

Training Programme on  
**WTO and Its Implications on  
Indian Agriculture**

**Reading Material**



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# 1. World Trade Organization

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*.....In brief, the World Trade Organization (WTO) is the only international organization dealing with global rules of trade between nations. Its main function is to ensure that trade flows as smoothly, predictably and freely as possible.*

**The result** *is assurance. Consumers and producers know that they can enjoy secure supplies and greater choice of the finished products, components, raw materials and services that they use. Producers and exporters know that foreign markets will remain open to them.*

*The result is also a more prosperous, peaceful and accountable economic world. Decisions in the WTO are typically taken by consensus among all member countries and they are ratified by members' parliaments. Trade friction is channelled into the WTO's dispute settlement process where the focus is on interpreting agreements and commitments, and how to ensure that countries' trade policies conform with them. That way, the risk of disputes spilling over into political or military conflict is reduced.*

*By lowering trade barriers, the WTO's system also breaks down other barriers between peoples and nations.*

**At the heart** *of the system – known as the multilateral trading system – are the WTO's agreements, negotiated and signed by a large majority of the world's trading nations, and ratified in their parliaments. These agreements are the legal ground-rules for international commerce. Essentially, they are contracts, guaranteeing member countries important trade rights. They also bind governments to keep their trade policies within agreed limits to everybody's benefit.*

*The agreements were negotiated and signed by governments. But their purpose is to help producers of goods and services, exporters, and importers conduct their business.*

**The goal** *is to improve the welfare of the people of the member countries.*

## **THE MULTILATERAL TRADING SYSTEM – PAST, PRESENT AND FUTURE**

The World Trade Organization came into being in 1995. One of the youngest of the international organizations, the WTO is the successor to the General Agreement on Tariffs and Trade (GATT) established in the wake of the Second World War.

So, while the WTO is still young, the multilateral trading system that was originally setup under GATT is well over 50 years old.

The past 50 years have seen an exceptional growth in world trade. Merchandise exports grew on average by 6% annually. Total trade in 2000 was 22-times the level of 1950. GATT and the WTO have helped to create a strong and prosperous trading system contributing to unprecedented growth.

The system was developed through a series of trade negotiations, or rounds, held under GATT. The first rounds dealt mainly with tariff reductions but later negotiations included other areas such as anti-dumping and non-tariff measures. The last round – the 1986-94 Uruguay Round – led to WTO's creation.

The negotiations did not end there. Some continued after the end of the Uruguay Round. In February 1997 an agreement was reached on telecommunications services, with 69 governments agreeing to wide-ranging liberalization measures that went beyond those agreed in the Uruguay Round.

In the same year, 40 governments successfully concluded negotiations for tariff-free trade in information technology products, and 70 members concluded a financial services deal covering more than 95% of trade in banking, insurance, securities and financial information.

In 2000, new talks started on agriculture and services. These have now been incorporated into a broader work programme, the Doha Development Agenda (DDA), launched at the fourth WTO Ministerial Conference in Doha, Qatar, in November 2001

The agenda adds negotiations and other work on non-agricultural tariffs, trade and environment, WTO rules such as anti-dumping and subsidies, investment, competition policy, trade facilitation, transparency in government procurement,

intellectual property, and a range of issues raised by developing countries as difficulties they face in implementing the present WTO agreements.

## **WTO AGREEMENTS**

How can you ensure that trade is as fair as possible, and as free as is practical? By negotiating rules and abiding by them.

The WTO's rules – the agreements – are the result of negotiations between the members. The current set were the outcome of the 1986-94 Uruguay Round negotiations which included a major revision of the original General Agreement on Tariffs and Trade (GATT).

GATT is now the WTO's principal rule-book for trade in goods. The Uruguay Round also created new rules for dealing with trade in services, relevant aspects of intellectual property, dispute settlement, and trade policy reviews. The complete set runs to some 30,000 pages consisting of about 30 agreements and separate commitments (called schedules) made by individual members in specific areas such as lower customs duty rates and services market-opening.

Through these agreements, WTO members operate a non-discriminatory trading system that spells out their rights and their obligations. Each country receives guarantees that its exports will be treated fairly and consistently in other countries' markets. Each promises to do the same for imports into its own market. The system also gives developing countries some flexibility in implementing their commitments.

## **GOODS**

It all began with trade in goods. From 1947 to 1994, GATT was the forum for negotiating lower customs duty rates and other trade barriers; the text of the General Agreement spelt out important rules, particularly non-discrimination. Since 1995, the updated GATT has become the WTO's umbrella agreement for trade in goods. It has annexes dealing with specific sectors such as agriculture and textiles, and with specific issues such as state trading, product standards, subsidies and actions taken against dumping.

## **SERVICES**

Banks, insurance firms, telecommunications companies, tour operators, hotel chains and transport companies looking to do business abroad can now enjoy the same principles of freer and fairer trade that originally only applied to trade in goods.

These principles appear in the new General Agreement on Trade in Services (GATS). WTO members have also made individual commitments under GATS stating which of their services sectors they are willing to open to foreign competition, and how open those markets are.

## **INTELLECTUAL PROPERTY**

The WTO's Intellectual Property Agreement amounts to rules for trade and investment in ideas and creativity. The rules state how copyrights, patents, trademarks, geographical names used to identify products, industrial designs, integrated circuit layout-designs and undisclosed information such as trade secrets – “intellectual property” – should be protected when trade is involved.

## **DISPUTE SETTLEMENT**

The WTO's procedure for resolving trade quarrels under the Dispute Settlement understanding is vital for enforcing the rules and, therefore, for ensuring that trade flows smoothly. Countries bring disputes to the WTO if they think their rights under the agreements are being infringed. Judgements by specially-appointed independent experts are based on interpretations of the agreements and individual countries' commitments.

The system encourages countries to settle their differences through consultation. Failing that, they can follow a carefully mapped out, stage-by-stage procedure that includes the possibility of a ruling by a panel of experts, and the chance to appeal the ruling on legal grounds. Confidence in the system is borne out by the number of cases brought to the WTO – more than 300 cases in ten years compared to the 300 disputes dealt with during the entire life of GATT (1947-94).

## **TRADE POLICY REVIEW**

The Trade Policy Review Mechanism's purpose is to improve transparency, to create a greater understanding of the policies that countries are adopting, and to assess their impact. Many members also see the reviews as constructive feedback on their policies. All WTO members must undergo periodic scrutiny, each review containing reports by the country concerned and the WTO Secretariat.

## **DEVELOPING COUNTRIES**

### **DEVELOPMENT AND TRADE**

Over three-quarters of WTO members are developing or least-developed countries. All WTO agreements contain special provision for them, including longer time periods to implement agreements and commitments, measures to increase their trading opportunities, provisions requiring all WTO members to safeguard their trade interests, and support to help them build the infrastructure for WTO work, handle disputes, and implement technical standards.

The 2001 Ministerial Conference in Doha set out tasks, including negotiations, for a wide range of issues concerning developing countries. Some people call the new negotiations as the Doha Development Round.

Before that, in 1997, a high-level meeting on trade initiatives and technical assistance for least-developed countries resulted in an “integrated framework” involving six intergovernmental agencies, to help least-developed countries increase their ability to trade, and some additional preferential market access agreements.

A WTO Committee on Trade and Development, assisted by a Sub-Committee on least-Developed Countries, looks at developing countries’ special needs. Its responsibility includes implementation of the agreements, technical cooperation, and the increased participation of developing countries in the global trading system.

### **TECHNICAL ASSISTANCE AND TRAINING**

The WTO organizes hundreds of technical cooperation missions to developing countries annually. It holds on average three trade policy courses each year in Geneva for government officials. Regional seminars are held regularly in all regions of the world with special emphasis on African countries. Training courses are also organized in Geneva for officials from countries in transition from central planning to market economies.

The WTO has set up reference centres in over 100 trade ministries and regional organizations in capitals of developing and least-developed countries. These centres provide computers and internet access to enable ministry officials to keep abreast of events in the WTO through online access to the WTO’s immense database of official documents and other material. Efforts are also being made to help countries that do not have permanent representatives in Geneva.

## **THE ORGANIZATION**

### **FUNCTIONS**

The WTO's overriding objective is to help trade flow smoothly, freely, fairly and predictably. It does this by:

- Administering trade agreements
- Acting as a forum for trade negotiations
- Settling trade disputes
- Reviewing national trade policies
- Assisting developing countries in trade policy issue, through technical assistance and training programmes
- Cooperating with other international organizations

### **STRUCTURE**

The WTO has 153 members, accounting for almost 95% of world trade. Around 30 others are negotiating membership.

Decisions are made by the entire membership. This is typically by consensus. A majority vote is also possible but it has never been used in the WTO, and was extremely rare under the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT).

The WTO's agreements have been ratified in all members' parliaments.

The WTO's top level decision-making body is the Ministerial Conference, which meets at least once every two years.

Below this is the General Council (normally ambassadors and heads of delegation in Geneva but sometimes officials sent from members' capitals) which meets several times a year in the Geneva headquarters. The General Council also meets as the Trade Policy Review Body and also as dispute settlement body.

At the next level, the Goods Council, Services Council and Intellectual Property (TRIPS) Council report to the General Council.

Numerous specialized committees, working groups and working parties deal with the individual agreements and other areas such as the environment, development, membership applications and regional trade agreements.



## **SECRETARIAT**

The WTO Secretariat, based in Geneva, has around 625 staff and is headed by a Director General. It does not have branch offices outside Geneva. Since decisions are taken by the Members themselves, the Secretariat does not have the decision-making role that other international bureaucracy are given.

The Secretariat's main duties are to provide technical support for the various councils, committees and the ministerial conferences, to provide technical assistance for developing countries, to analyze world trade, and to explain WTO affairs to the public and media.

The Secretariat also provides some form of legal assistance in the dispute settlement process and advises governments wishing to become members of the WTO. The annual budget is roughly 189 million Swiss francs.

## **FACT FILE**

### **The WTO**

**Location:** Geneva, Switzerland

**Established:** 1 January 1995

**Created by:** Uruguay Round negotiations (1986-94)

**Membership:** 153 countries (on 23 July 2008)

**Budget:** 189 million Swiss francs for 2009

**Secretariat staff:** 625

**Head:** Director-General, Pascal Lamy

#### **Functions:**

- Administering WTO trade agreements
- Forum for trade negotiations
- Handling trade disputes
- Monitoring national trade policies
- Technical assistance and training for developing countries
- Cooperation with other international organizations

## 2. Instruments of Protection

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Governments intervene in agricultural trade by means of direct and indirect instruments (see Box 1) with various objectives, the most common being to raise tax revenue, to support producers' incomes, to reduce consumers' food costs, to attain self-sufficiency and to counter interventions from other countries. These instruments are analysed in the following sections.

### Box 1: Main instruments of protection

Direct interventions	Indirect interventions
Tariffs	Exchange rate management
Import and export quotas	Commodity programmes
Export subsidies	Marketing supports
Sanitary and phyto-sanitary restrictions	Input subsidies and tax exemptions
	Long-term investment assistance

### 1 Direct protection instruments

Direct protection instruments affect commodities as they enter international trade either as imports or exports. The most common ones are tariffs, import and export quotas and export taxes and subsidies.

#### Tariffs

A tariff is a tax levied on an imported good. Specific tariffs are levied as a fixed charge per unit of the import good, for example Rs 500 per barrel of oil. Ad valorem tariffs are levied as a percentage of the CIF price (see Box 2) of an import good, for example a 20 percent charge on the CIF price of a tractor. Tariffs may be fixed (a given charge per physical unit or a given percentage of the CIF price) or variable (charges vary according to the CIF price). The variable import levies used by the European Union (EU) on imported foodstuffs were an example of a variable tariff.

Tariffs are the simplest and oldest form of trade policy instrument. Traditionally, they were used as a source of government revenue but they are mostly used today to protect particular home sectors from international competition by artificially increasing the domestic price of the imported good.

**Box 2: CIF and FOB prices**

CIF stands for COST, INSURANCE AND FREIGHT. It is the landed cost of an import good on the dock or other entry point in the receiving country. It includes the cost of international freight and insurance and usually also the cost of unloading onto the dock. It excludes any charge after the import touches the dock such as port charges, handling and storage and agents' fees. It also excludes any domestic tariffs and other taxes or fees, duties or subsidies.

FOB stands for FREE ON BOARD. It is the cost of an export good at the exit point in the exporting country loaded in the ship or other means of transport in which it will be carried to the importing country. It is equal to the CIF price at the port of destination minus the cost of international freight and insurance and the unloading onto the dock.

In the balance of payments and other trade statistics, imported goods are always valued at their CIF price and exported goods at their FOB price.

A tariff raises the price of imports to home consumers, increases government revenue, and tends to increase the price for domestic producers of the import-competing commodity, thus providing an incentive for them to increase production and replace imports. Tariffs, therefore, increase the income of producers and government at the expense of consumers, and tend to make the domestic production of the good greater than it would have been in the absence of the protective measure.

*Quotas*

Quotas are limits imposed by government on the physical quantity of either imports or exports. They can be unilaterally imposed by government or they can be negotiated with exporting or importing countries, which "voluntarily" agree to restrict exports or imports (see Box 3).

### **Box 3: Voluntary restraint agreements**

A voluntary restraint agreement is a promise by government "A" to government "B" to limit exports from country "A" to country "B" of a certain commodity (e. g. meat or cotton textiles) to a specified annual level. The trade effect is equivalent to that of an import quota, although the distribution of the quota rent may differ.

