

# **THE WORLD TRADE ORGANIZATION (WTO)**

## **A Question - Answer Booklet**

### **Frequently Asked Questions and Answers**

**WTO Cell Planning & Development Department Punjab**

# CONTENTS

- I.** The World Trade Organization (WTO)
- II.** Agreement on Agriculture
- III.** Agreement on Sanitary and Phytosanitary Measures
- IV.** Agreement on Trade Related Investment Measures (TRIM)
- V.** Dumping
- VI.** Agreement on Subsidies and Countervailing Measures
- VII.** Agreement on Safeguards
- VIII.** Agreement on Trade Related Aspects of Intellectual Property Rights
- IX.** General Agreement on Trade in Services (GATS)
- X.** Glossary of Key Terms
- XI.** Agreement on Textiles and Clothing

# CHAPTER 1

## Introduction to Multilateral Trading System

### *Bringing Trade Relations Under the Discipline of Multilateral Rules*

**Q: What is the World Trade Organization (WTO)?**

**A:** International trade for last six decades has been subject to the discipline of multilaterally agreed rules “by which countries are required to abide in their trade relations with one another”. The World Trade Organization (WTO, [www.wto.org](http://www.wto.org)) established on January 01, 1995 oversees this rules-based system. The WTO presently consists of 151 member countries and is the successor to the General Agreement on Tariffs and Trade (GATT) which had been performing a similar role since January 01, 1948. Pakistan has been a founding member of the GATT as well as that of the WTO.

### *Outlining Principles of the Multilateral Trading System*

**Q: What are the principles of multilateral trading system as embodied in the WTO agreements?**

**A:** The following principles form the basis of the WTO/GATT system:

- i. Non-discrimination in trade among nations
- ii. Protection through tariffs only
- iii. Maintaining predictability through binding of tariffs
- iv. Progressive liberalization of trade through negotiations
- v. Promoting fair competition in trade in the world market
- vi. Encouraging development and economic reforms among members

### ***Laying Down Rules for Trade Without Discrimination***

**Q: What is trade without discrimination?**

**A:** This principle of non-discrimination in trade is embodied in provisions relating to:

- (i) Most Favored Nation (MFN) Treatment
- (ii) National Treatment

### ***Favouring One, Favouring All***

**Q: What is the Most Favored Nation (MFN) treatment?**

**A:** The Most Favored Nation (MFN) principle requires that every WTO member will treat all its trading partners equally without any prejudice and discrimination. Therefore, if a member country grants some special favor or concession to another country, it will have to extend the same favourable / concessional treatment to all other WTO members. The essence of MFN principle is the 'equality of treatment' which can be summed up as “Favour one, favour all”. The MFN principle is embodied in Article-I of GATT, which governs trade in goods, Article-II of GATS i.e. agreement relating to Trade in Services and Article-IV of Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS).

**Q: Are there any exceptions to the MFN Principle?**

**A:** Yes. These are three major exceptions: (i) Formation of Common Markets / Free Trading Agreement / Regional Trading Agreements (ii) Positive differential action such as Generalised System of Preferences (GSP) giving special market access to a specific country or group of countries (iii) Discriminatory Actions due to unfair trade e.g. antidumping and countervailing actions.

### ***Giving Foreign Goods, a National Status***

**Q: What is the national treatment principle?**

**A:** The national treatment principle lays down that imported products are to be treated no worse in the domestic market than the local ones, once these have crossed the customs border. The same principle applies to foreign and domestic services, and foreign and local trademarks, copyrights and patents etc. However, charging customs duty on imports is not a violation of national treatment. The "national treatment (giving others the same treatment as one's own nationals) is specifically provided for the other WTO agreements (Article-III of GATT 1994, Article-XVII of GATS and Article-III of TRIPS). The principle is however, handled slightly differently in each of these agreements.

### ***Reducing (Progressively) Barriers to Trade***

**Q: How does the WTO encourage relatively free trade?**

**A:** The WTO encourages the process of trade liberalisation through free trade, gradually reducing barriers to international trade. This is achieved through multilateral trade negotiations among member countries. Progressive reduction of barriers (both tariff and non-tariff) leads to "freer" trade. The WTO does not seek unrestrained free trade. On the contrary it tries to follow a 'structured and functionally effective' way to harness the value of open trade to principles and fairness.

### ***Making Trade Flows Predictable***

**Q: What is the principle of predictability and how it is significant?**

**A:** A predictable business environment is important for the promotion of international trade among WTO members. This is achieved by (a) binding market opening commitments and (b) tariff rates by the WTO members' parties. WTO members cannot normally raise their tariff barriers beyond their bound levels without a complicated process of extensive negotiations and compensation to trading partners.

### ***Promoting Fair Competition***

**Q: How does the WTO promote fair competition?**

**A:** The WTO lays down rules that favour fair competition by discouraging unfair trade practices such as dumping and export subsidies. Though, unfair practices in reality persist in a number of cases e.g. subsidies by developed countries to their farmers.

### ***Recognizing Special Needs of Developing Countries / Least Developed Countries***

**Q: How does the WTO recognize special needs of developing and the least developed countries?**

**A:** The WTO recognises the special needs and problems of developing and the least developed countries in different parts of the world. Special and Differential Treatment (S&DT) for these countries is incorporated in the WTO laws, and rules. This is usually achieved by giving developing and the least developed

countries in some cases longer implementation periods and, more flexibility in matter of compliance with the WTO.

# CHAPTER 2

## RULES RELATING TO TRADE IN GOODS

### *General Agreement on Tariffs and Trade (GATT 1994)*

**Q: Which is the main WTO agreement governing trade in goods?**

**A:** Trade in goods is mainly regulated by the General Agreement on Tariffs and Trade (GATT 1994). There are in addition, twelve associated agreements governing trade in goods.

**Q: What does the GATT 1994 consists of?**

**A:** General Agreement of Tariffs and Trade (GATT 1994) consists of:-

1. General Agreement on Tariffs and Trade (1947) GATT 1947 as amended, rectified or modified of (i.e. updated amended version of the Agreement).
2. Legal instruments that came into force under GATT 1947, including protocols relating to (a) tariff concessions, (b) protocols of accession, (c) decisions on waivers (d) other decisions of contracting parties.
3. Understandings on certain GATT Articles adopted in the Ministerial Conference at Marrakesh in 1994.
4. The Marrakesh Protocol to GATT 1994.

### *Differences Between the GATT 1994 and the GATT 1947*

**Q: What are the key differences between the GATT 1947 and the WTO Agreement regarding the trade in goods?**

**A:** The GATT was an agreement for multilaterals regulating international trade in goods but it was an ad hoc institution which assumed this by default. Despite



this disadvantage GATT (47) has been a useful institution which helped the initial trade to run smoothly organization' from 1948-1994. The GATT as an organisation no longer exists and has been replaced by the WTO. But the GATT as an international agreement still exists in a modified form of its original version and incorporating all the amendments that were made from time to time till the creation of the WTO in 1995.

The main differences between the GATT and the WTO are:

- a) The GATT was ad hoc and provisional. It was never ratified by members' parliaments, and it contained no provisions for the creation of an International Organization. While, the WTO and its agreements are permanent. As an international organization, it has a sound legal basis because members have ratified the WTO agreements, and the agreements themselves describe how the WTO will be functioning to promote trade.
- b) The WTO has members while, the signatories to the GATT were called "contracting parties"
- c) The GATT dealt with trade in goods only, while, the WTO covers services as well as intellectual property.
- d) The WTO has a more effective settling system.

### ***Exceptions to MFN Principle***

**Q:** What are the permissible exceptions to the MFN principle?

**A:** Exceptions to the MFN principle but subject to strict conditions are permitted.

These some exceptions include:

- a) Regional Trade Agreements (RTAs) - countries can set up free trade areas/custom unions, etc. in which goods and services coming from the member countries are given preference over those from the other countries.

- b) Goods from certain developing countries are by developed countries given market access on special concessional terms to certain goods under the "Enabling Clause" (which makes this exception permissible).
- c) A country can impose on goods traded unfairly, antidumping duties by the exporting country through imposition or countervailing duties (if unfair trade was being carried on through subsidies).
- d) In services, countries are allowed, in limited circumstances, to depart from the principle of non-discrimination.

### ***Unravelling Schedules of Concession***

**Q: What are schedules of concessions?**

**A:** Schedules of concession are national schedules annexed with the Marrakesh Agreement and were negotiated under the Uruguay Round setting out terms, conditions and qualifications with which goods may be imported by a country. See [Article-II of GATT 1994] No additional duties or charges may be imposed at the border on the imported goods by the WTO member other than those provided in its 'Schedule of Concessions'.

### ***Giving Right of Unhindered Transit***

**Q: What is 'Freedom of Transit' right under GATT?**

**A:** Members of the WTO have been ensured that goods are transported without hindrance during transit across the territories of the other member countries to reach their final destination. Member can not discriminate between members' goods and means of transports with regard to goods in transit. Members are only entitled to recover reasonable charges on account of administrative expenditures

based on the actual cost of any services provided in connection with the transit process.

### ***Doing Away Quantitative Restrictions***

**Q: What are quantitative restrictions? Are these allowed under the WTO Provisions?**

**A:** The quantitative restrictions are limits or quotas imposed by importing / exporting countries on the amount of particular products that can be imported or exported from one country to another during a given period. Article XI of GATT 1994 prohibits the use of QRs (though there are certain exceptions) to this rule. In certain circumstances, however, quotas, export or import licenses or other similar measures are allowed, e.g.:

- (a) QRs temporarily imposed for prevention or relief of critical food shortages
- (b) QRs necessary to the application of standards or regulations for goods, classification, grading or making of commodities in international trade.
- (c) Import restrictions on any agricultural or fisheries products necessary to enforcement – governmental measures which operate to achieve specified purposes.

### ***Conditional Co-existence of the Regional Trade Arrangements / Free Trade Agreements With the Multilateral Trading System***

**Q: What are Regional Trade Agreements (RTAs)? Are they in conformity with Free Trade Agreements (FTAs)?**

**A:** Regional Trade Agreements are arrangements entered into by a group of WTO Member countries or any two of them, extending preferential concessions to its

members as against the rest of the membership as the WTO through according preferential treatment to a part of the WTO membership. These arrangements by definition deviate from the MFN principle. However, this is a deviation explicitly allowed from the principles of multilateral trading system of the WTO. Article XXIV of GATT 1994 recognises the purpose of RTAs such as customs unions and free trade areas to facilitate trade between constituent territories and countries, and not to raise barriers to the trade with other territories.

The RTAs are to be notified to WTO and should prescribe to the broad principles provided for them under GATT 1994.

### ***General Exceptions to the GATT 1994***

**Q: What are the situations in which WTO members are not obliged to adhere to the provisions of GATT 1994?**

**A:** To almost every rule one mostly comes across exceptions the WTO rules follow the same pattern. In some situations Member countries are not obliged to adhere to WTO provisions (Article XX of GATT). Member countries, notwithstanding other provisions of the WTO Agreements are inter alia to permit, to adopt or enforce measures necessary for 'General Exceptions' under Article XX GATT 1994.

- (a) protection of public morals
- (b) protection of human, animal or plant life or health
- (c) regulating import or export of gold or silver
- (d) securing compliance with laws that are not inconsistent with GATT. Protection of intellectual property rights or the prevention of deceptive practices.

