the Trade Policy Review Body of the General Council

**The Uruguay Round and the Dunkel Treaty:**

The Uruguay Round of GATT led to adoption of the Dunkel Treaty which covers 60 new agreements in addition to the existing agreed rules of GATT till 1994. The important ones among them are briefly discussed below.

**Issues in Built-in Agenda :** The built-in agenda includes agreements already concluded under the Uruguay Round of GATT but on which further negotiations are to be held. The issues in built-in-agenda are with respect to Agreement on Agriculture and General Agreement in Trade in Services.

**Agreement on Agriculture (AOA) :** This defines new rules on trade related agriculture measures. The AOA provides for:

a) **Market Access :** All members of WTO to convert non-tariff barriers on agricultural products to tariffs. Developed Countries are to cut tariffs ( i.e., import duties ) on agricultural products by 36% whereas developing countries are to cut tariffs by 24%.

b) **Domestic Support :** This refers to subsidies provided by governments to agriculture. The subsidies to agriculture are expressed as Aggregate Measure of Support ( AMS). The W.T.O. rules classify all farm subsidies into :

(i) **Amber Box subsidies :** These are subsidies provided to farmers (like support prices ) without imposing any limit on output. These are considered to be trade distorting. The WTO calls for reduction of amber box subsidies.

(ii) **Blue Box Subsidies :** There are subsidies linked to production but unlike amber box subsidies, the blue box subsidies do not impose limit on production ( in the form of quotas). These are also considered to be trade distorting.

(iii) **Green Box Subsidies :** These subsidies to the farm sector are

considered to be minimally trade distorting or non-trade distorting.

c) **Export Competition :** This is another component of the Agreement on Agriculture. According to this, Developed Countries are to reduce the value of export subsidies to agricultural products by 36% and reduce the volume of export subsidies to agricultural products by 24% over a 6- year period. The Developing Countries are to reduce the value and volume of export subsidies by 24% and 10% respectively over a 10 year period. One of the most sharply debated issues at the Cancun Ministerial Conference of WTO was trade in agriculture. China, 5. Africa,, India and Brazil formed a group, of 21 countries (i.e.. the G-21) in Cancun. This called for reduction in agricultural subsidies in EU and the U.S.A. Initially, the EU was unwilling to discuss a reduction in farm subsidies. Later the EU was willing to cut subsidies to agriculture but was unwilling to reduce import duties on farm products. The U.S. wanted subsidy cuts to be linked to reduction in import duties.

**NOTE : THE CAIRNS GROUP :** A group of 15 countries (including developed and developing ) which calls for reduction of agricultural subsidies and tariffs on agricultural products by the EU and the U.S. The CAIRNS Group includes major agriculture exporting countries like Australia, Brazil, New Zealand, Canada, Fiji, Paraguay, Uruguay, Chile, Colombia, Argentina, Malaysia, Thailand, Indonesia, the Philippines etc.

**TRIMS Agreement (Trade Related Investment Measures Agreement):** This is agreement of the Uruguay Round recognizes that certain investment measures could cause re-strictive effects on international trade in goods. Under TRIMS, member countries are not to apply trade related investment measures that are inconsistent with Article III (national treatment) or Article XI (general elimination of quantitative restrictions), of the GATT. Under TRIMS, the following are explicitly prohibited,





- a) Local Content requirement in countries requiring foreign enterprises set up in their domestic economy to use domestic products in their production
- b) Trade balancing requirements - which call upon foreign enterprises in the domestic economy to limit use of imported products in proportion to volume or value of local products that they export
- c) Foreign exchange restrictions - which restrict access to foreign exchange to restrict imports
- d) Domestic sales requirement - measures that restrict export in proportion of volume or value of local production to compel "firms to sell more in the domestic economy. However, developing countries can retain some TRIMS in accordance with the development needs of their economies.

