AGREEMENT ON AGRICULTURE

BY

MISS ASHWINI DOMINICA COLAÇO

SYLLM – IPR III

G. R. KARE COLLEGE OF LAW, MARAGO – GOA

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<u>WORLD TRADE ORGANIZATION</u>

The World Trade Organization (WTO) is the only Global International Organization dealing with the rules of trade between Nations. At its heart are the WTO agreements and negotiated which are signed by the bulk of the World's trading nations and ratified in their Parliaments. These documents provide the legal ground rules for International Commerce. They are contracts, binding Governments to keep their trade policies within agreed limits. The goal is to help producers of goods and services, exporters, and importers conduct their business.[1] Essentially, the WTO is a place where the Member Governments try to sort out the trade problems they face with each other.

The system's overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side effects — because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, Companies and Governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be '*transparent' and 'predictable'*. Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.[2]

The WTO agreements are lengthy and complex because they are legal texts covering a wide range of activities. But a number of simple, fundamental principles run throughout all of these documents. These principles are the foundation of the multilateral trading system. They are as follows:

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[1] http://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm (visited on 19/05/2014)
[2] http://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm (visited on 19/05/2014)

1. **NON-DISCRIMINATION:** A country should not discriminate between its trading partners and it should not discriminate between its own and foreign products, services or nationals.

2. **MORE OPEN:** Lowering trade barriers is one of the most obvious ways of encouraging trade; these barriers include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively.

3. **PREDICTABLE AND TRANSPARENT:** Foreign companies, investors and governments should be confident that trade barriers should not be raised arbitrarily. With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices.

4. **MORE COMPETITIVE:** Discouraging 'unfair' practices, such as export subsidies and dumping products at below cost to gain market share; the issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.

5. **MORE BENEFICIAL FOR LESS DEVELOPED COUNTRIES:** Giving them more time to adjust, greater flexibility and special privileges; over three-quarters of WTO members are developing countries and countries in transition to market economies. The WTO agreements give them transition periods to adjust to the more unfamiliar and, perhaps, difficult WTO provisions.

6. **PROTECT THE ENVIRONMENT:** The WTO's agreements permit members to take measures to protect not only the environment but also public health, animal health and plant health. However, these measures must be applied in the same way to both national and foreign businesses. In other words, members must not use environmental protection measures as a means of disguising protectionist policies.[3]

FUNCTIONS:

[3] http://www.wto.org/english/thewto_e/whatis_e/what_stand_for_e.htm (visited on 19/05/2014)

Among the various functions of the WTO, these are regarded by analysts as the most important:

1. It oversees the implementation, administration and operation of the covered agreements.

2. It provides a forum for negotiations and for settling disputes.

Additionally, it is the WTO's duty to review and propagate the national trade policies, and to ensure the coherence and transparency of trade policies through surveillance in global economic policy-making. Another priority of the WTO is the assistance of developing, least-developed and low-income countries in transition to adjust to WTO rules and disciplines through technical cooperation and training.

(i) The WTO shall facilitate the implementation, administration and operation and further the objectives of this Agreement and of the Multilateral Trade Agreements, and shall also provide the frame work for the implementation, administration and operation of the multilateral Trade Agreements.

(ii) The WTO shall provide the forum for negotiations among its members concerning their multilateral trade relations in matters dealt with under the Agreement in the Annexes to this Agreement.

(iii) The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes.

(iv) The WTO shall administer Trade Policy Review Mechanism.

(v) With a view to achieving greater coherence in global economic policy making, the WTO shall cooperate, as appropriate, with the international Monetary Fund (IMF) and with the International Bank for Reconstruction and Development (IBRD) and its affiliated agencies.

