

**WORLD TRADE ORGANIZATION:
A STUDY OF ITS STRUCTURAL AND FUNCTIONAL
EVOLUTION**

**Dissertation submitted to the Jawaharlal Nehru University
in partial fulfillment of the requirements
for the award of the Degree of**

MASTER OF PHILOSOPHY

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Date: 29.07.2005

CERTIFICATE

Certified that the dissertation entitled “**World Trade Organization: A Study of Its Structural and Functional Evolution**”, submitted by me in partial fulfillment of the requirements for the award of the degree of **MASTER OF PHILOSOPHY** has not been previously submitted for any other degree of this or any other university and is my own work.

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We recommend that this dissertation may be placed before the examiners for evaluation.

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----- *Dedicated to*

Parents, Sister and Brothers

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Acronyms

ATC	Agreement on Textiles and Clothing
CGE	Consultative Group of Eighteen
CP's	Contracting Party's
DSB	Dispute Settlement Body
DSM	Dispute Settlement Mechanism
ECOSOC	United Nations Economic and Social Council
EFTA	European Free Trade Area
EU	European Union
FAO	Food and Agricultural Organization of United Nations
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GNG	Group of Negotiation on Goods
GNS	Group of Negotiation on Services
IBRD	International Bank for Reconstruction and Development
ICITO	Interim Commission for the International Trade Organization
IGO's	Intergovernmental Organization
ILO	International Labour Organization
IMF	International Monetary Fund
IMM	Informal Ministerial Meeting
IOS	International Organization for Standardization
ITC	International Trade Centre
ITO	International Trade Organization
LDC's	Less Developed Countries
MEA	Multilateral Environmental Agreement
MFA	Multi Fibre Agreement
MFN	Most Favoured Nation
MNC	Multi- National Corporation
NAFTA	North American Free Trade Agreement
NGO	Non Governmental Organization
NTB	Non Tariff Barriers
OECD	Organization of Economic Co-operation and Development
OTC	Organization for Trade Cooperation
PPA	Protocol of Provisional Application
RTA	Reciprocal Trade Agreement
SPS	Sanitary and Phytosanitary Measures
TBT	Technical Barriers to Trade
TMB	Textile Monitoring Body
TNC	Trade Negotiation Committee
TPRM	Trade Policy Review Mechanism
TRIMS	Trade Related Investment Measures
TRIPS	Trade Related Aspects of Intellectual Property Rights
UN	United Nations
UNCED	UN Conference on Environment and Development
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UR	Uruguay Round

US	United States of America
VER	Voluntary Export Restraint
WCO	World Customs Organization
WHO	World Health Organization
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

Chapter I

Introduction

The World Trade Organization (WTO) is the legal and institutional foundation of the multilateral trading system. It provides the contractual obligations determining how governments should frame and implement international and domestic trade legislations and regulations. It also serves as the platform on which trade negotiations take place collectively among countries. The WTO was established on 1st January 1995. Governments concluded the Uruguay Round (UR) negotiations on 15 December 1993 and Ministers gave their political backing to the results by signing the Final Act in Marrakesh Agreement in Morocco on 14 April 1994. The “Marrakesh Declaration” affirmed that the results of the Uruguay Round would strengthen the world economy and lead to more trade, investment, employment and income growth throughout the world. The WTO is the embodiment of the Uruguay Round results and the successor to the General Agreement on Tariffs and Trade (GATT). The GATT covered trade in goods only; the WTO covers trade in goods, trade in services and “trade in ideas” i.e. intellectual property.

1.1 Significance of the Study

WTO stands as an important pillar of the international political economy along with International Monetary Fund (IMF) and International Bank for Reconstruction and Development (IBRD), and has exclusive right to regulate international trade. Its basic texts provide the legal ground rules for international commerce that keep national trade policies within agreed limits. For the first time in history, an international organization with vast a mandate has been established

to regulate international trade, whose membership covers more than 90% of the world trade. Its creation marked the biggest reform in international trade since the Second World War. It acts as a forum for negotiations, bringing together developed and developing nations on a common platform. It is the only forum where the developing and least developed countries can have a say in a unipolar world dominated by the US. The relationship between the developed and developing world is best understood by studying the organizational structures and their functioning. WTO is the largest organization striving to promote free trade among nations through constant negotiation.

The basic underlying philosophy of the WTO is that open markets, non-discrimination, and global competition in international trade are conducive to the national welfare of all the participating countries. Agriculture, and textiles and clothing have been brought within the GATT fold. While certain agreements, like Trade Related Aspects of Intellectual Property Rights (TRIPS), may involve some short-run costs for the developing countries, these are likely to be more than offset by the benevolent effects of inclusion of agriculture and textiles and clothing under the GATT umbrella. Further, the WTO embodies a much stronger enforcement/dispute settlement mechanism than what existed under GATT.

Although the WTO was conceived in the Uruguay Round, it had been in existence as an agreement in the form of the GATT ever since the close of the Second World War. The Great Depression of 1929 had disrupted the economies

of all countries and even the economically powerful ones were badly affected. In futile attempts to protect themselves, several countries had resorted to competitive devaluation of their currencies, exchanged preferential tariffs with favoured trading partners, jacked-up their import duties to abnormal heights and imposed various types of trade restrictions to balance their payments. This chaotic situation had undermined the global trading system throughout the 1930s until the Second World War intervened. The desperate economic conditions of both the victors and vanquished of the Second World War created problems for international trade.

It was against this background that the General Agreement on Tariffs and Trade was signed in 1947 by 23¹ nations with the intention of introducing a rule of law in international trade relations. Even though, international trade and commerce is perhaps as old as civilization, the regulation of international trade as an independent field in international relations gained scope. The emergence of the international organizations to regulate international trade is an important trend associated with it. Even though GATT was not an organization, for the first time, it brought the agreed parties under a common umbrella of rules. Its cardinal principle was the concept of non-discrimination (most-favoured nation and national treatment). It was comprehensive enough to cover almost every aspect of foreign trade in merchandise for nearly half a century until the setting up of WTO.

1.2 Background of the Study

Since the setting up of WTO, there has been debate over the benefits of the existing system for the developing countries. Although much research has

¹ India was one of the founding members of GATT 1947.

been conducted on GATT and WTO, hardly any study explores in comprehensive detail the implications of WTO from the point of view of its institutional structure and functioning. The components of the structure and the process of the organization (membership, decision-making process, dispute settlement mechanism) etc. govern the process of international trade. These features form the central research enquiries of this study. A study of the structures operating within the organization and its rules of membership would help in better understanding the workings of the organization. The evolution of WTO is traced in a chronological order since its establishment in the Uruguay Round (1986- 1994) and then through the various Ministerial Conferences of the WTO. The functioning of the WTO is determined by its functional and procedural mechanisms. Organizational aspects such as decision making, staff etc. determine the functioning of WTO.

1.3 Research Design and Methodology Adopted

The study is based on descriptive and diagnostic research designs. The descriptive design is set out with a focus on portrayal of the characteristic features of the organization and existing establishment to acquire knowledge. On the other hand the diagnostic study aims to identify the problems and tries to suggest methods to solve them. However the two types of designs are used alternatively in the case study method and statistical method. In the present attempt, the case study method is used to focus entire research on WTO. The nature of the study is analytical from an historical point of view tracing the evolution of WTO in its

first decade (1995- 2005). Both primary as well as secondary sources are used as contained in the bibliography. At appropriate places charts and tables are used for a better understanding.

1.4 Objectives and Key Research Questions of the Study

This study aims to initiate certain basic enquiries relating to the organization. The study of the evolution of the WTO is carried out with two objectives in mind:(i) assessing the role and the relevance of the organization in pursuing its stated objectives of furthering free and fair trade (ii) assessing the relevance of the organization for the developing countries. With these objectives, it tries to portray the evolution of WTO as an organization in the first decade of its existence; it tries to analyze its specific structural features and functioning, and assess the relevance of the organization for the developing countries.

1.5 Working Hypothesis Guiding the Research

The structures and functional aspects of the WTO have evolved with time and are a comment on the role played by the organization for the developing countries. These structural and functional components of the WTO need to be reworked to suit the interests of the developing countries.

1.6 Organization of Chapters

The present study “World Trade Organization: A Study of Its Structural and Functional Evolution”, is divided into three core chapters. They are: ‘Origins

of WTO’, ‘Structural Aspects of WTO’ and ‘Functional Features of WTO.’ Each chapter is based on a research question: ‘Origins of WTO’ traces the historical legacy of WTO, ‘Structural Aspects of WTO’ describes the organizational structure and ‘Functional Features of WTO’ explores the way the system functions. Along with these, ‘Introduction’ and ‘Conclusion’ form the first and last chapters respectively.

The first chapter introduces to the area of study (the present chapter) i.e. WTO, explaining the problem area it tries to address. It gives the preamble of the whole study which is carried out, the research design employed to the problem area, the hypothesis guiding its research, the key research questions which are tackled, the methodology adopted, the significance of study, the way the chapters are organized and finally the limitations of the study.

The second chapter explores the structural roots of WTO since GATT’s existence and mainly focuses on the process of establishment of WTO through the Uruguay Round. It tries to provide the theoretical background of the doctrine of free trade, the forerunners and their thought. It explicates the reasons for initiating ITO and the reasons for its demise. It explores the beginning of GATT 1947, its principles, its structures and their functioning, and its successive stages of evolution through eight rounds of multilateral trade negotiations. It also identifies the reasons for launching the Uruguay Round of negotiations that lead to establishment of WTO. Finally it attempts to differentiate the WTO from GATT.

The third chapter gives a detailed account of the whole structure of WTO. It explains the hierarchy of the structure and the background of its establishment. It explores the origin, history and function of the structural features such as the Ministerial Conferences, The General Council and its sub councils, the various sub committees and the working groups. It attempts to analyze the role played by the secretariat the Appellate body secretariat. Finally, the budget and financial transactions of WTO are stated.

The fourth chapter tries to explore the dynamics behind the functioning of the organizational features in a broader perspective. The features which are studied for this purpose include: Dispute Settlement Mechanism (DSM), accession process, decision making process and, involvement of civil society, Non Governmental Organizations (NGO's) and Intergovernmental Organizations (IGOs) like IMF and IBRD in the working of the system. The DSM section narrates the methods applied to settle a dispute, explores the provisions for developing countries in the system and explains their experiences in DSM. The accession process section gives a detailed account of the ways and means of accession to the system and problems faced by the developing countries during the process. Under decision making process, the legal methods adopted to take decisions is explained, the informal ways of decision making are also discussed. The Civil Society and NGO's section tries to explore the quest of civil society and NGO's to take part in the functioning of the organization. Finally the chapter explores the relationship between WTO and other IGO's like IMF, IBRD and

International Trade Centre (ITC). Overall, the study is carried out from a developing country perspective.

The fifth chapter contains the conclusions of the study. It presents the areas of struggle between developing and developed countries in the multilateral trading system. It draws certain perspectives from the study on the basis of which certain suggestions are provided.

1.7 Scope and Limitations of the Study

WTO is an organization with a vast mandate, dealing with a complexity of issues. A comprehensive study of its structure and its functioning is carried out from an organizational point of view. The study is not an attempt to include the issues and debates relating to the various sectors (e.g. agriculture, textiles, anti-dumping, intellectual property rights, investments) being handled by the WTO. The focus remains on the evolution of the structural and functional aspects. This study does not include a survey of international trade theory. It aims to fill the absence of research on WTO as an organization from a developing country perspective.

Issues involved in WTO's structure and its functioning are more vast than imagined. It had been looked into from different perspectives, which made the task all the more challenging. There was doubt that equal justice cannot be meted to every aspect of the study. Inaccessibility of few original texts, shortage of time

and lack of research techniques like interviews also add to the cause. It is an extensive library research of reputed books and journals.

This study is a comprehensive reflection of the complex and dynamic nature of world trading system. It highlights some of the arguments relating to the WTO from the perspective of the developing countries. It attempts to highlight the need for the world trading system to evolve and to reform continually.

Chapter II

Origin of WTO

This chapter overall tries to explore and analyze the dynamic forces that led to the establishment of the WTO. At the first instance, it summarizes the theoretical background which forms the foundation of the world trading system, including the arguments for free trade. Second, it tries to explain the reasons for the emergence of the need for a world organization to regulate international trade in the late 1940's, the role played by US and also the reasons for the failure of this initiative. Third, it traces the commencement of GATT 1947, its guiding principles, its organizational structures and their functioning (voting rights, accession, secretariat, dispute settlement methods), and its successive stages of evolution through eight rounds of multilateral trade negotiations. Fourth, it tries to portray the reasons for launching the Uruguay Round of negotiations, the successive phases thereon from Marrakesh Ministerial Declaration to the establishment of WTO. Finally, it attempts to differentiate the WTO from GATT 1947.

2.1 The Origins of the World Trading System

The genesis of world trading system can be understood in the context of the prevalent economic theory and the economic literature on the determinants of the trade between countries. Economists tried to analyze whether trade benefits or harms nations and, more importantly, to determine what trade policy was best for any particular country. The main school of thought which dominated during the mid twentieth century was the liberalists' argument of '*laissez-faire*' which advocated free trade among the nations for their welfare. The classical economists

Smith, Ricardo and Malthus¹ were the main propagators of this school. Contradictory to this school was the first reasonably systematic body of thought devoted to international trade, which is called 'Mercantilism' and it dominated in seventeenth and eighteenth century in Europe. Mercantilists argued that the key objective of trade should be to promote a favorable balance of trade, where the exports exceed the imports, resulting in a balance of trade surplus. However there were anti-mercantilist economists also during that period who advocated free trade and believed that free trade might be a better option for development than protectionist trade policy.

The break-through came with the Scottish economist Adam Smith who fundamentally changed the economic thinking about international trade.² He argued that economic growth depended upon the specialization and division of labour. Specialization helped to promote greater productivity i.e. producing more goods from the same resources. Further, he believed that the division of labour was limited by the extent of the market, therefore it was opined that international trade effectively increased the size of market for any given country, which allowed for more refined specialization, created an international division of labour and thereby benefited all the countries by increasing the world's productivity and output. Thus Smith made a powerful case that government promotion of trade and government restriction of trade was unwise and harmful. He fundamentally changed the analysis of trade policy and essentially established the presumption

¹ Thomas, Malthus, *Principles of Economy*, 1820.

² Adam, Smith, *An Inquiry into the Nature and Causes of the Wealth of the Nations*, 1776.

that free trade was the best policy for economic development. Smith believed that in order to meet a constantly growing demand for goods, a country's scarce resources must be allocated efficiently. According to Smith's theory, a country that trades internationally should specialize in producing only those goods in which it has an absolute advantage—that is, those goods it can produce more cheaply than can its trading partners. The country can then export a portion of those goods and, in turn, import goods that its trading partners produce more cheaply. Smith's work is the foundation of the classical school of economic thought.

Half a century later, the English economist David Ricardo modified this theory of international trade.³ Ricardo's theory, which is still accepted by most modern economists, stresses the principle of 'Comparative Advantage'. Following this principle, a country can still gain from trading certain goods even though its trading partners can produce those goods more cheaply. The comparative advantage comes if each trading partner has a product that will bring a better price in another country than it will at home. If each country specializes in producing the goods in which it has a comparative advantage, more goods are produced, and the wealth of both the buying and the selling nations increases. This economic thought gained momentum in the 1940's and got manifested in the form of GATT.

In the inter-war period, trade among nations was guided by the national policies of respective states. For example: United States (US) trade relations were

³ David, Ricardo, *On the Principle of Political Economy and Taxation*.

guided by the 'Reciprocal Trade Agreement' of 1934 in which US had bilateral trade relations with 29 countries. Thus unilateralism and bilateralism ruled the world economic relations. An utmost need for liberalization under a multilateral framework was felt to boost trade liberalization and to begin to correct the existing protectionist measures.

To stop the repercussions of protectionism, multilateral negotiations took place that paved the way for the Bretton Woods Conference. The Bretton Woods Conference was devoted to monetary and banking issues and it established the charters of the International Monetary Fund (IMF) to deal with current problems of account and International Bank for Reconstruction and Development (IBRD) to assist capital flows, but it did not take up the problems of trade as such. This was undoubtedly because the conference was sponsored by and under the jurisdiction of ministries of finance, while trade was under the jurisdiction of different ministries. Nevertheless, the 1944 conference is on record for recognizing the need for a comparable institution for trade.⁴

In December 1945, the US government invited a number of other nations to enter into negotiations to conclude a multilateral agreement for mutual reduction of tariffs. Within the next few months, i.e. in February 1946, United Nations (UN) Economic and Social Council (ECOSOC) at its first meeting adopted a resolution calling for a conference to draft a charter for an international

⁴ John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* (London: The MIT Press, 1994), p. 32.

trade organization. The above quoted developments provided the basis for setting up of the International Trade Organization (ITO).

2.2 Initiative for ITO and Its Failure

From the beginning, ITO was primarily an American idea.⁵ Negotiations concerning the form and functions of an international organization for trade were first held on a bilateral basis with the UK. This resulted in a pamphlet “Proposals for Expansion of World Trade and Employment.”⁶ Thereafter, the interdepartmental and interagency committees which met in Washington DC during 1943 to 1945 proposed a trade organization. It was based on four foundations (a) generalized most favoured nation treatment, with exception only for long standing preferences, (b) no increase in existing preferences, (c) a commitment to negotiate reductions in existing trade barriers, and (d) a ban on using quantitative restrictions except under exceptional conditions.⁷ As a consequence, in 1946 US proposed a draft of a suggested ITO charter for United Nations. This initiative led to the formation of a ‘Preparatory Committee’, which met for the first time in October 1946 at London.⁸

⁵ W. Diebold, Jr, “*The End of ITO*”, In Kym Anderson and Bernard Hoekman, ed, *The Global Trading System-vol.1 Genesis of GATT* (London and New York: I.B. Tauris Publishers, 2002),p. 82.

⁶ Dam, W. Kenneth, *The GATT-Law and International Economic Organization* (Chicago: Chicago University Press, 1968), p. 10.

⁷ John, Odell, and Barry, Eichengreen, “The United States, the ITO, and the WTO: Exit Options, Agent Slack, and Presidential Leadership” in Krueger, O Anne, (e.d) *The WTO as an International Organization* (Oxford: Oxford University Press), pp. 184- 185.

⁸ Totally four preparatory committee meetings were held in different places (London, New York (early 1947), Geneva (April to November 1947) and in Havana, consecutively) to complete a draft for a multilateral trade organization.. However the draft charter was modified in successive stages.

The participatory countries in London had divergent views regarding negotiations on trade and its regulation. The British and French were preoccupied with their agenda, the need for import controls to support their fragile balance of payments. The British further had stressed the importance they attached to trade with the commonwealth and empire. The Australians insisted on controls needed to facilitate industrialization and employment. The developing nations were primarily interested in the right to use import quotas to protect their infant industry. India and Latin America were prepared to accept only a weak agreement riddled with exceptions.⁹ Even then, the negotiations continued in the direction to liberalize trade. Finally, on 24 March 1948, the participatory countries in Havana Conference which started from 21 November 1947 in Cuba signed the draft charter called the 'Havana Charter'. The Havana Charter contained elaborate provisions for an organizational structure for ITO.¹⁰ It also provided for a relatively elaborate system for settlement of disputes between the member nations.¹¹ However, the charter of ITO did not come into being mainly due to the American Congress failure to ratify it. The reasons for the Congress refusal to ratify the proposal are cited variously by different scholars. Odell and Eichengreen analyzing US reactions to the two episodes i.e in 1947 and in 1995 to the formation of a world organization identify three stages in the process of

⁹ John and Eichengreen, n. 7, p. 185- 186.

¹⁰ The Havana Charter in Chapter VII contained provisions for membership (Article- 71), functions (Article- 72), structure (Article- 73), conference (from Articles 74-77), a executive board (from Articles 78-81), the commissions (Article 82 & 83), the director general (Article- 84) and a staff (Article- 85). With other organizational provisions from Articles 86- 91. For complete text see Wilcox, Clair, *A Charter for World Trade* (New York: Macmillan, 1949), pp. 231- 327.