Exchange controls, which limit the amount of foreign exchange made available to importers or to citizens travelling abroad, are a special kind of quota with the characteristic that they restrict imports in general rather than imports of a particular commodity.

Quotas are usually enforced by governments through issuing of licenses, which are property right documents allowing the holder to import or export specific quantities of a particular good. Government either sells or auctions the licenses to interested importers or exporters or distributes them free of charge according to some administrative criteria. For example, the United States has a quota on imports of foreign cheese. Only certain trading companies are allowed to import cheese, each of which is allocated the right to import (license) a maximum number of pounds of cheese each year. Individual quotas are based on the amount of cheese imported by the firm in the past.

Like tariffs, import quotas tend to raise the domestic price of the commodity and to increase the income of import-competing producers at the expense of consumers. The main contrast with tariffs is in the distribution of the revenue deriving from the difference in the selling price of the imported good with and without the protective measure. While in the case of tariffs this revenue is collected by government, in that of quotas it may go in part or totally to license holders, who are allowed to buy imported goods and resell them at a higher price in the home market. The gains thus made are known as quota rents and may to some extent be collected by government if the licenses are sold or auctioned.

### ***Export taxes***

Export taxes are levies on the export of commodities. Like tariffs on imports, they can be exacted per physical unit or as a percentage of the FOB price. Export taxes are normally used by governments as a means to raise revenue. Although their use has decreased in recent years, they were common in pre-structural adjustment days in countries where export production of primary commodities offered the easiest and surest way to collect fiscal revenue. Export taxes reduce the price received by the producers of the export commodity and also lower the selling price of the commodity in the domestic market. Thus, for instance, the taxation in the past by Argentinean governments of wheat and meat exports had the effect of reducing the price received for these products by Argentinean farmers as well as that paid for them by Argentinean consumers. Because of this effect on prices, export taxes tend to discourage domestic production and encourage domestic consumption of the exported commodity, thus reducing over time the quantity exported. Export taxes benefit domestic consumers and the government budget at the expense of export producers.

### ***Export subsidies***

An export subsidy is a payment to a firm or individual that ships a good abroad. Like a tariff or an export tax, it can be either specific or ad valorem. Export subsidies give producers and traders an incentive to export, making it more profitable to sell abroad and hence pushing up the price of the good in the home market. When a government subsidizes the export of a commodity, traders will tend to go on exporting the commodity up to the point when the home price exceeds the foreign price by the amount of the subsidy. Export subsidies benefit export producers and traders at the expense of domestic consumers and taxpayers.

### ***Sanitary and phyto-sanitary restrictions***

Sanitary and phyto-sanitary restrictions applied to imports are not in themselves trade measures but can easily be turned into them. They have been increasingly used with the deliberate purpose of shielding domestic producers from international competition. It is not rare that nations introduce such restrictions not to prevent health hazards on the basis of scientific evidence but in response to public

activism from interested parties. It is in recognition of this that sanitary and phyto-sanitary restrictions are high on the agenda of trade negotiations.

## **2. Indirect protection instruments**

Two different types of instruments are included here. The first is the management of the exchange rate which, although directly oriented to affect trade flows, has general (as opposed to commodity-specific) effects, since it applies equally to all imports and exports across the board. Because of this, we have classified it as an indirect instrument. We also include measures oriented to support certain producers, notably farmers, such as commodity programmes, marketing supports, input subsidies, tax exemptions, and long-term investment assistance. These measures focus on domestic production rather than trade and tend to support producers as such, not simply as exporters or import-competitors. They have, however, definite trade implications, since they affect the competitive position of home producers vis-à-vis international competitors.

### ***Exchange rate management***

The exchange rate, which is the price of the domestic currency in relation to foreign currencies, determines the amount of domestic currency received by exporters for a certain value of exports and paid by importers for a certain value of imports. By raising this price, currency devaluation increases the value in domestic currency received by exporters as well as that paid by importers. Devaluation, hence, encourages exports and discourages imports; raising this one price provides generalized incremental protection to all domestic exporters and import competitors. The opposite is true of overvaluation; an overvalued exchange rate discourages exports and encourages imports, because it works as a subsidy on imports and a tax on exports.

While devaluation can take place overnight as a consequence of a policy decision, overvaluation develops over time as a result of failures to adjust the exchange rate (i.e. to devalue) in situations in which domestic inflation is higher than that of the country's trading partners. Since devaluation pushes up the domestic price of exportable and importable commodities, it tends to have an inflationary impact. The fear that devaluation will feed the inflationary process often deters monetary authorities from devaluing in the face of creeping domestic

inflation, notwithstanding the potential positive effect of devaluation on the trade balance.

### ***Commodity programmes***

Commodity programmes are the major agricultural protection instruments used by the United States, the EU, Japan and other countries to aid local producers. These programmes are designed to support farm incomes, and often result in restricting imports or subsidizing exports. Commodity programmes include direct payments made to farmers in the form of subsidies to crop prices, as well as supply control programmes aimed at reducing the harvested area.

An example of direct payments to subsidize crop prices was the deficiency payment system practised in the United States to support grains and oilseeds, which granted farmers the difference between the market price for these commodities and a guaranteed or fixed target price, if higher. An example of a supply control programme is the payments made to farmers to keep land uncultivated under the set aside policy of the EU. The United States had a similar acreage reduction programme in the past, where producers were required to cut back the area sown to a particular crop by a prescribed percentage of the historic base, in order to be entitled to receive the corresponding payment<sup>2</sup>. The latter programmes aim at reducing the domestic production of certain crops so as to sustain their market price while avoiding or reducing the creation of export surpluses.

### ***Marketing support***

Marketing support instruments aim at reducing the marketing costs of home producers through different programmes such as transportation and storage subsidies and subsidized marketing credit.

### ***Input subsidies and tax exemptions***

Input subsidies aim at reducing the cost of production by lowering the price of inputs. They usually take the form of subsidies directly applied to inputs (e.g. fertilizer subsidy, say a 10 percent reduction in the price of fertilizer), exemptions from indirect taxes on inputs (e.g. tax exemptions for fuel used by agricultural machinery), concessionary domestic credit for production loans (e.g. subsidized interest rate for seasonal loans to farmers), government special insurance

programmes for farmers (e.g. crop insurance), free or subsidized extension services, no or partial cost recovery of irrigation water, and others. Another way of supporting farmers' incomes is by exempting farms from profit taxation or giving them a special tax treatment more favourable than that of other businesses.

***Long-term investment assistance***

Long-term investment supports aim at increasing the productivity and profitability of the farming sector. The main components are investments in agricultural research and in farm-related infrastructure, such as irrigation and drainage systems. Many countries subsidize these investments to a smaller or greater extent. Other long-term investments include the improvement of roads, ports, storage facilities, and information systems.

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### **3. Intellectual Property Rights (TRIPS)**

#### ***(Intellectual Property: Protection and Enforcement)***

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The WTO's **Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)**, negotiated in the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time.

#### **Types of intellectual property**

The areas covered by the TRIPS Agreement

- ❑ Copyright and related rights
- ❑ Trademarks, including service marks
- ❑ Geographical indications
- ❑ Industrial designs
- ❑ Patents
- ❑ Layout-designs (topographies) of integrated circuits
- ❑ Undisclosed information, including trade secrets

#### **Origins: into the rule-based trade system....**

Ideas and knowledge are becoming an increasingly important part of trade. Most of the value of new medicines and other high technology products lies in the amount of invention, innovation, research, design and testing involved. Films, music recordings, books, computer software and on-line services are bought and sold because of the information and creativity they contain, not because of the plastic, metal or paper used to make them. Many products that used to be traded as low-technology goods or commodities now contain a higher proportion of invention and design in their value — for example brand named clothing or new varieties of plants.

Creators can be given the right to prevent others from using their inventions, designs or other creations— and to use that right to negotiate payment in return for others using them. These are “intellectual property rights”. They take a number of forms. For example books, paintings and films come under copyright; inventions can be patented; brand names and product logos can be registered as trademarks; and

so on. Governments and parliaments have given creators these rights as an incentive to produce ideas that will benefit society as a whole.

The extent of protection and enforcement of these rights varied widely around the world; and as intellectual property became more important in trade, these differences became a source of tension in international economic relations. New internationally-agreed trade rules for intellectual property rights were seen as a way to introduce more order and predictability, and for disputes to be settled more systematically.

The Uruguay Round achieved that. The WTO's TRIPS Agreement is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. It establishes minimum levels of protection that each government has to give to the intellectual property of fellow WTO members. In doing so, it strikes a balance between the long term benefits and possible short term costs to society. Society benefits in the long term when intellectual property protection encourages creation and invention, especially when the period of protection expires and the creations and inventions enter the public domain. Governments are allowed to reduce any short term costs through various exceptions, for example to tackle public health problems. And, when there are trade disputes over intellectual property rights, the WTO's dispute settlement system is now available.

The agreement covers five broad issues:

- ❑ how basic principles of the trading system and other international intellectual property agreements should be applied
- ❑ how to give adequate protection to intellectual property rights
- ❑ how countries should enforce those rights adequately in their own territories
- ❑ how to settle disputes on intellectual property between members of the WTO
- ❑ special transitional arrangements during the period when the new system is being introduced.

## **Basic principles: national treatment, MFN, and balanced protection**

As in GATT and GATS, the starting point of the intellectual property agreement is basic principles. And, as in the other two agreements, non-discrimination features prominently: national treatment (treating one's own goods and foreign goods equally), and most-favoured-nation treatment (equal treatment of all member nations and trading partners in the WTO). National treatment is also a key principle in other intellectual property agreements outside the WTO.

The TRIPS Agreement has an additional important principle: intellectual property protection should contribute to technical innovation and transfer of technology. Both producers and users should benefit, and economic and social welfare should be enhanced, the agreement says.

## **How to protect intellectual property: common ground-rules**

The second part of the TRIPS agreement looks at different kinds of intellectual property rights and how to protect them. The purpose is to ensure that adequate standards of protection exist in all member countries. Here, the starting point is the obligations of the main international agreements of the World Intellectual Property Organization (WIPO) that already existed before the WTO was created:

- the Paris Convention for the Protection of Industrial Property (patents, industrial designs etc.)
- the Berne Convention for the Protection of Literary and Artistic Works (copyright).

Some areas are not covered by these conventions. In some cases, the standards of protection prescribed were thought inadequate. So the TRIPS agreement adds a significant number of new or higher standards.

The TRIPS agreement ensures that computer programs will be protected as literary works under the Berne Convention and outlines how databases should be protected.

It also expands international copyright rules to cover rental rights. Authors of computer programs and producers of sound recordings must have the right to prohibit the commercial rental of their works to the public. A similar exclusive right

applies to films where commercial rental has led to widespread copying, affecting copyright-owners' potential earnings from their films.

The agreement says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 50 years. Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 50 years.

### **Trademark**

The agreement defines what types of signs must be eligible for protection as trademarks, and what the minimum rights conferred on their owners must be. It says that service marks must be protected in the same way as trademarks used for goods. Marks that have become well-known in a particular country enjoy additional protection.

### **Geographical indications**

A place name is sometimes used to identify a product. This "geographical indication" does not only say where the product was made. More importantly, it identifies the product's special characteristics, which are the result of the product's origins.

Well-known examples include "Champagne", "Scotch", "Tequila", and "Roquefort" cheese. Makers of wines and spirits are particularly concerned about the use of place-names to identify products, and the TRIPS Agreement contains special provisions for these products. But the issue is also important for other types of goods.

Using the place name when the product was made elsewhere or when it does not have the usual characteristics can mislead consumers, and it can lead to unfair competition. The TRIPS Agreement says countries have to prevent this misuse of place names.

For wines and spirits, the agreement provides higher levels of protection, i.e. even where there is no danger of the public being misled.

Some exceptions are allowed, for example if the name is already protected as a trademark or if it has become a generic term. For example, "cheddar" now refers to a particular type of cheese not necessarily made in Cheddar, in the UK. But any country wanting to make an exception for these reasons must be willing to negotiate with the country which wants to protect the geographical indication in question.

The agreement provides for further negotiations in the WTO to establish a multilateral system of notification and registration of geographical indications for wines. These are now part of the Doha Development Agenda and they include spirits. Also debated in the WTO is whether to negotiate extending this higher level of protection beyond wines and spirits.

### **Industrial designs**

Under the TRIPS Agreement, industrial designs must be protected for at least 10 years. Owners of protected designs must be able to prevent the manufacture, sale or importation of articles bearing or embodying a design which is a copy of the protected design.

### **Patents**

The agreement says patent protection must be available for inventions for at least 20 years. Patent protection must be available for both products and processes, in almost all fields of technology. Governments can refuse to issue a patent for an invention if its commercial exploitation is prohibited for reasons of public order or morality. They can also exclude diagnostic, therapeutic and surgical methods, plants and animals (other than microorganisms), and biological processes for the production of plants or animals (other than microbiological processes).

Plant varieties, however, must be protectable by patents or by a special system (such as the breeder's rights provided in the conventions of UPOV — the International Union for the Protection of New Varieties of Plants).

The agreement describes the minimum rights that a patent owner must enjoy. But it also allows certain exceptions. A patent owner could abuse his rights, for example by failing to supply the product on the market. To deal with that possibility, the agreement says governments can issue "compulsory licences", allowing a competitor to produce the product or use the process under licence. But

this can only be done under certain conditions aimed at safeguarding the legitimate interests of the patent-holder.