- (e) Products
- (f) Protection of national treasures of artistic, historic or archaeological value
- (g) Conservation of natural resources if accompanied by restrictions on domestic production or consumption
- (h) Obligations under international commodity agreements
- (i) Restrictions on the export of domestic materials to prevent shortages
- (j) Acquisition or distribution of products in short supply

# CHAPTER 3

## SEEKING MULTILATERAL DISCIPLINE ON TRADE IN AGRICULTURE

### *Establishing Market Trading System*

**Q:** What objectives the Agreement on Agriculture (AOA) did try to achieve?

**A:** (1) To establish a fair and market oriented agricultural trading system.

(2) To provide for substantial and progressive reduction in agricultural support and export subsidies with a view to remove distortion in the world market.

### *Identifying Pillars of Agreement on Agriculture*

**Q:** What are the three pillars of AoA?

**A:** The three pillars of AoA are:

- (1) Enhancement of market access
- (2) Reduction of domestic support
- (3) Elimination of export subsidies

### *Measuring Magnitude of Support to Agricultural Sector*

**Q:** How total support extended by a Government to its farmers is measured?

**A:** The technical term for this purpose is the Aggregate Measurement of Support (AMS). It refers to the annual level of support (expressed in monetary terms)

- (a) to help extended producers of the basic agricultural products.

- (b) as a non-product-specific support provided in favour of agricultural producers in general.

### ***Using Analogy of Traffic Lights***

**Q: What are different kinds of domestic support?**

**A:** Various kinds of domestic support are provided by types are classified in the form of boxes. Colours of traffic lights: green (permitted), amber (slow down - i.e. be reduced), red (forbidden). In agriculture, things are, as usual, more complicated. The Agricultural trade Agreement has no red box, although domestic support exceeding the reduction commitment levels in the amber box is prohibited; and there is a blue box for subsidies that are tied to programmes that limit production. There are also exemptions for developing countries (sometimes called an "S&D box", including provisions in Article 6.2 of the agreement).

### ***Enforcing Discipline of Amber Box***

**Q: What do you mean by an Amber Box?**

**A:** All domestic support initiatives considered to distort production and trade fall into the "amber box". Such support is defined in Article 6 of the AoA as all domestic support except those not subject to reduction commitments. These include measures to support prices, or subsidies directly related to production quantities.

All kinds of supports are subject to limits: "De minimis" minimal supports are allowed (5% of agricultural production for developed countries, 10% for developing countries); the 30 WTO members that had larger subsidies than the

de minimis levels at the beginning of the post-Uruguay Round reform period are committed to reduce these subsidies.

### ***Blue Box Provisions***

**Q: What is Blue Box about?**

**A:** This is the "amber box with conditions" - conditions set to reduce distortion. Any support that would normally be in the amber box, is placed in the blue box if the support also requires farmers to limit production.

### ***Permitting Certain Kinds of Subsidies***

**Q: Describe Green Box?**

**A:** Green box subsidies must not distort trade, or the type of support permitted to be provided is required to be non-distorting (i.e. in Green Box), or at most cause minimal distortion. Though they are government-funded must not involve price support. They tend to be programmes and activities that are not targeted at particular products, and include direct income support for farmers and growers that are not related to present production levels. They also include environmental protection and regional growth programmes. "Green Box" subsidies are therefore, permitted without limitations, provided they comply with the policy-specific criteria.

### **"Tariffs Only" Adopting Concept of Tariffs Only**

**Q: How will you describe Tariffication?**

**A:** The rule now governing market access in agricultural products is "tariffs only". Before the Uruguay Round, some agricultural imports were restricted by quotas



system and by other non-tariff measures, which had been replaced by tariffs that provide more-or-less equivalent levels of protection. If the local prices were 75% higher than the world prices, then the new tariff could be around 75%.

### ***Tackling Trade Distortions***

**Q: How is trade distorted?**

**A:** Trade is distorted if prices are higher or lower than would have been the case had the transaction would taken place in a competition market than normal, or / and if quantities produced, bought, and sold are also higher or lower than normal - i.e. than the levels that would usually exist in a competitive market.

For instance, import barriers and domestic subsidies can make crops more costly in a market of a country. The higher prices will result in higher production of crop. If the surplus is to be sold on world markets, where prices are low, then export subsidies are needed.

As a result, the subsidising countries can be producing and exporting considerably more than they normally would.

### ***Reducing Tariffs in the Uruguay Round***

**Q: What reductions in tariffs had been agreed in Uruguay Round?**

**A:** Commitments to reduce tariffs, domestic support, and export subsidies as agreed in the Uruguay Round negotiations are set out in AOA. These are depicted in the chart given below:

<b>Uruguay Round Reduction Commitments</b> The reductions in agricultural subsidies and protection agreed in the Uruguay Round.		
	Developed countries 6 years: 1995–2000	Developing countries 10 years: 1995–2004
<b>1) Tariffs</b>		
Average cut for all agricultural products	–36%	–24%
minimum cut per product	–15%	–10%
<b>2) Domestic support</b>		
Total AMS cuts for sector (base period: 1986–88)	–20%	–13%
<b>3) Exports</b>		
Value of subsidies	–36%	–24%
<p>Least developed countries do not have to make commitments to reduce tariffs or subsidies.</p> <p>The base level for tariff cuts was the bound rate before 1 January 1995; or, for unbound tariffs, the actual rate charged in September 1986 when the Uruguay Round began.</p> <p>The other figures were targets used to calculate countries' legally-binding "schedules" of commitments.</p>		

Source: "Understanding the WTO" 3<sup>rd</sup> edition (A World Trade Organization Publication)

### *System of Dual Customs Rates and Tariffs*

**Q:** What do you understand by tariff-quotas (TQs) which has allowed to a system of dual customs rates?

**A:** TQs allow a certain volume of market access in respect of a specific at a lower tariff rate. A higher tariff is charged on products imported outside the tariff quota. This is how a tariff-quota system might function:

Imports entering under the tariff-quota (e.g. up to 1,000 tons) are generally charged 10%; Imports entering outside the tariff-quota are charged 80%.

Tariff quotas are also termed as 'tariff-rate quotas'.

### *Fixing Limits of Domestic Support*

**Q: What is the level of internal (domestic) support that could be provided by a WTO member to its agricultural sector and which is not required to be included in the calculation of its Current Total AMS?**

**A:** Such support is also referred to as the 'De minimis level of support'. For a developed country member the product specific/non-product specific domestic support which could be provided should not exceed 5% of that country's total value of production of agricultural growth in the relevant year. However, for developing country member the De minimis percentage is 10% that is allowed.

### *Identifying Payments Not-Subject to Reduction*

**Q: What payments by the Government of a country to farming sector are not subject to reduction commitments?**

**A:** Here are the types of payments under production limiting program which are not subjected to the reduction commitments:

\* Payments based on fixed area and yield, or

\* Payments made on 85 per cent or less of the base level of production, or

\* Livestock payments made on a fixed number of heads.

### *Allowing Flexibilities or Exemptions in Implementing WTO Agreements*

**Q: How flexibilities and exemptions are granted under the concept of 'Special Differential Treatment'?**

**A:** There are a number of measures found in various WTO Agreements that are intended to give developing and least developed WTO member countries with flexibilities or exemptions in implementing WTO agreements. Developing

countries have been asking for this principle to be applied so as to have a level playing field (as much as possible). So far, S&DT has generally meant that developing countries have longer time to implement slightly scaled down WTO commitments and some exemptions for the least developed countries. But there have been objections about these measures that these are not very meaningful as the high subsidies and support in developed countries will remain for many years to come. Developing countries have called for the fruitful implementation of S&DT. However the improved rules and regulations on this aspect of the WTO system have not yet been agreed by the member countries so far. (This is one of the pending subjects for negotiations under Doha Development Agenda).

***Granting exemptions from Trade Distorting Domestic Support Reduction***

**Q: What are the exemptions from the trade distorting domestic support reduction commitments available to the less developed countries under Special and Differential Treatment?**

**A:** These exemptions are allowed:

- i) The assistance measures, whether direct or indirect to encourage agricultural and rural developments.
- ii) Investment subsidies available to agriculture in developing countries and agriculture subsidies available to low income or resource poor producers in developing country.
- iii) Such domestic support to producer to encourage diversification from growing illicit narcotic crops.

### *Extending Export Subsidies and Reduction Commitments*

**Q: Which export subsidies are subject to reduction commitments under the AoA?**

**A:** These export subsidies are subject to reduction commitments.

a) The provision by governments or their agencies direct subsidies, including payment in kind to a industry, producer of agricultural, cooperative or any association to producers or to a marketing class contingent on export performance.

b) Sale for export of non-commercial stocks at a price lower than the price charged to buyer in the local market.

c) Payments on the export of an agricultural product that are financed by virtue of government action including the payments that are financed from the proceeds of a levy imposed on the agricultural product concern or from which the exported product is to be derived.

d) Provision of subsidy to review the expenses of exports of agricultural products including handling, up-gradation, transport freight and other processes expenses.

e) Subsidies on agriculture products contingent on their incorporation in exported schemes.

# CHAPTER 4

## PROTECTING HUMAN, ANIMAL OR PLANT LIFE AND HEALTH

### *AGREEMENT ON SANITARY AND PHYTOSANITARY MEASURES*

**Q:** What is Agreement on Sanitary and Phytosanitary (SPS) Measures?

**A:** The Agreement on the Application of Sanitary and Phytosanitary Measures entered into force with the establishment of the WTO on January 1st, 1995. It contains a framework of the basic rules and regulations for food safety, animal and plant health standards which directly or indirectly affect international trade. Within this framework it allows countries to set their own standards and criteria, but it also lays down that regulations must be based on scientific lines.

Further, these regulations should be applied only to the extent necessary to protect human, animal or plant life. Secondly such regulators should not unjustifiably discriminate between/among the countries where similar conditions exist.

The member countries to the agreement are encouraged to utilise the international standards, guidelines and recommendations where they exist. However, the members in the agreement might use measures which result in higher standards provided, that there is some solid scientific justification. They can also set higher standards based on the appropriate assessment of risks so long as the approach is consistent and not arbitrary.

### *Protecting Human, Animal and Plant Life*

**Q:** Describe sanitary and phytosanitary measures?

**A:** Under mentioned measures are regarded as sanitary and phytosanitary measures which seeks to:

- (i) Protect life, human or animal from risks arising from additives, contaminants, toxins or disease-causing organisms in their food.
- (ii) Protect human life from plant or animal-carried diseases.
- (iii) Protect animal or plant life from pests, diseases, or disease-causing elements by utilising all possible available measures.
- (iv) Prevent damage to a country from the entry, or spread of diseases.

### ***Indicating Scope of SPS Measure***

**Q: What other important measures does the SPS agreement take to protect environment, consumer interests and animal welfare?**

**A:** The SPS agreement also covers measures that are considered necessary to protect the health of fish and wild fauna, besides those of forests and wild flora. However, measures to protect environment consumer interests, or for the welfare of animals as such are not directly covered by the agreement.

### ***Defining Objectives of the Agreement***

**Q: What is the objective of SPS agreement?**

**A:** The establishment of a multilateral framework of rules and disciplines to guide the development, adoption and enforcement of sanitary and phytosanitary measures in a harmonised way so as to minimise their negative effects on the trade.

### ***Evolution of SPS Measures***

**Q: Were not a nation's food safety, animal and plant health regulations previously covered by the GATT 1947?**

**A:** The right of Government to protect through trade restrictions, human, animal, plant life or health has been recognized from the very beginning of GATT 47.

This has been, however, subject to the condition that these measures are not applied in a manner which discriminates between countries where the same conditions exist, nor these were a disguised restriction to trade. In other words, where required, for purposes of protecting human, animals or plant health and life governments and concerned authorities could impose more stringent requirements on imported goods than they required of domestic goods.