¹¹ The Havana Charter in Chapter VIII titled 'Settlement of Differences' (from Articles 92- 97) provided for reliance on the procedures of the charter (Article 92), provision for the consultation and arbitration (Article 93), reference to the executive board (Article 94), reference to the conference (Article 95), reference to the International Court of Justice (ICJ) (Article 96) and other miscellaneous provisions relating to dispute settlement (Article 97).

reaching and implementing an international agreement: negotiation, ratification and compliance. Their analysis of US behaviour in these stages emphasizes three factors: exit options, slack between US principals and their negotiating agencies and finally the presidential help to build the domestic support.¹² In my analysis, the US had exit options in 1947 and not during the formation of WTO and had no slack between its agents and its principals for which arguments have been put forth later, and finally president sought domestic help during WTO which was not the case earlier.

Diebold argues it was due to the change in the American political situation from 1945 to 1950 and the defect of the charter from the point of view of American businessmen. On the other hand, Wilber points out that there was concern within the Congress that national sovereignty might be compromised by such an organization. Supporting the above notion, it can be argued that the then US Secretary of State Cordell Hull and the Under Secretary of State Summer Wills believed that trade liberalization lead to economic development. But they showed scant interest later to establish a trade organization because the organization would have a code of law to enforce upon the member nations and to regulate international trade. As other Secretary of State Dean Acheson characterized Havana Charter as “first comprehensive code of international law to govern trade policies”.¹³ One also can refute the above argument stating that US was an eminent power at that time and it could have disobeyed ITO if it was

¹² John and Eichengreen, n. 7, p. 182.

¹³ Kenneth, n. 6, p. 13.

established. But the fact remains that the US decision was a major factor for the end of the ITO initiative. On the other hand, the Congress, the domestic interest groups and US negotiators failed to gain public opinion in favour of the package negotiated at Havana. Adding to the cause, the US public was also not happy over the UN functioning which was established in that decade itself. The mood was best captured by 'Fortune' in its article titled "How the US Lost the ITO Conferences" and in an editorial subtitled "The Charter is All Exceptions".¹⁴ Thus the then existing milieu failed to get domestic support from the US public.

Further, President Truman had the power to implement tariff cuts agreed under GATT through the authority of Reciprocal Trade Agreement Act (and similar subsequent legislation), where it did not require the Congress approval.¹⁵ So the priority of the Truman administration shifted to other fields. None of the other countries desired to enter an ITO which did not include the US. At that point of time, US was the pre-eminent economic power in the world. Finally, the conclusions reached at GATT were not conditional as a single undertaking like the WTO that required countries to accept the other elements of the ITO package as well. Thus the aim of ITO to bring about the "fullest collaboration"¹⁶ among all nations in the economic field was shattered by the change in the US position.

¹⁴ Kenneth, n. 6, p. 14.

¹⁵ John and Eichengreen, n. 7, p. 186.

¹⁶ Diebold, n. 5, p. 81.

2.3 Origin of General Agreement on Tariffs and Trade (GATT)

The history of the roots of GATT¹⁷ is entangled with that of the preparation of the ITO charter. The 1947 Geneva meeting was actually an elaborate conference in three major parts. One part was devoted to continuing the preparation of a charter for a major international institution- ITO. The second part was devoted to the negotiation of multilateral agreements to reciprocally reduce tariffs. The third part concentrated on drafting the 'General Clauses' of obligations relating to the tariff obligations. The Second and third part together, later, constituted the GATT.¹⁸

GATT originally was envisaged as the first of a number of agreements that were to be negotiated under the auspices of trade negotiations to form an organization (ITO). In order to ensure that the tariff concessions it recorded would not be undercut by other trade measures, it incorporated many substantive provisions essentially similar to those of the Havana Charter chapter on 'Commercial Policy Provisions' of the ITO draft charter. When the ITO failed, GATT became by default the foundation of an international institution. It did not include substantive chapters like Employment and Economic Activity, Economic Development and Reconstruction, Restrictive Business Practices, Intergovernmental Commodity Agreements etc as envisaged in ITO charter. It should be stressed that the general agreement was unaware of the institutional

¹⁷ The GATT 1947 is referred as GATT and the GATT 1994 is referred in the same manner throughout the study.

¹⁸ Jackson, n. 4, p. 32.

provisions from organizational perspective and so far as dispute settlement was concerned, contained relatively modest procedures.

2.4 Protocol of Provisional Application (PPA)

Twenty-three nations of the world established the GATT in 1948 by adoption of the Protocol of Provisional Application.¹⁹ The PPA had two significant impacts on GATT. First, it required only sixty day prior notice to withdraw from the GATT, whereas the GATT agreement required six months. Second and more important is its statement of implementation of GATT. Parts I and III of GATT 1947 were fully implemented without a PPA exception, but the PPA called for the implementation of Part II 'to the fullest extent not inconsistent with the existing legislation'.²⁰ Thus it provided the space for member countries to take exception to Part II rules when their existing legislation was inconsistent with GATT. These 'grandfather rights' solved, for most of the countries, the problem of executive authority to agree to the GATT. So GATT without much difficulty continued to exist and later surpassed the ITO when it was not realized.

GATT set the rules to restrict national trade policies. The CPs decreased tariffs in binding agreements, and implemented tariff cuts and also implemented those cuts on Most Favored Nation (MFN) basis. US took the lead by cutting its tariff by 35% on average.²¹ It should be remembered that the original parties to

¹⁹ Jackson, n. 4, p. 35.

²⁰ Jackson, n. 4, p. 36.

²¹ D.A. Irwin, "The GATT in Historical Perspective", In Kym Aderson and Bernard, M. Hoekman, (eds), *The Global Tradings system – vol. 1, Genesis of GATT* (London and New York: 1 B. Tauris Publishers, 2002), p. 221.

the GATT accounted for 80% of world trade.²² This marked for the first time in history, the beginning of free trade against protectionism under the umbrella of a multilateral agreement.

2.5 Foundational Principles of GATT

GATT was the only multilateral mechanism that laid down the agreed rules for international trade. The basic aim was to liberalize world trade and contribute to economic growth and development. In order to liberalize world trade, GATT operated according to a set of principles of non-discrimination. The first and most basic GATT concept, “Most Favored Nation”, (MFN) is found in Article I.²³ This provision states that the Contracting Parties may enjoy the same level of privileges accorded by any other GATT party to their “most favored” trading partner. The concept is not about a right to special treatment, but rather a right to equal treatment. The second essential principle of non-discrimination is found in Article III,²⁴ “National Treatment”. National Treatment requires that a nation party to the Agreement treat an incoming product, after it has passed customs and moved into its ‘stream of commerce’, in the same way it treats its

²² D.A. Irwin, n. 21, p. 221.

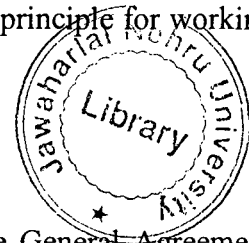
²³ *Article I*: With respect to customs duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III,* any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

²⁴ *Article III*: The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase, transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production.

own products. In other words, within its domestic market, a nation is not allowed to demonstrate commercial preference for its own products, as distinct from any action at the border in the form of a customs duty or other barrier. Apart from these, other important provisions for developing countries within GATT was the principle to safeguard their external financial conditions and for their balance of payment reason. Article XII²⁵ allowed contracting parties to safeguard their balance of payments in certain circumstances by restricting imports. Thus exemptions were given to a country, when economic or trade circumstances so warranted.

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The GATT also permitted the establishment of regional trading arrangements such as the EU or US-Canada Free Trade Agreement provided certain criteria were met. The criteria are meant to ensure that such trade arrangements do not become barriers to world trade. Lastly consultation, conciliation and dispute settlement formed the fundamental principle for working of the GATT.



Apart from the prescriptions on trade measures, the General Agreement contained three procedural provisions pertaining to trade relations between countries. The first required every country to notify all trade measures to the GATT for eventual circulation among its members. This enabled every member to examine the conformity of the measures with the provisions of the General Agreement. The second provided for consultations with parties likely to be

²⁵ *Article XII*: Notwithstanding the provisions of paragraph 1 of Article XI, any contracting party, in order to safeguard its external financial position and its balance of payments, may restrict the quantity or value of merchandise permitted to be imported, subject to the conditions enshrined in its sub clauses.

affected by the introduction of a trade measure. This afforded an opportunity for the initiating country to modify the measure in such a manner as to cause least disturbance in trade or affect as few participants as possible. The third, and the most important, provision dealt with the resolution of disputes between members. The entire congregation of members adjudicated and pronounced on the relative merits of the case. It prescribed that every country must treat the others equally, without discrimination. It prohibited discriminatory tariffs and prescribed that each country must apply the same rate to the imports from all members without distinction. The General Agreement was indeed a code of conduct for the practice of trade policy by the members. It contained rules for the regulation of tariffs, non-tariff barriers and other trade measures. It insisted on equality of treatment between domestically produced goods and foreign goods after importation. It prohibited the application of quotas because of their trade distorting effects. It laid down the principles of valuation for customs purposes, the procedures for imposition of anti-dumping and countervailing duties, the treatment of subsidies, and the conditions for introduction of restrictions to maintain balance of payments, to further a country's economic development, or to improve its foreign exchange situation. The General Agreement also permitted a member country to take emergency action when rising imports threatened serious injury to domestic producers.

2.6 Organizational Features of GATT

The framers of the GATT never intended that it should assume a role of international organization as the agreement included only trade policy. The

history of GATT forced it to assume a role for which it was never intended, and effectively that role became one of an organization for consultation and negotiation for international trade. Eric Wyndham White, then executive secretary of the GATT in a speech entitled “GATT as an International Trade Organization,” stated, ‘The General Agreement on Tariffs and Trade, as its name clearly indicates, is legally speaking, a trade agreement and nothing more. But because it is a multilateral agreement and contains provisions for joint action and decision, it had the potentiality to become, and has in fact become, an international ‘organization’ for trade cooperation between the signatory states.’²⁶ However, in a strict sense, GATT could not be treated as an organization as such. The original text nowhere referred to it as an organization nor did it have any membership; rather it was accepted as an agreement and the signatories to it were called in its terminology as ‘The Contracting Parties’ (CPs). The parties to the general agreement have contractual rights and contractual obligations aimed at a balance of mutual advantage. Important consequences follow from this contractual nature of the GATT.

In the first instance, the procedures for enforcement in relation to the terms of the Agreement are set in motion only where an affected contracting party takes initiative. The Agreement does not have an independent or autonomous role in enforcement of the rules as the GATT lacks an institutional structure.

²⁶Quoted in footnote no: 1 of Dam, W. Kenneth, *The GATT-Law and International Economic Organization* (Chicago: Chicago University Press, 1968), p. 335.

In the second instance, the contractual nature of the Agreement is the relative weakness of the sanctions that may be applied in the event of non-compliance with the rules. In the last resort, where consultations have failed and when the conciliatory intervention of contracting parties has also failed, the ultimate remedy which the CPs can offer to an injured party is a release from obligation to the offender, opening the way for retaliation.

At the third instance, following the contractual nature, the new members can only be admitted on terms to be agreed upon by two thirds of existing contracting parties (Article- XXXIII).

2.7 GATT's Operational Structure

Basic principles and mechanisms of GATT fell into two inter-related levels. At the first instance, GATT brought together a body of principles. It was an international contractual agreement by which each signatory or Contracting Party committed itself to treat all other signatories according to MFN standard. At the second instance, GATT was a forum where countries negotiated tariff reduction according to legal framework provided by the agreement. The following were the operating features of the GATT;

2.7 (a) Intersessional Procedures

GATT being an agreement lacked a well defined institutional structure. In the early years of its operation, it existed as an entity when major decisions were

taken by CPs. The CPs met almost every six months,²⁷ usually for several weeks, and discussed a wide range of problems including disputes about the implementation of GATT rules. Because of the fiction that GATT was not an organization, there was considerable reluctance at first to delegate any activity even to a 'committee'. Gradually that reluctance faded and the need for a standing body was felt. So an inter-sessional committee called 'Committee for Agenda and International Business' was formed in 1951 to carry out surveillance function.²⁸ The committee met between the sessions of the contracting parties. The function of the committee also included; organizing voting by airmail or telegraphic ballot on issues relating to import restriction justified for the balance of payment reason. This committee was replaced in 1960 by a 'Council of Representatives'²⁹ with broader powers to manage day-to-day activities. The Council had the right to hold regular sessions, over granting of waivers, on application of GATT rules, to accept new members and on general trade policy issues. The Council consisted of representatives of all GATT contracting parties who wished to assume the responsibility of such membership and met almost monthly. Partly because of the formation of this group, but also partly because diplomacy had increasingly become a process of referring to national capitals for instruction and even of voting by telex, the sessions of the CPs as such had been reduced to annual meetings which lasted only for few days. The Council, supervising the many other bodies of the GATT, carried on the ordinary grist of GATT business.

²⁷ Jackson, n. 4, p. 37.

²⁸ Jackson, n. 4, p. 37.

²⁹ Surendra, Bhandari, *World Trade Organization and Developing Countries: Diplomacy to Rule Based System* (New Delhi: Deep and Deep Publications, 2001), p. 2.

2.7 (b) The Secretariat

No secretariat existed for the GATT at the earlier stage. After Havana, however, an Interim Commission for the ITO (ICITO) was set up, in the typical pattern of preparing the way for a new international organization.³⁰ A small staff had assembled to prepare the ground for the ITO, and this staff serviced the needs of the GATT. As years passed and it became clear that the ITO was never to come into being, this staff found all of its time was devoted to the GATT, and it became *de facto* the GATT secretariat (technically as a kind of leased group, whereby the GATT reimbursed the ICITO for the costs of secretariat).³¹

2.7 (c) Parties to the Agreement and Their Accession

Since the GATT was not an organization, it did not have members. The terminology used in the agreement itself is ‘Contracting Party’. Apart from the twenty-three nations, which were original GATT CPs, nations could become GATT Contracting Parties by one of two methods. The normal method was governed by Article XXXIII of GATT and required a two-thirds vote of approval by the existing Contracting Parties for a nation to be accepted into the GATT. A second path to accession also existed, however. Article XXVI (5C) provided that if a parent country has accepted the GATT in respect of a dependent customs territory (such as a colony), and if that customs territory later becomes independent, such territory could become a GATT Contracting Party merely through sponsorship by the parent country.

³⁰ Bernard, M. Hoekman, and Michel, M Kostecki, (ed.) *The Political Economy of World Trading System: WTO and Beyond* (Oxford: Oxford University Press, 2001), p. 38.

³¹ Diebold, n. 5, p. 37.

Participation in GATT was not limited to sovereign nations. The actual GATT language allows a separate customs territory possessing full autonomy in the conduct of its external commercial relations and of other matters provided for in this Agreement to become Contracting Parties. Among the original GATT, CPs were Rhodesia, Nyasaland, Burma and Ceylon, although at the time they were not independent nations.

As for the accession by new states voluntarily, CPs do not obstruct it. The Agreement does not provide for a right to veto to the CPs, so that they may obstruct any state from becoming a party to the Agreement. However, under Article XXXV, they have the power to not accept the new entrant country. As such, in 1955, Japanese accession made 19 countries retain their restrictions on imports.

2.7 (d) Voting Rights:

Irrespective of geographical location, economic size or political system, there was adopted the system of one member / one-vote system. However voting rules varied according to the subject under discussion. The weighted voting technique of IMF and World Bank was not deemed a realistic option. The CPs acting jointly were governed by majority vote on many matters however, in much of GATT business there is a decided preference for 'consensus' approaches. Governed by Article XXX of GATT, amendments to Articles I, II and XXIX of GATT require unanimous acceptance, a situation that has never occurred. Amending the remaining parts of GATT required two – thirds acceptance on the

part of all contracting parties, but such an amendment obligated only those CPs which accept it.

2.7 (e) The Dispute Settlement and Procedures

It is probably fair to say that this mechanism is unique. The central and formal procedures were found in Articles XXII and XXIII of GATT. The first of these simply establishes the right to consult with any other contracting party on matters related to the GATT. Article XXIII is the centerpiece for dispute settlement. Article XXIII (1) *inter alia* provided that if any Contracting Party considers that any benefit is being ‘nullified or impaired’ by another Contracting Party, it can make consultation with that party, in case of not reaching any satisfactory result, it can invoke the multilateral GATT process. This Article envisages three types of complaints- violation complaints, non-violation complaints and situation complaints. Article XXIII (2) contains three kinds of actions by the contracting parties- recommendations, rulings and authorization to suspend obligations. It may be noticed here that these two Articles do not mention the term ‘dispute settlement’. Hence it has made dispute settlement a controversial feature of GATT.

Apart from the above Articles, subsequent decisions and understandings of the CPs were supplemented for settlement of disputes. The first of such decisions is the decision of 5 April 1966 on ‘Procedures under Article XXIII’ (referred as 1966 Rules) applying to disputes between developing contracting party and a developed contracting party. These rules resolve to safeguard both the present and

future potential trade of LDC Contracting Parties and if no satisfactory settlement in regard to any matter falling under Article XXIII (1), the LDC may use the good offices of Director General (DG) to facilitate the solution. The second supplement was the adoption of 'Decision on the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance' and its Annex 'Agreed Description of the Customary Practices of the GATT in the Field of Dispute Settlement' on 28 November 1979 at the conclusion of the Tokyo round. The paragraph 6(iv) of the Annex authorized the panel to set up their own working procedure. Even though no significant changes were made, it indicated that the Contracting Parties were willing to continue with the system as it developed.

Later, the 'Ministerial Decision on Dispute Settlement Procedure of 29 November 1982' was adopted which made a requirement for the CPs to inform the measures taken by it within a reasonable period of time or its reasons for not implementing the recommendations or ruling by the contracting parties. Then the 'Ministerial Decision of 30 November 1984' and further the 'Improvements to the GATT Dispute Settlement Rules and Procedures', decision of 12 April 1989 known as Montreal Rules were incorporated.³² Paragraph G of the Montreal Rules deals with 'Adoption of Panel Reports'. It interalia provided that 'the period from the request under Article XXII:1 or Article XXIII:1 until the council takes a decision on the Panel Report shall not, unless agreed to by the parties, exceed fifteen months. Thus it set out a time frame for settlement of disputes. Paragraph I

³² Rudolf and Eric, Canal-Forgues, "New Developments in the GATT Dispute Settlement Procedure", *Journal of World Trade*, 24 April, 1990, p. 67.

also called on Council for 'Surveillance of Implementation of Recommendations and rulings' for effective resolutions of disputes. Montreal Rules at least tried to carry forward the dispute to the stage of panel providing reasonable time for consultation. It also changed the system of 'positive consensus' to 'negative consensus' to establish a panel whereby decision to not establish a panel rested with the consensus of the council. The rules further provided for terms of reference to the panels, third party participation and time limits, and adoption of the panel reports. These rules may be said to form the basis of the 'Understanding on Rules and procedures governing the settlement of disputes under the WTO'. The procedures followed to settle the disputes have evolved through the four decades of practice into a rather elaborate process. Over the early years, the number of formal complaints brought before GATT panels accelerated, though not as dramatically as in recent times. Between 1948 and 1959, a respectable 53 formal legal complaints were brought before panels which showed the faith in its system at the beginning.

The normal GATT panel consisted of three to five persons, selected from among delegates to the GATT from national trade ministries, as long as these were countries without a direct interest in the dispute at hand. Selection of panel personnel was by the General Secretariat, with the consent of the parties to the conflict. The panels heard arguments, which were presented in oral and written form, both from the parties directly involved, and from any other party with an interest in the matter.