If a patent is issued for a production process, then the rights must extend to the product directly obtained from the process. Under certain conditions alleged infringers may be ordered by a court to prove that they have not used the patented process.

An issue that has arisen recently is how to ensure patent protection for pharmaceutical products does not prevent people in poor countries from having access to medicines— while at the same time maintaining the patent system’s role in providing incentives for research and development into new medicines. Flexibilities such as compulsory licensing are written into the TRIPS Agreement, but some governments were unsure of how these would be interpreted, and how far their right to use them would be respected.

A large part of this was settled when WTO ministers issued a special declaration at the Doha Ministerial Conference in November 2001. They agreed that the TRIPS Agreement does not and should not prevent members from taking measures to protect public health. They underscored countries’ ability to use the flexibilities that are built into the TRIPS Agreement. And they agreed to extend exemptions on pharmaceutical patent protection for least-developed countries until 2016. On one remaining question, they assigned further work to the TRIPS Council—to sort out how to provide extra flexibility, so that countries unable to produce pharmaceuticals domestically can import patented drugs made under compulsory licensing. A waiver providing this flexibility was agreed on 30 August 2003.

### **Integrated circuits layout designs**

The basis for protecting integrated circuit designs (“topographies”) in the TRIPS agreement is the Washington Treaty on Intellectual Property in respect of Integrated Circuits, which comes under the World Intellectual Property Organization. This was adopted in 1989 but has not yet entered into force. The TRIPS agreement adds a number of provisions: for example, protection must be available for at least 10 years.

## **Undisclosed information and trade secrets**

Trade secrets and other types of “undisclosed information” which have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices. But reasonable steps must have been taken to keep the information secret. Test data submitted to governments in order to obtain marketing approval for new pharmaceutical or agricultural chemicals must also be protected against unfair commercial use.

## **Curbing anti-competitive licensing contracts**

The owner of a copyright, patent or other form of intellectual property right can issue a licence for someone else to produce or copy the protected trademark, work, invention, design, etc. The agreement recognizes that the terms of a licensing contract could restrict competition or impede technology transfer. It says that under certain conditions, governments have the right to take action to prevent anti-competitive licensing that abuses intellectual property rights. It also says governments must be prepared to consult each other on controlling anti-competitive licensing.

## **Enforcement: tough but fair**

Having intellectual property laws is not enough. They have to be enforced. This is covered in Part 3 of TRIPS. The agreement says governments have to ensure that intellectual property rights can be enforced under their laws, and that the penalties for infringement are tough enough to deter further violations. The procedures must be fair and equitable, and not unnecessarily complicated or costly. They should not entail unreasonable time-limits or unwarranted delays. People involved should be able to ask a court to review an administrative decision or to appeal a lower court’s ruling.

The agreement describes in some detail how enforcement should be handled, including rules for obtaining evidence, provisional measures, injunctions, damages and other penalties. It says courts should have the right, under certain conditions, to order the disposal or destruction of pirated or counterfeit goods. Wilful trademark counterfeiting or copyright piracy on a commercial scale should be criminal offences. Governments should make sure that intellectual property rights’ owners can receive

the assistance of customs authorities to prevent imports of counterfeit and pirated goods.

### **Technology transfer**

Developing countries see technology transfer as part of the bargain in which they have agreed to protect intellectual property rights. The TRIPS Agreement includes a number of provisions on this. For example, it requires developed countries' governments to provide incentives for their companies to transfer technology to least-developed countries.

### **Transition arrangements: 1, 5 or 11 years or more**

When the WTO agreements took effect on 1 January 1995, developed countries were given one year to ensure that their laws and practices conform with the TRIPS agreement. Developing countries and (under certain conditions) transition economies were given five years, until 2000. Least-developed countries had 11 years, until 2006 — now extended to 2013 in general, and to 2016 for pharmaceutical patents and undisclosed information.

If a developing country did not provide product patent protection in a particular area of technology when the TRIPS Agreement became applicable to it (1<sup>st</sup> January 2000), it had up to five additional years to introduce the protection. But for pharmaceutical and agricultural chemical products, the country had to accept the filing of patent applications from the beginning of the transitional period (i.e. 1<sup>st</sup> January 1995), though the patent need not be granted until the end of this period. If the government allowed the relevant pharmaceutical or agricultural chemical to be marketed during the transition period, it had to provide, subject to certain conditions, an exclusive marketing right for the product for five years, or until a product patent was granted, whichever was shorter. Subject to certain exceptions, the general rule is that obligations in the agreement apply to intellectual property rights that existed at the end of a country's transition period as well as to new ones.



## 4. The Sanitary and Phyto Sanitary Agreement (SPS) of WTO and its Implications for India

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The **Agreement on the Application of Sanitary and Phyto-sanitary Measures** (the "SPS Agreement") entered into force with the establishment of the World Trade Organization on 1 January 1995. It concerns the application of food safety and animal and plant health regulations

The Agreement on Application of Sanitary and Phyto-sanitary Measures sets out the basic rules for food safety, animal and plant life requirements. It allows countries to set their own standards. However, it also specifies that regulations must be based on scientific findings and should be applied only to the extent that they are necessary to protect human, animal or plant life and health; they should not unjustifiably discriminate between countries where similar conditions exist.

WTO member countries are encouraged to use the standards developed by the relevant international bodies whenever they exist. However, members may use measures, which result in higher level of health protection, so long as their measures are based on an appropriate assessment of risk and the approach is consistent, not arbitrary.

The Agreement sets out a framework for what countries can do, but is not prescriptive in how countries use health standards and methods of inspecting products.

The SPS Agreement consists of 14 Articles and 3 Annexes.

The Agreement addresses the problem of how to ensure that your country's consumers are being supplied with food that is safe to eat — "safe" by the standards you consider appropriate? And at the same time, how can you ensure that strict health and safety regulations are not being used as an excuse for protecting domestic producers?

## **Key Features of the Agreement**

All countries maintain measures to ensure that food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants. These sanitary and phyto-sanitary measures can take many forms, such as requiring products to come from a disease-free area, inspection of products, specific treatment or processing of products, setting of allowable maximum levels of pesticide residues or permitted use of only certain additives in food. Sanitary (human and animal health) and phyto-sanitary (plant health) measures apply to domestically produced food or local animal and plant diseases, as well as to products coming from other countries

## **Transparency**

The transparency provisions of the SPS Agreement are designed to ensure that measures taken to protect human, animal and plant health are made known to the interested public and to trading partners. The agreement requires governments to promptly publish all sanitary and phyto-sanitary regulations, and, upon request from another government, to provide an explanation of the reasons for any particular food safety or animal or plant health requirement.

All WTO Member governments must maintain an Enquiry Point, an office designated to receive and respond to any requests for information regarding that country's sanitary and phyto-sanitary measures. Such requests may be for copies of new or existing regulations, information on relevant agreements between two countries, or information about risk assessment decisions.

In India there are 3 Enquiry Points which are as follows:

- For plant health & phyto-sanitary issues: Director, Plant Protection, Department of Agriculture & Co-operation, GoI, New Delhi.
- For animal health related issues: Department of Animal Husbandry, Ministry of Agriculture, GoI, New Delhi.
- For food safety related issues: Ministry of health and family welfare, The Food safety and Standards Authority will be in charge.
- Department of Commerce, New Delhi is the National Notification Authority.

Whenever a government is proposing a new regulation (or modifying an existing one) which differs from an international standard and may affect trade, they must notify the WTO Secretariat, who then circulates the notification to other WTO Member governments (over 700 such notifications were circulated during the first three years of implementation of the SPS Agreement). The notifications are also available to the interested public. Alternatively, notifications can be requested from the Enquiry Point of the country which is proposing the measure.

Governments are required to submit the notification in advance of the implementation of a proposed new regulation, so as to provide trading partners an opportunity to comment. The SPS Committee has developed recommendations on how the comments must be dealt with.

In cases of emergency, governments may act without delay, but must immediately notify other Members, through the WTO Secretariat, and also still consider any comments submitted by other WTO Member governments.

### **Harmonization**

The SPS Agreement explicitly recognizes the right of governments to take measures to protect human, animal and plant health, as long as these are based on science, are necessary for the protection of health, and do not unjustifiably discriminate among foreign sources of supply. Likewise, governments will continue to determine the food safety levels and animal and plant health protection in their countries. Neither the WTO nor any other international body will do this.

The SPS Agreement does, however, encourage governments to "harmonize" or base their national measures on the international standards, guidelines and recommendations developed by WTO member governments in other international organizations. These organizations include, for food safety, the joint FAO/WHO Codex Alimentarius Commission; for animal health, the Office International des Epizooties; and for plant health, the FAO International Plant Protection Convention. WTO member governments have long participated in the work of these organizations — including work on risk assessment and scientific determination of the effects on human health of pesticides, contaminants or additives in food; or the effects of pests and diseases on animal and plant health. The work of these technical organizations is subject to international scrutiny and review.

One problem is that international standards are often so stringent that many countries have difficulties implementing them nationally. But the encouragement to use international standards does not mean that these constitute a floor on national standards, nor a ceiling. National standards do not violate the SPS Agreement simply because they differ from international norms. In fact, the SPS Agreement explicitly permits governments to impose more stringent requirements than the international standards. However, governments which do not base their national requirements on international standards may be required to justify their higher standard if this difference gives rise to a trade dispute. Such justification must be based on an analysis of scientific evidence and the risks involved.

### **Precautions Provided**

Three different types of precautions are provided for in the SPS Agreement.

- First, the process of risk assessment and determination of acceptable levels of risk implies the routine use of safety margins to ensure adequate precautions are taken to protect health.
- Second, as each country determines its own level of acceptable risk, it can respond to national concerns regarding what are necessary health precautions.
- Third, the SPS Agreement clearly permits taking of precautionary measures when a government considers that sufficient scientific evidence does not exist to permit a final decision on the safety of a product or process. This also permits immediate measures to be taken in emergency situations.

There are many examples of bans on the production, sale and import of products based on scientific evidence that they pose an unacceptable risk to human, animal or plant health. The SPS Agreement does not affect a government's ability to ban products under these conditions.

### **Dispute Settlement under SPS agreement**

Since the GATT began in 1948, it has been possible for a government to challenge another country's food safety and plant and animal health laws as artificial barriers to trade. The 1979 TBT Agreement also had procedures for challenging another signatory's technical regulations, including food safety standards and animal and plant health requirements. The SPS Agreement makes more explicit not only the

basis for food safety and animal and plant health requirements that affect trade but also the basis for challenges to those requirements. While a nation's ability to establish legislation is not restricted, a specific food safety or animal or plant health requirement can be challenged by another country on the grounds that there is not sufficient scientific evidence supporting the need for the trade restriction. The SPS Agreement provides greater certainty for regulators and traders alike, enabling them to avoid potential conflicts.

The WTO is an inter-governmental organization and only governments, not private entities or non-governmental organizations, can submit trade disputes to the WTO's dispute settlement procedures. Non-governmental entities can, of course, make trade problems known to their government and encourage the government to seek redress, if appropriate, through the WTO.

By accepting the WTO Agreement, governments have agreed to be bound by the rules in all of the multilateral trade agreements attached to it, including the SPS Agreement. In the case of a trade dispute, the WTO's dispute settlement procedures encourage the governments involved to find a mutually acceptable bilateral solution through formal consultations. If the governments cannot resolve their dispute, they can choose to follow any of several means of dispute settlement, including good offices, conciliation, mediation and arbitration. Alternatively, a government can request that an impartial panel of trade experts be established to hear all sides of the dispute and to make recommendations.

In a dispute on SPS measures, the panel can seek scientific advice, including by convening a technical experts group. If the panel concludes that a country is violating its obligations under any WTO agreement, it will normally recommend that the country bring its measure into conformity with its obligations. This could, for example, involve procedural changes in the way a measure is applied, modification or elimination of the measure altogether, or simply elimination of discriminatory elements.

The panel submits its recommendations for consideration by the WTO Dispute Settlement Body (DSB), where all WTO Member countries are represented. Unless the DSB decides by consensus not to adopt the panel's report, or unless one of the parties appeals the decision, the defending party is obliged to implement the

panel's recommendations and to report on how it has complied. Appeals are limited to issues of law and legal interpretations by the panel.

Although only one panel was asked to consider sanitary or phyto-sanitary trade disputes during the 47 years of the former GATT dispute settlement procedures, during the first three years of the SPS Agreement ten complaints were formally lodged with reference to the new obligations. This is not surprising as the agreement clarifies, for the first time, the basis for challenging sanitary or phyto-sanitary measures which restrict trade and may not be scientifically justified. The challenges have concerned issues as varied as inspection and quarantine procedures, animal diseases, "use-by" dates, the use of veterinary drugs in animal rearing, and disinfection treatments for beverages. Dispute settlement panels have been requested to examine four of the complaints; the other complaints have been or are likely to be settled following the obligatory process of bilateral consultations.