The above five listings are the additional functions of the World Trade Organization. The WTO is also a centre of economic research and analysis which conducts regular assessments of the global trade picture in its annual publications and research reports on specific topics are produced by the organization. Finally, the WTO cooperates closely with the two other components of the Bretton Woods system, the IMF and the World Bank. As globalization proceeds in today's society, the necessity of an *International Organization* to manage the trading systems has been of vital importance. As the trade volume increases, issues such as protectionism, trade barriers, subsidies, violation of intellectual property arise due to the differences in the trading rules of every nation. The World Trade Organization serves as the mediator between the nations when such problems arise. WTO could be referred to as the product of globalization and also as one of the most important organizations in today's globalized society.[4]

MEMBERS AND OBSERVERS:

The WTO has 159 members and 25 observer Governments. In addition to states, the European Union is a member. WTO members do not have to be full sovereign nation-members. Instead, they must be a customs territory with full autonomy in the conduct of their external commercial relations. Thus Hong Kong has been a member since 1995 (as "Hong Kong, China" since 1997) predating the People's Republic of China, which joined in 2001 after 15 years of negotiations. The Republic of China acceded to the WTO in 2002 as "Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu" (Chinese Taipei) despite its disputed status. The WTO Secretariat omits the official titles (such as Counselor, First Secretary, Second Secretary and Third Secretary) of the members of Chinese Taipei's Permanent Mission to the WTO, except for the titles of the Permanent Representative and the Deputy Permanent Representative.

As of 2007, WTO member states represented 96.4% of global trade and 96.7% of global GDP. Iran, followed by Algeria, are the economies with the largest GDP and trade outside the WTO, using 2005 data. With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers. A number of international intergovernmental organizations have also been granted observer status to WTO bodies. 14 states and two territories so far have no official interaction with the WTO.[5]

[4] http://en.wikipedia.org/wiki/World_Trade_Organization (visited on 19/05/2014)
[5] ibid

AGREEMENTS:

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

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

The WTO oversees about 60 different agreements which have the status of International Legal Texts. Member countries must sign and ratify all WTO agreements on accession. We now shall have an overview of the following five important Agreements of the WTO in the following chapters:

a. Agreement on Agriculture.
b. Agreement on Textile and Clothing.
c. Agreement on Import Licensing Procedure.
d. The Agreement on Safeguards.
e. General Agreement on Trade in Services.

AGREEMENT ON AGRICULTURE

OBJECTIVES:

The main objectives behind Agreement of Agriculture of the World Trade Organization are:

1. Protection to domestic industry through tariffs.
2. Binding on tariffs.
3. Most Favoured Nations Treatment (MFNT).
4. National treatment.

THE WTO AGREEMENT ON AGRICULTURE: AN INTRODUCTION

The Agreement on Agriculture is an international treaty of the World Trade Organization. It was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade, and entered into force with the establishment of the WTO on January 1, 1995.[6] The Agreement on Agriculture brought about the World Agriculture Production and Trade under Multilateral Trade Rules. It was supposed to herald a new era of trade liberalisation in the agriculture sector, as hitherto agriculture had been mainly exempted from the disciplines of GATT.[7]

Overall, the results of the negotiations provide a framework for the long-term reform of agricultural trade and domestic policies over the years to come. It makes a decisive move towards the objective of increased market orientation in agricultural trade. The rules governing agricultural trade are strengthened which will lead to improved predictability and stability for importing and exporting countries alike. The agricultural package also addresses many other issues of vital economic and political importance to many Members. These include provisions that encourage the use of less trade-distorting domestic support policies to maintain the rural economy, that allow actions to be taken to ease any adjustment burden, and also the introduction of tightly prescribed provisions that allow some flexibility in the

[6] http://en.wikipedia.org/wiki/Agreement_on_Agriculture (visited on 12/05/2014)
[7] www.twnside.org.sg/title2/latestwto/**AGREEMENT ON AGRICULTURE FAO**.doc (visited on 12/05/2014)

implementation of commitments. Specific concerns of developing countries have been addressed including the concerns of net-food importing countries and least-developed countries.[8]

HISTORY OF THE AGREEMENT: ORIGINAL IDEA

The idea of replacing agricultural price support with direct payments to farmers decoupled from production dates back to the late 1950s, when a Panel of Experts, chaired by Professor Gottfried Haberler, was established at the twelfth session of the GATT Contracting Parties to examine the effect of agricultural protectionism, fluctuating commodity prices and the failure of export earnings to keep pace with import demand in developing countries.