**Agreement on Sanitary and Phytosanitary Measures (SPS Agreement):** Under the SPS agreement of the Uruguay round, WTO rules impose standards relating to food safety (like content of bacterial contaminants, pesticides, etc) inspection and labeling as well as safety standards for plant health (Phytosanitary) and animal health. The SPS measures can take many forms like prescribing maximum permissible levels of pesticides in food products, certification that food products, animals and plants are from a disease free area and minimum safety / inspection standards. These can be used by member countries to restrict imports on legitimate objectives of protecting human, animal and plant life. The WTO rules on SPS borrow norms of the Codex Alimentarius Commission. Under the SPS, the burden of proof to demonstrate scientifically that some product is not import is regulated in dangerous, is on the country imposing the regulation.

**Agreement on Technical Barriers to Trade (TBT Agreement):** This was renegotiated as part of Uruguay round. It is to ensure that technical regulations, standards, testing and certification procedures do not create obstacles to trade. The agreement covers technical regulations on quality, packaging and labeling. The exporting country normally has to satisfy these

technical regulations under the laws of the importing country. However, the TBT empowers the WTO to scrutinize such technical regulations in terms of whether they are legitimate or are aimed to protect domestic industry (protectionist).

**The Singapore Issues :** ( The New Issues). These are issues which were not discussed in the Uruguay Round of GATT but were included in the agenda of the WTO in the Singapore Ministerial Conference in 1996. The Singapore Issues are Competition Policy, Multilateral Investment Agreement, Government Procurement and Trade Facilitation. The Developed Countries want the WTO to frame rules covering all the Singapore issues while the Developing Countries are opposed to WTO taking the Singapore Issues for the present. Briefly the Singapore Issues are :

- i) **Multilateral Investment Agreement ( MAI) :** This agreement, if reached, will provide for a liberal set of international rules concerning foreign direct investment.
- ii) **Competition Policy :** The WTO to frame multilateral rules concerning fair competition in markets of all WTO members. The Developed Countries argue that unfair trade practices in developing countries (like formation for cartels by domestic companies) is hurting the trade prospects of Developed Countries.
- iii) **Government Procurement :** The Developed Countries want a set of multilateral rules concerning government procurement. In many developing countries, governments are major buyers of goods and services. The Developed Countries want a set of transparent rules on the basis of which the governments offer contracts for the purchase of goods and services.
- iv) **Trade Facilitation :** This calls for standardization of customs procedures and documentation for all WTO members.

**Implementational Issues:** These refer to agreements which have been concluded as part of the Uruguay Round of GATT and included in the Dunkel text but where the implementation is not



satisfactory. Hence these items require review and modification. These include :

1. **TRIPS** : (Trade Related Intellectual Property Rights ): The TRIPs agreement of WTO recognises seven forms of intellectual property rights. These are industrial designs, integrated circuits, trade marks, copyrights, geographic indications, patents and trade secrets.

**According to the TRIPS agreement:**

- Plants and animals cannot be patented
- Essential biological processes for production of plants and animals cannot be patented.
- Genes, micro-organisms, non-biological processes and microbiological processes to produce plants and animals can be patented.
- Geographic indications (which identify a good on the basis of its origin in a specific region and where the characteristic or / 'and reputation of that good is essentially attributable to that region IMs a permanent right (unlike patents which are time bound) and are community intellectual property rights (unlike patents which are individual rights). Under TRIPS, Geographic Indication" Protection is available to wines and spirits' where the member countries are to prevent the use of geographic indications for wines and spirits by using qualifying names. At the Doha Ministerial in 2000, the WTO agreed to examine the extension of geographic indication protection to products other than wines and spirits. The TRIPS agreement calls upon member countries to provide both process and product patents for pharmaceutical products and agricultural chemicals for a period of 20 years. The industrialised countries are to provide product and process patents beginning on January 1, 2000, while the developing countries are to provide the same beginning on 1<sup>st</sup> January, 2005. At the Doha Ministerial Conference, the TRIPS agreement was amended to provide for Least Developed Countries are to provide product and process patents to agricultural and pharmaceuticals beginning on 1<sup>st</sup> January 2016 A.D. by the Doha Declaration on Public Health and TRIPS provides for manufacture of a patented drug without'

approval of the patent holder to meet a public health emergency under compulsory licensing. In August 2003, the Doha Declaration of Public Health and TRIPS was further liberalised to provide for the import of a patented drug by a country which faces a public health emergency but which cannot produce a patented drug under compulsory licensing (because it does not have a pharmaceutical industrial base). This country can import patented drug from another developing member country of WTO which has the capability to manufacture / import the drug.