From around 1963 to 1970, the US and the European community (EC) colluded in nearly suppressing the operation of the GATT dispute settlement system, this being known as the period of ‘anti-legalism.’³³ The US and EC actually managed for this period to create a trading climate wherein legal disputes brought before the GATT were seen as ‘unfriendly’ action in the diplomatic meaning of the word. During the 1970s, the dispute resolution system was accordingly revived to some degree, and 32 new disputes were decided under the panel procedure. Not only were the cases increasing in volume as the years of this decade passed, they were also increasing in legal complexity and in significance for a world economy increasingly obsessed with the issues of competitiveness. The bilateral agreements entered outside the purview of GATT also posed a threat to its functioning. The Voluntary Export Restraint (VER) agreement, which was perfected in 1980, according to which an exporting country would agree voluntarily to restrict exports in hope of avoiding some kind of threatened trade sanction. The GATT legality of such agreements was questionable, and danger was posed to GATT system.

The 1980s act as a bridge between the old GATT system, which had become inadequate to the task of managing important disputes, and the World Trade Organization (WTO), which came into being after the eight year long Uruguay Round negotiations, begun in 1986. During this decade, 115 complaints were argued before GATT panels. Yet parties were no longer satisfied with what

³³ Mitsuo, Matsushita and others, *The World Trade Organization, Law, Practice and Policy* (Oxford: Oxford University Press, 2003), p. 27

the system had to offer, and there was widespread questioning of the efficacy of the dispute settlement system. The establishment of the panel to adjudicate the dispute and the adoption of the panel report could be done only by the consensus of the members. Often adoptions of these reports were blocked by the developed countries due to their influence at any stage in the course of dispute settlement.³⁴ This illustrated the concept of positive consensus and bilateral understandings outside the purview of the GATT played a pivotal role in jeopardizing the functions of the dispute settlement. It also shows that the aggrieved parties could legally invoke their domestic laws by successfully blocking the multilateral process. This defect has been later removed since WTO was established. Under WTO, dispute settlement mechanisms occupy a central role in its functioning.

2.8 GATT Trade Negotiation Rounds:

An important but intermittent feature of GATT has been the series of trade negotiating rounds, which it sponsored. Since the establishment of GATT in 1947 to Uruguay Round of 1986, eight trade negotiating rounds were devoted almost exclusively to tariff negotiations. However, during the time of fourth round at the

³⁴ For example (a) in 1988, the US imposed sanctions against imports from Brazil under Super 301 Trade Act of 1974 on the ground that Brazil has failed to give patent protection to the pharmaceutical products produced by the US companies. Brazil filed a complaint against the US stating that their step was GAT-illegal, and requested for dispute settlement panel in this regard. The US blocked the constitution of the panel by using its influence for over six months. The US later lifted the sanction after a bilateral consultation with the Brazil, and (b) in the canned fruit case the US brought a complaint against the EC with respect to their programme of subsidizing the domestic producers. A panel was established regarding this in June 1982. The panel gave its decision in favour of US in 1983. The panel report could not be adopted due to the EC opposition. The US withdrew the GATT agenda after it reached an understanding with the EC April to November in 1947.

'review session' of 1954-55, the GATT CPs separately drafted the protocols

GATT Trade Negotiation Rounds

Table: 2.1

Year	Venue	Contracting Parties	Outcomes
1947	Geneva Round	23	First GATT agreement signed. Tariff reduction item by item was negotiated and concessions on 45000 tariff lines were agreed upon.
1949	Annecy Round	29	Tariff reduction item by item was negotiated and modest tariff reductions on specific products were agreed upon.
1950-51	Torquay Round	32	Tariff reduction item by item was negotiated and on 8700 products reduction of tariff was agreed upon.
1955-56	Geneva Round	33	Tariff reduction item by item was negotiated and modest tariff reduction was agreed upon.
1960-61	Dillion Round	39	Tariff reduced item by item was negotiated. However, proposal by EC for a linear cut in duties on manufactures was not adopted but tariffs were adjusted following the creation of European Economic Community (EEC) in 1957. Around 4400 tariff concessions were exchanged.
1963-67	Kennedy Round	74	Tariff reduced by item-by-item negotiation. Areas of negotiation were non-tariff barriers, antidumping, customs valuation etc. Average tariff reduction of 35% by developed countries was approved. Some 30,000 tariff linear bound agreements on antidumping and customs valuation were reached.
1973-79	Tokyo Round	99	Tariff reduction by item-by-item negotiation. Agreements were reached upon non-tariff measures, anti dumping, subsidies, customs valuation, government procurement, import licensing, product standards, safeguard etc. Average tariff cut of developed countries was reduced to 1/3 rd so as to reach 6% on average for manufactures. The codes of conducts were established for interested GATT members on specific non-tariff measures.
1986-94	Uruguay Round	103 in 1986 and 117 by the end in 1993	Tariff combination of item by item and formula negotiation, non-tariff measures, all Tokyo round issues, plus pre-shipment inspection, trade related investment measures and rules of origin were discussed. New issues included: trade in transparency and surveillance of trade policies. Tariffs of developed countries were reduced by about 1/3 rd on average. Agriculture, textiles and clothing brought into the GATT, WTO was created and most of the Tokyo round codes were enhanced and made part of GATT 1994 which are applicable to all the members of WTO.

Source: Surendra, Bhandari, *World Trade Organization and Developing Countries: Diplomacy to Rule based System* (New Delhi: Deep and Deep Publications, 2001), p. 3-4.

revising non-tariff measure clauses of the agreement. The sixth round namely the 'Kennedy Round' had as one of its goals the negotiation of non-tariff measure obligation, but it succeeded only in a limited way to achieve this goal. The seventh round, the 1973-1979 'Tokyo Round', was more devoted to non-tariff measures than to tariffs.

The overall impact of these results was to substantially broaden the scope of coverage of the GATT system. Through the trade negotiations, GATT tried to fulfill its set objectives of free trade. Trade negotiations carried out the process of trade liberalization. However due to the complexities of issues involved and lack of proper institutional set up, the parties failed to be satisfied by the performance of the GATT.

The initiative to launch a new round of trade negotiation after 'Tokyo Round' was made as early as 1982. 'We have taken a critical step forward in GATT this week, and we have demonstrated to that very large community whose future is bound up with the health of international trade that GATT can and will meet the challenges that face the international trading system.'³⁵ Thus spoke Mr. Felipe Jaramillo, Chairman of the CPs, the decision in November 1985 to establish a preparatory committee to determine the objective, subject matter, modalities and participation of a new round of multilateral trade negotiations. Thus it officially paved the way for the eighth round of multilateral trade negotiations.

³⁵ *GATT Activities 1985- An Annual Review of Work of GATT* (Geneva, 1986), p. 5.

2.9 Reasons for Launching of Uruguay Round (UR)

While the Tokyo Round was a significant achievement in particular in establishing a range of agreements covering non-tariff barriers, there was plenty of unfinished business especially in the crucial areas of safeguards and agriculture. The 38th session of CPs in Geneva of trade ministries in November 1982 provided the substantial basis for new multilateral trade negotiations in the form of a Work Program covering most of the outstanding areas of difficulty in international trade policies that sowed seeds for UR.³⁶ This Work Program proved impossible in late 1985 to obtain concrete negotiations on many issues.³⁷ Meanwhile, The US and Japan argued that the GATT needed to update to cope with trading world of 1980s and further progress in 1982 “Work Programme” would only be possible in the context of a comprehensive round.³⁸ Later, at the session of CPs in November 1984, GATT developing countries made a joint statement emphasizing their commitment to preserving and strengthening the multilateral trading system and calling upon developed countries to implement existing commitments and aspects of ‘Work Programme’ and argued without such action a new round could not have credibility. They even argued that GATT was not competent to deal with services in which debate continued throughout 1985.

³⁶ Institute of Company Secretaries of India, *World Trade Organization: International Trade: Joint Ventures and Foreign Collaborations* (New Delhi: Institute of Company Secretaries of India, 2003), p. 9.

³⁷ *GATT Activities 1985*, n. 35, p. 7.

³⁸ *GATT Activities 1985*, n. 35, p. 7.

2.10 Origin of Uruguay Round

The decision by European Communities in March 1985, to support the initiatives for a round was followed closely by a similar decision by the countries of EFTA.³⁹ During this time, the publication of 'Leutwiler Report' titled 'Trade Policies for a Better Future', in the same month carried by an independent group pointed out the extent of the erosion of the GATT rules and the urgent need for action at national and international levels to find remedies and to restore the credibility of trade rules, came as immediate reasons for the launching of UR. The report proposed a program of action which was later discussed in the GATT council and Consultative Group of Eighteen (CGE). It needs to be stressed that all the three meetings of CGE were aimed at strengthening GATT in 1985. In the same year in June GATT Council took the debate of multilateral trade negotiations where the developing countries expressed the concern of promotion of 'new themes alien to the jurisdictional competence of GATT' and at apparent blockage of work related to 1982 ministerial mandate. By July, European Communities with many developed and developing countries proposed papers outlining the aim and objectives of a new trade round. Subsequently, US asked chairman of the CPs to convene a special session of CPs in September 1985. As such, the meeting took place between 30 September to 2 October, where preparatory process for new round was launched with establishment of group of senior officials charged with examining subject matter and modalities of proposed negotiations. Later, the senior group officials met for total eight days in mid October to early November. This session gave permission of preparation of new

³⁹ *GATT Activities 1985*, n. 35, p. 8.

round. The CPs decided that a 'Preparatory Committee' would be established to determine the objective, subject matter, modalities for and participation in multilateral trade negotiations taking into account the elements of 1982 Ministerial World Programme and views of groups of senior officials. The Preparatory Committee would be open to any CP or country, which has acceded to GATT. The Preparatory Committee will prepare by mid July 1986 recommendations for program negotiation for adoption at a ministerial meeting to be held on 1st September 1986.

The Preparatory Committee under the chairmanship of Mr. Arthur Dunkel, the then Director – General of GATT began its work in January 1986. The Preparatory Committee addressed mainly these areas; general objectives of the Round, 1982 work programme incorporation, handling of trade in service and trade in intellectual property rights, and finally position of less developed countries.

2. 11 Punta del Este Meeting and Ministerial Declaration

One Thousand and Two Hundred delegates attended the Punta del Este meeting from 78 countries, which started on 15 September 1986. Mr. Enrique Iglesias, the then Foreign Minister of Uruguay, chaired the meeting. He stressed the need for fullest freedom in international trade for developing countries to develop. In his words "closed trade, a world compartmentalized into blocs behind protectionist walls is a world in which countries like ours find it difficult to

develop. Only the wind of freedom wafting through the trade system and more equitable conditions can genuinely enable countries like ours to grow.”⁴⁰

The Ministerial Declaration of 20 September 1986 decided to launch a multilateral trade negotiation to be concluded within four years, which would be open to all participating countries. It also established a Trade Negotiation Committee (TNC) to carry out negotiations, to decide on appropriate mechanism to carry out reviews and evaluations. The developing countries initiated to incorporate textile and clothing in the trade negotiations. For the first time, from the developed countries side demand was kept to incorporate agriculture, intellectual property rights and investment measures related to trade in trade negotiation. Apart from “Group of Negotiation on Goods” (GNG), a ‘Group of Negotiation on Services (GNS) was set up to report on services to the TNC. Besides, these two committees the other committees which were in existence under Tokyo Round started to function more vigorously like the Committee on Tariff Concessions, Committee on Anti dumping Practices, Committee on Subsidies and Counter Vailing Measures, Committee on Government Procurement, Committee on Customs Valuation, Committee on Import Licensing and so on.

It was agreed by the participating members to complete the UR by December 1990 when the trade ministers met in Brussels. Due to dissatisfaction of developing countries in the results, agreements were not reached in the new areas to be included, such as agriculture, subsidies, textiles, intellectual property

⁴⁰ *GATT Activities 1986- An Annual Review of Work of GATT* (Geneva, June, 1987), p. 8.

rights, anti dumping etc. On the other hand, conflicts existed between the US and EU on agricultural issue. So the time limit had to be extended for the conclusion of the U.R. In November 1992, the EU and US settled most of their differences on agriculture in a deal known informally as the 'Blair House Record'.⁴¹ By July 1993 the 'Quad' announced significant progress in negotiations on tariffs and related subjects. Mr. Dunkel, submitted a report on December 15, 1993 covering comprehensively the whole text of Agreements called the 'Dunkel Draft', (later ratified by the Marrakesh Ministerial conference).

2.12 Marrakesh Ministerial Declaration:

For the first time in the history of GATT, UR adopted a 'package approach' to the negotiation. The package approach, it was envisaged, would enable the participants to seek and secure advantages across a wide range of issues-concession given in one area may bring in benefits in other areas. In Marrakesh, 177 ministers signed the Final Act establishing the World Trade Organization (WTO) and embodying the results of the Uruguay Round. The Final Act comprises 28 new Agreements of 22,000 pages with already existing GATT and finally establishing World Trade Organization. The WTO derives its authority from two sources: (a) the legal text itself i.e. the 'covered agreements' which is governed by the dispute settlement understanding recognized by the states, and (b) the reports of prior panels and appellate body which may be either adopted or un adopted.⁴²

⁴¹ Institute of Company Secretaries of India, n. 36, p. 35.

⁴² David, Maurob, and Palmeter, "WTO Legal System", *American Journal of International Law*, vol. 92(3), July 1998, p. 399.

2.13 New Areas Incorporated into UR:

The Uruguay Round Agreements are to be studied in sectoral isolation as each and every agreement has been negotiated separately establishing its own set of agreement, which are independent by themselves. To understand the Uruguay Round Agreements, it is first necessary to understand the negotiating postures of the key participants and alliance groupings from the old GATT. The wealthier developed countries shared a view that the newer areas of trade were not covered under the old GATT rules. They were forced to maintain open markets, and to absorb the export drive of the newly industrialized world in early 1970. Sectors of greatest trade interest to them were simply not addressed in the existing GATT system like intellectual property rights, trade related investment measures etc.

The Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) was of key significance to the developed countries. Their position was that penetration of newly industrialized country markets was severely restricted by the practice of those countries in copying research-intensive products without paying the costs of intellectual property rights. Developing countries opposed restrictions on technology transfer and adaptation of new technical knowledge to prevent developed countries lead in this area, as temporary monopoly, increase in profits and real wages are greater than the cost of rate of innovation. The technology transfer induced in developing countries by exports, direct investment or issue of licenses results in competition through imitation subsequently breaking up innovators technological monopoly. It further results in increase in real wages in developing countries. The implementation period to enforce TRIPS agreement

for developed countries was one year, for developing countries five years and for LDCs 11 years.

The Agreement on Agriculture was the first true step in creating a world “free market” in primary products – a matter that troubled the old GATT throughout its history. The developed countries were given six years time period for its implementation, with 10 years for developing countries and LDCs were given exemptions from the obligation. The Non Tariff Barriers (NTB) were converted to tariff barriers and were reduced by 36% and 24% for developed and developing countries respectively. The domestic subsidies were limited and reduced i.e. ‘Aggregate Measurement of Support’ by 20% and 13.3% for developed and developing countries respectively and for EU its 16.8%⁴³. Few fields were exceptions in which subsidies were allowed like in research, infrastructure, and in environment. Export subsidies were reduced by 36% and 24% and subsidized export volumes were reduced by 21% and 14% for developed and developing countries respectively.⁴⁴ However right to WTO members were given to determine the safety and health standards in agriculture at their own discretion with solid scientific evidence and based on universal international standards.

The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) and the Agreement on Technical Barriers to Trade (TBT) created

⁴³ Hans, Eckart Scharrer and George, Koopmann, “International Trade after the Uruguay Round of the GATT”, *Economics*, vol. 52, 1995, p. 26.

⁴⁴ *Ibid*, p. 26.

clear standards for determining whether or not a member country's environmental or technical standards posed unlawful impediment to global trade.

The General Agreement on Trade in Services (GATS) is of special importance as both India and Brazil raised skepticism over the trade in services and opposed its inclusion. This is substantiated by Justice Bhagwati's argument that the terms of trade effect will predominate over growth effect and the liberalization of services may have a welfare reducing effect which he calls 'immiserising growth scenario'.⁴⁵ He argues for infant industry protection in services for developing countries. The scope of services includes four modes of service provisions. These includes; (a) services provided from territory of one country in territory of another country, i.e. the movement of services (for example; transport services), (b) services provided in territory of one country to users of some other country (for example; tourism), (c) services provided with presence of a subject of one country in the territory of another country (for example; banking). This implies granting the right to establish a foreign commercial presence in domestic market, and (d) services provided by citizens of one country in the territory of some other member country (for example; contractual workers, consulting etc).⁴⁶ Totally 120 kinds of services were adopted under this Agreement in the Uruguay Round. Since expanding trade in services had also become of central economic concern to developed countries, the march of globalization clearly proceeded in part on the basis of hope for greater access to service markets in the rest of the world.

⁴⁵ Dieter, Bender, "The Developing Countries in the new WTO", *Economics*, vol. 55/56, 1997, p. 23.

⁴⁶ Aneta, Dermanovic, "World Trade Organization", *Review of International Affairs*, vol. 50, no. 1082- 83, July- August 1999, p. 10

One sector of trade in which developing countries were indisputably granted a major Uruguay Round benefit was in textiles. The Agreement on Textiles and Clothing (ATC) came into force completely in over a period of ten years replacing the traditionally “managed” forms of textile trade, thus guaranteeing that this labor-intensive industrial production which will shift almost completely in that period to the developing world. In some ways, it could be said that the Uruguay Round Agreements reflect traditional notions of comparative advantage.

Seen in the aggregate, the Uruguay Round Agreements represent a fundamentally changed ethos at the level of the global trading regime. In the case of each agreement, previously available modes of unilateral national protection are made far more difficult. Opportunities to protect vulnerable national constituencies, to protect the farm sector, to subsidize, to invoke environmental reasons for restricting imports, and finally to decide that emergency action is required – each of these means of traditional protectionism has become far more costly and difficult. The two other groups of agreement not included are also important: the agreement on trade policy reviews and the two plurilateral agreements not signed by all members: civil aircraft and government procurement.

2.14 Establishment of WTO

The WTO was established on January 1995 as per the UR agreements. The WTO builds upon the organizational structure of the GATT and its secretariat

to a significant extent. It formalizes and extends the structure that had gradually evolved over a period of some 50 years. The Punta del Este Ministerial Declaration launching UR originally did not call for the creation of a WTO. In principle, it was not necessary to create an international organization to implement the outcome of the negotiation. The EU subsequently supported the Canadian suggestion to create a multilateral trade organization that would cover the GATT, the GATS and others multilateral instruments covered in the UR in 1990. This would encompass the modified GATT, its sister bodies on services (GATS) and intellectual property (TRIPS) as well as all other agreements and arrangements concluded under the auspices of the UR.

The US was the 37th nation to ratify WTO. The senate approved 76-24 after the ratification by House of Representatives. The Director General of the WTO Sutherland applauding US stated that, US being a leader in the field of international cooperation has joined the treaty, without which the institution would have lacked credibility.⁴⁷ Unlike the President Truman, Clinton administration mustered the support of the former Presidents Gerald Ford, Jimmy Carter and George Bush. Ford went to the extent of saying, 'without UR sweeping changes, we condemn ourselves to a lawless international jungle where trade conflicts multiply'.⁴⁸ Even the business groups welcomed the WTO arrangement. Joe Gavin (Director for trade policy with the US Council for International business, a key element in a decade long negotiation) said, "This is the most

⁴⁷ Vipani, Seth, "Trade Tussle: GATT and US Approval", *Frontline*, vol. 12, no. 1, 31 December 1994- 13 January 1995, p. 53.

⁴⁸ *Ibid*, p. 54.

important vote on a trade policy issue that the Congress has been asked to take since the passage of Reciprocal Trade Agreement Act of 1934”.⁴⁹

The WTO builds on the organizational construction of the GATT and its secretariat. It has formalized and extended the structure of the GATT that had the record of over 50 years. As stated earlier, the developed country suggestion (Canadian Suggestion) of a Multilateral Trade Organization in 1990 was subsequently accepted by other nations and was supported by the European Union (EU). Croome claims that this desire was motivated to create a single institutional framework for world trade.⁵⁰ (However it should be remembered that in 1947 an effort was taken to form an organization for international trade). This included the existing GATT, GATS, TRIPS, TRIMS and other agreements and arrangements reached on conclusion of UR of talks. However it should be remembered that according to Wilber, US did not accept to enter into an organization for trade as it thought that its national sovereignty might be jeopardized far back in 1947 itself, when efforts were made to establish ITO. Over the years, the US stance has gradually changed, it is probably not because it has compromised on its sovereignty but due to the emerging need for an organization to regulate and monitor international trade. This need was felt undoubtedly due to the emerging compulsions in international trade like, expansion of trade beyond goods sector⁵¹, trade in agriculture and textiles⁵² remained outside the GATT purview, relative

⁴⁹ *Ibid*, p. 55.