### **SPS Committee**

The SPS Agreement established a Committee on Sanitary and Phyto-sanitary Measures (the "SPS Committee") to provide a forum for consultations about food safety or animal and plant health measures which affect trade, and to ensure the implementation of the SPS Agreement. The SPS Committee, like other WTO committees, is open to all WTO Member countries. Governments which have an observer status in the higher level WTO bodies (such as the Council for Trade in Goods) are also eligible to be observers in the SPS Committee. The Committee has agreed to invite representatives of several international intergovernmental organizations as observers, including Codex, OIE, IPPC, WHO, UNCTAD and the International Standards Organization (ISO). Governments may send whichever officials they believe appropriate to participate in the meetings of the SPS Committee, and many send their food safety authorities or veterinary or plant health officials.

The SPS Committee usually holds three regular meetings each year. It also holds occasional joint meetings with the TBT Committee on notification and transparency procedures. Informal or special meetings may be scheduled as needed.

## **Benefits of SPS Agreement**

**Consumers** in all countries benefit. The SPS Agreement helps ensure, and in many cases enhances, the safety of their food as it encourages the systematic use of scientific information in this regard, thus reducing the scope for arbitrary and unjustified decisions. More information will increasingly become available to consumers as a result of greater transparency in governmental procedures and on the basis for their food safety, animal and plant health decisions. The elimination of unnecessary trade barriers allows consumers to benefit from a greater choice of safe foods and from healthy international competition among producers.

Specific sanitary and phyto-sanitary requirements are most frequently applied on a bilateral basis between trading countries. **Developing countries** benefit from the SPS Agreement as it provides an international framework for sanitary and phyto-sanitary arrangements among countries, irrespective of their political and economic strength or technological capacity. Without such an agreement, developing countries could be at a disadvantage when challenging unjustified trade restrictions. Furthermore, under the SPS Agreement, governments must accept imported products that meet their safety requirements, whether these products are the result of simpler, less sophisticated methods or the most modern technology. Increased technical assistance to help developing countries in the area of food safety and animal and plant health, whether bilateral or through international organizations, is also an element of the SPS Agreement.

**Exporters** of agricultural products in all countries benefit from the elimination of unjustified barriers to their products. The SPS Agreement reduces uncertainty about the conditions for selling to a specific market. Efforts to produce safe food for another market should not be thwarted by regulations imposed for protectionist purposes under the guise of health measures.

**Importers** of food and other agricultural products also benefit from the greater certainty regarding border measures. The basis for sanitary and phyto-sanitary measures which restrict trade are made clearer by the SPS Agreement, as well as the basis for challenging requirements which may be unjustified. This also benefits the many processors and commercial users of imported food, animal or plant products.

## **SPS Agreement & India:**

Draft International standards, be it Codex, OIE or IPPC are regularly reviewed and commented by the Concerned Ministries and the national standards are harmonised with them to the maximum extent possible. EIC (Export Inspection Council) has formulated standards for poultry meat, poultry products and egg products. Department of Animal Husbandry has developed standards for meat products. Both APEDA and EIC have Residue Monitoring Plan. India is taking up the issue of equivalence with other countries. Finalisation of SPS protocol for Export of mangoes to China, MOU with Chile, FTA with Thailand, Singapore and Mutual Recognition (MRA) are some of the examples.

There are delays in granting of equivalence for our exports. Delay in approval of egg product exports and meat and meat products by EU - India notified 40-50% of its SPS regulations to the WTO. The regulations which are harmonised with international standards setting bodies like Codex, OIE, IPPC need not be notified.

The SPS regulations of other countries are informed to the stakeholders through the data base maintained by Center for WTO Studies under the Ministry of Commerce and Industry.

The enquiry points and notification points also help in maintaining transparency. The various Ministries have implemented measures for establishing disease/pest free zones.

The Department of Animal Husbandry has established and is maintaining disease free zones with respect to FMD, rinder pest and BSE.

The Department of Agriculture & Co-operation has established and is maintaining pest free zones with respect to Mediterranean fruit fly, seed weevil and pulp weevil.

India undertakes scientific risk analysis and takes suitable decisions based on it. Risk assessment is being done for plant health, animal health and food safety related issues. Training on risk analysis and risk assessment procedures with respect to food products (codex related), plant and plant related products (covered by IPPC)



and animal health (covered under OIE) was given under funding by STDF for building the capacities of officials involved with these procedures.

### **SPS agreement- Some Indian concerns:**

#### **Food Safety Concerns:**

##### **Apples wax coating by USA**

In case of food safety, India's Ministry of Health and Family Welfare published gazette notification GSR 656 amending the 1955 Prevention of Food Adulteration Act by prohibiting the sale of fresh fruits and vegetables coated with waxes, minerals oils and colours. This amendment threatened US horticultural exports to India and was notified to the WTO. Waxing was an essential treatment required to maintain shelf life. India was requested to notify this measure to the WTO so that members could have the opportunity to comment on the regulations. This issue of wax coating of fruits and vegetables is being examined by an expert group under the auspices of the Ministry Of Health.

##### **Bio-tech labelling**

Under biotech labelling and import approval process regulations in June 2006, the USA referred to India's notifications to the TBT committee affecting trade in biotechnology products. The Ministry of Commerce and Industry's "Supplement to the Government of India's Foreign Trade Policy Condition18" would require that its Genetic Engineering Approval Committee (GEAC) provide pre-approval of imports. The Ministry of Health and Family Welfare's proposed mandatory labelling requirement for biotechnology products would also require pre-approval by the GEAC.

India took note of the concerns raised and stressed that the proposed regulation on pre-approvals was not new as it had already been notified in 1989. India was committed to following the transparency requirements and would consider notifying the relevant measures to the SPS committee.

## **5. India & World Trade Organization (WTO)-**

### **WTO Agreement on Agriculture**

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#### **Introduction**

- Salient Features
- India's Commitments
- Mandated Negotiations

After over 7 years of negotiations, the Uruguay Round multilateral trade negotiations were concluded on December 15, 1993 and were formally ratified in April 1994 at Marrakesh, Morocco. The WTO Agreement on Agriculture was one of the many agreements which were negotiated during the Uruguay Round.

The implementation of the Agreement on Agriculture started with effect from 1.1.1995. As per the provisions of the Agreement, developed countries would complete their reduction commitments within 6 years, i.e., by the year 2000, whereas the commitments of the developing countries would be completed within 10 years, i.e., by the year 2004. The least developed countries are not required to make any reductions.

The products which are included within the purview of this agreement are what are normally considered as part of agriculture except that it excludes fishery and forestry products as well as rubber, jute, sisal, abaca and coir.

#### **SALIENT FEATURES**

The WTO Agreement on Agriculture contains provisions in 3 broad areas of agriculture and trade policy: market access, domestic support and export subsidies.

#### **Market Access**

This includes tariffication, tariff reduction and access opportunities. Tariffication means that all non-tariff barriers such as quotas, variable levies, minimum import prices, discretionary licensing, state trading measures, voluntary restraint agreements etc. need to be abolished and converted into an equivalent tariff. Ordinary tariffs including those resulting from their tariffication are to be

reduced by an average of 36% with minimum rate of reduction of 15% for each tariff item over a 6 year period. Developing countries are required to reduce tariffs by 24% in 10 years. Developing countries, as were maintaining Quantitative Restrictions due to balance of payment problems, were allowed to offer ceiling bindings instead of tariffication.

***Special safeguard*** provision allows the imposition of additional duties when there are either import surges above a particular level or particularly low import prices as compared to 1986-88 levels.

It has also been stipulated that **minimum access**, equal to 3% of domestic consumption in 1986-88, will have to be established for the year 1995 rising to 5% at the end of the implementation period.

### **Domestic Support**

For domestic support policies, subject to reduction commitments, the total support given in 1986-88, measured by the Total Aggregate Measure of Support (total AMS), should be reduced by 20% in developed countries (13.3% in developing countries). Reduction commitments refer to total levels of support and not to individual commodities. Policies which amount to domestic support both under the product specific and non-product specific categories at less than 5% of the value of production for developed countries and less than 10% for developing countries are also excluded from any reduction commitments. Policies which have no or at most minimal trade distorting effects on production are excluded from any reduction commitments ('Green Box'-Annex 2 of the Agreement on Agriculture). The list of exempted green box policies includes such policies which provide services or benefits to agriculture or the rural community, public stock-holding for food security purposes, domestic food aid and certain de-coupled payments to producers, including direct payments to production limiting programmes, provided certain conditions are met.

**Special and Differential Treatment** provisions are also available for developing country members. These include purchases for and sales from food security stocks at administered prices provided that the subsidy to producers is included in calculation of AMS. Developing countries are permitted untargeted subsidised food distribution to meet requirements of the urban and rural poor. Also

excluded for developing countries are investment subsidies that are generally available to agriculture and agricultural input subsidies generally available to low income and resource poor farmers in these countries.

### **Export Subsidies**

The Agreement contains provisions regarding members' commitment to reduce Export Subsidies. Developed countries are required to reduce their export subsidy expenditure by 36% and volume by 21% in 6 years, in equal instalments (from 1986 –1990 levels). For developing countries, the percentage cuts are 24% and 14% respectively in equal annual instalments over 10 years. The Agreement also specifies that for products not subject to export subsidy reduction commitments, no such subsidies can be granted in the future.

## **INDIA'S COMMITMENTS**

### **Market Access**

As India was maintaining Quantitative Restrictions due to balance of payments reasons (which is a GATT consistent measure), it did not have to undertake any commitments in regard to market access. The only commitment India has undertaken is to bind its primary agricultural products at 100%; processed foods at 150% and edible oils at 300%. Of course, for some agricultural products like skimmed milk powder, maize, rice, wheat, millets etc. which had been bound at zero or at low bound rates, negotiations under Article XXVIII of GATT were successfully completed in December, 1999, and the bound rates have been raised substantially.

### **Domestic Support**

India does not provide any product specific support other than market price support. During the reference period (1986-88), India had market price support programmes for 22 products, out of which 19 are included in our list of commitments filed under GATT. The products are - rice, wheat, bajra, jowar, maize, barley, gram, groundnut, rapeseed, toria, cotton, Soyabean (yellow), Soyabean (black), urad, moong, tur, tobacco, jute and sugarcane. The total product specific AMS was (-) Rs.24,442 crores during the base period. The negative figure arises from the fact that during the base period, except for tobacco and sugarcane, international prices of all products was higher than domestic prices, and the product specific AMS is to

be calculated by subtracting the domestic price from the international price and then multiplying the resultant figure by the quantity of production.

Non-product specific subsidy is calculated by taking into account subsidies given for fertilizers, water, seeds, credit and electricity. During the reference period, the total non-product specific AMS was Rs.4581 crores. Taking both product specific and non-product specific AMS into account, the total AMS was (-) Rs.19,869 crores i.e. about (-) 18% of the value of total agricultural output.

**Since our total AMS is negative and that too by a huge magnitude, the question of our undertaking reduction commitments did not arise. As such, we have not undertaken any commitment in our schedule filed under GATT.** The calculations for the marketing year 1995-96 show the product specific AMS figure as (-) 38.47% and non-product specific AMS as 7.52% of the total value of production. We can further deduct from these calculations the domestic support extended to low income and resource poor farmers provided under Article 6 of the Agreement on Agriculture. This still keeps our aggregate AMS below the *de minimis* level of 10%.

### **Export Subsidies**

**In India, exporters of agricultural commodities do not get any direct subsidy.** The only subsidies available to them are in the form of (a) exemption of export profit from income tax under section 80-HHC of the Income Tax Act and this is also not one of the listed subsidies as the entire income from Agriculture is exempt from Income Tax per se. (b) subsidies on cost of freight on export shipments of certain products like fruits, vegetables and floricultural products. We have in fact indicated in our schedule of commitments that India reserves the right to take recourse to subsidies (such as, cash compensatory support) during the implementation period.

### **MANDATED NEGOTIATIONS**

Article 20 of the Agreement on Agriculture (AoA) mandates that negotiations for continuing the reform process in agriculture will be initiated one year before the end of the implementation period. As the implementation period for developed

countries culminated at the end of the year 2000, the negotiations on the Agreement on Agriculture have begun in January 2000.

These negotiations are being conducted in special sessions of the WTO Committee on Agriculture (COA) at Geneva. The following are the broad parameters for carrying out negotiations:

- Experience of member countries in implementation of reduction commitments till date;
- The effects of reduction commitments on World Trade in Agriculture;
- Non-trade concerns, special and differential treatment to developing country members and the objective of establishing a fair and market oriented agricultural trading system; and
- Identifying further commitments necessary to achieve the long-term objectives of the Agreement.

During extensive deliberations in the WTO Committee on Agriculture and in the General Council, member countries had agreed to broadly adhere to the mandate of Article 20 of the Agreement. In pursuance of the same, in the first phase of the negotiations, members have submitted 47 negotiating proposals, which were discussed in Seven Special Sessions of the CoA. With the approval of the Cabinet Committee on WTO Matters, India also submitted its negotiating proposals to the WTO on 15<sup>th</sup> January 2001, in the areas of market access, domestic support, export competition and food security. These proposals were drawn up and drafted based on the inputs received from wide ranging consultations with various stakeholders and keeping in view India's objectives in the negotiations, which are to protect its food and livelihood security concerns and to protect all domestic policy measures taken for poverty alleviation, rural development and rural employment as also to create opportunities for expansion of agricultural exports by securing meaningful market access in developed countries. India also co-sponsored two papers, one on "Market Access" along with 11 other developing countries and another on "Export Credits for Agricultural Products" along with 9 other countries/group of countries.