In the Tokyo Round of multilateral trade negotiations (1974-79) an Agreement on Technical Barriers to Trade was negotiated. Although this agreement was not developed primarily for the purpose or for regulating sanitary and phytosanitary measures yet it covered technical requirement resulting from food safety and animal and plant health measures, including pesticide residue limits, inspection requirements and labelling.

The governments which were members of the 1979 TBT agreement agreed to use relevant international standards such as those for food safety and protection of health. The 1979 TBT agreement included provisions for settling the trade disputes arising from the use of food safety and other technical restrictions.

### ***Aim of SPS Agreement***

**Q: Why was SPS Agreement concluded?**

**A:** As sanitary and phytosanitary measures could be misused to effectively restrict trade, the GATT member governments were concerned about the need for clear rules regarding their use. The WTO objective of achieving free trade could be defected by protectionist steps in the guise of sanitary and phytosanitary measures.

The SPS agreement was aimed at closing this potential loophole. It gives more defined and detailed rights and obligations for food safety, animal and plant health measures which influence the international trade. The member countries



are allowed to impose only those requirements needed to protect health which are based on scientific principles. A government can challenge another country's food safety or animal and plant health requirements on the ground that they are not justified by scientific evidence. The procedures and decisions used by a country in assessing the risk to food safety or animal or plant health must be made available to other countries upon request government have to be consistent in their decisions on what is safe food, and in responses to animal and plant health concerns.

### ***Setting up Consultative Mechanism***

**Q: What is SPS Committee and what does it do?**

**A:** The SPS agreement established a committee on Sanitary and phytosanitary Measures '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. The committee has agreed to invite representatives of several international and inter-governmental organizations as observers, including Codex, OIE, IPPC, WHO, UNCTAD and the international standards Organization. The government may send whichever officials they think appropriate to participate in the meeting of the SPS committee, and may send their food safety authorities or veterinary or plant health officials.

The committee usually holds three regular meetings every year. It also holds occasional joint meetings with the TBT committee on notification and transparency procedures. Informal or special meetings might also be called as required.

### *Laying down principles for Application of SPS Measures*

**Q: What are the principles governing application of SPS measures?**

**A:** The SPS measures are required to follow these principles:

- i) Measures are to be based on scientific principles and should not be inconsistent with the provisions of the SPS agreement.
- ii) Measures should not arbitrarily or unjustifiably discriminate between/among members where identical or similar conditions exist.
- iii) Measures should not be applied in a way which would constitute a disguised restriction to international trade.

### *Achieving consistency with International Standards*

**Q: How harmonisation of these measures is to be brought about?**

**A:** The member should base their SPS measures on International standards, guidelines or recommendations. Harmonisation principle is necessary to ensure that the measures are consistent with the relevant provisions of this agreement and of GATT 1994.

### *Promoting Compliance with SPS Measures*

**Q: How can different aspects of SPS measures be promoted?**

**A:** Measures based on international standards / guidelines are presumed to be consistent with SPS Agreement. The WTO itself is not to develop these standards.

The SPS Agreement recognizes standards developed by the Codex Alimentarius Commission, the International Office of Epizootics, and the international and regional organizations operating within the framework of the International Plant Protection Convention. The member countries are required within the limits of

their resources, to promote within these organisation the development and periodic review of standards, guidelines and recommendations with respect to all aspects of sanitary and phytosanitary measures in the relevant international organizations and their subsidiary bodies.

### ***Achieving Uniformity of Standards with a Partner Country***

**Q: What is the principle of equivalence; how is it determined?**

**A:** The members are required to accept the sanitary or phytosanitary measures of other member as equivalent, even if these measures differ from their own or from those used by other members trading in the same product, if the exporting member objectively demonstrates to the importing member that its measures achieve the importing member's appropriate level of sanitary or phytosanitary protection. For this purpose, reasonable access should be given, upon request, to the importing Member for inspection, testing and other relevant procedures.

### ***Adapting to Regional Conditions***

**Q: What is importance of adaptation of regional conditions, including pests - or decease free areas and areas of low pest or disease prevalence?**

**A:** (i) The member countries are to ensure that SPS measures are adopted keeping in view the attributes and characteristics of the region and by also taking into account the level of prevalence of specific disease or pests, the existence of eradication or control programme and appropriate criteria or guidelines which may be developed by the relevant International Organisations

(ii) Exporting members claiming that areas within their territories to be pests or disease - free are needed to provide the necessary evidence to that effect.

### *Notifying Changes in Measures*

**Q: How can changes be brought in SPS measures?**

**A:** The members are required to notify the changes in their SPS by publishing those prominently with a view to ensure that other members become acquainted with them. The changes should be made with reasonable intervals except in urgent circumstances.

### *Achieving Consistence with SPS Agreement*

**Q: What is to be done to ensure that the procedures of control, inspections and approval etc are not inconsistent with the provisions of the SPS Agreement?**

**A:** The members countries of the agreement are to observe the provisions of Annex C of the SPS agreement in the operation, control, inspection and approval procedures, including national systems for approving the use of additives or for establishing tolerances for contaminants in foods, beverages or feedstuffs, and otherwise assure that their procedures are not inconsistent with the provisions of this agreement.

### *Need for Technical Assistance*

**Q: Who provides the technical assistance to the developing member countries?**

**A:** Member countries are to facilitate the provision of technical assistance to the members especially developing countries. This assistance may be extended either bilaterally or through appropriate international organizations to allow such countries to adjust to, and comply with SPS measures necessary to achieve the appropriate level of SPS protection in their export markets.

### ***Giving Special and Differential Treatment***

**Q: Who is entitled to Special and Differential Treatment?**

**A:** The special needs of developing country members and in particular the least developed country members are to be taken into account. The phased introduction of new SPS measures and longer time frame for compliance are to be accorded on products of interest to developing country members.

### ***Establishing Enquiry Points:***

**Q: What are the enquiry points (EPs)?**

**A:** Each Member is to ensure that at least one enquiry point exists which is to be responsible for the provision of answers to questions from interested Members. It should be also able to provide relevant documents. The EP will deal with queries regarding:

- (i) Any sanitary or phytosanitary regulations or proposed within its territory.
- (ii) Any control and inspection procedures, production and quarantine treatment, pesticide tolerance and food additive approval procedures which are operated within its territory.
- (iii) Risk assessment procedures, factors taken into consideration, as well as the determination of the appropriate level of sanitary or phytosanitary protection.
- (iv) The membership and participation of the member or of concerned bodies within its territory in international and regional sanitary and phytosanitary organisations and systems.

# CHAPTER 5

## REGULATING TRADE RELATED INVESTMENT MEASURES (TRIMs)

### *Preventing Trade Distortion from National Investment Regulations*

**Q:** What are the objectives of agreement on TRIMs?

**A:** An agreement on Trade Related Investment Measures is one of the Agreements negotiated in the Uruguay Round. This Agreement is a recognition of the possibility that certain investment measures can cause trade-restrictive and distorting effects. Hence this Agreement seeks to

- i) help in avoiding trade restrictive and distorting effects of investment measures.
- ii) expand, progressive and liberalisation of global trade.
- iii) facilitate investment process across the globe.
- iv) stimulate economic growth of all member countries
- iv) promote economic growth in the developing member countries while free competition in the international market.

### *Prohibiting Investment Measures Inconsistent with WTO Principles*

**Q:** What is the effect of this agreement?

**A:** This agreement lays down that no member country shall apply a trade related investment measure that is inconsistent with the provisions of GATT Article III or Article XI.

### *Illustrations of Inconsistency with WTO Rules*

**Q: What trade related investment measures are inconsistent with Article III and XI of GATT 1994?**

**A:** The Agreement contains an illustrative list of TRIMs that are inconsistent with Articles III and XI. These include the conditionalities under domestic law and administrative rulings such as local-content, trade-balancing, import-substitution, foreign exchange and export-limitation requirements.

### *Laying down notification requirement*

**Q: What is the notification requirement under TRIMs?**

**A:** Under Article V of TRIMs agreement all member countries were required to notify to the Committee on Trade Related Investment Measures all TRIMs which were inconsistent with the provisions of the agreement, within 90 days of coming into force of the WTO agreement.

### *Laying down time frame to eliminate the inconsistent TRIMs*

**Q: What is the time frame to eliminate the inconsistent TRIMs?**

**A:** Every Member country of the WTO was required to eliminate TRIMs notified by them within 2 years of the date of entry into force of the WTO agreement. However, in case of developing countries this limit was 5 years and for the least developed countries it was 7 years.

### *Notifying TRIMs by Pakistan*

**Q: Which programme was notified by Pakistan to the Committee on TRIMs?**

**A:** Pakistan notified the Committee on Trade Related Investment Measures in April 1995 that its programme generally known as "Indigenisation/Deletion Policy" may be inconsistent with the provisions of TRIMs agreement.

# CHAPTER 6

## PROTECTION AGAINST THREAT FOR UNFAIR IMPORTS

### A. *DUMPING*

#### *Implementation of Article IV of GATT*

#### *Defining Dumping*

**Q:** What do you mean by dumping?

**A:** Dumping is the sale of an exported product in a foreign market at a price below its 'normal value'. This definition entails a comparison between two prices, the export price and the 'normal value', in order to determine if a product is dumped. Normal value is usually the domestic price of the product in the exporting country. In the absence of such domestic price for the purpose of comparison, normal value may be calculated on the basis of the price of the product when sold to a third country, or the cost of production of the product in the country of the origin plus a reasonable addition for selling cost and profits.

Dumping is not the sale of a product for export at a price below that charged by domestic producers in the importing country. This is merely price undercutting. The prices charged by the producers in the importing country are not relevant in determining whether an imported product is dumped. However, the question of price undercutting is among the relevant factors to be considered in determining whether the domestic industry is injured by dumped imports.

#### *Absolute or Conditional Prohibition of Dumping*

**Q:** Is dumping prohibited?

**A:** It is not prohibited as such. The WTO provisions do not regulate the practice of dumping itself. These regulate the circumstances and procedures under which member countries may impose anti-dumping measures. Article VI of the GATT



1994 and the Anti-Dumping agreement authorise WTO members to impose anti-dumping measures if they have determined, after a properly conducted investigation that the effect of dumping is such as to cause or threaten to cause material injuring the domestic industry.

### ***Imposing Antidumping Duty***

**Q: What factors are taken into for the imposition of an anti-dumping measure?**

**A:** The Anti-Dumping agreement specifies that in order to impose an anti-dumping measure the member must determine:

- (i) The existence of dumping;
- (ii) Material injury to the domestic industry and;
- (iii) A causal link. All three elements must be determined in the course of an investigation carried out by the authorities of the importing member, in line with the procedural rules set out in the agreement.

### ***Calculating Dumping Margin***

**Q: How is the dumping margin calculated?**

**A:** The dumping margin is the difference between the export price and the normal value. The Anti-Dumping agreement gives rules for calculating the export price i.e. the price of the allegedly dumped product in the importing country, and the normal value (the price of the allegedly dumped product in the exporting country).

### ***Determining Injury***

**Q: How is a determination on the injury to the domestic industry made?**

**A:** The agreement leaves a great deal of discretion to the investigating authorities as to how the question of injury to the domestic industry is to be addressed. However, the Agreement sets out a series of factors concerning the volume of

dumped imports, the effects of dumped imports on prices, and the impact of dumped imports on the domestic industry, which must be considered in that analysis. Regarding the impact of dumped imports on the domestic industry, the Agreement requires consideration of all relevant factors, including sales, market share, capacity utilization, employment levels, ability to raise capital, return on investments, cash flow, inventories and the magnitude of the margin of dumping and investments.