By the 1980s, Government payments to agricultural producers in industrialised countries had caused large crop surpluses, which were unloaded on the world market by means of export subsidies, pushing food prices down. The fiscal burden of protective measures increased, due both to lower receipts from import duties and higher domestic expenditure. In the meantime, the global economy had entered a cycle of recession, and the perception that opening up markets could improve economic conditions led to calls for a new round of multilateral trade negotiations. The round would open up markets in services and high technology goods, and ultimately generate much needed efficiency gains. With a view to engaging developing countries in the negotiations, many of which were “demandeurs” of new international disciplines, agriculture, textiles and clothing were added to the grand bargain. In leading up to the 1986 GATT Ministerial Conference, developed country farm groups that had benefited from protectionist policies strongly resisted any specific compromise on agriculture. In this context, the idea of exempting production and ‘trade-neutral’ subsidies from WTO commitments was first proposed by the US in 1987, and echoed soon after by the EU. By guaranteeing farmers a continuation of their historical level of support, it also contributed to neutralising opposition to the round. In exchange for bringing agriculture within the disciplines of the WTO and committing to future reduction of trade-distorting subsidies,

[8] http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#aAgreement (visited on 12/05/2014)

developed countries would be allowed to retain subsidies that cause 'not more than minimal trade distortion' in order to deliver various public policy objectives.[9]

THREE PILLARS:

The Agreement on Agriculture has three central concepts, or "pillars": *domestic support, market access and export subsidies.*

1. DOMESTIC SUPPORT: THE BOXES

The first pillar of the Agreement on Agriculture is "*domestic support*". The WTO Agreement on Agriculture negotiated in the Uruguay Round (1986–1994) includes the classification of subsidies into '*boxes*' depending on their effects on production and trade: amber (most directly linked to production levels), blue (production-limiting programmes that still distort trade), and green (causing not more than minimal distortion of trade or production). While payments in the amber box had to be reduced, those in the green box were exempt from reduction commitments. Detailed rules for green box payments are set out in Annex 2 of the Agreement on Agriculture. However, all must comply with the 'fundamental requirement' to cause not more than minimal distortion of trade or production, and must be provided through a government-funded programme that does not involve transfers from consumers or price support to producers. The Agreement on Agriculture's domestic support system currently allows Europe and the USA to spend $380 billion every year on agricultural subsidies alone. "It is often still argued that subsidies are needed to protect small farmers but, according to the World Bank, more than half of EU support goes to 1% of producers while in the US 70% of subsidies go to 10% of producers, mainly agri-businesses." The effect of these subsidies is to flood Global Markets with below-cost commodities, depressing prices and undercutting producers in poor countries – a practice known as dumping.

2. MARKET ACCESS:

[9] http://en.wikipedia.org/wiki/Agreement_on_Agriculture (visited on 12/05/2014)

"*Market access*" is the second pillar of the Agreement on Agriculture, and refers to the reduction of tariff (or non-tariff) barriers to trade by WTO member-states. The 1995 Agreement on Agriculture required tariff reductions of:

a) 36% average reduction by developed countries, with a minimum per tariff line reduction of 15% over six years.

b) 24% average reduction by developing countries with a minimum per tariff line reduction of 10% over ten years.

Least Developed Countries (LDCs) were exempted from tariff reductions, but either had to convert non–tariff barriers to tariffs—a process called *tariffication*—or "*bind" their tariffs, creating a "ceiling" which could not be increased in future.*

3. EXPORT SUBSIDIES/ COMPETITION:

"Export subsidies" is the third pillar of the Agreement on Agriculture. The 1995 Agreement on Agriculture required developed countries to reduce export subsidies by at least 36% (by value) or by at least 21% (by volume) over the six years. In the case of developing country Members, the required cuts are 14% (by volume) and 24% (by value) over 10 years.[10]

The above shows that developing countries are subjected to the same disciplines to liberalise their agriculture sector as the developed countries, the only concession being slightly lower reduction rates and slightly longer time schedules. The LDCs do not have to reduce their tariffs or subsidies, but they are also committed not to raise them. Thus, developing countries have to abide by a programme of liberalisation.[11]

[10] http://en.wikipedia.org/wiki/Agreement_on_Agriculture (visited on 12/05/2014)
[11] www.twnside.org.sg/title2/latestwto/**AGREEMENT ON AGRICULTURE FAO**.doc (visited on 12/05/2014)

"Peace" provisions within the agreement include: an understanding that certain actions available under the Subsidies Agreement will not be applied with respect to green box policies and domestic support and export subsidies maintained in conformity with commitments; an understanding that "due restraint" will be used in the application of countervailing duty rights under the General Agreement; and setting out limits in terms of the applicability of nullification or impairment actions. These peace provisions will apply for a period of 9 years.