⁵⁰ John, Croome, *Reshaping the World Trading System: A Study of Uruguay Round* (Geneva: WTO, 1995), pp. 43.

⁵¹ Only goods sector was under the purview of the GATT agreements.

⁵² The Multi-Fiber Agreement (MFA) of 1974 regulated trade in textiles.

weakness and ineffective dispute settlement mechanism to the growing complexities of issues and areas in international trade and so on.

Since GATT came into being, attempts were made periodically to put it on a more organizational footing. As already explained, the very first attempt to create ITO to regulate international trade was obstructed by US Congress by not ratifying it. During the 1955 meeting, this was meant to review the GATT, a number of contracting parties proposed to establish an Organization for Trade Cooperation (OTC). This proposal was much less elaborate than the ITO but it also failed to get the approval of US congress again. The issue of providing an institutional framework for international trade reappeared again in the UN Economic and Social Council (ECOSOC) in 1963. The idea was that this body would implement the recommendations of UNCTAD as well as other relevant policy decisions taken by UN and its organs. This proposal failed to impress the developed nations of the world at that point of time and hence found its own demise. However in 1964 the UN General Assembly Resolution establishing UNCTAD provided that it should be concerned with the matters relating to the elaboration of a comprehensive trade organization.⁵³ After which no concrete efforts were made towards building an organization for trade. With the setting up of WTO, an international trade organization emerged that is firmly based on the GATT principles - reciprocity and non-discrimination.

⁵³ Hoekman, and Kostecki, n. 30, p. 50.

1.15 The Difference between the GATT and the WTO

The WTO is not a simple extension of the GATT; rather it completely replaces its predecessor and has a very different character. The few principal differences are; (a) the GATT was a set of rules, a multilateral agreement, with no institutional foundation, only a small associated secretariat which had its origins in an attempt to establish ITO in the 1940s. The WTO is a permanent institution with its own secretariat, (b) the GATT rules applied to trade only in merchandise goods. In addition to goods WTO covers trade in services and trade related aspects of intellectual property rights, (c) while GATT was a multilateral instrument, by 1980s many new agreements had been added of a plurilateral, and therefore selective in nature. The agreements which constitute the WTO are almost multilateral and permanent thus involving commitments for the entire membership, and (d) the WTO dispute settlement system is faster, more automatic, and thus much less susceptible to blockages, than the old GATT system. The implementation of WTO dispute findings will also be more assured, and finally (e) the WTO has members. The GATT had contracting parties, underscoring the fact that officially GATT was a legal text.⁵⁴

At the end it is clear that the establishment of WTO is not at a single instance as in case IMF or World Bank rather it had to wait nearly fifty years to have its present shape. Many organizational structures it possesses are established prior to its birth which had evolved along with GATT 1947; few were established

⁵⁴ Institute of Company Secretaries of India, n. 36, p. 10.

during the UR negotiations and few afterwards. Even the structures that took birth are issue based like the Council for Trade in Goods, the Council for Trade in Services and the Council for Trade Related Aspects of Intellectual Property Rights that deal with the respective field ascribed to it and it is governed by respective agreements. However, WTO united various set of agreements to be governed by a stronger DSM and brought them under a common umbrella of rules that regulate international trade.

Chapter III

Structural Aspects of WTO

The Agreement Establishing the WTO creates ‘an integrated, more viable and durable multilateral trading system encompassing the GATT, the results of past liberalization efforts and all of results of UR of multilateral trade negotiation’ so clearly lacking in the pre-1995 GATT system.¹ With this agreement, all participating countries were obliged to accept the WTO, all the multilateral trade instruments (the Uruguay Round Agreements) appended to the WTO Agreement, and the GATT Agreement. (The PPA, of course, is now obsolete). The activities of the World Trade Organization, abstract as they are, are fully described in the Agreement establishing the WTO: to provide a forum for negotiations to administer the DSU, and to co-operate with the other major institutions of global economic governance – the IMF and World Bank.

The Ministerial Conference of all members is to meet at least every two years; the General Council, also composed of representatives of all the members, is to meet “as appropriate” to carry out functions, the Ministerial Conference may be unable to carry out. The General Council must convene as required to discharge its function as the DSB, a change that allows the members to give legal effect to rulings of the Panels and Appellate Body. There are more specialized councils created to oversee the functioning of the various sectors of trade- in goods, services, intellectual property matters, and so forth. The agreement formally establishes a WTO Secretariat and an office of Director General. The WTO continues the GATT practice of “decision-making by consensus”. Where

¹ *WTO Agreement*, Preamble, Para. 4.

decision cannot be arrived at by consensus, the matter in question must be decided by majority voting.

3.1 The Legal Framework

The Marrakech Agreement establishing the WTO charges the organization with providing the common institutional framework for the conduct of trade relations among its members in matters for which agreements and associated legal obligations apply.² Four Annexes to the WTO define the substantive rights and obligations of members. Annex 1 has three parts: Annex 1.A entitled 'Multilateral Agreements on Trade in Goods,' contains the GATT 1994. Annex 1.B contains the GATS and Annex 1.C contains the agreement on TRIPS. Annex 2 contains the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). Annex 3 contains the Trade Policy Review Mechanism (TPRM), an instrument for surveillance of member's trade policies. Finally the Annex 4 entitled Plurilateral Trade agreements consists of Tokyo Round Codes that were not multilateralized in the UR and therefore they bind only on the member nations, which sign them. Together, Annexes 1-3 embody the Multilateral Trade Agreements.³

² *Article II (1)*: The WTO shall provide the common institutional framework for the conduct of trade relations among its Members in matters related to the agreements and associated legal instruments included in the Annexes to this Agreement.

³ *Article II (2)*: The agreements and associated legal instruments included in Annexes 1, 2 and 3 (herein after referred to as "Multilateral Trade Agreements") are integral parts of this Agreement, binding on all Members.

3.2 The Hierarchy of the Structure

The WTO is headed by a Ministerial Conference, (see chart:1) which includes the members of the organization who meet at least once in every two years-, which is the highest decision making authority of the structure.⁴ So more frequent participation of the trade ministers is possible under the WTO regime, whereas in old GATT regime, a decade could pass between the ministerial meetings. Between the meetings of the Ministerial Conference, which is responsible for carrying out the functions of WTO- the organization is managed by a General Council next to the Ministerial Conference at the official level.⁵ The general Council meets monthly, i.e. 12 times a year. The General Council shall also carry out the functions assigned to it by the Ministerial Conference. On average, some 70% of the total members take part in the Council meetings, usually by delegations represented in Geneva. The General Council itself, as needed, turns into the Dispute Settlement Body⁶ (DSB) to adjudicate trade

⁴ *Article III (2)*: The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference, *and Article IV (1)*: There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

⁵ *Article IV (2)*: There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council.

⁶ *Article IV (3)*: The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure, as it deems necessary for the fulfillment of those responsibilities.

disputes according to the provisions established and modifies itself into the Trade Policy Review Body (TPRB)⁷ to review trade policies of the member countries.

Three subsidiary councils operate under the general guidance of the General Council: the Council for Trade in Goods, The Council for Trade in Services and the Council for Trade Related Aspects of Intellectual Property Rights. Additional committees or working parties are established to deal with matters covered under the GATT, GATS and TRIPS agreement. Committees working under the auspicious of Council for Trade in Goods includes on subjects like subsidies, antidumping and countervailing measures, technical barriers to trade (product standards), import licensing, customs valuation, market access, agriculture, sanitary and phytosanitary measures, trade related investment measures, rules of origin and safeguards. Similarly, specific committees address matters relating to the Council for Trade in Services like which deal with trade in financial services and on specific commitments. Similar committees also exist under the council for Trade Related Aspects of Intellectual Property Rights.

Apart from which, there are separate committees dealing with different subjects like; surveillance of trade restrictions taken for balance of payment purpose; surveillance on regional trade agreements; trade environment linkages; WTO's finance and administration and finally there is Committee on Trade and

⁷ *Article IV (4)*: The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review Body may have its own chairman and shall establish such rules of procedure, as it deems necessary for the fulfillment of those responsibilities.

Development that deals with the interests of developing countries which includes a sub committee for least developed countries (*Sub- Committee on Least Developed Countries*). These are directly accountable to the General Council. In addition, working groups have been established to deal with notifications, pre-shipment inspection, and state-trading enterprises and to study the relationship between trade and investment, between trade and competition policy, the issue of transparency in government procurement, 'trade, debt and finance' and 'trade and technology transfer'. Committees also exist to administer the 'Plurilateral Agreements'⁸ that applies to only those members who are the signatories- that deals with trade in civil aircraft and government procurement. The Information Technology Agreement Committee is also been added into the plurilateral agreement. Given their nature, these are not under the guidance of the General Council but operate within the general framework of the WTO system and inform their activities to the General Council.

There also exists a separate body to deal with trade in textiles labeled as the Textile Monitoring Body (TMB). A separate working party exists to deal with the matters relating to the membership accessions. Specific working parties are established to overview the domestic regulation of the member countries and the GATS rules. All the members may participate in all the councils, committees, and so forth, except the Appellate body, Dispute Settlement Panels, The Textiles

⁸ *Article IV (8)*: The bodies provided for under the Plurilateral Trade Agreements shall carry out the functions assigned to them under those Agreements and shall operate within the institutional framework of the WTO. These bodies shall keep the General Council informed of their activities on a regular basis.

Monitoring Body and the committees dealing with the Plurilateral Agreements.⁹ Some 40 councils, committees, subcommittees, bodies, and standing groups or working parties functioned under the WTO auspices in 2000- more than twice the number in the GATT regime.¹⁰ Even though such bodies are open to all the members, developing countries participation is minimal but the participation of major trading partners of the world is appreciable. Participation represents the mixture of national interests and resource constraints. Least Developed Countries (LDCs) in particular tends not to be represented at these meetings- often not having a delegation placed at Geneva.

All of these put together with the inclusion of working parties on accession, dispute settlement panels, meetings of regional groups, heads of delegations, and numerous *ad hoc* and informal groups added up to 1200 events a year at the headquarters. Most of the businesses are conducted in English, but few official meetings require the knowledge of French and Spanish interpretation.

3.3 The Background of the Evolution of the Structure

Tokyo Round of Agreements and Arrangements have had a greater impact on the evolution of the structural aspect of WTO than any other round of negotiations under the auspicious of the GATT 1947. As such many arrangements and agreements of Tokyo round negotiations are still part and parcel of WTO. One change is that in contrast to the Tokyo Round, which had limited

⁹ www.wto.org.

¹⁰ Bernard, M. Hoekman and Michel, M. Kostecki, *The Political Economy of World Trading System: The WTO and Beyond* (Oxford: Oxford University Press, 2001), p. 53.

membership, new WTO Agreements on Anti-Dumping Practices, Customs Evaluation, Import Licensing, Subsidies and countervailing Measures and Technical Barriers to Trade apply to all members. Apart from the above, the Tokyo round agreements on Civil Aircraft and Government Procurement are incorporated into Plurilateral Agreement in the Annex VI of WTO. The crux of the evolution of these agreements which formed the different wings of WTO through years is as follows;

3.4 Anti- Dumping Practices

The Tokyo Round Agreement on Anti- dumping Practices that came into force on 1 January 1980 interpreted Article VI of the GATT 1947 in such a way it set out the conditions for the affected countries to imposing anti-dumping duties against the injurious dumped imports. Dumped products are those sold to an importer at a price lower than that charged by the producer of the domestic market. They were 26 parties to this agreement in 1994 (considering EU as one). With the establishment of WTO all became the members of the new 'Committee on Anti- Dumping Practices'. Tokyo Agreement on Anti-Dumping practices were agreed to be terminated at the end of 1995 and thus came to end. However transitional provisions were established until the end of 1996 for unresolved disputes. In December 1994 Committee adopted a decision providing for continued operation of Agreement along its WTO counterpart till the end of year 1995. The agreement says member countries to inform the committee about

preliminary and final anti dumping actions and report all investigations twice a year.¹¹

3.5 Subsidies and Countervailing Measures

The 'Agreement on the Interpretation and Application of Article VI, XVI and XXIII' of the GATT 1947, which is generally known as 'Subsidies Agreement' came into force on 1 January 1980. The Agreement building on Article XVI of the GATT 1947 provided certain rules regarding the provisions of subsidies by the signatories. It also set out certain substantive and procedural requirements for the conduct by the signatories of the countervailing duty investigations. Countervailing measures are the duties under appropriate circumstances countries can impose on subsidized imports, which cause or threaten to cause material injury to a domestic industry. The Agreement further provided a mechanism for surveillance and dispute settlement with respect to subsidies and countervailing measures.¹² With the establishment of WTO, the new 'Committee on Subsidies and Countervailing Measures' of WTO had replaced the then existing 'Committee on Subsidies and Countervailing Measures'.

However the Tokyo Round Committee existed till the end of 1995 because in December 1994 the Committee had adopted a decision providing for continued operation of the agreement alongside its WTO counterpart. It also decided that the Committee to exist until the end of 1996 for dealing with any disputes related to

¹¹ Institute of Company Secretaries of India, *World Trade Organization: International Trade: Joint Ventures and Foreign Collaborations* (New Delhi: Institute of Company Secretaries of India, 2003), p. 54.

¹² Institute of Company Secretaries of India, n. 11, p. 54.

already existed investigations or review not subject to its counterpart in WTO's Agreement.

3.6 Technical Barriers to Trade

The 'Agreements on Technical Barriers to Trade' came into force from 1 January 1980. This agreement aimed at ensuring that activities relating to the standard testing and certification of product do not create unnecessary barriers to trade.¹³ Signatories were required to notify draft technical regulations, which were covered by provisions of the agreement. By the end of 1994 there were 44 signatories and 23 nations had observer status. With WTO coming into force the new 'Committee on Technical Barriers To Trade' replaced the old 'Committee On Technical Barriers To Trade'.

3.7 Customs Valuation

The 'Agreement on Implementation of Article VII of the GATT 1947' came into force on 1 January 1980 as per the Tokyo Round results. The 'Customs Valuation Agreement' sought to replace many different national valuation systems in force at that time with a set of straightforward rules that provided for a fair, uniform and neutral system and precluded the use of arbitrary or fictitious values. The agreement gave greater precision to the provisions on customs valuation already found in the GATT and had led to wide spread harmonization of valuation systems and greater predictability in duties payable by traders. The

¹³ *WTO Annual Report 2001* (Geneva: WTO, 2001), p. 66.

agreement was terminated on 1 January 1996. The WTO Committee replaced it. The signatories were to ensure that their laws, regulations and the administrative procedures conform to the provisions of the agreement and were required to inform the Committee on Customs Valuation of any changes in this regard. Such notifications were subject to examination in the committee, which has a role to play in the area of conciliation and settlement of disputes. Developing countries were allowed to delay applications of the old agreement for period not exceeding five years.

3.8 Import Licensing

The Agreement on Import Licensing came into the force on 1 January 1980 and was terminated on 1 January 1996. The old agreement ensured that the licensing procedure do not in themselves restrict imports. By signing the agreement the government committed themselves to using simple import licensing procedure and to administering them in a neutral and nondiscriminatory way. To these end signatories submitted details of their national procedures and laws, which were then examined by overseeing 'Committee on Import Licensing'.

3.9 Plurilaterals of Tokyo Round:

(a) Government Procurement

In most countries, the government and the agencies it controls are, together the biggest purchasers of the goods of all kinds, ranging from basic commodities to high technology equipment. The 'Agreement on Government

Procurement', of the Tokyo Round came into force on 1 January 1981.¹⁴ The purpose was to increase and promote international competition in this sector. At the end of year 1994 there were 12 signatories to the agreement with 38 members given observer status.

The agreement sought to increase transparency in laws, regulations, procedures and practices in government procurement and to ensure that they do not serve to protect domestic products and suppliers from international competition or discriminate among foreign suppliers or products. It contained detailed rules on the way in which tenders were to be invited and awarded.

In the UR, the negotiations were aimed at improving, broadening and expanding agreement based on Article IX: 6(b). An 'Informal Working Group' concluded the agreement relating to government procurement in parallel with the UR agreements on 15 December 1993. The outcome of the agreement opened up international competition in over government purchases worth several billion dollars each year. It for the first time covered services, procurement at the sub central level (examples: states, provinces, departments and pre-fectures) and procurement by public utilities. The new agreement expanded ten-fold times more than the earlier code. Eleven members had signed the new agreement on 15 April 1994. At the end of 2004 there were 16 parties to the agreement, with 12 countries at the various stages of accession process.

¹⁴ Institute of Company Secretaries of India, n. 11, p. 58-59.

In 1994 an Interim Committee was established for preparing of the base work for the new agreement, which was expected to come into force on 1 January 1995. This adopted procedures to allow accession negotiation prior to the date of entry o new agreement. Interim committee also started a review for use of Information Technology in government procurement during preparation for the responsibilities to the 'Committee on Government Procurement' under the new agreement under the article XXIV: 8. It also established a working group on statistical reporting. Presently this agreement comes under the plurilateral agreements of WTO.

(b) Civil Aircraft

The 'Agreement on Civil Aircraft' came into force on 1 January 1980 as per the results of the Tokyo Rounds.¹⁵ It was only the sectoral agreement covering manufactures. It eliminated import duties on civil aircraft and bulk of aircraft parts. It applies to all civil aircraft, all other parts, components and all ground flight simulators and their parts ad components. By the end of 1994 it had 22 signatories. The 'Committee on Civil Aircraft' met thrice for its review in month of February, October and November 1994 and finalized its accommodation under Plurilateral Agreements in annex 4 of WTO. At the end of 2004 there were 30 members with 26 members having observer status to the agreement. The Agreement eliminates all customs duties and other charges on imports of civil aircraft products and repairs, binds them at zero level, and requires the adoption

¹⁵ *WTO Annual Report 2000* (Geneva: WTO, 2000), p. 83.

or adaptation of end-use customs administration. The Agreement prohibits signatories from requiring, or exerting pressure on, purchasers to procure civil aircraft from a particular source, and provides that purchasers of civil aircraft products should be free to select suppliers on the basis of commercial and technical factors only. The Agreement regulates signatories' participation in, or support for, civil aircraft programmes, and prohibits signatories from requiring or encouraging sub-national entities or non-governmental bodies to take actions inconsistent with its provisions. However, only the above two Plurilaterals sustained but Bovine meat and the Dairy products agreements of the Tokyo Rounds were terminated in 1997.¹⁶

3.10 Tariff Concessions

At the 'Implementation Conference' in December 1994, a decision was reached that the 'Committee on Tariff Concessions' should co-ordinate activities with the 'Committee on Market Access' that is to be established under the WTO Council of goods from 1 January 1995. In addition to tariff issues, the term of reference of WTO's Committee on Market Access include also activities related to non-tariff measures and operation of the Integrated Data Base.