**Data Exclusivity** : Industrialised countries want WTO rules to be amended so that clinical test data submitted by pharma companies to patent offices to get market approval for their generic drugs are not disclosed to other producers of generic drugs. The argument of developed countries is that pharma companies producing imitator drugs and get marketing approval for these drugs as patent offices rely on data submitted by the original inventors of the drugs to grant such market approval. This move is being seen as a deliberate attempt by developed countries to delay competition in generic drugs and hence extend the life of a patented drug indirectly. However, it is also a fact that each new investigation of the therapeutic effects of a drug leads to more data and hence a higher overall safety of the drug. Under article 39.3 of WTO, members are not obliged to grant data exclusively but are to protect clinical data against unfair commercial use.

**The Sui Generis system:** The TRIPS Agreement of the WTO provides for protection of new plant varieties by protecting their seeds either by Patents or by a Sui Generis System. Sui Generis System of protecting new plant varieties is to "protect them by interpreting plant varieties in the scientifically correct method of describing their botanical characteristics in the form of a sub-species rather than a scientifically incorrect and commercial / industrial description of their characteristics. The Sui Generis System of protection of new plant varieties was already part of GATT and has been retained under WTO. The protection of new plant varieties according to WTO rules calls for all member countries of the WTO enacting Plant Breeders Rights Act by 2000 A.D. The



Plant Breeders Rights system will protect new plant varieties invented after 2000 A.D, The Plant Breeders System recognises the rights of farmers, researchers and plant breeders (i.e., the right of farmers to exchange patented seeds and to save a part of the harvest as seed to sow for the next crop, the right of researchers and breeders to use one protected seed to carry out experiments to breed new varieties are recognised under the Plant Breeder Rights System)

**Agreement on Textiles and Clothing ( ATC ) :**

This is a another trnplementational issue. The ATC is part of the WTO, having been negotiated in the Uruguay Round. It provides for a phased dismantling of the Multi Fibre Arrangement ( Mf'A ) of the GATT which,governs textile trade. Under the MFA, textile trade between countries “of GATT was based on country-specific quotas, arrived on the basis of bilateral agreements between countries. The ATC calls for dismantling the MFA completely by December 31. 2004 so that textile trade is free from quantitative restrictions beginning on 1<sup>st</sup> January 2005. The Developing Countries argue that the ATC is not being properly implemented i.e., the phased removal of quantitative restrictions on textile trade is not being adhered to by the Developed Countries.

**Agreement of Anti-Dumping Duties:** The WTO rules provide for the levy of anti-dumping duties if countries are suspected of resorting to dumping ( i.e., selling goods at prices less than the cost price or /and selling goods in other countries at a price less than the sale price of the same good n their own economics). The issue of anti-dumping duties has to do with the frequent resort to anti-dumping duties by Developed Countries against the imports from Developing Countries. At the Doha Ministerial Conference In 2000, the WTO agreed that the implementationa issues will also be discussed n the Doha Round along with the other issues.

**Non-Trade Issues:** At the Singapore Ministerial of the WTO, the industrialised countries attempted to include labour standards and environment as part of the agenda of WTO but were successfully prevented by the Developing Countries.

**1. Labour Standards :** This is to evolve a set of minimum rights of labour ( like right to collective bargaining, bar on exploitative forms of labour

like forced labour/child labour and underpaid labor ). After evolving these minimum rights of labour,.W.T.O, should have rules under which it can impose sanctions against a member country which does not abide by the minimum labour standards. The Developing Countries declare that the link between labour standards and international trade is not clear and hence oppose the inclusion of labour standards as part of the agenda of WTO.

**2. Trade Vs Environment :** The Developed Countries want W.T.O. rules providing for sanctions against countries which carry out international trade by destroying the environment ( like exporting tropical timber by large scale deforestation of tropical rainforests ). The Developing Countries declare that the link between environment and international trade is not clear and hence are opposed to the inclusion of environment in the agenda of WTO. The Doha Ministerial has however set up a committee to examine on whether negotiations can+ake place on trade Vs environment.