## **6. Agri-Exports: Challenges and Prospects**

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### **Introduction**

India is naturally endowed with diverse and varied agro climatic conditions and a vast reservoir of resources and soil regimes for growing a wide variety of crops for domestic consumption and export. Added to this is the large community of knowledgeable farmers who have been able to adapt themselves to the changing requirements of growth and diversification dictated by the global scenario. Promotion of agricultural exports is looked upon as an important instrument for boosting growth in the rural and "real economy" and creating conditions for improving the returns to the farmers.

We are also aware that Government of India's EXIM POLICY (2002-2007) endeavours to give necessary momentum and direction to the country's export drive. The world trade regime under the WTO has also opened up new export possibilities and new vistas for the farmers to earn higher values for their produce. The WTO, in fact the Agreement on Agriculture (AoA), provides new opportunities for export of agriculture products and, in this respect, India is yet to take advantage of the emerging opportunities to enlarge its trade, particularly with the widening of the global market.

### **Export Competitiveness of India's Agricultural Products**

India has a competitive advantage in several commodities for agricultural exports because of near self-sufficiency of inputs (except fertilizers and pesticides), relatively low labour costs and diverse agro-climatic conditions. These factors have enabled export of several agricultural commodities over the years such as marine products, cereals, cashew, tea, coffee, spices, oil meals, fruits and vegetables, castor and tobacco. For certain commodities like Basmati Rice, India has a niche market access in spite of competition.

The ten most important agricultural products that currently cover more than 80 per cent of the trade in the world market are coarse grain, cotton, rice, soybean, sugar, spices, tea, tobacco, vegetable oil and wheat, commodities in which India has a dominant production. Apart from these, fruits and vegetables (the second largest producer with 150 million tonnes), spices (world's largest producer, with over 3

million tonnes) milk (being the largest producer with 91 million tonnes), poultry (5th largest with 842 million) meat products (with 417 million livestock, the largest in the world), fisheries (8000 km of coastline; 7th largest producer with 6 million tonnes) offer tremendous potential for export. Horticulture occupies about 12 million ha, which accounts for about 7 per cent of the total cropped area. The annual production is about 150 million tonnes. India's share in world production is nearly 10 per cent in fruits and 14 per cent in vegetables. India produces 50 per cent of world's mangoes, 19 per cent of banana, 36 per cent of cashew nut, more than 10 per cent of onion, 38 per cent of cauliflower, 28 per cent of green peas etc. Despite all this, our share in the world exports of fruits and vegetables is only about 1 %. And it is only about 2 per cent of the fruits and vegetables produced in the country are processed and there is considerable potential to increase it to about 10 per cent.

An area that emerges as high potential one for exports in the years ahead, among the agricultural exports, is the processed food products. The export of fresh fruits and vegetables and processed fruits and vegetables continue to remain a mere 6 % of the total value of exports, despite the institutional support to boost their exports, though there are indications of a steady rise in their exports. Processed items include fruit pulps and concentrated pulps, juice concentrates, canned fruits and vegetables, dehydrated vegetables and frozen fruits and vegetables. The level of processing in our country is very low and varies from sector to sector, and is estimated at 2 % in case of fruits and vegetables. Even in developing countries such as Malaysia (80 per cent) and Thailand (30 per cent), it is very high. Similarly, value addition in India is estimated at 7 % as compared to 45 % in The Philippines and 23 per cent in China.

Within the country, there are wide variations in productivity levels. Punjab, Haryana, Andhra Pradesh, Tamil Nadu and Kerala may have attained productivity levels of a world standard. But other regions are way behind. Thus, the issue of competitiveness is also region specific. A regionally differentiated strategy, taking into account the agronomic, climatic and environmental conditions is, therefore, sought to be pursued to realize the full potential of yield in every region.

Comparative advantage, in itself, is a relative concept and it depends upon the relative changes in the international market. A major difficulty faced by India in the international market is the high level of subsidies given by developed countries



for their Agri-exports. Hence, it is imperative to evolve concrete strategies to make Indian agriculture competitive and enhance its efficiency. For this purpose, on the one hand, we should be seeking substantial reduction in the support given to agriculture by developed countries, on the other hand, Indian agriculture would also require to be supported to maintain and improve its competitiveness.

The annual increase in India's exports on account of WTO and the enlarged market share is estimated to be US\$ 1.25 billion, marginally less than what has been estimated by the Ministry of Commerce at US\$ 1.5 billion to 2 billion. A study carried out by National Council for Applied Economic Research (NCAER), which had covered 17 agricultural commodities, had rated rice, banana, grapes, sapota and litchi as highly export competitive. Raising the level of productivity and quality standards to internationally competitive levels is one of the major challenges following the dismantling of quantitative restrictions on imports, as per the WTO Agreement on Agriculture. For several commodities, our national productivity is less than the world average. There is potential for enhancing crop productivity and thereby increasing Agri-exports.

### **Credit Facilities to Agri-Exports**

Institutional agencies and banks have been playing an important role in extending credit and other support to agriculture and in the promotion of exports. Nationalised commercial banks have been providing credit support by way of pre-shipment and post-shipment. Other support facilities may include foreign exchange transactions including forward cover, provision of cross-currency options, weekly trends in forex markets, providing country profiles and risk, credit, status report of overseas trading partners, market intelligence, counselling, risk management and optional hedging of foreign exchange exposures in the long term perspective, consulting services on exchange controls, import-export policy and other formalities in foreign trade, Inputs supplied to contract farms by exporters as raw materials for export and sanctioning the line of credit to processors, financing bulk purchase of inputs etc. Given the thrust on Agri-exports and the advent of WTO, we need to have a fresh look at the financial assistance being extended to promote agricultural exports with a view to making it more export-friendly. Apart from banks, the other institutions involved in export promotion include the commodity Boards like Coffee

and Tea Boards, the Spices Board as also the Agriculture and Processed Food Products Export Development Authority (APEDA).

### **WTO Impact: Globalisation and Trade for Development**

Between 1994 and 2003, we were busy finding faults with the WTO Agreement rather than paying attention to enhancing the productivity, quality, diversification, value addition and sustainability aspects of our agriculture. As a result, the mismatch between production and post-harvest technologies persists and the infrastructure for handling perishable commodities continues to be poor. The experience has, thus far, shown that WTO has no visible agenda for the resource-poor farming families. Globalisation has proved to be inherently asymmetric in its impact. Countries most dependent on export of primary commodities have not been able to derive benefit from a "free trade" regime. Rich nations are not prepared to phase out trade distorting subsidies and provide increased market access to predominantly Agri developing countries. Globalisation creates losers as well as winners, and entails risks as well as providing opportunities. Now, let us have a close look at the effects and impacts of WTO and their relevance to India's Agri-exports.

- There has been a growing divergence, not convergence of income levels, both between countries and people.
- Inequality among and within nations has widened.
- Assets and incomes are more concentrated and wage share fallen while profits share has risen.
- Capital mobility alongside labour immobility has reduced the bargaining power of the organised labour.
- The rise in unemployment and with more and more people working in the informal sector has generated an excess supply of labour and depressed real wages.

- The rapid growth of global markets has not seen the parallel development of social and economic institutions.
- Labour rights have been less assiduously protected than capital and property rights.
- Global rules on trade and finance are unfair to the extent that they produce asymmetric effects on rich and the poor countries; and within countries between people.

In other words, the rich countries want access to the poor countries' resources, markets, and labour forces at the lowest possible price, retain subsidies and resist opening their markets to the poor countries. On the other hand, the developing countries determine to protect the livelihood of their farmers as this is critical and essential for social stability as well as political survival. They argue that labour rights protection is as critical as intellectual property rights protection for the rich. All issues were to be discussed in Doha in 2003 but the Doha Round of Trade Talks (DRTT) collapsed due to unbridgeable differences between the EU, the USA and the developing countries led by India, China, Brazil. The EU opened its markets to "everything but Arms with technical rules of origin" whereas the USA opened its markets to "everything but what it produces".

Under these situations, the developing countries, including India, must extend their support to:

- (i) develop new technologies and markets and shelter fledging firms from international speculations,
- (ii) increase investments in training, infrastructure and research,
- (iii) provide labour rights protection and
- (iv) ensure additional social safety nets to cushion the farmers against price and market volatility for their products.

### **Major Constraints of Agri-Export Sector**

- (i) Lack of a broad raw material base in terms of the kinds and varieties of fruits and vegetables suitable in all respects for processing and their availability in commercial quantities at prices economical to the processing industry. Invariably, the cost of the raw material is high.
- (ii) Low productivity and poor quality of the produce, as compared to the very high levels obtained in the advanced countries, affect processing and none of the processing units work to full capacity utilisation. Much of the produce taken up for processing is devoid of the quality attributes or characteristics required for processing.
- (iii) Despite the WTO and the Agreement on Agriculture (which focuses primarily on reduction of tariffs, increased market access, reduction in Aggregate Measure of Support in the form of subsidies) subsidies continue as a result of which the expected gains have eluded developing countries like India.
- (iv) Imposition of non-tariff barriers like sanitary and phyto-sanitary (SPS) conditions on imports from developing countries. Lack of awareness and knowledge about the SPS measures and quality standards required to be adopted by the processing industry and exporters.

- (v) Fruits and vegetables are generally constrained by poor price support, credit support and delivery system which affect processing.
- (vi) The quality of packaging is poor. Importing countries demand specific packaging for each produce and the use of bio-degradable materials resulting in high cost of packaging.
- (vii) The emergence of trading blocs in Asia, Europe and North America have also considerably affected India's Agri-export trade.
- (viii) Due to poor infrastructure in handling, transport, marketing and processing, horticulture, as an industry, has not grown in our country. Poor infrastructure, particularly transportation, road networks, and freight and cargo facilities, cold storage facilities, etc., coupled with inadequate post-harvest management affect the produce and products.
- (ix) Inadequate supply of power, water and research and development support add to the constraints.
- (x) The freight rates in India are reported to be around 50 to 100 per cent higher than those prevalent in some other countries which does very little to improve our competitiveness.
- (xi) It is the residual rather than the fresh produce that is often taken up for processing, which has a bearing on quality.
- (xii) Lack of a proper marketing strategy geared to meeting the raw material requirement of processing units and ensuring a sustainable export market for the processed products.
- (xiii) Poor and inconsistent quality of processed products and inadequate export promotion are some of the constraints plaguing the processing industry.

### **Suggestions for Promoting Exports**

**Infrastructure Development:** A major impediment to promoting exports is the lack of adequate infrastructure, particularly cold storage facilities and transportation. There is a need to encourage public-private partnership in building such facilities and ensuring their proper maintenance. There is no dearth of financial assistance as there are several incentives being provided by Government of India under its capital investment subsidy scheme as well as those available under the schemes envisaged

by APEDA. Concerted efforts need to be made in this direction in collaboration with commercial banks.

**Marketing Strategy:** In the new scenario where all the quantitative restrictions have now been removed and there is increased opportunity for the developing countries to have access to global markets, it is imperative that a marketing strategy is worked out, focusing on major items of import by countries and to concentrate on such products using the comparative advantage. The countries in the European Union, African countries and the CIS countries need to be given greater attention.

**Contract Farming:** Contract farming needs to be encouraged not only to provide a broad base for raw materials for processing but also for the supply of the right type of inputs and other linkages necessary for the acceptability of the quality standards for competitive exports.

**Human Resources Development:** There is also a vital need for human resources development and to train the exporters about the quality standards and the sanitary and Phyto sanitary measures that need to be complied with.

**Market Access and Information:** There is a need to provide continuous updating of data on market information, market access, procedures and processes etc.

**Biotechnology:** India has been recognized as one of the five top biotechnology leaders in the Asia-Pacific region. In terms of number of patents filing, India ranks third in Asia. Biotechnology leads to reduction in cost and improvement in productivity. Given the low-cost but high-calibre work force, there is a need for optimal utilization of intellectual and biological resources with a view to bringing cost effectiveness in production.

**Trade Related Intellectual Property Rights:** India should launch genetic and legal literacy movements immediately to sensitize panchayats and rural families on the implications of the protection of plant varieties and Farmers' Rights Act 2001 and Biodiversity Act 2002, since they contain provisions for recognizing and rewarding the contributions of the primary conservers of biodiversity and holders of traditional knowledge.

**Credit Facilities:** The EXIM Bank, in consultation with APEDA and the Ministry of Agriculture, may set up Farm Export Promotion Cells in each AEZ and provide necessary technical support and guidance to the exporters. It can also open offices in each state in order to promote Agri-export and also establish overseas branches in countries where Indian exports are favourite destinations.

**Economies of scale:** Economies of scale and brand-banding can only happen when large and big companies enter the sector. In this respect, contract farming and corporate farming should be extended credit facilities with liberal terms and making storage, movement, processing, marketing and trade of farm commodities free from regulations and controls. It is necessary to consider streamlining the procedure for export financing of agricultural products which are perishable in nature and making it entrepreneur-friendly. Likewise, the procedure for obtaining export credit guarantee cover should be streamlined and made exporter-friendly and in this respect a comprehensive insurance cover, right from the stage of production to export, can also be considered.

### **Policy Challenges**

The following policy options should receive our attention at the earliest with a view to preparing ourselves meeting the full impact of WTO.