### ***Establishing a Casual link***

**Q: What is the process of establishing a causal link?**

**A:** The agreement leaves a great deal of discretion to the investigating authorities as to how a causal link is to be established. Members have been relying on various methods for reaching a determination e.g. finding out (within a time period) a link between the injury and the dumped imports, as well as undertaking econometric analysis to estimate the performance of the domestic industry had there been no dumped imports. The agreement requires that the investigating authorities also examine other known factors which may be causing injury, for example imports not at dumped prices, contraction in demand or changes in the pattern of consumption, developments in technology, trade restrictive practices or competition by other producers and the productivity of the domestic industry. If such other factors are also found, causing injury, this can not be attributed to the dumped imports.

### ***Following Lesser Duty Rule***

**Q: What do you understand by lesser duty rule?**

**A:** The lesser duty rule, establishes that dumping duties should be less than the margin of dumping, and only high enough to remove the injury to the domestic industry. This rule is not obligatory but is highly recommended. Many member

countries do apply the lesser duty rule. Though there are no provisions as to how the appropriate amount should be calculated.

### ***Agreeing on a Price Undertaking***

**Q: Describe the mechanism of price undertaking?**

**A:** A price undertaking is a method whereby instead of imposing an anti-dumping measure, the investigating authorities enter into an agreement with an exporter to either revise the prices of the given product or cease exports at dumped prices so as to eliminate the injurious effect of dumping. Any price increases by the exporter are limited to the amount of the dumping margin. A price undertaking is entirely voluntary on the part of both the individual exporters and the investigating authorities. An undertaking can only be sought or accepted from exporters after a preliminary finding of dumping, injury and causal link. The undertakings are limited to price revisions, and may not include quotas. A price undertaking can include monitoring and information requirements, and the possibility of swift imposition of anti-dumping measures if the terms of the undertaking are violated. A price undertaking may be advantageous for an exporter if, for instance, the price revision accepted in an undertaking is less than the margin of dumping. Moreover, a price increase pursuant to an undertaking yields increased revenues for the exporter or importer, rather than increased duties for the government or the importing Member, and generally, the investigation does not continue after an undertaking is accepted.

### ***Fixing a Time Limit***

**Q: How long anti-dumping measures can remain in force?**

**A:** The general principle is that the measures should remain in force only as long as, and to the extent necessary, to counteract dumping which is causing injury. The Anti-Dumping Agreement, however, provides a specific maximum time-

limit of five years, for the imposition of anti-dumping duties. However, the importing country may extend the period of imposition if it conducts a review before the measure expires, and determines that the elimination of the measure would be likely to lead to the continuation or recurrence of the dumping and the injury.

### ***Stating Investigations***

**Q: How does an anti-dumping investigation begin?**

**A:** An anti-dumping investigation usually begins after the receipt of a written application filed by or on behalf of the domestic industry producing the like product, although in exceptional cases the government of the importing country can begin an investigation without an application having been filed. The agreement sets forth rules for determining the composition of a local industry and what is the like product. In addition, the agreement that a certain proportion of the domestic industry must support the application.

### ***Posing Threat to Developing Countries***

**Q: Explain implications of anti dumping for developing member countries?**

**A:** Binding tariffs and applying them equally to all trading partners on the MFN Principle is an important way to the smooth flow of trade in goods. The WTO agreements uphold these principles but they also allow some exceptions, under certain conditions e.g. anti-dumping action themselves.

Developing countries strongly apprehend that some developed countries may misuse these 'contingency measures' and impose antidumping duties on exports from countries that are 'competitive'. Pakistani businessmen fear that now after lifting of quotas in textiles and clothing the possibility of developed countries tempted to use often contingency measures, against exports from Pakistan, most notably through antidumping measures.

## **SUBSIDIZED IMPORTS**

### **B. *AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES***

#### ***Defining Subsidy***

**Q: What improvements have been brought about by the SCM Agreement?**

**A:** Certain key terms for the first time in any GATT agreement, such as “subsidy” and “serious prejudice” have been defined.

- Export subsidies and subsidies contingent on the use of domestic instead of imported goods, including de facto export subsidies that are tied to exports or export earnings in practice have been prohibited.
- The procedures for showing when serious prejudice exists in foreign markets have been elaborately defined and considerably strengthened.
- A category of government assistance that will be non-actionable and non-countervail able has been provided for (strict conditions and criteria have been made applicable).
- Requiring phase out of export subsidies and import substitution subsidies by developing countries (but not by LDCs) and accelerating the phase-out of export subsidies in situations where a developing country has achieved global export competitiveness in a particular product sector; and
- The rapid, effective WTO dispute settlement mechanism has been made applicable (which will end the present ability of the losing, subsidizing government to block the adoption of panel reports).

**Q: What is the definition of the term “Subsidy”?**

**A:** SCM Agreement defines a subsidy under Article 1 and provides presence of two elements: (1) a “financial contribution by a government or any public body” within that government’s territory and (2) consequent conferral of “a benefit.”

**Q: Whether all Subsidies are actionable?**

**A:** In order to be actionable either under WTO dispute settlement procedures or in a domestic countervailing duty (CVD) proceeding, a subsidy also must be “specific in accordance with the provisions of Article 2 of SCM Agreement

**Q: What kinds of subsidies are there?**

**A:** Article 3 of the SCM Agreement provides for a framework for the categorization of subsidies. These are: (1) subsidies that are prohibited (the “red light” category); (2) subsidies that may be challenged in WTO dispute settlement proceeding and domestically countervailed if they cause adverse trade effects (the “yellow light” category, including “dark amber”); and (3) subsidies that are non-actionable and non-countervail able if they are structured according to criteria intended to limit their potential for causing trade distortions (the “green light” category).

**Q: What types of Subsidies are prohibited?**

**A:** The following types of Subsidies are prohibited:

- i. Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, on export performance; and
- ii. Subsidies contingent, whether solely or as one of several other conditions, on the use of domestic rather than imported goods.

### ***Prohibiting Export Subsidies***

**Q: Are developing countries exempted from the prohibition on export subsidies?**

**A:** No. Subsidies contingent upon export performance are prohibited by the agreement because they are designed to affect trade and are thus most likely to cause adverse impact on the interests of other members. These therefore remain

actionable, both at the multilateral level and through the imposition of countervailing duties.

In the WTO, if a panel finds that this is the case of a prohibited subsidy, it will recommend that the member granting the subsidy take appropriate steps to remove the adverse effects or withdraw the subsidy. Alternatively, a member may impose countervailing duties but, as mentioned above, only after it has determined the existence of subsidised imports, injury to a domestic industry, and a causal link between the subsidised imports and the injury.

**Q: What are regarded as adverse effect of Subsidies?**

**A:** Article 5 spells out three types of adverse effects:

- (i) Injury to the domestic industry of another WTO member.
- (ii) Nullification or impairment of benefits accruing directly or indirectly to other WTO members
- (iii) Serious prejudice to the interests of another member.

**Q: Does there have to be a monetary payment for a subsidy to exist?**

**A:** No, the definition of the term 'subsidy' in the SCM agreement contains the following elements (i) a financial contribution (ii) by a government or any public body within the territory of a member country (iii) which confers a benefit. The financial contribution can take various forms and shapes, and the agreement contains a list of measures that stand for a financial contribution. Such measures include direct transfers of funds, grants, loans, or equity infusions. Besides, any form of income or price support in the sense of Article XVI of GATT 1994, that is operating directly or indirectly to increase exports or reduce imports, would also be considered a subsidy if it confers a benefit.

### *Applying SCM at National and Sub-National Levels*

**Q: Does SCM cover subsidies given at a sub-national level?**

**A:** Yes it does. The agreement refers to a financial contribution by a government or any body within the territory of a member country, and therefore applies not only to subsidies provided by national governments, but also those provided by sub-national governments such as state or local governments and by such public bodies as state-owned companies as well. While judging the regional specificity of a subsidy the assessment is made at the level of the granting entity.

For example, if the granting body is a state government, regional specificity would exist if the subsidy were granted only to firms situated in a particular area of the state, but not if it were granted to firms throughout the state.

### *Provision of Countervailing Duties to Encounter Harmful Subsidies*

**Q: What can a member country do if its interests have been harmed by the subsidization of another member?**

**A:** A WTO member country which considers that its interests are being harmed or exploited by grant of subsidy has two possible ways under the agreement, i.e.a countervailing duty investigation, or a multilateral dispute settlement challenge. If the member believes that a domestic industry is suffering material set back as a result of subsidized imports, it may initiate a countervailing duty investigation or approach WTO dispute settlement.

While countervailing measures are a unilateral step, the member may apply them only after an investigation and a determination that the substantive criteria set forth in the SCM agreement - the existence or subsidised imports, injury to a domestic industry, and a causal link between the two - are satisfied. If, however, the adverse effect is being felt by the member's exporters, either in the subsidising member's market or in a third country market, then the only



available option is multilateral dispute settlement, that is by invoking the WTO's Dispute Settlement Mechanism and, if consultations under the DSU fail to resolve the dispute, requesting a panel. Following detailed procedures laid out in the Understanding on Rules and Procedures Governing the Settlement of Disputes and the SCM Agreement, the panel would submit its report, which would include its findings and conclusions on the matter. Should the subsidy be found to be prohibited by, or cause adverse effects in the sense of the SCM Agreement, the panel would make a recommendation as to its withdrawal or removal of the adverse effects caused by it.

### ***Agricultural Products and SCM Agreement***

**Q: Are subsidies for agricultural products subject to the agreement?**

**A:** There is no general exemption for agricultural products from the SCM agreement. However, the AoA provides for a number of specific rules regarding subsidies on agricultural products that override certain particular provisions of the SCM. For instance, during a nine-year implementation period commencing in 1995, domestic support measures falling within the green box of the Agriculture Agreement are non-actionable for purposes of countervailing duties as well as for seeking redress from the WTO dispute settlement system. Local support steps, measures and export subsidies that conform fully to a member's reduction commitments under the AoA, or are exempt from those commitments, are also exempt from multilateral challenge under the SCM. While on the other hand, except with respect to the "green box" subsidies, subsidised agricultural products may nevertheless generally be subject to countervailing duties, and agricultural subsidies must be notified to the Committee on Subsidies and Countervailing Measures. Further, agricultural subsidies which are not fully in conformity with the Agreement on Agriculture are fully actionable under the

Agreement as well. In short, while the provisions of the SCM Agreement do not apply to agricultural subsidies in all cases, the Agreement nevertheless remains highly relevant to agricultural products.

### ***Making Provisions for LDCs***

**Q: Is special treatment under the SCM with respect to prohibited subsidies provided to developing the least developed member countries?**

**A:** The agreement provides special and differential treatment in case of developing country member. Differing levels of development among countries translates into differing levels of obligations and longer transition periods with regard to various obligations. The SCM takes into account three categories of developing country members:

- (i) Least-developed country members (LDCs)
- (ii) Certain members identified in Annex VII (b) of the agreement until such time as their GNP per capita has reached \$ 1,000 per annum and;
- (iii) Other developing countries

The prohibition on export subsidies does not apply to Annex VII countries, while non-Annex-VII developing countries had an eight-year period to phase out their export subsidies. However, developing country members were not allowed to increase the level of their export subsidies during this period. The prohibition on import substitution subsidies did not apply to LDCs for a period of eight years and did not apply to other developing countries, for a period of five years.

*Excluding VAT from Definition of Export Subsidy*

**Q:** Would an exemption or remission of Value Added Tax (VAT) be considered an export subsidy?

**A:** Not exactly though Annex I of the Agreement lists the exemption or remission of indirect taxes as a type of export subsidy. The question whether such a remission is an export subsidy or not would depend on the amount of the remission. Since VAT is a cumulative tax that is remitted only upon export, an export subsidy would only be deemed to be there if the amount remitted is in excess of that paid.