**NAMA (Non-Agricultural Market Access) :**

The U.S. and the EU are at the lead in the W.T.Q. as far as NAMA is concerned. The U.S. proposal is that all member countries of W.T.O. should reduce customs duties to zero percent on industrial goods by 2015 A.D. to boost world trade in manufactured goods, The Developing Countries, while not Opposed to this suggestion, call for a longer period of time i.e., for reduction of customs duties to zero percent by 2025. However, the Doha Round has agreed to carry out negotiations on elimination and reduction of customs duties in respect of Seven Categories of industrial goods. The talks are to be completed by I<sup>st</sup> January 2005.

**The Doha Round:** This was launched in Doha, Qatar in 2001. The key issues in Doha round are related to further liberalization of trade in Agriculture (including implementation issues in Agreement on Agriculture), Non-Agricultural Market Access (NAMA), GATS and some issues in TRIPS. These are briefly





1. **Agriculture** : The talks are focused on substantial reduction in trade distorting domestic support to agriculture (i.e. subsidies) within Amber Box and Blue Box categories, by developed countries. Self-designation of appropriate number of "special" products in agriculture by developing countries, an operational and effective special safeguards mechanism (SSM) and simplification of tariffs and tariff capping by IC's.
2. **Non-Agricultural Market Access (NAMA)** : This covers manufacturing products, fuels and mining products, fish and forestry products. These are not covered by AOA or in negotiations under GATS.
3. **Liberalisation of Trade in Services** : The General Agreement in Trade in Services ( GATS) covers trade in services. The GATS was adopted in the Uruguay Round of GATT and further talks were to be held beginning in 2000 for liberalising trade in services. The services trade is classified under 4 modes. These are :
  - (i) **Mode - I** : This involves supply of service from one country to another i.e., cross border supply of services, like International Subscriber Dialling (ISP),
  - (ii) **Mode - II** : This includes services provided in the territory of the service provider ( and hence the service is consumed abroad ), Example: tourists consuming services like boarding lodging and transport in the country they visit
  - (iii) **Mode -III** : This includes commercial presence abroad. For example, companies, setting up branches or subsidiaries in another country, like a bank branch , being opened in some other country,
  - (iv) **Mode-IV** : This includes Movement of Natural Persons to provide some service. Example is movement of labour from one country to another. The developing countries like India want a liberal set of rules concerning mode-IV whereas the developed countries are more interested in a liberal set of rules involving mode-III.
4. **TRIPS** : Further talks on TRIPS are on providing a clear linkage between TRIPS Agreement and Convention in Biodiversity by incorporating specific disclosure norms for patent application and enhanced protection foTgeographical indications in addition to wines and spirits. The other issues in TRIPS are related to evergreening and data exclusivity. Evergreening refers to patents on drug molecules by altering the patented drug molecule only marginally. The developing countries argue that evergreening is only to extend the patent period of patented drug beyond 20 years by the multinational drug companies by altering the patented drug partially and claiming a new patent for a further period of 20 years. This is sometimes referred to as TRIPS plus.
 

**The Anti-Counterfeiting Trade Agreement (ACTA)** : The ACTA is a proposed plurilateral agreement for establishing international standards on IPR enforcement. That is the proposed ACTA seeks to establish a new international legal framework that would create its own governing body outside existing international institutions such as WTO, WIPO or the UN. The scope of proposed ACTA is very broad, counterfeit goods, generic drugs, copyright infringement on the internet etc. The ACTA draft text requires signatory countries to provide for procedures for customs seizure of goods suspected of infringing trademarks, copyrights and other IPR's against goods in transit. According to ACTA, in-transit includes customs transit and transshipment seizures are to be allowed even when there is mere prima facie case of IPR violations. The ACTA is being criticized by developing countries as a deliberate attempt by developed countries to undermine legitimate competition, like in the case of generic medicines. India argues that ACTA reduces the power of courts and transfers much power to the owners of IPR's by allowing for seizure of goods without court oversight. The ACTA was originally proposed by USA and Japan but today enjoys support of Canada, the EU, Switzerland, Australia, Mexico, Morocco, South Korea, New Zealand and Singapore.