3.11 State Trading Enterprises

Although state trading activities are governed by rules set forth in GATT Agreement 1994, the issue of the state trading attracted little attention or activity

¹⁶ Institute of Company Secretaries of India, n. 11, p. 58.

within the GATT before the UR. This was due to the uncertainty over coverage of the article XVII, as well as absence of a standing body to review required notification on CP's state trading activities. Recognizing the need for more effective means of addressing the state trading issues, negotiations on state trading were held during the UR. These negotiations resulted in creation for an 'Understanding on Interpretation of Article XVII of the GATT 1994'. This new understanding makes two important contributions. Firstly, it established a working definition of state trading enterprise; secondly it mandates the creation of a 'Working Party' on state trading. The Working Party which met in April and November was charged with three tasks i.e. of regularly reviewing members (article XVII notification, reviewing the existing questionnaire on state trading which has been in use since 1960 and to develop an illustrative list of showing the kinds of relationship between governments and enterprises and activities engaged in, by these enterprises that may be relevant for the purpose of article XVII. These various understandings (referred as Tokyo codes) reached during the Tokyo round were later on incorporated into the WTO agreements. Apart from these arrangements of Tokyo round, other structures also were in existence. Such as;

3.12 Committee on Trade and Environment

The trade and environment debate is not new. The link between trade and environmental protection, consisting of both the impact of environmental policies on trade, as well as the impact of trade on the environment, was recognized as early as 1970. The interface between trade, environment and sustainable

development continued to provide a main focus of activity for GATT members throughout 1994, especially after the ministers signed the Final Act of UR in Marrakesh on 15 April 1994 and adopted a decision calling for the establishment of a WTO Committee on Trade and Environment and a detailed work programme for the committee. The committee was “to identify the relationship between the trade measures and environmental measures in order to promote sustainable development” and “to make appropriate recommendations on whether any modifications of the provisions of the multilateral trading system are required, compatible with the open, equitable and non-discriminatory nature of the system”. Provided with a broad based mandate covering all areas of the multilateral trading system- goods, services and intellectual property rights, the committees work programme was built on the progress already achieved by the GATT Group on Environmental Measures and International Trade and the work related to the UN Conference on Environment and Development (UNCED).

As the entry into force of WTO was pending to 1 January 1995, a Sub-Committee on Trade and Environment was established by the Marrakesh Ministerial Conference to carry out work on trade and environment under the authority of Preparatory Committee of WTO. The Sub- Committee was chaired by Ambassador Luiz Felipe Lampreia of Brazil and began its meetings in May 1994. The Sub- Committee held several meetings, of which the meeting held at the end of November 1994 is important where it examined the item 6 of the work programme- the effect of the environmental measures on market access,

especially in relation to developing countries and least developed countries and the environmental benefits of removing trade restrictions and distortions. In the same year the chairman of the Sub- Committee held informal consultations with eleven¹⁷ intergovernmental organizations to discuss how the Sub-Committee and the WTO Committee on Trade and Environment can provide input in respect of appropriate arrangements for relations with the inter-governmental and non-governmental organizations referred to in 'Article V'¹⁸ of the WTO Agreement. After the establishment of WTO, the first meeting of the General Council was held on 31 January 1995, which established the WTO Committee on Trade and Environment. Ambassador Juan Carlos Sanchez Arnau of Argentina chaired the committee being open to all members. The committee held its first meeting on 16 February and carried the work of the Sub- Committee. Since December 1996 it has met approximately three times a year. It has held a number of information sessions with MEA secretariats to deepen Members' understanding of the relationship between MEAs and WTO rules, and organized a number of public symposia for non-governmental organizations (NGOs). In November 2001, at the Doha Ministerial Conference, it was agreed to launch negotiations on certain issues related to trade and environment. The CTE was also requested to give particular attention to three items of its work programme;

¹⁷ The eleven intergovernmental organizations included: UN, UNEP, FAO, ITC, UNDP, OECD, EFTA, and the Commission on Sustainable Development, IMF, UNCTAD and the World Bank.

¹⁸ *Article V (1)*: The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.

(2) The General Council may make appropriate arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

1. The effect of environmental measures on market access and the win-win situations
2. The relevant provisions of the TRIPS Agreement
3. Labeling requirements for environmental purposes.¹⁹

In addition, the CTE and the Committee on Trade and Development were asked to act as a forum in which the environmental and developmental aspects of the negotiations launched at Doha could be debated.

3.13 Regional Trading Arrangements

Regional trading arrangements are by large examined on the basis of article XXIV, which sets out the criteria for establishing customs unions and free trade areas. In essence, the agreements should not have the effect of reinforcing or raising new barriers to the trade of third countries: and they are supposed to cover substantially all trade among the participants. Tariffs and other trade restrictions should be eliminated or reduced for the majority of trade between members.

The last stages of the UR were marked by a wave of new regional integration agreements-33 were notified to GATT between 1990 and 1994. By the end of 1994, all most all GATT members were parties to at least one preferential type trade agreement notified to GATT (with two major exceptions of Japan and Hong Kong). These agreements took various forms, ranging from the establishment of customs unions through non-reciprocal preferential agreements

¹⁹ *WTO Annual Report 2002* (Geneva: WTO, 2003), p. 119.

such as Lome Convention, to free- trade areas (EFTA and NAFTA). Eighteen regional trading arrangements were notified to the WTO in 2003, increasing the total number of notified agreements in force to 193.

3.14 Committee on Trade and Development

The Committee on Trade and Development, established in February 1965, was one of the principle standing committees of the GATT and was responsible for reviewing, discussing and negotiating issues of trade interest to developing countries. One of its main functions was to keep under continuous review the implementation of the Part IV of the general Agreement, or the principles and the objectives outlined in the GATT which relate to trade and trading opportunities to the developing countries. The committee had also the responsibility for overseeing the implementation of the 'Enabling Clause,' one of the agreements resulting from the Tokyo Round, providing for differential and more favorable treatment of developing countries in various areas of trade policy.

Activities and programmes to help developing countries participate actively in the GATT's work and in international negotiations had become increasingly important, which reflected in the participation of developing countries in the UR of negotiations. The Committee held a formal session on 21 and 25 November 1994 which discussed the then status of developing countries and least developed countries status in the GATT and their future in WTO. The key topics concerned were: the impact of the results of the UR on the developing

countries, reviewing the implementation of the provisions of the Part IV of the GATT and the operation of the 'Enabling clause', technical assistance to developing countries in the context of the UR and the work of Sub-committee on Trade of Least Developed Countries (At the Sub-Committee's meeting held in early November 1994, the Director general announced the establishment of a special unit in the GATT secretariat to deal specifically with their needs in the context of the new legal framework resulting from the UR, which met a long standing request of the least developed countries). With the establishment of WTO in 1995, the WTO Committee on Trade and Development replaced the GATT committee. It created a Sub-Committee on Least Developed countries to examine their special problems and to propose specific measures aimed at facilitating their integration into the multilateral trading system.

3.15 Trade Policy Review Body (TPRB)

In 1994, the trade policy regimes of 13 countries were reviewed by the GATT Council through three reviews as part of 1994 programme of reviews after the Trade Policy Review Mechanism (TPRM) of GATT was replaced by TPRB of WTO. The objective of the TPRM was to contribute to improved adherence of all the parties to the GATT rules, disciplines and commitments, and hence to smoother functioning of the multilateral trading system. The reviews were aimed to achieve greater transparency in and understanding of the trade policies and

practices of the contracting parties.²⁰ The mechanism enabled the collective appreciation and evaluation by the CPs to the full range of individual party's trade policies and practices and their impact on the functioning of the multilateral trading system. Reviews were to take place against the background of wider economic and development needs, the policies and objectives of the contracting parties concerned, as well as the external trading environment. These objectives are carried out by the General Council which acts as the TPRB of WTO. Under the TPRM, the four largest trading entities (at present, the European Union (EU), the United States, Japan and Canada) are reviewed every two years; the next 16 largest trading partners every four years; and the remaining WTO Members every six years, with a longer interval envisaged for least developed countries.²¹ It has been agreed that these intervals may, if necessary, be applied with a flexibility of six months' extension. India had been reviewed three times in 2004 by the TPRB.²²

The other committees include Committee on Trade in Financial Services which is mandated to discuss matters relating to trade in financial services and formulate proposals or recommendations for consideration by the Council. It is responsible, inter alia, for the continuous review and surveillance of the application of the GATS with respect to this sector, and serves as a forum for

²⁰ Petersmann, Ernst-Ulrich, "The Transformation of World Trading System through the 1994 Agreement Establishing World Trade Organization", *European Journal of International Law*, Vol. 6, 1995, P. 211.

²¹ International Trade Centre UNCTAD/WTO (ITC) Commonwealth Secretariat (CS), *Business Guide to the World Trading System* (Geneva: ITC/CS, 1999), p.47.

²² *WTO Annual Report 2004* (Geneva: WTO, 2005), p. 67.

technical discussions and examination of regulatory developments, Committee on Specific commitment (CSC) which oversees the implementation of services commitments as well as the application of the procedures for the modification of schedules. It is also responsible for examining ways to improve the technical accuracy and coherence of schedules of commitments and lists of MFN exemptions. It has concentrated its work on the second part of this mandate and more specifically on the classification of services and scheduling of commitments, with a view to assisting the current round of negotiations on trade in services. The Committee on Rules of Origin is authorized by of the Agreement on Rules of Origin which is to harmonize non-preferential rules of origin and to ensure that such rules do not themselves create unnecessary obstacles to trade The Committee on Rules of Origin resolved more than 300 outstanding issues in 2001 and 19 in 2002, as a result of which the number of unresolved issues is now reduced to one-hundred-and-thirty-seven.

3.16 The Secretariat

The WTO Secretariat is located in Geneva. The WTO secretariat is the hub of the very large and dispersed network comprising official representatives of the members based in Geneva, civil servants based in capitals, and national business, large Multi-National Corporations (MNC) and nongovernmental groups that seek to have their own governmental push to achieve their own self interest at the multilateral level. The operation of the WTO depends upon the collective inputs of the thousands of the civil servants and the governmental officials that

deal with the trade issues in each member country. An initiative to launch the new Multilateral Trade Negotiation and settling the disputes – the high two profile activities of the WTO rests with the members themselves, not the secretariat.

Unlike the World Bank (IBRD) or the International Monetary Fund (IMF), the WTO does not have an executive body comprising a subset of members. Such executive body facilitates decision making by concentrating discussions among a smaller but representative group of members. The closest the GATT ever came to such a forum was the Consultative Group of Eighteen (CGE), which was established in 1975 that aimed to strengthen the GATT system.²³ It ceased meeting in 1985, and never substituted for the GATT Council of Representatives. The WTO secretariat is relatively small with some 600 staff (as on 13 October 2004) which is located in Geneva that includes individuals representing about 60 nationalities and is headed by a Director General.²⁴ The professional staff is composed mostly of economists, lawyers and others with a specialization in international trade policy. There are also a substantial number of personnel working in support services, including informatics, finance, human resources and language services. The total staff complement is composed almost equally of men and women. The working languages of the WTO are English, French and Spanish. Its main duties are to supply technical and professional support for the various councils and committees including organizational meetings of governing

²³ *GATT Activities 1985- An Annual Review of Work of GATT* (Geneva, 1986).

²⁴ *Article VI (1)*: There shall be a Secretariat of the WTO (hereinafter referred to as “the Secretariat”) headed by a Director-General.

bodies and preparing background documents for the committees and the councils when requested, to provide technical assistance for developing countries, to monitor and analyze developments in world trade, to provide information to the public and the media and to organize the ministerial conferences. It has very little formal power to undertake any initiative. The powers of which are still rather limited compared to other international bodies, such as Commission of the European Communities or the secretariat of the Organization of Economic Co-operation and Development (OECD). The Director General has no power to take any legal action on any of WTO members if it has violated its law, nor he has nor the secretariat has any power in settlement of disputes. The secretariat needs to abstain from making any interpretations of the WTO legal agreements or passing on judgement on the conformity of a member's policy with WTO rules. The documents prepared by the WTO secretariat tend to be subjected to close scrutiny of the WTO delegations. There is a very little scope for the Director General to put the topics for discussion under the WTO agenda. As it is noted during a discussion at the UR that a diplomat addressing the Director General said; 'Sir, there is a difference between you and me: I am a contracting party and you are a contracted party.'²⁵

The secretariat plays an important role in reducing the transactions costs by distributing information. It has been mandate to undertake on its own actions in ensuring transparency by undertaking the periodic reviews of the members

²⁵ Bernard, M. Hoekman, and Michel, M. Kostecki, *The Political Economy of World Trading System: The WTO and Beyond* (Oxford: Oxford University Press, 2001), p. 54.

trade policies. The secretariat also facilitates dispute settlements by supporting the work of the panels. At times members have asked the WTO secretariat to review draft memoranda during accession process before their circulation to prevent incomplete documentation from being disseminated. The secretariat however assumes no responsibility regarding the contents of the memorandum.²⁶ Even though secretariat members are not the decision makers they can have substantive influence in the working of the WTO due to their technical skills, institutional memory and familiarity with the issues. The less capable and assertive chairman of a working party or a country's delegation, the stronger and effective influence of the secretariat can be felt. In a sense secretariat is the guardian of the collective responsibilities of the member states.

The WTO Secretariat is organized into divisions for its smooth functioning with *functional, information and liaison and support roles*. Each and every divisions carry out activities ascribed to them by the respective agreements and function only within the vicinity of their subject. Divisions are normally headed by a Director who reports to a Deputy Director-General or directly to the Director-General.

Functional divisions includes Accessions Division, Agriculture and Commodities Division, Council and Trade Negotiations Committee Division, Development Division, Economic Research and Statistics Division, Institute for

²⁶ Constantine, Michalopoulos, "WTO Accession" in Bernard, Hoekman, Aaditya, Mattoo, and Philip, English, in *Development, Trade and WTO: A Hand book* (Washington, The World Bank, 2002), p. 63.

Training and Technical Cooperation, Intellectual Property, Legal Affairs Division, Market Access Division, Rules Division, Technical Cooperation Audit Division, Textiles Division, Textiles Monitoring Body, Trade and Environment Division, Trade and Finance Division, Trade in Services Division and Trade Policies Review Division.

Information and liaison divisions include External Relations Division and Information and Media Relations Division.

Support divisions include Administration and General Services Division, Informatics Division and Language Services and Documentation Division.

The small size of the secretariat is somewhat misleading. As mentioned earlier, the WTO is a network- based organization. The WTO secretariat and the national delegates in Geneva work in close proximity with numerous civil servants in their respective capital, ministries of trade, foreign affairs, finance, telecommunications and agriculture, and specialized bodies such as customs authorities, central banks, health and safety standards administration, environmental protection agencies, national patent and trade mark agencies, and so on, all tend to have staff that deal with WTO issues and provide inputs into the WTO activities. The total size of the network prediction is impossible. The secretariat function is to keep the network function to operate smoothly. Once the network nature of the institution is realized it becomes clear that the WTO is a much larger entity than that the size of the organization. In short the WTO Secretariats responsibilities include: providing administrative and technical

support for WTO delegate bodies (councils, committees, working parties, negotiating groups) for negotiations and the implementation of agreements, technical support for developing countries, and especially the least-developed, providing trade performance and trade policy analysis to WTO economists and statisticians, assistance from legal staff in the resolution of trade disputes involving the interpretation of WTO rules and precedents and dealing with accession negotiations for new members and providing advice to governments considering membership.

3.16 (a) The WTO Appellate Body's Secretariat

The Appellate Body has its own Secretariat. The Appellate Body was established by the Understanding on Rules and Procedures Governing the Settlement of Disputes to consider appeals to decisions by dispute settlement panels. The seven-member Appellate Body consists of individuals with recognized standing in the fields of law and international trade who reside in different parts of the world and are required to be available at all times and on short notice to hear appeals. They are appointed to a four-year term, and may be reappointed once.

3.17 Budget and Financial Transaction of WTO

The financial contributions to the budget of the WTO are based on GATT 1947 practice.²⁷ The WTO's income comes from assessed contributions

²⁷ *Article VII (2) (b)*: The financial regulations shall be based, as far as practicable, on the regulations and practices of GATT 1947.

calculated on the basis of each members share in the total trade of all the WTO members, computed on the basis of year average of the most recent trade figures (if this share is less than 0.12%, a minimum contribution is assessed). The EU contribution is assessed separately for each of its member states, and includes intra-EU trade. Voluntary contributions are provided by the industrialized market economies for specific purposes such as technical assistance or training of officials from developing countries. Apart from the members contribution miscellaneous income is earned from rental fees and sales of WTO print and electronic publications. The WTO also manages a number of trust funds, which have been contributed by Members. These are used in support of special activities for technical cooperation and training meant to enable least-developed and developing countries to make better use of the WTO and draw greater benefit from the multilateral trading system. The Director General presents the annual budget of the WTO to the Committee on Budget, Finance and Administration, so as to get the approval of the General council.²⁸ The WTO's budget is approved by the General Council, acting on behalf of WTO members. Overall, the budget covers the costs of holding meetings, maintenance costs for the Secretariat headquarters in Geneva, technical cooperation missions and other official visits overseas. The budget is also used for technical assistance and for trade policy courses as well as for the salaries and related costs of the Secretariat staff of slightly over 500. The Appellate body has a budget that is independent of the WTO's Secretariat. The WTO's total budget for the year 2004 is 161,776,500

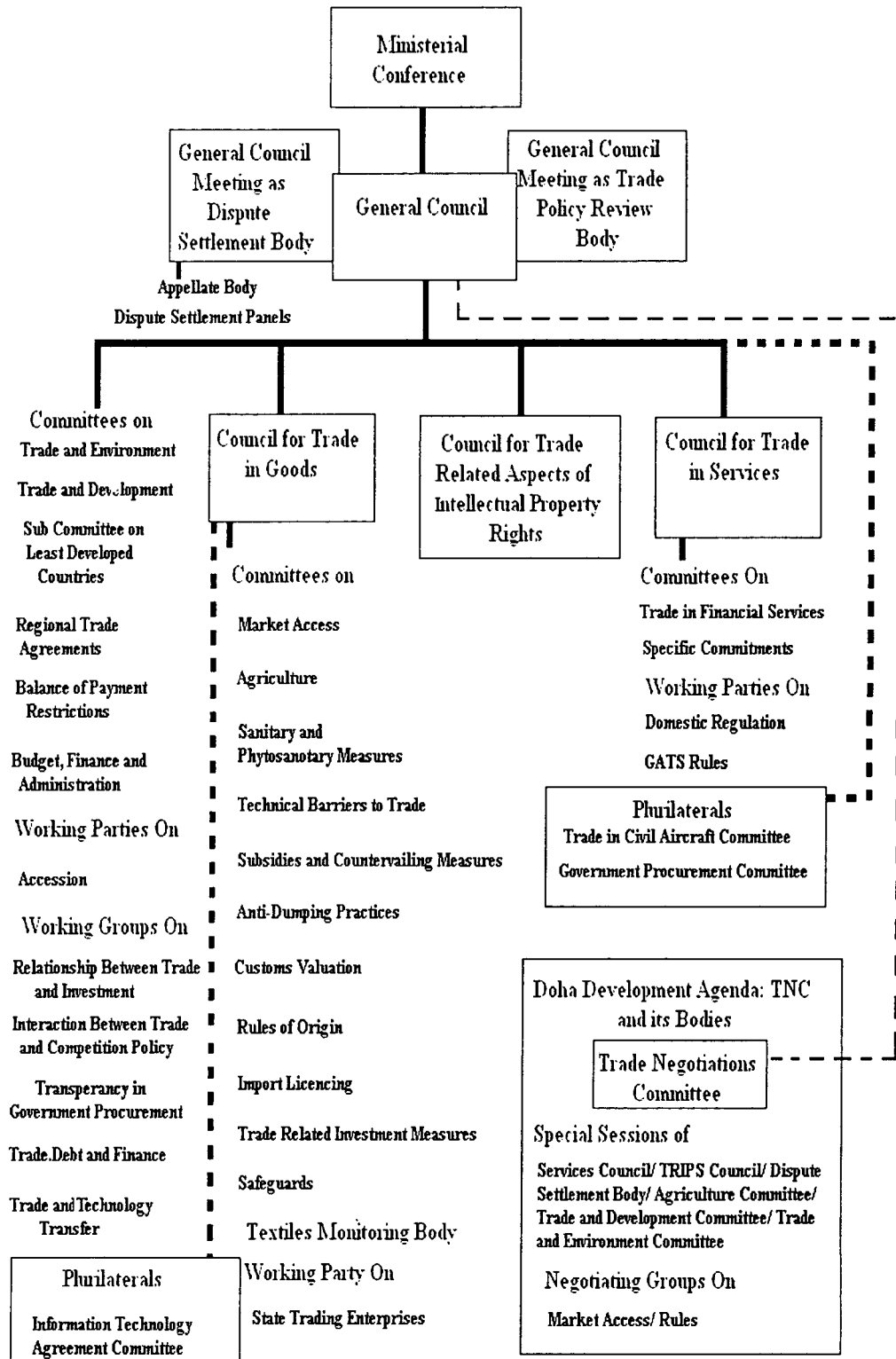
²⁸ *Article VII (1)*: The Director-General shall present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO.