# CHAPTER 7

## AGREEMENT ON SAFEGUARDS

### *Outlining Scope of Safeguard Measures*

**Q: What kind of measures are covered by Safeguards Agreement?**

**A:** The Agreement contains rules for application of safeguard measures under Article XIX of GATT 1994. These are termed as 'emergency' measures and steps that might be taken in case of increased quantitative of imports of particular goods, when such imports have caused or threaten to cause serious injury to the importing member's domestic industry. Safeguard measure may consist of quantitative import restrictions or duty increase that is higher than bound rates. Such measures are thus one of the three types of contingent trade protection measures the other two being anti-dumping and countervailing measures.

### *Re-establishing Multilateral Discipline*

**Q: What is the purpose of the Safeguards Agreement?**

**A:** Under GATT 1947, safeguards were regulated by Article XIX only but Uruguay Round resulted in the Safeguards Agreement, which added clarity and introduced important changes in the system. Prior to the GATT era contracting parties had been increasingly applying a variety of so-called 'grey area' measures to limit imports of certain products. Such measures were not imposed pursuant to Article XIX, and thus were not subject to the multilateral discipline. The legal status of such measures under the GATT was doubtful. This Agreement aims to clarify and reinforce GATT disciplines, particularly those of Article XIX; re-establish multilateral control over safeguards and encourage and

enhance structural adjustment on the part of industries adversely affected by increased imports.

### ***Applying Agreement on Non-Discrimination Basis***

**Q: Can the agreement be applied on a bilateral or selective basis?**

**A:** The Safeguards agreement can not be applied bilaterally or selectively. One of the major guiding principles of the agreement is that such measures be applied on a non-selective or i.e. on most-favored-nation basis. Article 2(2) says, "Safeguard measures shall be applied to a product being imported irrespective of its source."

### ***Filing a Complaint- A Step by Step Process***

**Q: What steps are necessary while applying a safeguard measure?**

**A:** Following steps are necessary:

- (i) A member country first needs to have an investigation conducted by competent authorities according to procedures established and published prior to their application.
- (ii) The Agreement requires reasonable public notice of the investigation and publication of a detailed analysis of the case in the form of a report disseminating the findings.
- (iii) The concerned authorities are required to hold public hearings or provide other means for the interested parties to present their views.
- (iv) A member country can apply the measure only after an investigation leading to a determination of an increase in quantity of imports, serious injury in the sense of significant impairment in the position of a domestic industry or threat of serious injury that is clearly imminent, and a causal link between the increased imports and the injury / threat of injury.

### *Changing an Enforced Measure*

**Q: Can a member increase the restrictiveness of an enforced safeguard measure?**

**A:** A member country can not increase the degree of restrictiveness of an enforced measure. On the other hand another major guiding principle is that the measure be progressively liberalised while in force. If a measure is extended beyond the initial duration of application, it may not be made more restrictive during this period than it was at the end of the initial period.

### *Apprehending Great Damage from Delay*

**Q: When can a member apply provisional safeguard measures?**

**A:** Under 'circumstances where delay would cause damage that would be difficult to repair', provisional measures may be imposed. Prior to doing this, there must be a preliminary determination that there is clear evidence of serious injury or threat thereof caused by the increased imports. Provisional measures should be in the form of refundable tariff increases, and may be kept in place for a maximum of 200 days. In addition to this, the period of application of any provisional measure must be included in the total period of application of a safeguard measure.

### *Compensation for Applying Safeguard Measure*

**Q: Does a member country have to pay compensation to enforce a safeguard measure?**

**A:** Yes. A Member applying safeguard measures must generally pay for them through compensation. A member applying a safeguard measure must maintain a substantially equivalent level of concessions and other obligations with respect to affected exporting country. To do so, any proper measures of trade compensation may be agreed among the affected members through consultation.

Without such an agreement on compensation within 30 days, the affected exporting members may individually suspend substantially equivalent concessions and other obligations unless the Council for Trade in Goods disapproves. However, this right to retaliate may not be exercised for the first three years that a safeguard is in effect, provided that the measure has been taken as a result of an absolute increase in imports, and conforms to the provisions of the Agreement.

### ***Accepting Voluntary Export Restraint (VER)***

**Q: Describe advantages for an exporting country in accepting voluntary exporting restraints? Why are they prohibited now?**

**A:** By accepting a VER, the exporting country succeeded in securing access to the importer's market, though to a limited extent. Further, since competition was limited and supply was meagre, it was able to make up for the reduced volume of sales through higher prices. It was necessary to impose disciplines on the adoption of such measures because they affected trade flows negatively but - since they were not imposed pursuant to Article XIX of the GATT 1947 - escaped multilateral discipline. VERs also had the effect of excluding those countries that were not part of the arrangement from participation in trade in the importer's market. Such measures are not allowed after establishment of the WTO.

### ***Functions of the Committee on Safeguards***

**Q: What is the function of Committee on Safeguards?**

**A:** Multilateral discipline on the use of safeguard measures is established through notification requirements as well as through the creation of a Committee on Safeguards charged with reviewing members' safeguard notifications, among other duties. The Committee also monitors, reports and makes recommendations

to the Council for Trade in Goods on the implementation and operation of the agreement, makes findings as to members' compliance with respect to the procedural provisions of the agreement for the application of safeguard measures, assists with consultations, monitors the phase-out of pre-existing measures, reviews proposed retaliation, and performs any other functions determined by the Council for Trade in Goods.

***Notification Requirement***

**Q: What are essential contents of notifications re: Safeguards?**

**A:** The Safeguards agreement sets out extensive notifications requirements. The members are needed to notify legislation, existing Article XIX and 'grey area' measures, and the initiation of investigations, findings, and the imposition of new measures on the member countries.



# CHAPTER 8

## INTEGRATION OF TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS) IN THE MULTILATERAL TRADING REGIME (AGREEMENT ON TRIPS)

### *Defining Intellectual Property*

**Q:** What are intellectual property rights?

**A:** Intellectual property rights can be defined as 'the rights given to people over the creations of their minds'. This endow the creator of creations of mind an exclusive right over the use of his creations for a certain period of time. Intellectual property rights, is a broad, generic term to describe different kinds of monopoly rights granted by the state to an inventor/author or any other creative individual for the protection of certain intangible creation ideas and, works of art, etc.

These rights share a common characteristic - they are essentially negative rights to prevent others from doing something territorially and internationally.

These rights are generally divided into two major categories:

(i) Copyright and rights related to copyright: i.e. rights granted to authors of literary and artistic works, authors of computer software and rights of performers, producers of phonograms and broadcasting organisations etc. The main purpose of protection of copyright and related rights is to encourage and reward the creative work of the people.

(ii) Industrial property: This includes (a) the protection of distinctive signs such as trademarks and geographical indications, and (b) industrial property protected primarily to stimulate innovation, design and the creation of technology. In this category, fall inventions, industrial designs and trade secrets.

### ***Establishing Multilateral Discipline re: Intellectual Property Rights***

**Q: Were intellectual property rights covered under GATT 1947 before the TRIPS?**

**A:** The GATT 1947 dealt with trade in goods only. The GATT did not cover intellectual property rights. As a matter of fact before the WTO, there was no specific agreement on intellectual property rights in the framework of the multilateral trading system.

### ***Categorisation of IPRs***

**Q: What are the categories of Intellectual Property referred to under the TRIPs agreement?**

**A:** According to the TRIPS agreement, "intellectual property" refers to: all categories of intellectual property that are the subject of the agreement. It includes,

- (i) Trade Marks
- (ii) Patents.
- (iii) Integrated Circuit Design
- (iv) Copyrights
- (v) Industrial Designs.
- (vi) Geographical Indications
- (vii) Confidential Information

### ***Recognizing Usefulness of IPRs***

**Q: What is the need of Intellectual Property protection?**

- A:**
- (i) To protect the market one is operating in
  - (ii) To create currency of IPR
  - (iii) To create "intrinsic" value
  - (iv) To ensure long-term growth

- (v) To create an image with one is customer
- (vi) Valuable recognition for the individual and the organization

### ***Recognizing Benefits of Intellectual Property Rights***

**Q: What benefits Intellectual Property system provides?**

- A:**
- (i) Inventor/researcher reaps the rewards of their hard work
  - (ii) Encourages continues research and upgradation of knowledge
  - (iii) Inventors/researchers get material benefit for their ideas
  - (iv) Patents are published so the information does not remain locked up
  - (v) Investors feel reassured that IPRs acquired by them / developed by them are safe and secure

### ***Establishing Architecture for Protecting IPRs***

**Q: How does the TRIPs agreement and international conventions on intellectual property operate together?**

- A:**
- (a) The TRIPS lays down that the WTO member countries must comply with the substantive obligations of the main conventions of WIPO (World Intellectual Property Organization) - the Paris Convention on industrial property, and the Berne Convention on copyright.
  - (b) The TRIPS also put forth additional obligations in areas, which were not addressed in these conventions, or were thought not to be sufficiently addressed in them. The TRIPS is therefore, sometimes described as a 'Berne and Paris-plus' agreement. The text of the TRIPS also makes use of the provisions of some other international agreements on intellectual property rights.
  - (c) The WTO members are required to protect integrated circuit layout designs in accordance with the provisions of the Treaty on Intellectual Property in Respect of Integrated Circuits. The TRIPS also refers to a number of

provisions of the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations.

### ***Role of World Intellectual Property Organization (WIPO)***

**Q: What does WIPO stands for?**

**A:** The World Intellectual Property Organization (WIPO) was established on 14 July 1967. It became a specialised agency of the UN in 1974, and administers a number of international treaties / agent in the area of intellectual property, such as the Paris and Berne Conventions.

The WIPO's objectives are to promote intellectual property protection throughout the world through cooperation among states and, where appropriate, in collaboration with any other international organisation. The WIPO also aims to ensure administrative cooperation among the intellectual property unions created by the Paris and Berne Conventions and sub-treaties concluded by the members of the Paris Union. The administration of the unions created under the various conventions is centralised through the WIPO's secretariat, the "International Bureau". The International Bureau also maintains international registration services in the field of patents, industrial designs and appellations of origin. The WIPO also promotes development cooperation for developing countries through advice, training and furnishing of documents. There is an agreement for cooperation between the WIPO and the WTO.

### ***Establishing Non-discriminative Principle***

**Q: How does MFN principle operate under TRIPS agreement?**

**A:** With regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a member country to the people of any other country shall be accorded immediately and without any conditions to the nationals of all other member countries

### *All Nations are Favoured Equally*

**Q: Describe National Treatment under TRIPS agreement?**

**A:** Each member shall accord to the nationals of other member countries treatment, no less favourable than that it accords to its own nationals with regard to the protection of intellectual property.

### *Defining Scope of Patent Rights*

**Q: What is the functional scope of Patent Rights?**

**A:** The patent rights include exclusive right to:

- (i) Make the invention
- (ii) Use the invention
- (iii) Sell the invention
- (iv) Distribute the invention
- (v) Exclusive rights obtained after grant of patent by the government of Pakistan.