- Increased investment in agriculture
- Increased flow of institutional credit to facilitate agricultural exports
- Diversification from cereals to high-value crops such as fruits and vegetables, floriculture, spices, animal husbandry, fisheries, medicinal & herbal crops etc.
- Promoting and encouraging public-private partnership to facilitate investment in infrastructure such as in irrigation, agriculture research, electricity, roads, rural markets, cold storage and transportation etc., in an endeavour to reduce transportations costs
- Organizing farmers into associations that would jointly produce and process commodities for international markets at both the regional and global levels including formation of SHGs and motivating them for cultivation, processing, marketing, nurseries, seeds production etc., and linking such initiatives through contract farming and corporate farming
- Increased investment on developing viable and cost effective seeds industry

- Developing institutions and providing support to them for the vertical integration of production, processing, packaging and marketing of agricultural produce with public-private partnership
- Policy framework for the contract and corporate farming should be streamlined
- Improving sanitary and phyto sanitary measures as well as adoption of codex alimentarius standards of food safety and simultaneously evolving SPS standards for our domestic products as well as imports, including strengthening the capacity of the state government institutions for educating the farmers with regard to SPS requirements

### **Conclusion**

In conclusion, let us remember the quote from our eminent agricultural scientist, Dr M S Swaminathan, "India should ensure that all boxes in the WTO must be abolished, and trade distortion, and unfair practices must be spelt out clearly and factors governing sustainable livelihood should be recognised so that resource-poor, developing countries should be able to place restrictions on imports."

### **Source**

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## **7. Decision-Making Processes in India: The Case of the Agriculture Negotiations**

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### **I. The problem in context**

India submitted a very detailed and comprehensive proposal as part of the ongoing negotiations on agriculture in the WTO in January 2001. It covered all aspects of the negotiations and remains as one of the longest proposals ever submitted by any member. This study examines the manner in which this negotiating proposal was finalized, the consultations that were undertaken and the actual decision-making process that led to the submission of the proposal. It attempts to identify the main protagonists and the key stakeholders, the role that each one played in the process, and the extent to which, in their view, they succeeded in getting their concerns reflected in the proposal. Finally, the study also tries to ascertain from the stakeholders their perception of the WTO as an organization, including in the context of the WTO's perceived influence on the process and final outcome.

Agriculture has been, and perhaps will remain for some time, a key issue in the WTO, with the power to influence negotiations, packages and the outcomes of Ministerial Conferences. It is equally sensitive, if not even more so, in the Indian context. To understand these sensitivities fully, including India's emphasis on self-sufficiency, it is important to keep in mind the extreme shortage of food grain that the country faced in the 1950s and 1960s. It was only the success of the 'Green Revolution' that helped India overcome its dependence on food aid. The criticality and sensitivity of the Indian agriculture sector can be further gauged by the following factors:

- the share of agriculture in the national GDP is a huge 24%;
- a little over 700 million people, that is about 69% of the population, are dependent on the rural economy for their livelihood;

- a very large majority of this rural population survives on an annual per capita income of US\$ 175 as compared with the current national per capita income of US\$ 480;
- nearly 70% of cultivable land, that is about 100 million hectares out of 142 million hectares, continues to be vulnerable to the vagaries of the monsoon; and
- even though India is the second-largest agricultural producer in the world, its yields are still very low when compared with some of the other producers.

This would show why agriculture is such a key issue for India in the WTO, and the constraints that were probably factored in while finalizing the Indian proposal. Additionally, the rural population in India, which is largely agro-based, has a political mind of its own, and has the power (and often the inclination) to prove the political 'pundits' wrong. This was amply demonstrated in the 2004 General elections in which the then ruling and favoured National Democratic Alliance was voted out of power, largely because the rural population felt neglected, and in fact somewhat bypassed, by the much touted process of economic liberalization. This power, which the rural population wields, makes the decision-making process in agriculture even more sensitive and consequently subject to even greater political scrutiny.

## **II. The local and external players and their roles**

### **The federal government**

The main protagonists in the context of the agriculture negotiations at the federal level in India are the Ministry of Commerce and Industry (MOCI), the Ministry of Agriculture (MOA) and the Ministry of External Affairs (MEA).

The MOCI is mandated with the primary responsibility for all WTO-related issues. The government of India orders regarding the allocation of business state that it is the MOCI which handles all issues related to 'International trade and commercial policy, including tariff and non-tariff barriers'. Within the MOCI, the Trade Policy Division (TPD) is responsible for the work relating to the WTO. It is headed by a Special Secretary, who is assisted by two senior joint secretaries and a team of nearly twenty middle-management-level officers. The Permanent Secretary of the MOCI is kept in the loop but for most issues the final decision and the negotiating positions are largely formulated in the TPD itself.

On the other hand, the MOA is the nodal ministry for all issues relating to agriculture, including the work relating to the Food and Agriculture Organization of the United Nations (FAO). However, the situation is somewhat ambiguous when it comes to agriculture issues within the WTO. International trade negotiations no doubt come within the ambit of the MOCI, but the MOA feels that when it comes to trade negotiations in agriculture, it should be the lead protagonist. In fact, as a former official of the Agriculture Ministry pointed out, 'the first step taken by the government, which set the ball rolling on the agriculture negotiations, was taken by the MOA and not by the MOCI, in the form of a seminar organized in conjunction with the FAO in June 1999'. This ambiguity is compounded because the consultative process between the two ministries is not institutionalized and, in the past, largely depended on personal relationships between the officials heading these divisions. Nonetheless, it is clear from the feedback provided by various officials that on issues related to agriculture the MOCI has been careful to avoid finalizing positions before obtaining the explicit approval of the MOA.

The role of the MEA as a stakeholder, especially in the context of the agriculture negotiations, is less clear. Its expertise in the negotiating process is not in doubt, since it has negotiated most international agreements; what the MOCI does doubt, however, is the MEA's expertise in the substance of the negotiation — and especially so in the case of agriculture. This perhaps explains why the MEA does not appear to have been involved in the consultative process to any significant extent.

### **The state governments**

The state governments were not regarded as significant stakeholders during the Uruguay Round (UR) and their involvement was minimal during the pre-UR consultations. This is surprising, not only because some of the Indian states are larger than many WTO members, but also because agriculture is a state subject. In fact, some state governments had, soon after the conclusion of the UR, filed a case in India's Supreme Court on the grounds that the government of India had no authority to accept obligations arising out of the Agreement on Agriculture (AOA) because of agriculture's status as a state subject. The government of West Bengal reiterated these concerns in May 2001, saying that 'agriculture is a state subject, therefore all agreements, legislations etc., are within the exclusive domain of the state governments', and that it was unacceptable that 'the government of India had

signed the AOA.... without first arriving at a consensus among the state governments'. It is clear that many state governments have significant sensitivities regarding agriculture; these appear to have been taken into account during the consultative process. At the same time, it is also true that awareness of WTO-related issues is very superficial in the states, including amongst the state bureaucracy, and the positions taken by them are largely political rather than being based on the likely implications of the proposals. T. S. R. Subramanian said that 'in most states, the WTO and its rules are regarded as a distant entity without any immediate consequences for the state government, and perceived as a largely esoteric subject'.

## **Industry**

There are two main industry associations in India. The first, the Confederation of Indian Industry (CII) was established as a non-government, industry-led and industry-managed organization. It has been playing an increasingly active role in putting forth the views and concerns of the industry to the government. Its membership extends to over 4,800 companies from the private as well as public sectors. According to N. Srinivasan, Director-General of the CII, it provides a platform for sectoral consensus-building and networking. He categorized the CII as fulfilling two functions, namely 'creating an awareness amongst its members on key WTO issues and providing inputs to government, based on the feedback received from industry'. The second industry association, the Federation of Indian Chambers of Commerce and Industry (FICCI), was established in 1927, and according to Manab Majumdar, the association's Project Leader (WTO), FICCI has been at the forefront of 'analyzing the impact of events through a multi-disciplinary approach involving representatives of business, academia, policy-makers and foreign experts, and evolving problem-solving responses'. These organizations do not seem to have been consulted during the Uruguay Round. Srinivasan put it very aptly when he said that 'for a long time the relationship between the government and industry was based on a "we-they" syndrome; the UR reflected the tenuousness of the relationship, with the government taking most decisions on its own'. Today, the situation has changed dramatically and these associations are not only consulted regularly, but also provide critical inputs to government on trade issues. Srinivasan felt that the turning point of this relationship was the Seattle Ministerial Conference when, for the first time, representatives from industry were formally a part of the Indian delegation.

## **Academic institutions and think tanks**

During the UR, academic institutions and think tanks did not feature in the consultative process at all. Since the UR, they have become much more involved, even though this participation is still somewhat marginal because most of them do not have the resources needed to conduct a meaningful analysis. At times, they also lack the sectoral expertise that the modern multilateral process requires, something which is not uncommon amongst academic institutions around the world. However, a number of institutions and think tanks were consulted during the drafting of the agriculture proposal. These included the National Council for Applied Economic Research (NCAER), the Indian Institute of Foreign Trade (IIFT), the Indian Council for Research on International Economic Relations (ICRIER) and the Research and Information System for the Non-Aligned and other Developing Countries (RIS). Dr Anil Sharma, a senior economist in NCAER, said 'our inputs were sought so that MOCI could take informed positions on various issues and use the analytical data that we provided to convince domestic lobbies about the appropriateness of these positions'. Biswajit Dhar of the IIFT said 'even though the terms of reference of the prescribed work were very broad, the actual inputs sought by the ministry were invariably needs-based. A former official of the MOA stated that these institutions provided valuable inputs, especially in analyzing the micro-level impact of liberalization in agriculture, both that had already been undertaken and that which was being proposed.

## **Civil society**

Civil society in India, in the same way, perhaps, as in any other country, is extremely heterogeneous. It is not difficult to find groups actively defending or opposing any point of view in relation to a particular issue. This is not to belittle their contribution to the overall debate, a fact which seems to be well accepted. There is an increasing recognition in most government circles that consultations with civil society are very important. However, there is still a big question mark as to which non-governmental organization (NGO) to invite to the consultative process, as there are a very large number of active NGOs to choose from. As Amrita Narlikar said, 'the process of involving NGOs seems to be a self-affirming process with the more critical ones being often excluded from the inter-ministerial consultations; the checks and balances, so necessary in such a process of consultation, seem to be missing'.

Officials appeared to have somewhat preconceived notions of the views of civil society. A former official of the MOA said, 'the views expressed by the civil society representatives are always protectionist in nature. According to them, Indian agriculture is simply not trade-driven; their only objective is, therefore, to ensure that the livelihood of the subsistence farmers is protected.'

### **III. Challenges faced and the outcome**

Perhaps the most significant challenge that was faced in arriving at an outcome (that is the final negotiating proposal) was to put in place a process that would take into account the very diverse views and positions of the various stakeholders, while ensuring that a cohesive proposal could be prepared. The process went through a number of different phases: the initial identification of the key issues; consultations with the non-governmental stakeholders, including industry associations; the initial drafting of the proposal; holding regional and inter-ministerial consultations; and the final approval by the Cabinet.

#### **Identification of key issue**

As a first step towards identifying the main issues that would need to be addressed in the agriculture negotiations, the MOCI and MOA asked the NCAER and IIFT to analyze the experience of implementing the AOA and to make appropriate recommendations on the critical issues facing Indian agriculture. Interestingly, the basic approach to Indian agriculture does not seem to be the same as far as these institutions are concerned. For example, Dr Anil Sharma of the NCAER feels that 'Indian agriculture is quite competitive and India should adopt a more aggressive stand in the negotiations'. On the other hand, IIFT had a more conservative approach and was more closely aligned to the MOA's position on the need to protect the agriculture sector. A former official of the TPD said that though their inputs were very useful, they did not often factor in the political sensitivities of the issues that they were analyzing. Giving one such example, the official said that according to the econometric analysis carried out by NCAER, a somewhat lower bound rate was proposed as being sufficient to take care of probable import surges for a particular food security-sensitive commodity, but since such a low bound rate was not politically acceptable, it was modified while finalizing the proposal.

The ministries also contacted a number of well-known agricultural scientists. Some very useful suggestions appear to have come out of these interactions. For instance, M. S. Swaminathan, one of the most renowned agricultural economists in India, came up with the suggestion that India should press for a livelihood box, in which all the country's concerns on rural development and poverty alleviation could be aired. This concept seems to have been taken on board even though India's final proposal talks of a 'food security box' rather than a 'livelihood box'. At the same time, the policy framers also had to factor in views such as those expressed by Devinder Sharma, a trade and food policy analyst who, at that time, wrote that five years after the World Trade Organization came into existence, the anticipated gains for India from the trade liberalization process in agriculture are practically zero. And yet, undaunted by the negative fallout from the implementation of the WTO's Agreement on Agriculture, the Ministry of Agriculture is aggressively pushing for the second phase of reforms. The entire effort of the free trade initiative is to destroy the foundations of food self-sufficiency so assiduously built over the years.

### **Consultations with industry**

Indian industry representatives appear to have been involved in the entire consultative process. Srinivasan stated, 'in addition to providing feedback to MOCI, CII also lobbied and presented the industry's view on key issues to people like Mr Lamy and Mr Zoelick, whom we met on several occasions'. Manab Majumdar said, 'FICCI had constituted an agriculture task force, whose primary mandate was to provide inputs to the government on agriculture issues'. He, in fact, felt that it was not the government but the industry associations which needed to do more, including by apportioning more resources into their analysis of WTO issues. However, one criticism levied at industry associations by some of the stakeholders was that they tended to adopt positions on policy issues that looked suspiciously similar to those of the government and that they were rarely critical of government. However, both the representatives of CII and FICCI disagree: Srinivasan said, 'we did not hesitate to criticize the government, although such views are often expressed in private consultations, rather than in public statements of disagreement'. Majumdar was of the view, 'we do have differences with the government but we tend not to wash our dirty linen in public'.