CHF, which includes WTO's secretariat budget of 157,060,700 CHF and the Appellate Body and its Secretariat budget of CHF 4,715,800.²⁹ The WTO also finances, jointly with UNCTAD, the operations of the International Trade Centre etc.

Observing from the make up the structure of WTO as an organization, it stands peculiar in comparison to the other intergovernmental organizations. It has not been established by way of accident rather than by the dynamic forces acting in international trade like nation states, Lobbies etc have necessitated for WTO to be established. On the other side expansion of international trade in variety of sectors (textiles, services, intellectual property's etc) had pressurized the nations to form a world organization to regulate trade among them. Even though the GATT had its own set of contributions in form of agreements and structures through its evolution, it necessitated countries to integrate the whole agreements and existing structures under a common forum in form of an organization which is to be guided by a strong set of multilateral rules and also to be governed by effective dispute settlement mechanism. After a thorough understanding of the organizational structure it necessitates one to turn back to the ways and means through which it functions, which is attempted in the forthcoming chapter.

²⁹ *WTO Annual Report 2004*, n. 22, p. 126.

Chart 3.1 : WTO's Organizational Structure



Source: www.wto.org

Chapter IV

Functional Features of WTO

This chapter tries to explore the dynamics behind the functional features of the trading system. Section 1 outlines the principles based on which the multilateral trading system functions. Section 2 tries to find how the decisions are taken in WTO in practice. Section 3 tries to narrate the formalities and modalities involving the various stages of accession process. Section 4 explores the procedures involved in dispute settlement mechanism, its way of functioning vis-à-vis developing countries and their experience. Section 5 explores the relationship with the NGOs and Civil Society and their participation in the WTO and Section 6 attempts to explain the relationship between Intergovernmental Organizations such as IMF, World Bank, UNCTAD and others.

4.1 Foundational Principles of WTO

The WTO agreements are lengthy and multifaceted 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 guiding its way of functioning. Those are; (a) trade without discrimination, (b) freer trade: gradually, through negotiation, (c) predictability: through binding and transparency, (d) promoting fair competition and (e) encouraging development and economic reforms.¹

¹ WTO, Information and Media Relations Division, *Understanding the WTO* (Geneva: WTO, 2003), p.10- 13. And also see, Institute of Company Secretaries of India, *World Trade*

(a) Trade without Discrimination (Non- Discrimination)

Under the WTO agreements, countries cannot normally discriminate between their trading partners. Granting a country special favour (such as a lower customs duty rate for one of their products) and denying for other WTO members is not allowed rather it had to extend its favour to all the members of WTO. This principal is known as Most-Favoured-Nation (MFN) treatment. It also should not discriminate between its own and foreign products, services or nationals (they are given National Treatment by which treatment is meted out for foreigners and locals equally in ones own domestic market).

(b) Promoting Freer Trade

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 through constant and productive negotiations. The WTO agreements allow countries to introduce changes gradually, through “progressive liberalization”. Developing countries are usually given longer time to fulfill their obligations.

(c) Predictability

Predictable foreign companies, investors and governments should be confident that trade barriers (including tariffs, non tariffs and other measures) will not be raised arbitrarily. More and more tariff rates and market opening

Organization: International Trade: Joint Ventures and Foreign Collaborations (New Delhi: Institute of Company Secretaries of India, 2003), p. 37- 38.

commitments are bound in the WTO. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition such as freedom of choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable.

(d) Promoting Fair Competition

The multilateral system needs to encourage fair competition by which it discourages unfair practices such as export subsidies and dumping products at below cost to gain market share, and

(e) Encouraging Development and Economic Reform

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.² 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 were even more so in the Doha Development Agenda and in Cancun Ministerial Conference. The WTO system is to contribute to development by offering more beneficiaries for the LDCs by giving them more time to adjust greater flexibility and special privileges.

² Institute of Company Secretaries of India, n. 1 p. 40.

4.2 Decision Making Process

(a) The Formal Decision Making

The Agreement stipulates that WTO shall continue the GATT practice of decision making by consensus.³ Consensus was the *modus operandi* of the GATT. Consensus does not mean unanimity. Consensus is deemed to have been reached when, at the time a decision is being taken, not a single member country voices opposition to its adoption. Those that are not present or abstained don't count. Decision making by consensus is a useful device to ensure that only decisions on which there is no major opposition and consequently which have good chances of being implemented are made. This is because the WTO has few means of pressing unwilling nations to implement the decisions. Despite the effective lack of veto power, the consensus practice is of value to smaller countries as it enhances their negotiating leverage, particularly if they are able to form a coalition in the both formal and informal consultations which proceeds to the decision making. As it helps in enhancing the legitimacy of the decisions that are taken collectively so it makes mandatory for the developed nations to acknowledge the decisions taken when it is not to their favour. The rule of consensus thus prevents tyranny of the majority from exploiting the weak.

When a consensus is not possible, the WTO Agreement provides for decision by majority vote, which is based on principle of one member-one vote,

³ WTO Agreement, *Article IX: 1*; The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.

with each country having one vote.⁴ The four specific situations involving voting are; (1) An interpretation of any of the multilateral trade agreements can be adopted by a majority of three quarters of WTO members, (2) The Ministerial Conference can waive an obligation imposed on a particular member by a multilateral agreement, also through a three-quarters majority, (3) Decisions to amend provisions of the multilateral agreements can be adopted through approval either by all members or by a two-thirds majority depending on the nature of the provision concerned. But the amendments only take effect for those WTO members, who accept them and (4) A decision to admit a new member is taken by a two-third majority in the Ministerial Conferences, or the General Council in between the conferences.⁵ Despite the provision decision on all the policy matters are expected to be taken by consensus.

(b) The Informal Decision Making

However in practical, issues were resolved first among the dominating members of the Quad group of countries which constitute the United States, the European Union, Japan and Canada. Quad served as an unofficial Board of Directors of the WTO as role played by the G7 finance ministers of IMF and World Bank. That decision would then be brought to a slightly larger forum called the 'Green Room' at the WTO. The 'Green Room' is a phrase taken from the informal name of the director-general's conference room, where trade envoys of

⁴ Unlike the International Monetary Fund (IMF) and other organizations, WTO does not have a weighted voting system, under which some countries have more votes than the others and power is not delegated to a board of directors or the organization's head.

⁵ Institute of Company Secretaries of India, n. 1, p. 61.

some 15-20 members from industrialized, developing and least developed countries would be called to endorse it. Subsequently, the decision would be presented as a *fait accompli* to the larger membership. All this used to be justified on the ground that all 148 members of the WTO cannot arrive at a ‘consensus’ decision on trade issues in an open platform. For Example; WTO Chief Michael Moore and US Ambassador Barshefsky abandoned to give ears for developing countries during Seattle meeting and took decisions with major trading partners consisting of fifteen members. Shridath Ramphal, the former Secretary General of Commonwealth Nations called it as ‘Neo-Colonists’.⁶ Thus secret negotiations, arm twisting, and the display of brute economic power by the US and Europe aimed at ensuring that the interests of the rich are protected.⁷

However, this system is now being overhauled. It is being replaced by what are called ‘Informal Ministerial Meetings’ where a diverse crowd of some 30-odd trade ministers are carefully picked by the host nation and then crucial trade issues are tossed up.⁸ Even in these informal ministerial meetings, some five or six key countries will decide among themselves the solution to the problem and subsequently present it to the remaining 25 ministers for approval. After it is clinched at the informal ministerial meeting, the agreement is endorsed at the

⁶ William, J. Antholin, “Towards a Democratic World Trading System”, in T. K. Bhaumik, (ed) *Doha Development Agenda: A Global View* (New Delhi: Penguin Enterprises, 2003), p. 145-146.

⁷ Joseph, Stiglitz, “The Cancun round of WTO talks is a chance for developing countries to get a fairer deal. But don't count on that happening”, *The Guardian*, Friday, August 15, 2003.

⁸ For example; Five Interested Parties (FIPs) was created by the US earlier in 2004 as an informal group to draw up the blueprint for the framework agreement in agriculture. The five members comprised the US, EU, Australia, Brazil and India (initially the US was reluctant to include India but under pressure from the EU it changed its mind). The FIPs’ procedures are opaque and there is no record of the deliberations. Further, the understanding reached among the five members at the end of a meeting are kept confidential from the rest of the membership with the chairman of the Doha trade negotiations Ambassador Tim Groser being a central observer and a silent participant.

autonomy in the conduct of its external commercial relations. Accession negotiations concern all aspects of the applicant's trade policies and practices, such as market access concessions and commitments on goods and services, legislation to enforce intellectual property rights, and all other measures which form a government's commercial policies. Applications for WTO membership are the subject of individual working parties. Terms and conditions related to market access (such as tariff levels and commercial presence for foreign service suppliers) are the subject of bilateral negotiations. Accession terms must be agreed between the applicant and the WTO members (Article XII). The process of accession to the WTO is complex, demanding and lengthy. It can be divided into an introductory phase of formalities and three substantive phases. The three substantive phases are (a) the applicant's preparation of a memorandum on the foreign trade regime, which describes the country's policies and institutions that have a bearing on the conduct of international trade; (b) the member's fact finding phase; and (c) the negotiation phase.¹¹ The last two phases, while conceptually separate, tend to overlap in practice.

(a) The Formalities

After a country sends a letter to the Director General of the WTO expressing its desire to accede to the organization, the request is considered by the General Council. In practice, it will usually have requested observer status before this point. The general council then decides to set up a working party, with

¹¹ *WTO Annual Report 2000* (Geneva: WTO, 2001), p. 29.

appropriate terms of reference, to consider the accession application and it nominates the chairman of the working party. The working party is open to all WTO members but usually is made up only of 'quad' (Canada, EU, US and Japan) plus other interested countries.

(b) The Memorandum

The preparation of the memorandum on the foreign trade regime by the applicant explaining its policies and institutions is a demanding task because of the range of issues that the memorandum has to address and the degree of detail required. The preparation of the memorandum is solely the responsibility of the applicant and so is the any delay in its preparation. Even if the original memorandum is prepared quickly, if it is incomplete in its details or if the legislation and practices described are inconsistent with WTO provisions, the subsequent question and answer period can be protracted. At times members have asked the WTO secretariat to review draft memoranda before their circulation to prevent incomplete documentation from being disseminated. The secretariat however assumes no responsibility regarding the contents of the memorandum.

(c) Questions and Answers

Once the memorandum has been circulated to WTO members, the accession process enters the second stage, in which members asks questions and seek clarifications on the applicants policy and institutions. This typically takes several months(in case of Russia it took more than a year.) the purpose of this fat

finding phase is to make sure that the legislations and the institutions of the applicant are in conformity with the WTO provisions.

(d) Negotiations

At some point during the question and answer phase- after most, but frequently not all, the points raised by working party members have been answered- the applicant is requested to submit its so called initial schedule of offers in goods and services. This consists of (a) the detailed schedule of tariffs the applicant proposes to impose on goods and the level at which the tariffs are bound and (b) the commitments it makes and the limitations it sets on providing access to its market for services. In addition to the above the applicant is requested to make commitments regarding the level of support it plans to provide to its agriculture in relation to a base reference period (usually three representative years before the application for accession) as well as other aspect of its support for agricultural trade like export subsidies.

Once these offers are tabled, the accession process enters its final phase, which involves specific bilateral negotiations between the applicant and each WTO member that wishes to hold such talks regarding the tariff level or the degree of openness of the service sector proposed by the prospective member. Often, bilateral negotiations take place in parallel with formal meetings of the working party that continue to deal with questions and answers regarding the foreign trade regime. When these negotiations are in the process of being

finalized and the applicant as provided assurances that the legislation and institutions that would permit compliance with WTO provisions are in place, a draft report on accession, including the schedule of agreed commitments on goods and services is prepared by the secretariat for consideration of the working party. After approval by the working party the report is forwarded to the general council. Following a favorable decision by the general council i.e. approval by two-thirds majority (generally a formality), the country is invited to sign a protocol of accession. However, accession to a Plurilateral Trade Agreement would be governed by the provisions of that Agreement. In many cases, the country's own parliament or legislature has to ratify the agreement before membership is complete.

All members have joined the system as a result of negotiation and therefore membership means a balance of rights and obligations. They enjoy the privileges that other member countries give to them and the security that the trading rules provide. In return, they had to make commitments to open their markets and to abide by the rules. Those commitments were the result of the membership (or "accession") negotiations. Countries negotiating membership are WTO "observers".

During the process of accession developing countries face comparatively more challenges than the developed countries. According to Constantine Michalopoulos, this is due to a variety of reasons as he encapsulates like (a) the need to introduce laws and institutions for the operation of private enterprises and markets free from government controls- other than those explicitly provided under

WTO regulations-regarding for example standards, sanitary and phytosanitary (SPS) provisions, intellectual property rights and state trading practices, (b) most of the third world countries find the preparation of the memorandum is difficult due to insufficient human or material resources to address the variety of issues covered under the organization. Most countries have had to seek assistance from outside experts funded by bilateral aid agencies, from WTO itself and from World Bank,¹² (c) weak follow up as in cases of Uzbekistan and Sudan where they have applied for accession and working parties were set up in 1994 but the memoranda of foreign trade policy were submitted only on September 1996 for Uzbekistan and in January 1999 for Sudan. Apart from the above said reasons, political scourges (to some extent as it happened in the case of China, Russia and Taiwan), institutional weakness, domestic pressures, lengthy process, adopting to new liberal trade policies, shift from domestic policies to WTO set rules without sufficient transitional periods in areas of standards, trips and customs evaluation makes it still worse for the transitional economies to adjust to the organization. According to Hoekman, Kostecki and Van Grassek, the vast coverage of areas than in GATT, the change in attitude of US which rests in pursuit of economic gain, major trading powers pursuit to get accession in WTO to integrate their economies with the world economy like China and Russia are the reasons for making accession process far more difficult.¹³

¹² Constantine, Michalopoulos, "WTO Accession", In Bernard, Hoekman, Aaditya, Mattoo, and Philip, English, (e.ds), *DEVELOPMENT, TRADE, AND THE WTO A Handbook* (Washington DC: The World Bank, 2002), p. 65.

¹³ Bernard, M. Hoekman, and Michel, M. Kostecki, (ed.) *The Political Economy of World Trading System: WTO and Beyond* (Oxford: Oxford University Press, 2001), p. 67.

Nevertheless, UNCTAD, World Bank, EU, US, Switzerland and WTO have programs to help countries for membership at various stages of accession process, which should be exploited to maximum by the developing countries¹⁴. Channeling more resources from WTO to secretariat in this regard, could be much more beneficial for developing nations. The Integrated Program of Trade Related Technical Assistance to least developed countries has the potential to benefit a number of acceding countries.

4.4 Dispute Settlement Mechanism

For a multilateral trading system to function properly and without friction, it is not enough to have an agreed set of rules. The rules have to be supplemented by other rules giving countries the right of redress when infringements occur and for settling their differences and disputes. The establishment of a strong multilateral dispute settlement mechanism which removes some of the weakness of the earlier GATT system is thus one of the most critical achievements of the Uruguay Round talks. The shift in the GATT settlement proceedings from power oriented trade to rule oriented trade practice was to obtain rule oriented, binding decisions in conformity to the agreed obligations and preferred avoiding the various risks involved in diplomatic means of dispute settlement through bilateral solutions. A procedure for settling disputes existed under GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively. The WTO Agreement provides a more structured process with clearly defined common system of rules and procedures applicable

¹⁴ Ibid, p. 67.

to disputes arising under any of its legal instruments. The agreement emphasizes that prompt settlement of disputes is essential if the WTO is to function properly. The UR also made it impossible for the country losing a case to block the adoption of the ruling.

The DSU emerging out of UR is in principle applicable to disputes under any of WTO agreements taken individually or in combination (Article 1.1 DSU). The list of agreements to which the DSU applies is contained in Appendix 1 DSU. They are referred to as 'covered agreements' in the DSU. The DSU is applicable to the resolution of the disputes under the Marrakesh agreement establishing the WTO as well as the agreements annexed thereto subject, for some of them, to special or additional rules and procedures contained in Appendix 2 DSU. The covered agreements even include the plurilateral agreements also. However the applicability of the DSU to the plurilateral trade agreements is subject to the adoption of a decision by the parties to each of these agreements setting out the terms for the application of the understanding to the individual agreement, including any special and additional rules or procedures (Appendix 1 DSU). The main responsibility for administering these rules and procedures lies with the General Council which acts as the (DSB) Dispute Settlement Body (WTO Agreement, Articles III:3, IV:3; Understanding on Rules and Procedures Governing the Settlement of Disputes{DSU}). The DSB comprises of all the members of the WTO, has the authority to establish panels, adopt panel and Appellate body reports, maintain surveillance of the implementation of rulings

and recommendations and authorize suspension of concessions and other obligations under WTO agreements(DSU Article: 2).

(a) Participants in DSM

Only the WTO members can take part in the dispute settlement under the WTO. WTO dispute settlement is not open to WTO observers, other international organizations, nongovernmental organization, local governments or private persons. It is not mandatory that a single panel is be to established for a single complaint lodged by a member, in cases which are of similar nature a single panel might examine all such cases. (Article 9.1 DSU). In US- Import Prohibition of certain Shrimp and Shrimp products, complaint by India, Malaysia, Pakistan and Thailand, the DSB decided to establish one single panel despite the separate request made by India once a panel had already been established at the request of other members. The WTO dispute settlement mechanism provides for three main ways of resolving the disputes; (a) bilateral consultations, (b) good offices, conciliation and mediation and (c) adjudication, including arbitration.

The WTO dispute settlement provisions are composed of a set of internationally agreed rules and universally applicable to which the WTO members must have recourse where they seek redress of the effects of measures of the other WTO members under the WTO agreements when they allege: a violation of the obligations or other nullifications or impairment of benefits under

the agreements or an impediment to the attainment of any objective of the agreements.

(b) Time Taken to Settle a Dispute

These approximate periods for each stage of a dispute settlement procedure are target figures, the agreement is quite flexible. In addition the countries can settle their dispute themselves at any stage. Totals are also approximate.

Table: 4.1

60 days	Consultations, mediation etc.
45 days	Panel set up and panelists appointment.
6 months	Final panel report to the parties.
3 weeks	Final panel report to WTO members.
60 days	Dispute Settlement Body adopts panel report (if no appeal).
Total= 1 year	(without appeal)
60- 90 days	Appeal report.
30 days	Dispute Settlement Body adopts appeal report.
Total 1 year 3 months	(with appeal).

Source: Institute of Company Secretaries of India, *World Trade Organization: International Trade: Joint Ventures and Foreign Collaborations* (New Delhi: Institute of Company Secretaries of India, 2003), pp. 230- 231.

(c) Steps Involving Settlement of Disputes

A proper description of stages involving in dispute settlement process would provide a detailed understanding of DSB. The various stages involved successively are;

(a) consultations and conciliation between disputed parties,¹⁵ (b) establishment of panel, (c) panel procedures and its functioning,¹⁶ (d) adoption of panel report and Appellate Body, (e) consideration of the reports by DSB and finally (f) implementation of the reports.¹⁷

(1) Consultations and Conciliation between the Disputed Parties

Members are initially required to attempt to settle their disputes through bilateral consultations in order to reach mutually acceptable solutions (DSU Article : 4). The procedure also provides for third party mediation i.e. of WTO Director General or any other person to use his or her good offices to conciliate and mediate between them (DSU Article: 5). The goal of the consultation stage is to enable the disputing parties to understand the factual situation and the legal claims and hopefully to settle the matter bilaterally. Only when the consultations or the efforts at conciliation have not produced the desired result within 60 days may the complaining party request DSB formally to commence the dispute settlement mechanism by establishing a panel to examine the complaint. In order to expedite the settlement of disputes and to ensure that the establishment of a panel is not delayed by the country against whom a complaint is made, the

¹⁵ Ibid, p. 76- 77.