### *Duration of Protection*

**Q: What is the during of protection?**

**A:** The protection duration can be up to 20 years.

### *Scopes of Protection*

**Q: What is the scope of protection?**

**A:** As such all patent protection is available for both products and processes.

### *Commercialisation of Patented Intellectual Property*

**Q: How is patented intellectual property commercialised?**

**A:** This is done through

- (a) Licensing
  - i. Exclusive or non-exclusive to one or more product companies.
  - ii. Revenue stream with little additional investment

- (b) Selling off
  - i. When the company decides not to pursue the business.
- (c) Bartering
  - i. Usually for "cross-licensing" other patents
- (d) Own Use
  - i. Incorporation into one's own product

### ***Path to Protected Identify – Trade Marks***

**Q: What is meant by a Trademark?**

**A:** Any sign, or any combination of signs, capable of distinguishing the goods or services of one business entity from those of others, can be given a legal cover through a trademark. Such signs, in particular words including personal names, letters, numerals, figurative elements and combinations of colours as well as any combination of such signs, shall be eligible for registration as trademarks. Where signs are not inherently capable of distinguishing the relevant goods or services, Members countries may make registrability depend on the distinctiveness acquired through use. They may require, as a condition of registration, that signs be visually perceptible.

### ***Important World of Geographical Indication (GI)***

**Q: What are the geographical indications?**

**A:** The geographical indications are, for the purposes of TRIPs Agreement, indications which identify a good as originating in the territory of a WTO member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

Geographical indication is important for products whose quality is ensured by indicating the area of their origin, for example, Basmati Rice in Pakistan. Kala Kalur Apple, Kinno, Sindhi Ajrak etc.

### ***TRIPS Setting Standards for***

**Q: Does the TRIPS require all member to have rules on protection of intellectual property to be identical?**

**A:** Yes. The TRIPS agreement requires WTO Members to follow certain minimum standards for the protection of intellectual property rights covered in it.

### ***Conditions and Requirement for Compulsory Licensing***

**Q: Does the agreement allow compulsory licensing of patents?**

**A:** The TRIPs agreement allows compulsory licensing and government use of a patent without the authorization of its owner. But this can only be done in public interest and on full filly a number of conditions aimed at protecting the legitimate interests of the right holder. For instance: the person or company applying for a license must have first attempted, unsuccessfully, to obtain a voluntary license from the right holder on reasonable commercial terms. Further, adequate remuneration must be paid to the right holder.

The authorisation granted under compulsory licensing must also meet certain requirements. In particular, it cannot be exclusive, and it must as a general rule to be granted mainly to supply the local market.

### ***Extent of Protection for Animals and Plants***

**Q: Does the agreement require to provide patent protection to plant varieties?**

**A:** Yes the TRIPs agreement exclude from patentability 'plants and animals (other than micro-organisms), and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes'. But the agreement demands that members must provide for the protection of

plant varieties, either by patents or by a special system or by combination of both.

***Pakistan Catching up with TRIPS***

**Q: Did Pakistan take steps to meet requirements of TRIPs?**

**A:** Yes. The Government of Pakistan took and is continuously taking all possible measures to meet the requirements of TRIPs. Pakistan took following measures:-

- (i) Necessary laws have been promulgated to ensure the compliance of TRIPs agreement in such areas as patents, copyright, brands & trademark etc.
- (ii) Intellectual Property Organization has been established at a national level to look after the obligations and rights of the govt and citizen of Pakistan with reference to the TRIPs agreement.

***Taking Legal Initiatives***

**Q: What legal initiatives including promulgation of new laws and amendments of old one have been made?**

**A:** The old laws and amendments made to them are given below:

<b>Relevant Field</b>	<b>Old Legislation</b>	<b>New Legislation</b>
<b>Patents</b>	Patents & Designs Act, 1911	Patents Ordinance, 2000 & Patents (Amendment) Ordinance, 2002
<b>Trademarks</b>	Trademarks Act, 1940	Trademarks Ordinance, 2001
<b>Copyrights</b>	Copyright Ordinance, 1962	Copyrights (Amendment) Ordinance, 2000



<b>Geographical Indications</b>	None	Provisions of Trademarks Ordinance, 2001 (New law being drafted)
<b>Industrial Designs</b>	Patents & Designs Act, 1911	Registered Designs Ordinance, 2000
<b>Integrated Circuits Design</b>	None	Registration of Integrated Circuits Ordinance, 2000
<b>Plant Varieties</b>	None	Plant Breeders Rights Law being drafted

# CHAPTER 9

## MULTILATERAL DISCIPLINE FOR TRADE IN SERVICES

### *GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)*

#### *Distinction between Goods and Services*

**Q:** What is the difference between goods and services?

**A:** Goods are tangible, visible and are made of matter or are matter while services are intangible and invisible. Services, however, in a number of cases are tradable.

#### *Significance of Global Trade*

**Q:** What is the importance of global trade in services?

**A:** The significance of global trade in services is well established. Following facts are relevant:

- (i) The global trade in services is currently 20% of all international trade
- (ii) Almost 60% of global production and employment is in services field
- (iii) International trade in services is likely to overtake trade in goods in the next twenty years.
- (iv) Productivity of industries is linked with availability of financial and information services amongst others.

#### *Case for Liberalization of Trade in Services*

**Q:** Why is the liberalisation of services important?

**A:** The following arguments in support of liberalisation of trade in services are worth noting:

- (i) Liberalisation of trade in services leads to improvement both in final products as well as inputs to other productive activities.

- (ii) Enhanced competition can result in better quality services and consequently the consumers are the beneficiaries in such a scenario
- (iii) Liberalisation results in transfer of technology and enhanced competitiveness of services sector
- (iv) Improved efficiency of local/domestic service suppliers as a result of liberalisation results in improved prospects for export of services
- (v) Attractive Foreign Direct Investment is greatly helped by the liberalisation of the services sector
- (vi) An efficient services infrastructure is a precondition for economic efficiency and growth.
- (vii) Liberalised markets promote product and process innovation
- (viii) Liberalised trade under WTO ensures greater predictability, certainty and transparency thus encouraging long-term investment.

### ***Defining General Agreement on Trade in Services (GATS)***

**Q: What is the GATS?**

**A:** The General Agreement on Trade in Services (GATS) is the first set of multilateral, legally enforceable rules and regulations covering international trade in services.

It consists of the following:

- (i) A framework of general rules and disciplines
- (ii) Annexes addressing special conditions relating to individual sectors
- (iii) Liberalisation commitments specific to the service sectors & sub sectors listed on each country's schedule.
  - The WTO Council for Trade in Services oversees the operation of the agreement

- A detailed procedure for the dispute settlement

### ***Outlining Principles of GATS***

**Q: What are the basic principles underlying the GATS?**

**A:** The following are the basic principles underlying the GATS:

- (i) Coverage: The GATS covers all services except services supplied in the exercise of governmental authority.
- (ii) MFN: National MFN Treatment Principle applies to all services sectors.
- (iii) National Treatment: National Treatment principle applies in the areas where commitments are made.
- (iv) Transparency: Transparency in regulations requires publication and dissemination of all laws and regulations as well as establishment of Inquiry Points in every country.
- (v) Mutual Recognition: Mutual recognition of the qualifications required for the supply of services are encouraged
- (vi) Liberalising Trade: Measures to liberalise trade including greater participation of developing countries
- (vii) Monopolies: Rules governing monopolies and other business restraining practices are also incorporated in the scheme
- (viii) Requirements of Regulations: The agreement lays down that the regulations are to be objective and reasonable
- (viii) It also has provisions for further negotiations

### ***Exceptions to Agreement***

The main provisions allowing Exceptions are:

- (a) Economic Integration
- (b) Balance of payments restrictions
- (c) Labour market integration

- (d) General and security exceptions

### ***Scope of GATS***

**Q: What is the scope of GATS?**

- A:**
- (i) All services and measures affecting trade in services are included.
  - (ii) Excluded services: services provided under governmental authority and, Air Transport.

### ***Governmental Authority and Services Supplied***

**Q: What do you mean by services supplied in the exercise of governmental authority?**

- A:** A service supplied in the exercise of governmental authority means any service, which is provided neither on a commercial basis, nor in competition with one or more service suppliers.

### ***Classifying Services under GATS***

**Q: What services are covered under the GATS?**

- A:** It classifies all services into 12 groups, which are further subdivided into around 155 sub sectors. The main sectors include:
- (i) Business services
  - (ii) Communication services
  - (iii) Construction and engineering services
  - (iv) Distribution services
  - (v) Education services
  - (vi) Environmental services
  - (vii) Financial services
  - (viii) Health services
  - (ix) Tourism and travel services
  - (x) Recreational, cultural and sporting services

(xi) Transport services

(xii) Other services

### ***Members of GATS***

**Q: Which countries are members of GATS?**

**A:** All WTO member countries are at the same time members of the GATS and, to varying degrees, have assumed commitments in individual service sectors.

### ***Classification of Services through Different Modes***

**Q: Give main modes of service supply under GATS?**

**A:** The GATS distinguishes between four modes of supplying services, i.e. cross-border trade, consumption abroad, commercial presence, and presence of natural persons.

**Mode-1:** Cross-border supply is defined to cover services flows from the territory of one member country into the territory of another member country e.g. banking or architectural services transmitted via telecommunications or mail.

**Mode-2:** Consumption abroad refers to situations where a service consumer e.g. tourist or patient moves into another member's territory to obtain a service.

**Mode-3:** Commercial presence implies that a service supplier of one member country sets a territorial presence, including through ownership or lease of premises, in another member's territory to provide a service e.g. domestic subsidiaries of foreign insurance companies or hotel chains.

**Mode-4:** Presence of natural persons consists of persons of one member country entering the territory of another to supply a service e.g. accountants, doctors or teachers. The Annex on Movement of Natural Persons specifies, however, that members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis.

### ***Requirement and Importance of Schedule of Specific Commitments***

**Q: What is a service schedule? What is the importance of these schedules?**

**A:** Elements of Schedule of Commitments: Each WTO member is required to have a 'Schedule of Specific Commitments', which identifies the services for which the member guarantees market access promises national treatment as well as indicate any limitations that may be attached to its commitments. The schedule may also be used to assume additional commitments regarding, for example, the implementation of specified standards or regulatory principles. Commitments are undertaken with respect to each of the four different modes of service supply.

Sectoral and horizontal: Most schedules consist of both sectoral and horizontal sections. The 'Horizontal Section' contains entries that apply across all sectors subsequently listed in the schedule. Horizontal limitations often refer to a particular mode of supply, notably commercial presence and the presence of natural persons. The 'Sector-Specific Sections' contain entries that apply only to the particular service.

### ***Time of Enforcement of Specific Commitments***

**Q: When did members' specific commitments enter into force?**

**A:** The majority of current commitments entered into force on January 1st 1995, i.e. the date of entry into force of the WTO. New commitments have since been scheduled by participating members in extended negotiations and by new members that have become a part of the WTO.

### *Upgrading and Updating of the Commitments*

**Q: Can commitments be introduced or improved outside the process of multilateral negotiations?**

**A:** Yes, any member country is free to expand or upgrade or update its existing commitments at any suitable or desired time.

### *Withdrawal or Changing of Specific Commitments*

**Q: Can specific commitments be withdrawn or changed?**

**A:** In accordance with Article XXI of GATS, specific commitments may be modified subject to certain procedures and processes. Countries, which may be influenced by such changes, can request the modifying member to negotiate compensatory adjustments; these are to be granted on a MFN basis.

### *A Favour to One must be Extended to All under GATS*

**Q: What does Most-Favoured-Nation Treatment mean with respect to GATS?**

**A:** It means that with respect to any measure covered by GATS, each member shall agree and accord immediately and unconditionally to services and service suppliers of any other member treatment no less favourable than that it accords to like services and service suppliers of any other member country.

### *Provision for Integration of Labour Market between or Among the Parties*

**Q: Is exception clause regarding Labour Market Integration provided by GATS?**

**A:** The GATS does not prevent any of its member countries from being a party to an agreement establishing full integration of the labour markets between or among the parties to such an agreement, provided that such an agreement exempts citizens of parties to the agreement from requirements concerning residency and work permits and is notified to the Council for Trade in Services.