The agreement sets up a committee that will monitor the implementation of commitments, and also monitor the follow-up to the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. The package is conceived as part of a continuing process with the long-term objective of securing substantial progressive reductions in support and protection. In this light, it calls for further negotiations in the fifth year of implementation which, along with an assessment of the first five years, would take into account non-trade concerns, special and differential treatment for developing countries, the objective to establish a fair and market-oriented agricultural trading system and other concerns and objectives noted in the preamble to the agreement. [12]

AGREEMENT ON AGRICULTURE & ITS IMPLICATIONS IN INDIA:

As far as Market Access is concerned India had bound its tariffs at 100% for primary products, 150% for processed products and 300% for edible oils, except for certain items (comprising about 119 tariff lines), which were historically bound at a lower level in the earlier negotiations. Out of these low bound tariff lines, bindings on 15 tariff lines which included skimmed milk powder, spelt wheat, corn, paddy, rice, maize, millet, sorghum, rape, colza and mustard oil, fresh grapes etc. were successfully negotiated under GATT Article XXVIII in December 1999 and the binding levels were suitably revised upward to provide adequate protection to the domestic producers. India has also not taken any commitment to provide minimum market access opportunities which other countries who had tariffied their QRs had to undertake to the extent of 3% of its domestic consumption going upto 5%, at the

[12] http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#aAgreement (visited on 13/05/2014)

end of the implementation period. Though India is not entitled to use the Special Safeguard Mechanism of the Agreement, which can be used only by countries which had tariffied, yet it can take safeguard action under the WTO Agreement on Safeguards if there is a surge in imports causing serious injury or if there is a threat of serious injury to the domestic producers.[13]

In India under the Domestic Support Pillar, the product-specific supports is negative, while the non-product specific support i.e., subsidies on agricultural inputs, such as, power, irrigation, fertilisers etc., is well below the permissible level of 10% of the value of agricultural output. Therefore, India is under no obligation to reduce domestic support currently extended to the agricultural sector.[14]

And in the discipline of Export Subsidies of the kind listed in the Agreement on Agriculture, which attract reduction commitments, are not extended in India. Also, developing countries are free to provide certain subsidies, such as subsiding of export marketing costs, internal and international transport and freight charges etc. India is making use of these subsidies in certain schemes of Agricultural & Processed Food Products Export Development Authority (APEDA), especially for facilitating export of horticulture products.[15]

MEASURES TO SAFEGUARD INDIAN AGRICULTURE:

Some of the measures taken by the government in this regard are:

(i) Import duties on a number of agro and other items have been increased. For example, the duty on areca nut has been raised from 35% to 100%, on poultry products from 35% to 100%, on wheat from 0% to 50%, on skimmed milk powder from 0% to 60% for imports beyond the tariff rate quota (TRQ) of 10,000 tonnes; on apple from 35% to 50%, on rice from 0% to 70%, on broken rice and paddy from 0 % to 80%, and on sugar from 27.5% to 60%

[13] http://pib.nic.in/focus/foyr2001/foapr2001/Agreement on Agriculture 1.html (visited 13/05/2014)
[14] ibid
[15] ibid

(ii) In the Budget 2001-2002 customs duty on tea, coffee, copra and coconut as well as desiccated coconut has been increased from the present rate of 35% to 70%. The rate of duty on crude edible oils, except soya bean oil, which ranged from 35% to 55%, has been increased to a uniform rate of 75%. Similarly the duty on refined oils which ranged from 45% to 65% has also been hiked to 85%. Customs duty has also been enhanced on import of crude palm oil by vanaspati manufacturers from 25% to 75%. However, sick vanaspati units would pay @ 55%. It needs to be mentioned in this connection that customs duty on edible oil has to harmonize the interests of both domestic producers and consumers. In the Budget Speech for the year 2001-2002, the Finance Minister has categorically assured that the interest of farmers would be adequately safeguarded and the Government would move swiftly whenever there is a perceptible threat on account of imports. It has also been announced in the budget that countervailing duty equivalent to state excise duty would be levied on imported alcoholic beverages.

(iii) Import of all packaged commodities have been subjected to compliance of all the conditions of the standards as are applicable on the domestic packaged commodities in accordance with the Weights and Measures (Packaged commodity) Order 1977.