¹⁶ Delich, Valentina, "Developing countries and the WTO Dispute Settlement System" In Hoekman, Bernard, Mattoo, Aaditya and English, Philip, (e.d.) *DEVELOPMENT, TRADE, AND THE WTO- A Handbook* (Washington DC: The World Bank, 2002), p. 71- 72.

¹⁷ WTO, Information and Media Relations Division, *Understanding the WTO* (Geneva: WTO, 2003), p. 55- 60. Also refer Petersmann, Ernst-Ulrich, "The Transformation of World Trading System through the 1994 Agreement Establishing World Trade Organization", *European Journal of International Law*, Vol. 6, 1995, P. 207- 210. And: John, H. Jackson, "Designing and Implementing Effective Dispute Settlement Procedures: WTO Dispute settlement, Appraisal and Prospects", in Krueger, O. Anne, (e.d.) *The WTO as an International Organization* (Oxford: Oxford University Press), p. 161- 180.

procedure require DSB to establish the panel, when requested by the complaining country, unless there is a consensus against the establishment of such a panel.(DSU Article 6:1).

(2) Establishment of Panel

The DSB establishes a panel (DSU Article: 8), drafts terms of reference and determines its composition. A panel normally consists of three persons, unless parties to the dispute agree that it should have five persons. The names of the persons to be appointed to the panel are proposed by the WTO Secretariat from the list maintained by it of governmental and non governmental experts. The persons in the list are well qualified senior officials of the member countries or senior officials working in WTO Secretariat or persons who have taught international trade law or policy. All the panelists serve in their individual capacity. The parties have the right to object to a proposed panelist. ¹⁸So usually the membership of the panel is settled in consultation with the parties to the dispute (DSU Article: 12.8). The WTO Secretariat provides administrative support and generally prepares the background documentation regarding the facts of the case.

(3) Panel Procedures and its Functioning

The panels are generally required to submit to DSB within a period of six to nine months reports containing their recommendations after making an objective assessment of the facts of the case and of the conformity of the

¹⁸ The Institute of Company Secretaries of India, n. 1, p. 233.

measures complained about with the relevant provisions of the legal instruments. The panel usually goes through the following steps; (a) examination of the facts and the arguments; (b) meetings with then parties and interested third parties; (c) interim review – a descriptive and interim report are sent to the parties, who may request a review meeting with the panel; (d) drafting of the conclusions and the recommendations; and finally (e) panel report is issued to the parties and is circulated to the DSB.

(4) Adoption of Panel Report and the Appellate Body

The panel report must be adopted by the DSB within the 60 days, unless a consensus exists not to adopt, or a party appeals the findings of the panel to the ‘Appellate Body’. Appeals are limited to the issues of law or the legal interpretation developed by the panel.

The establishment of the Appellate Body as a kind of court of appeal is a new addition to the dispute settlement system (DSU Article: 17). The body consists of seven persons of recognized authority appointed for four years with expertise in law, international trade and the subjects covered by the various agreements. They are not affiliated to any government. Of the seven, only three persons are called to serve in any one case. The appeal can be made by any of the parties to the dispute. The report of the appellate body, which will be confined to issues of law in the panel report and the legal interpretations developed by it, has to be submitted to DSB within a period of 60 to 90 days.

(5) Consideration of the Reports by DSB

The report of the panel or of the Appellate Body, where one of the parties has appealed against the panel's report, is submitted to the DSB for adoption with appropriate recommendations and rulings (DSU Article :20). The Appellate Body report is the final and is adopted by the DSB. In order to ensure prompt settlement of the disputes, it is provided that the period "from the date of the establishment of the panel by the DSB" and the date "when it considers the panel or appellate report" should not exceed nine months when the panel report is not appealed and 12 months when it is appealed.

(6) Implementation of the Reports

According to the procedures, the reports of the panels are to be implemented by the parties in the three ways described below;

Compliance- First, the procedures emphasize that the party in breach of obligations must promptly comply with the recommendations of the panel or Appellate Body. If it is not possible for the party to implement the recommendations immediately, DSB may on request grant it a reasonable period for implementation.

Provision for compensation- Second, where the party in breach does not comply within a reasonable period, the party that has invoked the dispute settlement procedure may request compensation. Alternatively, the party in breach of the obligations may itself offer to pay compensation.

Authorization of retaliatory action- Third, where the party in breach fails to comply and adequate compensation where requested is not provided, the aggrieved party may request DSB to authorize it to take retaliatory action by suspending concessions or other obligations under the agreements. In other words the aggrieved party may be authorized to raise tariffs on products which it imports from the party in breach; the trade in such products should be approximately equal to that affected by the measures complained about.¹⁹ However it should be questioned whether a developing country can retaliate effectively in case of violation of trade rules on it by a developed country. Further, the rules provide that such retaliatory actions shall be authorized by DSB as far as possible in the same sectors of GATT, GATS or the Agreement on TRIPS in which the panel or the Appellate Body has found violation. If this is not possible it can authorize retaliation under other sectors of the same agreement. Only in rare cases and as last resort can DSB authorize retaliation across agreements. However the provisions of compensation and authorization by DSB of retaliatory measures are temporary measures. The ultimate solution is for the country which is in breach of the obligation to implement the recommendations. The rules require DSB to keep such cases under review to secure their full implementation.

(d) Legal Provisions in DSU in Favour of Developing Countries

A number of provisions in the DSU relate for the developing countries. Article 4.10 calls for the members to give special attention to the particular problems and interest of developing countries in consultations, and Article 12.10

¹⁹ International Trade Centre UNCTAD/WTO (ITC) Commonwealth Secretariat (CS), *Business Guide to the World Trading System* (Geneva: ITC/CS, 1999), p. 30.

allows for the extension of the consultation period in cases of measures taken by developing countries if the parties agree. Article 8.19 provides that a developing country involved in a case can request that the panel include at least one person from a developing country, and article 12.11 states that in such cases the panel report is to indicate how account was taken of relevant provisions concerning differential and more favorable treatment for developing countries that are embodied in the WTO agreements referred to in the dispute. If a case is brought by a developing country, the DSB in considering what appropriate action might be taken, is to take into account not only the trade coverage of the measures complained of but also their impact on the economy of the country concerned (DSU Article: 21.8). Article 27.2 provides for neutral legal advice (technical assistance) to be furnished by the WTO Secretariat to developing country members. Finally article 24.1 calls for due restraint in invoking the DSU against least developed countries(LDCs), in asking for compensation, or in seeking authorization to suspend the application of concessions or other obligations to these countries.

(e) Developing Countries Experience

Most of the clauses in the DSU regarding developing countries have proved to be more declarative than operative. For instance, the concept in the Article 4.10 of giving special attention to the particular problems and interest of the developing countries during consultations has no operative content. Although this was mentioned in a DSB meeting no substantial results or discussions on

concept of special attention have taken place²⁰. Article 21.7 mandates that when a matter is raised by a developing country, the DSB is to consider what further action might be appropriate to the circumstances; the provision is hardly utilized by the developing countries. Developing countries lack the high level expertise and resources to check arguments, issues and possibilities of comparing the results and experiences of the past, to explore new legal as well as economic arguments. Domestically also fail to build up an efficient and transparent liaison between the state and industry in order to obtain and up date information on trade problems in which developing countries have a stake. International financing for training public officials in developing countries should build up. The technical assistance called for in the article 27.2 is provided by only a few consultants and is inadequate. The WTO secretariat's helping hands to developing countries in legal and strategic issues is limited. In this context, the Advisory Centre on WTO Law could play an important role in helping the developing countries in pursuing the cases. The Venezuela's proposal to increase the number of legal experts in secretariat is appreciated by other transitional economies. It has also called for the creation of a trust fund to establish alliances with private law firms to augment developing countries legal capacity. Lastly the provisions related to least developed countries have not been invoked at all as no LDC has been involved in a dispute or complainant or as a respondent. There is a consensus among western researchers that the WTO DSU represents a move from a power- oriented system (as embodied in GATT) to a rule-oriented system. For example, according to

²⁰ Delich, Valentina, n. 16, p. 73.

Trebilcock and Howse “the Uruguay Round Understanding on Dispute Resolution seeks to advance substantially the legal orders conception of the GATT”.²¹

Even if it is pursued to be rule oriented system many arguments are put forth against rule oriented system: First, it is unlikely that a WTO panel will find against a state invoking the national security exception clause. Secondly, strengthening the rule-oriented DSM is not in developing countries interests as it gains little from the substantive trade rules which the DSM will interpret and enforce. Thirdly, it will have even less to gain from the envisaged agreements on investment, social clause and the trade-environment interface. Fourthly, even when the WTO DSM decides a case in favour of developing countries it will not always be easy to effectively enforce the same against the developed countries in the face of asymmetrical power relations. Fifthly, the threat of unilateral retaliations is not ruled out in practice despite the establishment of the rule-oriented system. Gordon feels ‘It should therefore attempt to persuade the rest of the WTO membership that an imbalance between international obligations and domestic independence will undermine the GATT/WTO regime and the principles upon which it is based’.²²

²¹ M. J. Trebilcock, and R. Howse, *The Regulation of International Trade* (London: Routledge, 1995), p. 397.

²² Gordon, A. Prudence, “The World Trade Organization- Throwing the Baby out with the Bath Water ? How Institutionalization and Increased Regulation Might Undermine Trade Liberalization”, *Australian Journal of International Affairs*, Vol. 50, no. 3, 1996, pp. 249.

4.5 Relationship with Non-Governmental Organizations (NGOs) and Civil Society

The increasing ramifications of the international trade, as well as those of WTO and its far reaching agreements such as TRIPs, GATS and DSB has changed the dynamics of the international trade. In recent years NGOs claiming that the rights of citizens and civil society have been infringed by the WTO rules have increased their access to participation in WTO deliberations. The civil society refers to a broad collectivity of non governmental, non commercial more or less formal organizations. They help in greater public participation in WTO, disseminate information at the national level increasing public awareness, and provide wealth of knowledge in respective areas of expertise. The legal basis on which the WTO establishes its relations with the NGOs is laid in the Article V:2 of the Marrakesh Agreement which reads that “the General Council may make appropriate arrangements for consultation and co-operation with non-governmental organizations concerned with matters related to those of the WTO”.²³ It failed to define to what extent consultations can be had. On 18 July 1996 the General Council further clarified the framework for relations with NGOs by adopting a set of guidelines which “recognizes the role NGOs can play to increase the awareness of the public in respect of WTO activities”.²⁴ These guidelines are instrumental for both Members and the WTO Secretariat in maintaining an informal and positive dialogue with the various components of civil society. Since 1996 arrangements for NGOs have essentially focused on

²³ *The Results of the Uruguay Round of Multilateral Trade Negotiations, The Legal Texts*, p. 9.

²⁴ Aart, Jan Scholte, with Marc, Williams and Brien, O. Robert, “The WTO and Civil Society”, *Journal of World Trade*, Vol. 33, No. 1, February 1999, p. 110.

attendance at Ministerial Conferences, participation in issue-specific symposia, and the day-to-day contact between the WTO Secretariat and NGOs.

The other provision which opens option for NGOs is the last paragraph of the Marrakesh Declaration on the Trade and Environment on 18 July 1994, inviting the Sub-committee of the Preparatory Committee, and the Committee on Trade and Environment once established to “provide inputs to the relevant bodies in respect of appropriate arrangements for relations with intergovernmental and non-governmental organizations referred to in Article V of the WTO”.²⁵ The other way in which provided an opportunity was by launching WTO website in September 1995 opening avenues for civil society. It marked to larger extent the participation of NGOs which increased transparency. The WTO website (www.wto.org) in English, French and Spanish offers access to over 10,000 pages of information that is updated on a daily basis. In addition, users can use the website to access the WTO Document Dissemination Facility. This contains over 60,000 trilingual WTO working documents. New documents are added daily. The site also hosts the WTO broadcasting service which enables users to view and hear highlights of key WTO events, some of which are broadcast live on the Internet. The WTO also maintains a joint website with the World Bank (www.itd.org) focusing on trade and development. The World Trade Organization’s publications are available in print or electronic versions, in English, French and Spanish with few free basic information brochures about the WTO. They cover legal texts and agreements, country and product studies,

²⁵ *Ibid*, p. 469- 471.

analytical economic data, special trade-related studies and histories of various trade negotiations and agreements. Visitors to this site have access to comprehensive information about WTO and download information. Currently the website is visited by an average of 36000 individual users every month who download approximately 18 gigabytes or 15 million pages or documents.²⁶ The other initiative was provided by WTO secretariat by adding a special section for NGOs to WTO homepage in September 1998 through which it has been providing regular briefings for NGOs and with specific information for civil society, e.g. announcements of registration deadlines for ministerial meetings and symposia. In addition, a monthly list of NGO position papers received by the Secretariat are compiled and circulated for the information of Members. In the run-up to the Doha Ministerial Conference in 2001, WTO members proposed and agreed on several new activities involving NGOs. In 2002, the WTO Secretariat increased the number of briefings for NGOs on all major WTO meetings and began listing the briefing schedules on its website. NGOs are also regularly invited to the WTO to present their recent policy research and analysis directly to member governments.

A monthly list of NGO position papers received by the Secretariat is compiled and circulated for the information of member governments. A monthly electronic news bulletin is also available to NGOs, enabling access to publicly available WTO information. Another important channel is through the media,

²⁶ Gabrielle, Marceau, "Is The WTO Open And Transparent?", *Journal Of World Trade*, vol. 33, no. 1, February 1999, pp. 11.

with regular briefings on all major meetings for journalists in Geneva and increasingly by email and other means for journalists around the world.

(a) NGOs Participation

Although NGOs have been interested in the GATT since its inception in 1947, the period since the creation of the WTO has vividly demonstrated that the multilateral trading system is being scrutinized by public opinion like never before. The WTO Secretariat receives a large number of requests per day from NGOs from all over the world and Secretariat staffs meet NGOs on a regular basis – both individually and as a part of NGO organized events. In contrast to the organizations such as OECD, where business groups have observer status or the ILO the WTO has not allowed NGOs to participate in its work. The interaction is limited to the organizations that are directly concerned with the issues that are addressed by the WTO.²⁷ Out of 159 NGOs which submitted application to attend 1st Singapore Ministerial conference only 108 attended the conference. Each accredited NGO was allowed a maximum of 4 representatives and total number of individuals reached 235. The accommodation and facilities provided for the NGOs in Suntec Conference Centre and in Westin Hotel were the Conference respectively marked a significant step towards acknowledging civil society. The Third Ministerial Conference of the WTO, held in Seattle from 30 November to December 1999 epitomized the evolving relationship with NGOs and underlined

²⁷ Hoekman, and Kostecki, n. 13, p. 70.

the growing interest of civil society in the work of the WTO. The amount of participating NGOs grew to 686 in Seattle. In Seattle, a special NGO Centre was set up which provided registered NGOs with a large number of meeting rooms, computer facilities and documentation from the official event. Throughout the Ministerial Conference more than 160 meetings (workshops, seminars, and private meetings) took place in the NGO Center. As in the case of previous Ministerial Conferences, NGOs were briefed on a daily basis by the WTO Secretariat on the progress of the working sessions. Additionally, NGOs had full access to the Press Centre located in the official Conference venue. Regardless of the outcome of the Seattle Ministerial Conference and the tumultuous protests accompanying its proceeding on environmental issues, these features have all been welcomed by NGOs as genuine signs of commitment to ensure transparency. Due to which WTO has been forced to recognize other actors in international stage, failing to do so would threaten the viability of international trading system. After seven years since Singapore ministerial meeting 1578 participants representing 795 NGOs attended the Cancun Ministerial Conference.²⁸

In addition symposia's have become a regular feature of contact and exchange of ideas between the WTO and NGOs. The 1994 and 1998 symposia on trade and environment and 1997 symposia on trade related issues affecting LDCs marked evolving close relationship between civil society and the WTO. These type symposia have become precedence for later symposia's. In March 1999, the

²⁸ Peter, Sutherland and Others, It is a Report by the Consultative Board to the Director General Supachai Panichpakdi titled, "*The Future of the WTO- Addressing the Institutional Challenges in the New Millennium*", (Geneva: WTO, 2004), p. 42.

WTO held two High-Level Symposia in Geneva, which represented an important step forward in WTO's dialogue with civil society with 672 NGOs participation.²⁹ They demonstrated that governments and civil society alike, can engage in open and constructive dialogue, and on issues where differences may exist, move towards identifying solutions. Along the same lines, a symposium was held on 29 November 1999 in Seattle. The Seattle Symposium on International Trade Issues in the First Decades of the Next Century provided a further opportunity to enhance this dialogue.³⁰ A wide range of important issues were discussed, such as the role of international trade in poverty elimination, the effects of globalization on developing countries, the integration of Least-Developed countries into the multilateral trading system, increasing public concerns with the trading system, trade and sustainable development, and trade and technological development. Since 2002 WTO Annual Symposia's in collaboration with NGOs are held. The External Relations Department is currently responsible for relations with the civil society, IGOs and Parliamentarians, handled by small set of professionals.³¹

However modest reforms have been made from time to time understanding the value of NGOs in representing the mood of the public. At 1998 Ministerial Meeting President Clinton formally called for "a forum where business, labour, environmental and consumer groups can speak out and help to

²⁹ Supachai, Panitchpakdi, "Balancing Competing Interests: The Future Role of the WTO", in P Gary, P. Sampson, (e.d.) *The Role of the World Trade Organization in the Global Governance* (Tokyo: United nations University Press,2001), p. 34.

³⁰ Frank, Loy, "*Public participation in the World trade Organization*", in Sampson, P gary, (e.d.) *The Role of the World Trade Organization in the Global Governance* (Tokyo: United nations University Press,2001), p. 125.

³¹ Peter, Sutherland, and Others, n. 28, p. 44.

guide the further evolution of the WTO” and urged the WTO to take every feasible step to bring openness and accountability to its operations.³²

4.6 Intergovernmental Organization (IGO)

Since its establishment, the WTO has had extensive contact with other inter-governmental organizations interested in its activities. A separate Ministerial Declaration was adopted at the Marrakesh Ministerial Meeting in April 1994 to underscore the objective to achieve greater coherence in global economic policy-making. Relations have been established with relevant organizations with the United Nations system, the Bretton Woods organizations, or various regional bodies to ensure that the resources and expertise of the international community remain focused, coordinated and, most important, relevant to the most pressing global needs. Many of the organizations have observer status in one or more of the various WTO Committees, Councils or working groups. Some of them are also represented in the negotiating groups for trade in certain services sectors.

(a) International Monetary Fund (IMF) and World Bank

Even though IMF had lasting relationship since GATT³³ times, the cooperation between the WTO and IMF is being developed on the basis of the

³² Frank, n, 30, p. 121&125.

³³ Under the GATT 1948, the formal relationship between the GATT and the IMF derived primarily from the provisions on balance-of-payments restrictions, whereby the IMF provided information on and an assessment of the situation of the balance of payments of the contracting party engaged in consultations under Articles XII or XVIII: B of the GATT. In addition, Article XV provides for IMF and the GATT CPs to seek cooperation with regard to exchange questions within the jurisdiction of the IMF and matters relating to quantitative restrictions and other trade measures within the jurisdiction of the CPs, and for the latter to consult fully with the former on problems concerning monetary reserves, balance of payments and foreign exchange arrangements.