## **Inter-ministerial consultations**

Even though the two key ministries, the MOCI and the MOA, appear to have initiated the process somewhat independently, they do seem to have kept each other involved and informed on developments. Subsequently, the interaction between the two ministries increased even more and culminated in what was practically a joint negotiating proposal. But the path to the final common position was not all that smooth. Officials from both the ministries admitted that there were — at times serious — differences on the position the two ministries wanted to adopt on key issues. R. C. A. Jain, in trying to explain the reasons for these differences, said 'MOCI, understandably, has a broader perspective and sees agriculture as one of the sectors being negotiated, whereas for MOA it was difficult to accept such an approach as agriculture is a very sensitive sector in which compromises cannot be made'. He also felt that differences arose because 'MOCI's mandate was to increase India's share of global trade, while MOA wanted to ensure that domestic production and the livelihood of small farmers was in no way threatened.' A former expert who was closely associated with the drafting process said that the two ministries were like the two sides of a convex lens; the inevitability of their relationship being signified by the two joined ends of the lens, while the differences amongst them on the approach to key issues is illustrated by the bulging middle part of the lens.

## **State-level consultations**

The central government organized very wide-ranging consultations on WTO agriculture issues. In June—July 2000 issue of MOCI's monthly newsletter, mention is made that in the process of preparing India's negotiating position on agriculture, the government initiated regional consultations at various places, besides national level consultations, with a view to generating greater awareness of the issues and to receive views and suggestions which would facilitate a consensus regarding India's position. However, some people still feel that these consultations were more of a formality rather than a process that led to significant changes. T. S. R. Subramanian said that the discussions in these state-level consultative meetings often remained superficial because of a lack of in-depth knowledge of WTO issues at the state level. An official of the Ministry of Agriculture said that rather than contributing to the substantive aspects of the negotiating elements, these discussions tended to largely reflect a fear "psychosis" of the WTO, and views simply did not emanate in these



consultations that the agriculture negotiations should be seen as an opportunity; instead, there was an overwhelming feeling that this was a threat which had to be countered. A former official of the MOA said, 'an attempt was made to explain that the agriculture negotiations did not represent the kind of threat people made it out to be, but it was very difficult in view of the uni-directional nature of views that were being expressed. The best we could do in these circumstances was to build the negotiating proposal around the objective of maintaining the status quo.

### **Finalization of the proposal by the Cabinet**

All these meetings and consultations played an important role in giving final shape to the Indian proposal. The Commerce Ministry's website specifically mentions that the Indian proposal jointly formulated by the Department of Agriculture and Co-operation and Department of Commerce, reflects the broad consensus which was achieved through a series of regional-level meetings, meetings with the state governments, interaction with political parties, representatives of farmers' organizations, various autonomous institutions, agricultural universities and eminent agricultural economists.

As for the involvement of India's WTO mission in Geneva, an official said that the mission was always kept in the picture and provided useful feedback, especially about the likely reactions of possible/potential alliance partners to the different elements of the proposal. The final draft was submitted to the cabinet early in January 2001. While it was not possible to consult the file on the cabinet note (all such notes are secret), officials involved with the exercise indicated that since most ministries had been consulted beforehand, practically no changes took place during the examination by the cabinet. Once approved by the cabinet, the proposal was transmitted to Geneva.

It was the culmination of this intense consultative process that led to India's negotiating proposal being submitted to the Special Session on Agriculture in January 2001. As a very detailed proposal, it broadly reflects the concerns and attempts to address the issues that were raised during the consultative process. While all three pillars of the negotiations are covered, it starts with a detailed proposal on food security in which it proposes the setting up of a 'food security box' which encompasses all the special and differential treatment flexibilities. In other sections,

there is an evident thrust on seeking adequate reduction of tariffs, including tariff peaks, in developed countries, while seeking flexibility not to reduce tariffs on its food security crops. There is also a clear reference to the linkage between an a priori reduction in trade distorting domestic support in developed countries, and reductions in tariffs in developing countries. It seeks the complete elimination of all export subsidies. At the same time, it proposes that all measures taken by developing countries for poverty alleviation, rural development, rural employment and diversification of agriculture should be exempted from any reduction commitments.

### **The perception of the WTO's role in the process**

The documented records and the oral interviews that were conducted clearly show that the Indian proposal on agriculture was finalized mainly through a bureaucratic process based on consultations with stakeholders. Julius Sen has pointed out, in relation to the proposals on WTO issues that 'India's negotiating positions are almost without exception recommended by Commerce Ministry officials, examined by the Committee of Secretaries, and then approved by the concerned Cabinet sub-committee'. Clearly, the process was bureaucratically driven and subject to fairly wide-ranging domestic consultations. And yet, to many, the WTO seems to have a significant influence, on both the process and outcome. The general perception is that the WTO is pushing the agenda for global economic reform and that the agriculture negotiations are a part of this WTO-led reform agenda. Feelings against the WTO were expressed even more strongly in the context of reductions in tariffs, especially on agriculture products, which many of the stakeholders felt would open up domestic markets with negative implications for rural employment and agriculture production. The fact that the WTO does not have an organizational mandate of the kind that the World Bank and the IMF have, and that it is a completely member-driven organization, where the agenda is set and executed by the members on the basis of explicit consensus, does not seem to be a well known, or an accepted fact. Instead, as Amrita Narlikar said, 'the general public seems to have a very opinionated view of the WTO, and even certain civil society organizations and other institutions who would be expected to have a better understanding of the WTO, more often than not, seem to have a negative perception of the organization'. Biswajit Dhar, who writes for a number of newspapers, also said that because of such a perception 'it is not always very easy to take a pro-WTO line in public writings'.

A number of reasons were put forward to explain this perception. The Indian ambassador to the WTO felt that this was because 'the general public still regards the WTO as a developed country club, pushing the agenda at the behest of the major players and global MNCs'. Another, perhaps more historical, explanation was given by a former official of the Commerce Ministry, who said that 'when India signed up to the Uruguay Round Agreements, the long-term implications of many of the obligations it was undertaking were far from clear. Later, when quantitative restrictions had to be lifted and patent protections tightened, there was a public outcry. At that stage, it was convenient to attribute the responsibility for these decisions to the WTO.' The former Indian ambassador to the WTO supported such an explanation, when he said that 'the public at large has a very negative perception of the TRIPS Agreement and there is a feeling that developing countries, including India, were literally coerced into accepting the agreement; a feeling that is still very deeply entrenched in the Indian psyche and colours the general perception of the WTO even today'. These feelings become even more pronounced in the context of agriculture. A former official of the MOA said, 'self-sufficiency in agriculture is still seen as the single most important achievement after independence, and there is a feeling that the WTO is out to undo this very achievement by its insistence on liberalization, without acknowledging the importance of self-sustainable domestic production'.

Not that balanced views were not forthcoming. Srinivasan of the CII said that their members understood that the WTO only provides a platform for negotiations and it was up to member countries to negotiate outcomes of interest to them. Others too acknowledged that many positive things had come about because of the WTO. For instance, Biswajit Dhar said, 'the consumer in India today has a much wider choice, mainly because of the removal of quantitative restrictions'. Subramanian said that there has been a vast improvement in the efficiency and in the customer service of the banking sector after foreign banks were allowed to open up branches in the country. But these positive outcomes are rarely acknowledged. Subramanian, in fact, equated the WTO to the British Raj in India, which, according to him, 'got blamed for things, but never got credit for the positive changes it introduced'.

#### **IV. Lessons for others (the players' views)**

It is not very easy to generalize, or to draw lessons from a process which had so many protagonists, especially as their contributions were spread out both geographically and temporally. Some of the decision-making processes have definitely been institutionalized and it would not be wrong to assume that they would be followed whenever decisions are being taken on other WTO-related issues. It is also clear that the consultative process in India had come a long way, especially as compared with the situation before the Uruguay Round, and the debate on the various tenets of trade policy had been thrown open to a much wider audience. As the present analysis shows, very wide-ranging consultations, spread out over more than two years, were held while finalizing the negotiating proposal on agriculture. As obtained from the records of the Commerce Ministry, in addition to a very large number of informal consultations, a total of fourteen formal consultative meetings were held with stakeholders between 1999 and 2001.

The inclusiveness of the consultative process is also borne out by the reactions of some of the key stakeholders. The associations representing Indian industry appear to be largely satisfied with the consultative process. The Director-General of CII said, 'we were involved at all stages of the process, and the final proposal adequately reflects the concerns that we brought to the government's attention'. Similarly, Manab Majumdar of FICCI said, 'the process of consultations followed during the course of finalizing the agriculture proposal reflects the exponential increase in interaction between government and the industry associations'. However, the position is less clear as far as the involvement of the actual agricultural producers is concerned. While rural agricultural worker unions exist, their political priorities seem to limit their capacity to organize themselves at the grass-roots level; they also appear reluctant to go beyond their own immediate spheres of interest. Clearly, therefore, the ability of agricultural workers' groups to influence the government still remains very limited. To some extent, their views were reflected in the stance taken by the MOA, whose officials were generally satisfied with the final proposal. Jain felt that this was because of a clear understanding at the political level that on issues of substance, the views of MOA would prevail.

There is also no denying that the process was kept very transparent. Flyers were put out on the official website at every stage, and comments appear to have been regularly solicited from the various stakeholders. However, it also appears that the political bosses preferred to play safe and were more comfortable with a defensive strategy rather than pushing aggressively for market reforms. As a former Cabinet Secretary said, 'the politicians do not want to lose their domestic support for events taking place in far away Geneva and, therefore, tend to adopt an intransigent stand, especially on an issue like agriculture, where the domestic constituency is as large as 700 million people'.

It would, therefore, not be wrong to conclude that the Indian position and policy approach to the agriculture negotiations in the WTO were arrived at on the basis of some very intensive cross-sectoral and inter-ministerial consultations, and then adopted at the highest possible level in the government. Apart from the officials in the ministries of Commerce and Agriculture, representatives of various autonomous institutions, agricultural universities and eminent agricultural economists were also involved in the process. In addition, inputs were sought from the state governments, representatives of different political parties and civil society. Clearly, therefore, this was a decision taken by the government on the basis of expressed domestic concerns.

Such a decision-making process would seem to fit in with the mandate and role of the WTO as a facilitator of an inter-governmental dialogue that leads, among other things, to binding decisions on the governments involved. The WTO, as is well known, though perhaps not well enough propagated, is not an independent or self-contained entity with the constitutional legitimacy to take decisions in the name of its members. Rather, it is a vehicle for decision-making among national governments vested with sovereign authority.

The present analysis strengthens this view, since clearly in the formulation of India's agriculture negotiating proposal there is very little, if anything at all, that can be attributed to extraneous factors, including the WTO. And yet the spectre of the WTO, not as an institution mandated merely to facilitate the negotiating process, but as an institution attempting to influence domestic decision-making process, does not seem to have completely disappeared. The WTO is still perceived somewhat negatively. The general view seems to be that it is an institution seeking to undermine domestic policy space. There is clearly a lack of understanding about the WTO's mandate and the member-driven nature of the organization. The dichotomy between a decision-making process which was no doubt completely domestic and clearly very democratic, and the perception of the WTO as an organization attempting to influence domestic decision-making processes, is perhaps best summed up by excerpts from two different interviews that the Union Agriculture Minister gave recently. While speaking to the *Financial Express*, he said 'let me make it amply clear that India will not succumb to any pressure.... we will take a pragmatic view on various issues.... we will not compromise on safeguarding the interests of the small and marginal farmers' — a statement that clearly emphasizes the domestic imperatives of India's position in the agriculture negotiations. However, in another interview given very soon afterwards, he still referred to the 'threat from the WTO', a threat whose only basis is perhaps a continuing, though hopefully diminishing, legacy from the Uruguay Round, when the responsibility of certain politically uncomfortable decisions had been apportioned to the WTO.

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# WTO and Agreement on Agriculture

## Questions and Answers

### 1. What is the Agreement on Agriculture?

The Agreement on Agriculture (AoA) came into force on 1 January 1995 and brought not only all basic agricultural products but also the products derived from them under multilateral rules and commitments. Also included are wines, spirits, tobacco products, fibres such as cotton, wool and silk and raw animal skins for leather production. Fish and fish products are not included; nor are forestry products. The AoA prescribes rules in the areas of market access (tariffs and tariff rate quotas), domestic support (production related subsidies) and export competition (export subsidies, export credit and international food aid). These three elements are commonly referred to as the “pillars” of agricultural trade reform. The commitments of member countries in each of the three “pillars” are contained in their individual schedules. The commitments were implemented over a period of 6 years by developed countries and 10 years by developing countries starting from 1995.

### 2. Does the WTO determine the customs tariffs on import of agricultural products?

Customs tariff is the duty charged on the import of any good into the domestic territory of a country. WTO Member countries are expected to “bind” their customs tariffs, in other words, they are expected to notify the ceiling rates of tariffs. The tariffs which are actually imposed by the Customs authorities on imports into a country are the applied customs tariffs. Each Member is free to set the applied customs tariffs. The only restriction is that the applied tariff of the Member on an agricultural product cannot exceed the bound customs tariff on the product. For example, the “bound” customs duty on wheat notified to the WTO by India at the end of the Uruguay Round is 70%. Customs duty on wheat imposed by India cannot therefore be increased beyond 70%.