### *Domestic Regulation - Measures Affecting Trade in Services to be Administered Properly*

**Q: What does domestic regulation under the GATS regime imply?**

**A:** This means that each member state shall ensure that all measures of general application affecting trade in services are administered in a reasonable, objective and impartial manner. It also implies that each member shall maintain or institute judicial, arbitral or administrative tribunals or procedures, which provide, at the request of an affected service supplier, for review and remedies for administrative decisions affecting trade in services.

### *Licensing of Services*

**Q: Is there any provision in GATS for recognition of licensing of services supplies?**

**A:** The GATS provides that a member may recognise the education or experience obtained or licenses or certifications granted in a particular country. Such recognition, which may be achieved through harmonisation or otherwise may be based upon an agreement or arrangement with the country concerned or accorded autonomously. It also provides that a member shall not accord recognition in a manner which would constitute a means of discrimination between countries in the application of its standards or criteria for the authorization, licensing or certification of services, or a disguised restriction on trade in services.

### *Tackling the Adverse Balance of Payment*

**Q: What are the restrictions to safeguard the balance of payments in GATS?**

**A:** In the event of serious balance-of-payments and external financial difficulties or its threat, a member country may adopt restrictions on trade in services on which it has undertaken specific commitments and stands, including on

payments or transfers for transactions related to such commitments. It is recognised that particular pressures on the balance of payments of a member in the process of economic development or economic transition may necessitate the use of restrictions to ensure, inter alia, the maintenance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition.

The GATS lays down that restriction:

- (i) shall not discriminate between/among members.
- (ii) shall be consistent with the Articles of Agreement of the International Monetary Fund.
- (iii) shall avoid unnecessary damage to the commercial, economic and financial interests of any other member.
- (iv) shall not exceed those necessary to deal with the circumstances.
- (v) shall be temporary and be phased out progressively as the situation improves.

### ***Effectiveness of GATS***

**Q: Is the pursuit of national policy objectives and priorities of a member affected by GATS?**

**A:** The GATS expressly recognises the right of members to regulate the supply of services in pursuit of their own policy objectives, and does not seek to influence these objectives. Rather, the Agreement establishes a framework of rules to ensure that services regulations are administered in a reasonable, objective and impartial manner and do not constitute unnecessary barriers to trade.

### *Measures to Protect National Interest – An Exemption from GATS*

**Q:** Are there any specific exemptions in the GATS enabling a country to address national policy interests?

**A:** The GATS permits members in certain conditions to introduce or maintain steps in contravention of their obligations under the agreement, including the MFN requirement or specific commitments. The relevant Article provides cover, inter alia, for measures necessary to:

- (i) Protect public morals or maintain public order.
- (ii) Protect human, animal or plant life or health by all possible means.
- (iii) Secure compliance with laws or regulations not inconsistent with the agreement including, among others, measures necessary to prevent deceptive or fraudulent practices.
- (iv) The Annex on Financial Services entitles members, regardless of other provisions of the GATS, to take measures for prudential reasons, including for the protection of investors, depositors, policy holders or persons to whom a fiduciary duty is owed by a financial service supplier, or to ensure the integrity and stability of the financial system.

Finally, in the event of serious balance of payments difficulties members are allowed to temporarily restrict trade, on a non-discriminatory basis, despite the existence of specific commitments.

### *Safeguard in the Developing Countries through Special Provisions*

**Q:** Are there special provisions for developing countries under GATS?

**A:** Developing country interests have been catered for both in the general structure of the agreement as well as in individual articles. In particular, the objective of facilitating the increasing participation of developing countries in services trade

has been enshrined in the preamble to the agreement and underlies the provisions of Article IV.

This Article directs members inter alia, to negotiate specific commitments relating to the strengthening of developing countries' domestic services capacity; the improvement of developing countries' access to distribution channels and information networks; and the liberalisation of market access in areas of export interest to these countries. While the notion of progressive liberalisation is one of the basic tenets of the GATS, Article XIX provides that liberalisation takes place with due respect for national policy objectives and members' development levels, both overall and in individual sectors. The developing countries are thus given flexibility for opening fewer sectors, liberalising fewer types of transactions, and progressively extending market access in line with their development situation. Other provisions ensure that developing countries have more flexibility in pursuing economic integration policies, maintaining restrictions on balance of payments grounds, and determining access to and use of their telecommunications transport networks and services. In addition, developing countries are entitled to receive technical assistance from the WTO.

***Built-in-Agenda i.e. Finding Solution through Negotiations***

**Q: What do you mean by built-in agenda of the GATS?**

**A:** The GATS, including its Annexes and related instruments, sets out a work programme which is popularly referred to as the 'built-in' agenda. The programme reflects both the fact that not all services-related negotiations could be concluded within the time frame of the Uruguay Round, and that members have already committed themselves, in Article XIX, to successive rounds aimed at achieving a progressively higher level of liberalisation. Besides, various

GATS Articles provide for issue-specific negotiations intended to define rules and disciplines for domestic regulation, emergency safeguards (Article X), government procurement and subsidies (Article XV). These negotiations are currently under way. At the sectoral level, discussions on basic telecommunications were successfully concluded in February 1997 and negotiations in the area of financial services in mid-December 1997. In these negotiations, members achieved significantly improved commitments with a broader level of participation.

### ***Doha Round Progress Under GATS***

**Q: What progress with regard to GATS has been made under the Doha Round?**

**A:** The Doha Round recognised the work done in GATS Council and also approved the request approach. The deadlines under the Doha round were as under:

- (i) Initial requests 30-6-2002
- (ii) Initial offers 31-3-2003
- (iii) Finalisation of negotiations 1-1-2005 (Not met so far)
- (iii) Revised Offers May 2005 (Under July Package)

The negotiations are on going. The pace so far is extremely slow. Pursuant to the principle of single undertaking agreement on services will be part of comprehensive package covering among others trade in a agriculture and non agriculture market access.

### ***Sectoral Commitments for Pakistan***

**Q: Did Pakistan make any sectoral commitments?**

**A:** Commitments have been made by Pakistan in the following sectors:

- (i) Business Services

- (ii) Communication Services
- (iii) Construction & Engineering Sector
- (iv) Financial Services
- (v) Health & Medical Services
- (vi) Tourism & Travel Services

### ***Liberal and Flexible Policies without WTO Obligations***

**Q: What do you mean by autonomous liberalisation? Did Pakistan undertake any such steps?**

**A:** The following sectors have been liberalised under a policy of autonomous liberalisation i.e. liberal and flexible policies without WTO obligations:

- (i) Financial services such as banking sector and insurance sector.
- (ii) Professional services
- (iii) Health related services
- (iv) Education services
- (v) Maritime transport services
- (vi) Courier services

### ***Consultation Mechanisms in Pakistan***

**Q: Is there any consultation mechanism regarding GATS in Pakistan?**

**A:** The WTO section in Ministry of Commerce is the main coordination point for the consultative process. Initial requests from other countries are shared with stakeholders at this point. Regular consultations are carried out with other ministries, such as Finance, Health, Education, Environment, Communications, and Tourism. The Ministry of Commerce also undertakes consultations with Chambers and representative bodies though consultation with provinces has not been adequately undertaken.

### *Impediments for Pakistan's Services Exports*

**Q: Describe main issues and impediments for service sector trade of Pakistan?**

**A:** The main impediments to service exports are:

- (i) Restrictions in movement of natural persons (visas and duration of stay constraints).
- (ii) Obstructions to commercial presence (sponsorship and equity requirements).
- (iii) Discrimination in equivalence of qualifications.
- (iv) Lack of level playing field.
- (v) Imposition of discriminatory taxes (high tax deductions from salaries).
- (vi) Lack of effective marketing by private companies and by the govt.

The domestic issues and impediments are as under:

- (i) Non compliance to laws enacted by professional bodies/regulatory institutions.
- (ii) Lack of expertise on WTO/GATS issues
- (iii) Lack of transparency in public and private sector; corruption and issues of governance.
- (iv) Regulatory issues; conservative and change resistant bureaucracy, outdated laws, inefficiency and strangulating procedures.
- (v) Lack of credit to service providers.
- (vi) Absence of mechanism for collection and dissemination of information regarding service sector

# CHAPTER 10

## GLOSSARY OF KEY TERMS

1. Amber box: Type of domestic supports considered to distort trade and therefore subject to reduction commitments.
2. Anti-dumping duties: Article VI of the GATT 1994 permits the imposition of anti-dumping duties against dumped goods, equal to the difference between their export price and their normal value, if dumping causes injury to producers of competing products in the importing country. Also see "dumping".
3. Appellate Body: An independent seven-person body that, upon request by one or more parties to a WTO dispute, reviews findings in panel reports.  
  
Article XX: Article of GATT 1994 listing allowed "exceptions" to the trade rules.
4. ATC: The WTO Agreement on Textiles and Clothing, which has expired since 1st January 2005, and trade in this sector is now regulated under GATT rules.
5. Automaticity: The "automatic" chronological progression for settling trade disputes in regard to panel establishment, terms of reference, composition and adoption procedures.
6. Blue box: permitted domestic supports linked to production, but subject to production limits and therefore minimally trade-distorting.
7. Boxes: Categories of domestic support.
8. Codex Alimentarius Commission: FAO/WHO Commission that deals with international standards on food safety.



9. Commercial presence: Having an office, branch, or subsidiary in a foreign country.
10. Counterfeit: Unauthorized representation of a registered trademark carried on goods identical or similar to goods for which the trademark is registered, with a view to deceiving the purchaser into believing that he/she is buying the original goods. Countervailing measures Action taken by the importing country, usually in the form of increased duties to offset subsidies given to producers or exporters in the exporting country.
11. Customs union: A Regional Trading Arrangement where Members apply a common external tariff (e.g. the EC).
12. Distortion: When prices and production are higher or lower than levels that would usually exist in a competitive market.
13. DSB: Dispute Settlement Body - when the WTO General Council meets to settle trade disputes.
14. DSU: The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes.
15. Dumping: Occurs when goods are exported at a price less than their normal value, generally meaning they are exported for less than they are sold in the domestic market or third-country markets, or at less than production cost.
16. Food security: Concept which discourages opening the domestic market to foreign agricultural products on the principle that a country must be as self-sufficient as possible for its basic dietary needs.
17. Free Trade Area: Trade within the group is duty free but members set own tariffs on imports from non-members (e.g. NAFTA).
18. GATS: The WTO's General Agreement on Trade in Services.

19. GATT 1947: The old (pre-1994) version of the GATT.
20. GATT 1994: The new version of the General Agreement, incorporated into the WTO, which governs trade in goods.
21. GATT: General Agreement on Tariffs and Trade, which has been superseded as an international organization by the WTO. An updated General Agreement is now one of the WTO's agreements.
22. General obligations: Obligations, which should be applied to all services sector at the entry into force of the agreement.
23. Geographical indications: Place names (or words associated with a place) used to identify products (for example, "Champagne", "Tequila" or "Roquefort"), which have a particular quality, reputation or other characteristic because they come from that place
24. Green box: supports domestic considered not to distort trade and therefore permitted with no limits.
25. GSP: Generalized System of Preferences - programmes by developed countries granting preferential tariffs to imports from developing countries.
26. Harmonized System: An international nomenclature developed by the World Customs Organization, which is arranged in six digit codes allowing all participating countries to classify traded goods on a common basis. Beyond the six-digit level, countries are free to introduce national distinctions for tariffs and many other purposes.
27. Initial commitments: Trade liberalizing commitments in services which members are prepared to make early on.
28. Intellectual property rights: Ownership of ideas, including literary and artistic works (protected by copyright), inventions (protected by

patents), signs for distinguishing goods of an enterprise (protected by trademarks) and other elements of industrial property.