1994 Marrakesh Ministerial Declaration on the Contribution of the WTO to Achieving Greater Coherence in Global Economic Policy-making between the WTO, the IMF and the World Bank.³⁴

Collaboration and cooperation between the WTO and the IMF was strengthened when the heads of the two organizations signed an agreement in Singapore in December 1996 during the WTO's Ministerial Conference³⁵. Signed by the WTO's Director-General, Mr. Renato Ruggiero, and the IMF's Managing Director, Mr. Michel Camdessus, the agreement focuses on three main elements. First, it laid the basis for carrying forward the WTO's Ministerial mandate to achieve greater coherence in global economic policy by cooperating with the IMF and the World Bank. Second, reflecting the synergies in the work and responsibilities of the IMF and the WTO, the agreement provides channels of communication to ensure that the rights and obligations of members are integral to the thinking of each organization. Thirdly in keeping with enhanced cooperation, the agreement accords observer status to the IMF and WTO in certain of each other's decision-making bodies. Thus, it granted the WTO observer status at the IMF's Annual meetings and at the Interim Committee, as well as at the appropriate meetings of the IMF's Executive Board, when it considers trade issues, and in turn grants observer status to the IMF on most WTO bodies. In December 1997 and on various occasions in 1998, representatives of the WTO secretariat participated at the IMF's Executive Board meetings on,

³⁴ Petersmann, Ernst-Ulrich, P. 67.

³⁵ *WTO Annual Report 1998*, (Geneva: WTO, 1999), p. 133.

among other matters, the World Economics Outlook, on a possible amendment of the IMF's Articles of Agreement with respect to capital movements, and on an examination of the trade policy content of IMF-supported adjustment programmes.

The Agreement between the IMF and the WTO has other benefits, including better access for both organizations to each other's information and data. The IMF's macroeconomic information is of great use to the WTO Secretariat, especially in the preparation of the in-depth and regular Trade Policy Reviews of each WTO Member. In turn, the IMF has access to a wide range of WTO information, including its Integrated Data Base, which contains trade statistics and information on WTO Members' tariff rates, and to Members' schedules of concessions in goods and services; this helps the IMF in its surveillance and lending activities.

The Director-General of the WTO, the Managing Director of the IMF, and the President of the World Bank issued a joint report in October 1998 on the mechanisms in place and the opportunities they saw for closer cooperation among the three institutions. In February 1999, the General Council agreed to initiate a series of informal meetings on specific issues raised under the WTO's Coherence mandate. Under the Coherence mandate, the WTO Secretariat was also asked to participate with the staff of the IMF and the World Bank in the organization of two seminars, covering "Developing countries participation in new trade negotiations" in September, and "Developing countries and trade in agriculture"

in October 1999.³⁶ Since then secretariat collaborations have become a common feature. Again in 2000 as part of ongoing collaboration three seminars were held on topics which covered “Special and Differential Treatment for Developing Countries”, “Implementation of the WTO Agreements”, and “Small Economies in the Multilateral Trading System”.³⁷ A mutual consultation between the heads of these organizations often takes place.

(b) The World Bank

In April 1997 the World Bank and the WTO signed an agreement to strengthen their cooperation and collaboration.³⁸ Signed by Mr. Renato Ruggiero, Director-General of the WTO, and Mr. James Wolfensohn, President of the World Bank, at the World Bank’s headquarters in Washington, D.C., the agreement focuses on three main elements. First, it provides the basis for carrying forward the WTO’s Ministerial mandate to achieve greater coherence in global economic policy making by cooperating with the World Bank. The WTO Secretariat and the World Bank are expected to consult and exchange views on all matters of common interest. Second, the agreement calls for improved communication between the two institutions through the exchange and sharing of information, thus ensuring that interests of Members are integral to the thinking of each organization. The WTO and the World Bank will share access to their respective databases, undertake joint research and technical cooperation activities and exchange reports and other documents. Third, the agreement accords observer

³⁶ *WTO Annual Report 2000*, (Geneva: WTO, 2001), p. 89.

³⁷ *WTO Annual Report 2001*, (Geneva: WTO, 2002), p. 112.

³⁸ *WTO Annual Report 1998*, (Geneva: WTO, 1999), p. 134.

status to the World Bank and the WTO to attend meetings of each other's decision-making bodies.

Thus, the WTO attends the Annual Meetings of the World Bank's Board of Governors, the Development Committee and sessions of the Bank's Executive Board as appropriate, while the World Bank may attend the WTO's Ministerial Conference, the General Council and other relevant committee meetings. On various occasions in 1997 and 1998, representatives of the WTO Secretariat participated at the Bank's Executive Board discussions, including on the Global Economic Prospects and Developing Countries, the World Development Report, and the Integrated Framework for Trade related Technical Assistance to Least-Developed Countries. The Agreement provides the WTO Secretariat with access to World Bank information, including the Bank's Economic and Social Database and the World Debt Tables, the World Bank Atlas and World Development Indicators, its Trends in Developing Economies and its African Development Indicators. This information is essential to the work of the WTO's Trade Policy Review Body, the Committee on Trade and Development and the Sub-committee on Least-Developed Countries. In turn, the World Bank has access to the Integrated Database of the WTO and to WTO Members' schedules of market access commitments and concessions in goods and services.

In 1998, the WTO and the World Bank's Economic Development Institute continued collaboration on a project that invited some 30 developing countries

which were provided with the necessary facilities to enable on-line access to WTO information.³⁹ Collaboration has also advanced in the area of technical cooperation. The WTO and World Bank co-sponsored in 1998 a number of regional seminars on WTO matters. As consultations with IMF mutual consultation also takes place between the heads of these organizations.

In contrast to the previous situation, formal relations between the WTO, the IMF and the World Bank now encompass a larger range of issues. The IMF's role within the WTO system through GATT Article XV now also covers the corresponding Article of the GATS (Article XI). Similarly, the IMF's balance-of-payments role is maintained but now enlarged to cover services (Article XII of the GATS).

Collaboration has also advanced in the area of technical cooperation to assist the developing countries and the LDCs. The World Bank and the IMF were the two of the five organizations that cooperated with the WTO in the organization of the High Level Meeting for Least-Developed Countries, which the WTO convened in October 1997. This meeting was a first critical step in a long-lasting Integrated Framework for Trade-Related Technical Assistance to Least-Developed Countries in which the IMF, World Bank and WTO play complementary and mutually supportive roles.

³⁹*WTO Annual Report 1998*, n. 35, p. 134.

The Singapore ministerial conference also set a “Plan of Action “to deal with the particular trade problems of LDCs. This led to launching of the Integrated Framework of co-operation among the secretariats of various intergovernmental organizations whereby IMF, UNCTAD, ITC, World Bank, United Nations Development Programme (UNDP) with WTO works hand in hand for LDCs.⁴⁰ The co-operation between these organizations has been extended to achieve even the objectives of Doha mandate.

(c) The International Trade Centre UNCTAD

The World Trade Organization (WTO) and the United Nations Conference and Trade and Development (UNCTAD) reflects their shared interest in advancing the cause of global trade liberalization within the framework of the multilateral system. The two executive heads meet regularly. At their meeting on 20 January 1998 they focused on a number of issues, of particular importance being the follow-up to the High-Level Meeting on Integrated Initiatives for Least-Developed Countries’ Trade.

Within the overall objective of coordination across the board and making better use of collective resources for the benefit of all developing countries, the major focus of WTO-UNCTAD joint efforts has been to assist least-developed countries and African countries in particular, in integrating more fully and effectively into the world trading system. The two organizations and the International Trade Centre have also collaborated in the establishment of an

⁴⁰ Peter, Sutherland, and Others, n. 28, p. 37.

unprecedented Technical Assistance Programme, designed to target specific African countries and help them expand and diversify their trade, and ease their integration into the multilateral trading system. The drive for greater coordination between WTO and UNCTAD underscores the broader need to integrate the developing world and especially the least-developed countries more fully into the global economy. The outcome of the High-Level Meeting is a self-assessment by least-developed countries of their development needs, leading to a number of activities designed to improve their integration. The WTO, UNCTAD and the other agencies including the International Trade Centre continue to work together on this task.

Established by GATT in 1964, the International Trade Centre (ITC) is a joint subsidiary organ of the WTO and the United Nations, the latter acting through the UN Conference on Trade and Development (UNCTAD). However, WTO cooperates more closely with UNCTAD and ITC than the case with the GATT as it were looked as rival organizations as both dealt with similar area of interest even though they differed greatly in their functions, operations and underlying ideology.⁴¹ The WTO General Council and the UNCTAD Trade and Development Board determine the broad policy guidelines of ITC's programme and the two contribute equally to ITC's regular budget. ITC has also been designated by the UN Economic and Social Council as the focal point for technical cooperation with developing countries in trade promotion.

⁴¹ Hoekman and Kostecki, n. 13, p. 69.

Apart from the stated intergovernmental organizations, it has specific co-operation with other few IGOs. In case of core labour standards, the Singapore ministerial conference declaration of 1996 clearly states that the ILO “is the competent body to deal with and set with the standards, only noting that the WTO and ILO secretariats will continue with their existing co-operation”.⁴²

In case of trade and environment standards, there are linkages references to the Uruguay Round of agreements. Consequently elements of co-operation exist between the WTO and United Nations Environment Programme (UNEP) with more recent openings of secretariats of Multilateral Environmental Agreements (MEAs). Further co-operation will depend upon the conclusions contemplated by the Uruguay Round taking into consideration the other MEAs and WTO rules.⁴³

In 2002, a new Fund called the Standards Trade and Development Facility was launched, which provides grants and financial support for technical assistance projects to help and implement international standards on food safety, and plant and animal health. This is in cooperation with WHO, FAO, OIE, Codex Alimentarius, but is administered by the WTO.⁴⁴ The other contacts include International Organization for Standardization (IOS), the Brussels based World Customs Organization (WCO), the World Intellectual Property Organization (WIPO), the International Office of Epizootics. The WTO cooperates with the

⁴² Peter, Sutherland, and Others, n. 28, p. 36.

⁴³ Peter, Sutherland, and Others, n. 28, p. 36.

⁴⁴ Peter, Sutherland, and Others, n. 28, p. 37.

WIPO through the TRIPs agreement, the ISO because of WTO disciplines on product standards, the ITU (telecommunications and e-commerce) and the WCO which develops rules of origin and classification of goods.⁴⁵

⁴⁵ Hoekman, and Kostecki, n. 13, p. 69.

Chapter V

Conclusion

The GATT had pursued trade liberalization from its commencement in 1947. Through successive rounds of multilateral negotiations, it had succeeded in reducing the tariff levels in the developed countries from the average of 40 per cent in 1948 to less than 4 per cent by the end of the Uruguay Round. Uruguay Round was the most significant and the most multifarious compared with any of the previous Rounds. Apart from its objective of tariff and trade liberalization, the principal aim of the Uruguay Round was to strengthen the multilateral trading system to face the needs of the future.

The most important aspect was aimed at improving the functioning of the GATT system as a whole and for increasing the overall effectiveness of the GATT as an institution. This resulted in unconditional application of GATT rules by all members. A comprehensive dispute settlement mechanism was installed. A new institution was created in succession to the GATT that is the World Trade Organization with a wider domain covering international trade in both goods and services. The other aspect was related to the strengthening of the existing GATT rules pertaining to anti-dumping actions, subsidies and countervailing measures, custom valuation methods, technical barriers to trade and miscellaneous other aspects. While the basic rights and obligations of the members remained untouched, the rules were modified to remove the shortcomings noticed in their application, to improve the general discipline, to clarify the provisions with greater precision, and to prescribe the procedures for their implementation. A beginning was made to liberalize agricultural trade and to integrate textiles into GATT. The Trade in services had assumed significant proportions and new rules

were formulated to govern its flows. A controversial agreement was formulated to deal with the trade related aspects of intellectual property, particularly patents. The results of the Uruguay Round in all these four areas were put together in a composite package for acceptance by the negotiating countries.

There have been some significant multilateral initiatives following the conclusion of the UR and creation of the WTO. The First WTO Ministerial Conference was held in Singapore in December 1996. The conference raised new issues covering environment, agriculture, subsidies and countervailing duties and the so called 'Singapore Issues' on investment, transparency in government procurement, competition policy and trade facilitation because they first entered the WTO agenda at that Conference. Later, these were included in 2001 in the agenda of the Doha round of trade talks only after tense negotiations between the European Union, which for years had been demanding a WTO treaty on foreign investment, and India, which has been leading in resisting to an expansion of the role of the WTO.¹ A compromise then pushed a final decision to the Cancun WTO conference.

The Second Ministerial Conference, held in Geneva in May 1998, carried forward the results of the Singapore Ministerial and established a work programme to examine trade-related issues involving global electronic commerce. Attention was paid to preparations for the negotiations mandated under the UR built-in agenda.

¹ Rammanohar, C. Reddy, "Decision time on Singapore issues at WTO", *The Hindu*, Monday, July 28, 2003.

The Third Ministerial Conference began at Seattle, with the members of the WTO not being able to agree on an agenda for the proposed Millennium Round. There were a number of reasons for the failure of the Seattle Ministerial to launch a new round. Domestic US politics played a key role. There were strong differences between the EU and the US on the issues relating to agricultural liberalization. Developing countries were unwilling to accept inclusion of labour standards and environmental issues within the purview of the new round. The awareness of NGOs and their open protest against the system for favouring the developed countries and MNCs through incorporation of new issues also contributed to the cause. Small countries were left completely in the cold. So the Seattle Ministerial was unable to launch a fresh Round of trade talks.

Fourth Ministerial Meeting was kicked off in Doha, Qatar, in the backdrop of September 11. There were serious conflicts between North and South governments and between the United States and Europe in agriculture where the US supported the ambitious Swiss formula for tariff reduction and EU supported the UR percentage tariff reduction approach. But on the other side, the U.S. and European negotiators used nearly every known form of arm-twisting, bullying and bribery to stifle Third World proposals and tried to give the appearance of consensus for the issues put forth by them on industrial tariffs and market access for non agriculture goods, services, implementation issues including Singapore issues. India and the developing world made sure that no negotiations on these topics could take place without the agreement of every single member country in the WTO. A new coalition of the NGOs which opposed the MNCs to have hold

on drug and pharmaceuticals, and developing countries came to picture that forced to bring out the agreement on public health and drug patents in Doha Development Agenda, against the strong opposition of US, Switzerland, UK and Germany. The Doha Development Agenda also raised concerns over the implementation issues that were agreed during UR.

In order to fulfill the Doha mandate and to settle the difference between the developed countries and developing countries over issues particularly in agriculture, and to carry out the agenda set forth, the Cancun Summit was held in 2003. Here, a new group of twenty-two developing nations (G22) emerged as a negotiating bloc directly challenging the continuation of a one-sided neoliberal system that protects wealthy countries, while opening developing nations to the vulnerability of the global market. Brazil and India emerged as a catalyst and organizer for bringing together developing and progressive countries to transform the system. The G22 comprises of Brazil, India, China, South Africa, Mexico, Thailand, the Philippines, Argentina, Turkey and Costa Rica, among others. Around the same time, Brazil, India and South Africa announced the creation of the Group of Three (G-3), with the possibility of becoming the G-5 to include China and Russia (who themselves had recently formed an alliance with the specific aim of countering US power). The Singapore issues which were on the agenda since 1996 was against the interest of developing countries and therefore under stiff opposition from Third World, the developed nations were made to withdraw these issues from WTO agenda. Approximately seventy other developing nations in addition to the G22 refused to sign the final US and EU-

written accord in Cancun Ministerial Conference. Even though the Cancun Summit failed, it brought respect to the G22 which was recognized to be a permanent actor in the negotiations. In the words of Lamy, “G22.... is self consciously positioning itself as a counteragent to the G8 in terms of global economic governance.”²

However, the long lasting debates continue to exist whether the new system is beneficial for developing countries or not. On one side, it is argued on the benefits of competition and liberalization. Why should the narrow selfish interests of a few take precedence over the public good of many? Why should the people continue to be at the mercy of the public monopolies and their pampered employees? Why should the consumer be deprived of better products for the sake of abnormal profits for the local producer? On the other side it is argued that WTO only serves the interests of developed countries, serving the multinational corporations dictating policy for their commercial interests. Yet one can not escape from the clutches of the ongoing globalization of markets. Even the powerful nations cannot withstand alone to be a spectator, they are supposed to join the mainstream. China joined WTO even though it was forced to make many commitments before its accession. WTO has grown from 128 members since end of Uruguay round to 148 members as of February 2005. It is the largest trading organization governing international trade and houses more than a hundred

² Fatoumata Jawara, and Aileen Kwa, *Behind the Scenes at the WTO: The Real World of International Trade Negotiations: Lessons of Cancun- Updated Edition* (New York: Zed Books, 2004), p. ii.

developing nations in it. The advantages of membership of an organization for developing countries are;

1. Provides the benefits of freer international trade i.e the benefits of comparative advantage.
2. Brings the developed countries under the umbrella of universal international trading rules. Thus obstructing the unilateral protectionist policy of the developed countries for their selfish national interest.
3. Provides an opportunity for bargaining in international trade vis-à-vis developed countries, which is not possible if they are individually trading i.e in case of bilateral trading relations.
4. Provides for developing countries to have favourable terms of trade if they are acting collectively.

On the other side, it also should be ensured that the organization functions to the developing countries advantage. In order to get fruitful results from the organization, the functional features have to be influenced or manipulated in such a manner that they function to the advantage of developing countries. This can be possible in two ways;

1. If developing countries have an effective voice in the decision making power of the WTO, they can have their objectives met, as the WTO is a member driven organization.
2. The strengthening of the DSM of WTO, particularly the enforcement of the decisions.

At the decision making level from organizational point of view, Jeffrey J Schott, Professor at Institute for International Economics, Washington feels that ‘...The WTO will likely suffer from slow and cumbersome policy-making and management — an organization with more than 120 member countries cannot be run by a “committee of the whole”. Mass management simply does not lend itself to operational efficiency or serious policy discussion. Both the IMF and the World Bank have an executive board to direct the executive officers of the organization, with permanent participation by the major industrial countries and weighted voting. The WTO will require a comparable structure to operate efficiently. ... [But] the political orientation of smaller ... members remains strongly opposed’.³ Nevertheless, proposals for the creation of a smaller executive body, perhaps like a board of directors should be created with ‘Proportional Representation’ which consists of developing, LDCs and developed countries (however the criteria of demarcation is to be clearly defined in WTO terms which is not the case at present). Secondly, the intergovernmental organizations and NGOs should be given a say in the decision making because they represent the public participation in the system which would provide an additional strength for developing countries to bargain in the power oriented trading system and also more transparency needs to be ensured in the system.

Strengthening of the DSM is not limited to its strict rules and enforcement procedures. The participation of all the member countries must be ensured. The WTO articles, rules, regulations are highly complicated and the interpretations

³ Jeffrey J. Schott, *The Uruguay Round: An Assessment*. (Washington: Institute for International Economics, 1994), pp. 138-140.

vary widely. So educating the LDCs and developing countries lawyers in international trade should be the responsibility of WTO.

Further, the multilateral trading system in the future must find an efficient alternative to trade sanctions and retaliatory measures if the cause of free trade has to be genuine. It must equip itself with all resources to meet the challenges of the future as new areas always emerge and find a place in WTO like issues relating to trade and investment, labour standards, environment, trade facilitation, simplifying customs procedures, competition policy, electronic commerce and transfer of technology etc.

As we begin to address the growing gap between rich and poor, the WTO can contribute to the international economic architecture in several important ways: First, the WTO provides a powerful bulwark against protectionist pressures from developed world unilaterally as already stated, Second, the WTO can help to advance and anchor necessary economic reforms in the developing economies, Third, continuing the momentum towards universal membership of the system would obviously enhance the WTO's ability to provide a stable foundation for the global trading system and enhance economic growth, particularly to developing countries which constitute nearly 80% of its membership. Finally, the WTO agreements are not cast in stone and there is a possibility of re-moulding the agreements. The developing countries should bring their collective strength on issues that are significant from their point of view like agriculture, cotton and textiles etc. It is imperative that the developing countries effectively influence the structural and functional features of the WTO in a manner that the organization

works to their advantage. The collective strength that the developing countries have displayed in recent WTO negotiations indicate an encouraging trend in this direction.

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