**3. Rules for multilateral trade in agricultural products were already in place at the end of the Uruguay Round. What is the purpose of the agriculture negotiations under the Doha Round?**

Negotiations in the Doha Round are aimed at establishing a fair and market-oriented trading system through a program of fundamental reform encompassing strengthened rules and specific commitments on support and protection in order to correct and prevent restrictions and distortions in world agricultural markets. These objectives are to be realized through substantial improvements in market access for agricultural products; reduction and eventual phasing out of all forms of export subsidies; and substantial reductions in trade-distorting domestic support. Thus, while the AoA is the first multilateral agreement for introducing disciplines in respect of agricultural trade, the Doha negotiations are aimed at further lowering subsidies that distort agricultural markets and reducing barriers to market access.

**4. Can we use non-tariff measures on import of agricultural products?**

Market access issues dealt by the AoA are limited to tariffs and tariff rate quotas. Before the Uruguay Round, some agricultural imports were governed by various forms of quotas and other non-tariff measures (NTMs). These measures have been converted into their tariff equivalents, i.e. they provide more-or-less equivalent levels of protection as did the NTMs. Conversion of the quotas and other types of NTMs into tariffs is called "tariffication". The AoA prohibits the use of non-tariff measures that are exclusive for agricultural products. It effectively means that tariffs are normally the only border protection measure allowed. However, members can resort to non-tariff measures under the balance-of-payments provisions and other non-agriculture specific provisions of GATT 1994 and other multilateral trade agreements which are applicable to general trade in goods (industrial or agricultural).



**5. Was India required to cut its tariffs on agricultural products as a result of the Uruguay Round of agriculture negotiations?**

Uruguay Round participants agreed that developed countries would cut their committed bound tariffs by an average of 36%, in equal steps over six years. Developing countries had to reduce their bound tariffs by 24% in 10 years. Several developing countries like India used the option of offering ceiling tariff rates rather than tariffication. India opted to do so because it was maintaining quantitative restrictions on account of Balance of Payment problems, which were eliminated in March 2001. At the end of the Uruguay Round, India had bound its tariffs on most items, at 100% for primary products, 150% for processed products and 300% for edible oils. Bound tariffs on some products (comprising about 119 tariff lines) were lower since they were historically bound at a lower level in the earlier Rounds of multilateral trade negotiations. Subsequently, however, negotiations were conducted under GATT Article XXVIII and the binding levels were revised upwards in December 1999 on 15 tariff lines including skimmed milk powder, spelt wheat, paddy, rice, maize, millets, sorghum, rapeseed, colza and mustard oil, fresh grapes etc.

**6. How are subsidies provided to farmers of any concern to the WTO?**

The reason why it was considered necessary to reduce and discipline domestic support policies that support domestic prices, or subsidize production in some other way, is that they encourage over-production. This squeezes out imports or leads to export subsidies and low-priced dumping on world markets.

**7. Are subsidies to farmers completely prohibited under the AoA?**

No. The AoA distinguishes between support programmes that stimulate production directly, and those that are considered to have no direct effect. Subsidies that are in the nature of programmes having direct effect on production and trade, referred to as the “Amber Box”, have to be reduced. In the terminology used by the AoA, these subsidies are called “aggregate measurement of support” or “AMS”. Developed countries were required to reduce their AMS as existing during 1986-88 (the “base period”) by 20% over six years starting in 1995. Developing countries had to reduce their AMS by 13.3% spread over a 10-year period. Least-developed countries were not required to make any cuts.

**8. Did India have to reduce subsidies provided to its farmers as a consequence of the Uruguay Round negotiations?**

India was not required to reduce any of the subsidies given to its farmers. This is because India's total AMS was well below the ceiling prescribed in the AoA. Moreover, developing countries have been provided three additional exemptions, namely, (1) investment subsidies which are generally available to agriculture; (2) agricultural input subsidies generally available to low-income or resource-poor producers; and (3) domestic support to producers to encourage diversification from growing illicit narcotic crops.

**9. Are subsidies on export of agricultural products permitted?**

The AoA prohibits export subsidies unless the subsidies are specified in a member's schedule of commitments. Where they are listed, the agreement requires WTO members to cut both the amount of money they spend on export subsidies and the quantities of exports that receive subsidies. Taking averages for 1986-90 as the base level, developed countries agreed to cut

the value of export subsidies by 36% over six years and developing countries by 24% over ten years starting in 1995. Developed countries also agreed to reduce the quantities of subsidized exports by 21% over six years (14% over 10 years for developing countries). Least-developed countries were not required to make any cuts. During the six-year implementation period, developing countries were allowed under certain conditions to use subsidies to reduce the costs of marketing and transporting for exports.

#### **10. What are modalities?**

Negotiating Groups have been constituted in the WTO on each aspect of the negotiations. From time to time, based on the views expressed by the WTO Members, the Chairs of these Groups bring out draft modalities containing proposals that would help realize the objectives of the negotiations. In the agriculture negotiations, the draft modalities include formulas and other methods to be used to reduce tariffs and agricultural subsidies. The Chair of the Negotiating Group on Agriculture brought out Draft Modalities on Agriculture on 17 July 2007; and based on the multilateral discussions, brought out further revised draft versions on 8<sup>th</sup> February, 19<sup>th</sup> May and 10<sup>th</sup> July 2008. The revised draft text of 10<sup>th</sup> July 2008 formed the basis of discussion during the Mini-Ministerial meeting of the WTO in Geneva in July 2008. A fourth revised draft version was issued on 6<sup>th</sup> December 2008.

#### **11. Which are the main Coalition Groups in the Agriculture Negotiations? Is India a member of any coalition?**

The main coalition groups in the agriculture negotiations are the G-20, the G-10, the G-33, the Cairns Group, the African Group, the African-Caribbean-Pacific (ACP) Group and the Cotton-4 (Benin, Burkina Faso, Chad and Mali). Other groupings include the group of small and vulnerable economies (SVEs), Least developed countries (LDCs) and the Tropical Products group. India is a member of the G-20 and G-33 coalition groups. The G-20, led by Brazil, is a coalition of developing countries pressing for ambitious reforms of

agriculture in developed countries with some flexibility for developing countries. The G-33, led by Indonesia, is spearheading the developing country effort to arrive at satisfactory modalities on Special Products and the Special Safeguard Mechanisms as provided for in the mandate of the Doha Round. These two measures are critical parts of the special and differential treatment provisions for developing countries.

#### **12. How will agricultural tariffs be reduced in the Doha Round?**

There are two main elements in the market access modalities that are on the table: (i) Band-wise tariff reductions; and (ii) Flexibilities or deviations from the prescribed tariff reductions to be used by members (developed and developing) to address their special needs. Tariffs are proposed to be cut according to a formula, which prescribes steeper cuts on higher tariffs. These reductions are to be made from bound rates.

#### **13. Will tariffs on all agricultural products be cut as a result of the Doha Round negotiations?**

The mandate of the Doha Round provides for flexibilities or deviations from the prescribed tariff reductions to be used by members (both developed and developing) to address their special needs.

#### **14. Will India continue to have adequate policy space to raise tariffs on agricultural products even after the Doha Round?**

The tariff cuts to be taken by developing countries would be moderated by four flexibilities that are built into the mandate of the Doha Round: Developing countries are required to undertake no more than a maximum overall average cut of 36%. If the band-wise cuts described above lead to an overall average cut higher than 36%, they can take a lower cut proportionately across bands to keep within 36%. A simple slotting of India's tariffs into the appropriate tariff band and the applicable cut, results in an overall average cut of around 41%. So, we can scale back the cuts by the same factor in each band so that the overall average cut is no more than 36%.

**15. How will India protect the interests of its poor and vulnerable farmers?**

The Hong Kong Ministerial Declaration of December 2005 provides that developing country members would have the flexibility to self-designate an appropriate number of tariff lines as “Special Products” (SPs) guided by indicators based on the criteria of food security, livelihood security and rural development. This is a special and differential treatment provision that allows developing countries some flexibility in the tariff cuts that they are required to make on these products

**16. Will the list of products to be designated as SPs be decided in the negotiations?**

No. Special Products will be self-designated, that is, once the modalities are finalised, the developing country Member will decide which of its products it wants to designate as SPs. Once this is decided, the list would be notified to the WTO as part of the Member's schedule of commitments under the Doha Round. In India's case, the list of SPs would be decided by the Ministry of Agriculture and Cooperation, the Ministry of Food Processing Industries, the Department of Commerce and other agencies concerned in consultation with State Governments.

**17. Will developed countries be allowed to shield some of their agricultural products from full tariff cuts?**

Members (both developed and developing) may designate an appropriate number of tariff lines to be treated as sensitive, on which they would undertake lower tariff cuts. Even for these products, however, there has to be “substantial improvement” in market access, and so the smaller cuts would have to be offset by tariff rate quotas, thus improving the possibilities of market access. According to the draft modalities of 6<sup>th</sup> December 2008, developed countries can designate 4% of tariff lines as sensitive products; for

members with more than 30% of their tariff lines in the top tariff band (75+band), a higher entitlement of 6% is proposed. Developing countries can designate one-third more (5.3% or 8%) of products, as Sensitive Products. Almost 35% of India's agriculture tariff lines are in the top band of 130+ and therefore, the sensitive product entitlement would be 8%. In other words, India would have the flexibility to take lower cuts than would otherwise be required under the tariff reduction formula on 8% lines, using one of the options for developing countries that do not require provision of access through tariff quotas.

**18. Would developing countries also be required to provide tariff rate quota access to compensate for the lower cuts on their Sensitive Products?**

For developing countries the quota expansion is two-thirds of the amounts for developed countries, and domestic consumption does not include subsistence farmers' consumption of their own produce. Instead of offering tariff rate quotas, developing country Members can take the full formula cuts on all their Sensitive Products but over an implementation period three years longer than normal.

**19. Did India use the special safeguard provisions available in the Agreement on Agriculture? Will developing countries have recourse to any emergency safeguard measures in the Doha Round?**

The AoA allowed Members to take special emergency actions ("special safeguards" by way of imposition of an additional tariff) in the case of products whose non-tariff restrictions were converted to tariffs, in order to prevent swiftly falling prices or surges in imports from hurting their farmers. The right to do so was reserved by 38 members and for a limited number of products in each case. India was not entitled to do so because it exercised the option of binding its tariffs instead of "tariffication" of quantitative restrictions (on account of balance of payments problems).

**20. Will Members continue to have recourse to the Special Safeguard (SSG) after the Doha Round?**

In the Doha Round, the debate has been about whether to eliminate the SSG, or reduce the number of products for which it can be invoked and to constrain it. The G-20 has always maintained that this is a transitional instrument and should be eliminated at the earliest. The EC, Switzerland, Japan and Norway want the SSG to continue. The Chair's 6<sup>th</sup> December 2008 text proposed that on the first day of implementation, developed country Members would reduce the number of lines eligible for the SSG to 1% of scheduled tariff lines and eliminate the SSG no later by the end of the seventh year of implementation. For developing country Members the SSG coverage would be reduced to no more than 2.5% of tariff lines on the first day of implementation. For Small and Vulnerable Economies (SVEs) the SSG coverage shall be reduced to no more than 5 per cent of lines over 12 years.

**21. Have solutions been found to the SSM issues that became contentious during the July mini-Ministerial meeting?**

Negotiations on these issues began first informally in September 2008 and then in the WTO's Agriculture Negotiating Group from October 2008. This continued till early December but solutions continued to elude the negotiators. In the 6<sup>th</sup> December 2008 version of the draft modalities, the Chair has left the section on SSM untouched. However, he has given his suggestions for a possible solution to the above UR bound problem in a separate paper (TN/AG/W/7) also brought out on 6<sup>th</sup> December 2008.

**22. Apart from caps on the overall trade-distorting support, are caps proposed on the support for individual products as well?**

Yes. This Round also seeks to place limits on subsidies at the level of products, in order to avoid shifting support between different products. For countries other than the US, the ceiling or maximum level would be the average support actually provided during the Uruguay Round implementation

period (1995-2000). The calculation for the US would be based on total Amber Box support for specific products per year for that period but shared among products according to the average share over the years 1995-2004. Another special dispensation, implicitly for the US, is that they can begin with a cap that is 30% higher than the scheduled limits.

**23. Will the de minimis levels of support permissible also be reduced in this Round? Will this lead to India having to reduce any of its subsidies for its farmers?**

De minimis support also has to be reduced in the Doha Round, with special treatment for developing countries. Developed countries are to cut by 50% from day one (i.e. cap at 2.5% of the value of production, from the current 5%). Developing countries with Amber Box commitments are required to cut de minimis by two-thirds of the developed country cuts (from the current 10% of the value of production, i.e., ending up with about 6.7% of the value of production). Developing countries, like India, with no AMS commitments will not be required to cut de minimis support.

**24. What about disciplines on the non trade distorting or Green Box support measures?**

The Doha Round mandate envisaged a review of the criteria for defining support as “Green Box” support and to allow effective coverage of programmes of developing countries that cause no more than minimal trade-distortion. The draft modalities include proposals to tighten criteria for developed countries and possible revision of conditions for developing countries' food stockpiling purchases from low-income farmers or those with few resources, at prices that are higher than the market.

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