29. Internal support: Encompasses any measure which acts to maintain producer prices at levels above those prevailing in international trade; direct payments to producers, including deficiency payments, and input and marketing cost reduction measures available only for agricultural production.
30. International Office of Epizootics: Deals with international standards concerning animal health.
31. LDCs: Least-developed countries.
32. Liberalization: The process of deregulating trade by reducing trade restrictions imposed by governments. Local-content measure Requirement that the investor purchase a certain amount of local materials for incorporation in the investor's product.
33. Members: WTO governments
34. MFN: Most-favoured-nation treatment (GATT Article I, GATS Article II and TRIPS Article 4), the principle of not discriminating between one's trading partners. It is a WTO policy that all member countries have equal status and there can be no discrimination between members. For example, if one member favours another member by lowering its tariffs on that country's goods, that agreement has to be applied to all other WTO members so that they are all equally "most-favoured." MFN status does not apply to non-WTO countries.
35. Multilateral: The term used to describe the WTO agreements because they apply to multiple countries and commit all members to liberalizing trade simultaneously." Multilateral" also refers to the global nature of

WTO activities, as opposed to those of smaller, often-regional organizations like the EU, NAFTA, and ASEAN (Association of South East Asian Nations).

**36.** Modes of delivery: How international trade in services is supplied and consumed. **Mode 1:** cross border supply; mode 2: consumption abroad; mode 3: foreign commercial presence; and mode 4: movement of natural persons.

**37.** Multifibre Arrangement: An arrangement that was in place from 1974 to 1994 under which countries whose markets were disrupted by increased imports of textiles and clothing from another country were able to negotiate quota restrictions.

**38.** National schedules: The equivalent of tariff schedules in GATT, laying down the commitments accepted - voluntarily or through negotiation - by WTO members for trade in services.

National treatment: The principle of giving others the same treatment as one's own nationals. GATT Article III requires that imports be treated no less favourably than the same or similar domestically produced goods once they have passed customs. GATS Article XVII and TRIPS Article 3 also deal with national treatment for services and intellectual property protection.

**39.** Non-tariff measures: such as quotas, import licensing systems, sanitary regulations, prohibitions, etc.

Nullification and impairment Damage to a country's benefits and expectations from its WTO membership through another country's change in its trade regime or failure to carry out its WTO obligations.

**40.** Offer: A country's proposal for further liberalization.

41. Panel: Consisting of three experts, this independent body is established by the DSB to examine and issue recommendations on a particular dispute in the light of WTO provisions.
42. Piracy: Unauthorized copying of copyright materials for commercial purposes and unauthorized commercial dealing in copied materials.
43. Product-mandating: Requirement that the investor export to certain countries or region.  
  
Quantitative restrictions: Specific limits on the quantity or value of goods that can be imported (or exported) during a specific time period.
44. Rules of origin: Laws, regulations and administrative procedures, which determine a product's country of origin. A decision by a customs authority on origin can determine whether a shipment falls within a quota limitation, qualifies for a tariff preference or is affected by an anti-dumping duty. These rules can vary from country to country.
45. S&D: "Special and differential treatment" provisions for developing countries. Contained in several WTO agreements.
46. Safeguard measures: Action taken to protect a specific industry from an unexpected build-up of imports - governed by Article XIX of the GATT 1994.
47. Schedule of concessions: List of bound tariff rates.
48. Schedule of Specific Commitments: A WTO member's list of commitments regarding market access and bindings regarding national treatment for trade in services.  
  
SPS regulations: Sanitary and Phytosanitary regulations - government standards to protect human, animal and plant life and health, to help ensure that food is safe for consumption.

- 49.** Subsidy: There is two general types of subsidies: export and domestic. An export subsidy is a benefit conferred on a firm by the government that is contingent on exports. A domestic subsidy is a benefit not linked to exports.
- 50.** Tariff binding: Commitment not to increase a rate of duty beyond an agreed level. Once a rate of duty is bound, it may not be raised without compensating the affected parties.
- 51.** Tariff escalation: Higher import duties on semi-processed products than on raw materials, and higher still on finished products. This practice protects domestic processing industries and discourages the development of processing activity in the countries where raw materials originate.
- 52.** Tariff peaks: Relatively high tariffs, usually on "sensitive" products, amidst generally low tariff levels. For industrialized countries, tariffs of 15 per cent and above are generally recognized as "tariff peaks".
- 53.** Tariffication: Procedures relating to the agricultural market-access provision in which all non-tariff measures are converted into tariffs.
- 54.** Tariffs: Customs duties on merchandise imports. Levied either on an ad valorem basis (percentage of value) or on a specific basis (e.g. weight). Tariffs give price advantage to similar locally produced goods and raise revenues for the government.
- 55.** TBT: The WTO Agreement on Technical Barriers to Trade.  
TPRB, TPRM: The Trade Policy Review Body is General Council operating under special procedures for meetings to review trade policies and practices of individual WTO members under the Trade Policy Review Mechanism.

- 56.** Trade facilitation: Removing obstacles to the movement of goods across borders (e.g. simplification of customs procedures). Trade-balancing measure: Requirement that the investor use earnings from exports to pay for imports.
- 57.** Transparency: Degree to which trade policies and practices, and the process by which they are established, are open and predictable.
- 58.** TRIMS: Trade-Related Investment Measures. The WTO Agreement on TRIMs prohibits members from imposing or maintaining measures relating to investment that adversely affect trade in goods. Under the agreement, member countries agree not to pass any foreign investment laws that violate GATT rules, and to eliminate any existing TRIMs that do.
- 59.** TRIPS: Agreement on Trade-Related Aspects of Intellectual Property Rights. Sets out rules for trade and investment in ideas, inventions, and industrial designs. Intellectual Property Rights (IPRs) are the rights given to individuals over intellectual creations, including copyrights, patents, trademarks, etc. Waiver Permission granted by WTO members allowing a WTO member not to comply with normal commitments. Waivers have time limits and extensions have to be justified.

# CHAPTER 11

## AGREEMENT ON TEXTILES AND CLOTHING

This Agreement has come to an end on 31<sup>st</sup> December, 2004. As a consequent textiles and clothing sectors stand fully integrated into the WTO system

### *Purpose of the Agreement*

**Q: What is the purpose of the Agreement on Textiles and Clothing?**

**A:** The trade in textiles and clothing did not attract the provisions of GATT, which is thereby that GATT rules did not apply to this trade. It was governed by the infamous Multi Fiber Agreement (MFA) which was regulated outside the ambit of GATT. The purpose of the agreement was to bring this trade under the GATT where all GATT rules would be applicable which interalia include application of MFN; National Treatment; binding of tariffs, removal of QRs etc. The ATC had been evolved over a long period of time during the Uruguay Round and long negotiations have to be undertaken to reach this agreement.

### *Products Covered by the Agreement*

**Q: What do you mean by product coverage in the agreement?**

**A:** The product coverage of the agreement includes all products classified as textiles products in section XI of the HS codes. Besides, it includes soft luggage, footwear upper, umbrellas, seat belts etc.

### *Objective of the Agreement*

**Q: What is the objective of the ATC?**

**A:** The object of this negotiation has been to secure the eventual integration of the textiles and clothing sector - where much of the trade is presently subject to the bilateral quotas negotiated under the Multifibre Arrangement (MFA)- into the GATT on the basis of strengthened GATT rules and disciplines.



### ***Process of Integration of the Agreement on Textile and Clothing***

**Q: What is the process of integration and how does it take place?**

**A:** The process of integration of the sector into the GATT would take place as under:

In the first phase on January 1st 1995, each party would integrate into the GATT products from the specific list in the agreement which accounted for not less than 16% of its total volume of imports in 1990. Integration means that trade in these products will be governed and regulated by the general rules of GATT.

At the beginning of phase 2, on 1 January 1998, products which accounted for not less than 17% of 1990 imports would be integrated. On January 1st 2002, goods which accounted for not less than 18% of 1990 imports would be integrated. All remaining products would be integrated at the end of the transition period on January 1st 2005. At each of the first three stages, products should be chosen from each of the following categories: tops and yarns, fabrics, made-up textile products, and clothing.

### ***Process of Liberalization under the Agreement***

**Q: Does the ATC provide for growth of quotas during the integration period?**

**A:** All MFA restrictions in place on 31 December 1994 would be carried over into the new agreement and maintained until such time as the restrictions are removed or the products integrated into GATT. For products remaining under restraint, at whatever stage, the agreement lays down a formula for increasing the existing growth rates.

Thus in the first stage, and for each restriction previously under MFA bilateral agreements in force for 1994, annual growth should be not less than 16 per cent higher than the growth rate established for the previous MFA restriction. While

for stage 2 annual growth rates should be 25% higher than the rates of first stage. For stage 3, annual growth rates should be 27% higher than the previous rates of both stages.

While the agreement stresses greatly on the phasing-out of MFA restrictions, it also recognises that some members maintain non-MFA restrictions not justified under a GATT provision. These would also be brought into conformity with GATT within one year of the entry into force of the Agreement or phased out progressively during a period not exceeding the duration of the agreement.

### ***Safeguard Provisions during the Integration Period***

**Q: Does the transitional agreement provide any safeguard to the importing country during the integration period?**

**A:** It also contains a specific transitional safeguard measures which could be implemented to products not yet integrated into the GATT at any stage. Action under the safeguard mechanism could be taken against individual exporting countries if it were demonstrated by the importing country that overall imports of a product were entering the country in such increased quantities as to cause serious damage - or to threaten it - to the relevant domestic industry, and that there was a sharp and substantial increase of imports from the individual country concerned. Action under the safeguard mechanism could be taken either by mutual agreement, following consultations, or unilaterally but subject to review by the Textiles Monitoring Body. If taken, the level of restraints should be fixed at a level not lower than the actual level of exports or imports from the country concerned during the twelve-month period ending two months before the month in which a request for consultation was made. Safeguard restraints could remain in place for up to three years without extension or until the

product is removed from the scope of the agreement (that is, integrated into the GATT), whichever comes first.

### ***Provisions to Co-op with Circumvention of Commitments***

**Q: What if countries try to import goods through routs that do not attract quotas in importing countries?**

**A:** The agreement includes provisions to cope with possible circumvention of commitments through transshipment, re-routing, false declaration concerning country or place of origin and falsification of official documents.

The agreement also stipulates that, as part of the integration process, all members shall take such actions in the area of textiles and clothing as may be necessary to abide by GATT rules and disciplines so as to improve market access, ensure the application of policies relating to fair and equitable trading conditions, and avoid discrimination against imports when taking measures for general trade policy reasons.

### ***Implementation of Commitments and Reports for Major Reviews***

**Q: What is the mechanism adopted for overseeing the implementation of the ATC?**

**A:** In the context of a major review of the operation of the agreement to be conducted by the Council for Trade in Goods before the end of each stage of the integration process, the Council for Trade in Goods shall by consensus take such decisions as it deems appropriate to ensure that the balance of rights and obligations in this agreement is not upset. Moreover, the Dispute Settlement Body may authorise adjustments to the annual growth of quotas for the stage subsequent to the review with respect to members it has found not to be complying with their obligations under this agreement.

A Textiles Monitoring Body (TMB) oversees the implementation of commitments and to prepare reports for the major reviews mentioned above. The agreement also has provisions for special treatment to certain categories of countries - for instance, those which have not been MFA members since 1986, new entrants, small suppliers, and least-developed countries.