(iv) Import of 131 products has been made subject to compliance of the mandatory Indian quality standards as applicable to domestic goods. For compliance of this requirement all manufacturers/ exporters of these products to India are required to register themselves with Bureau of Indian Standards (BIS). The list of 131 products includes various food preservatives and additives, milk powder, infant milk food etc.

(v) An Inter-ministerial Group headed by Commerce Secretary was constituted on 28/7/2000 to assess the likely impact of the removal of QRs on imports and to suggest suitable corrective measures. Departments of Agriculture & Cooperation; Consumer Affairs; Small Scale Industries and Agro & Rural Industries; Chemicals & Petro-chemicals; Fertilisers; Petroleum and Natural Gas; Animal Husbandry & Dairying as well as the Ministries of Heavy Industries & Public Enterprises and Information Technology have been represented in the Group.

Although maintenance of quantitative restrictions (QRs) on imports is not permitted as per Article XI of GATT, the Government can, if the situation so warrants, utilise the mechanism of raising the applied tariffs within the bound rates, if such a gap exists and take measures such as anti-dumping action, safeguard actions and imposition of countervailing duties, which are permissible under certain specified circumstances under the WTO Agreements, in order to provide protection to the domestic producers. Imports are being closely monitored and the government are determined to ensure through the appropriate use of the above mechanisms that imports do not cause any serious injury to the domestic producers.[16]

SPECIAL AND DIFFERENTIAL TREATMENT (SDT) IN THE WTO AGREEMENT ON AGRICULTURE:

Special and Differential Treatment (SDT) is the term used for the way in which developing countries are treated differently to developed countries within the WTO system. The principle of SDT is that international trade rules should be adapted to the particular economic situation of developing countries. It is important to recognise that developing countries are not a homogenous group and will be affected differently by agricultural trade liberalisation depending on their net trade status, the commodity composition of their trade, etc.

Within the WTO, SDT treatment has taken two main forms:

1. With respect to market access commitments, SDT treatment has taken the form of allowing *non-reciprocal trade preferences* designed to provide preferential access for developing country exports to the markets to developed countries.
2. With respect to trade rules and disciplines, STD treatment means that developing countries can be exempted from the need to implement multilaterally agreed rules or might be asked to accept less onerous obligations. In the Uruguay Round, SDT treatment also meant offering

[16] ibid

developing countries longer implementation periods and possibly technical assistance to help them meet multilaterally agreed commitments.[17]

The WTO Agreement on Agriculture provided SDT treatment to developing countries in various ways. Developing countries could opt to establish their initial bound tariff levels using ceiling bindings at whatever level they chose, rather than being required to convert their existing border protection measures into tariffs. They had lower reduction percentages and longer implementation periods for their tariff reduction, export subsidy reduction and domestic support reduction commitments (and least developed countries were not required to make any reduction commitments). Greater flexibility was provided in the use of certain policy instruments such as investment subsidies or export subsidies. Special provisions for net food-importing developing countries and the least developed countries were included in the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food Imports Developing Countries.

For these reasons, WTO disciplines are rarely binding on developing countries. For example, tariffs applied by a broad sample of 32 developing countries average 20% even though their bound tariff levels (the maximum levels they can apply) average 84%. Few countries are near their limit on permitted trade-distorting domestic support, and fewer still would be in a position to offer export subsidies even if they had this right. Developing countries are also concerned that their freedom to take action in response to import surges or low world market prices or to regulate their domestic markets to ensure food security might be put at risk in the Doha Round negotiations unless the rules are sufficiently adapted to their needs.

Nonetheless, many developing countries believe that the existing flexibility in the Agreement on Agriculture does not go far enough. Despite the previous generalisation, there are cases for particular countries and for particular commodities where their freedom of action is now constrained by the commitments they accepted under the Agreement on Agriculture. They

[17] http://www.tcd.ie/iiis/policycoherence/wto-agricultural-trade-rules/special-differential-treatment-developing-countries.php (visited on 13/05/2014)

argue that they must retain the ability to provide protection and support to domestic food production for food security, livelihood security and rural development reasons, as well as to protect producers and consumers against volatile world prices and import surges.

They also argue that there is an asymmetry about the current Agreement; the disciplines applied to developing countries ironically are often stricter than those applied to developing countries. For example, because few developing countries offer domestic subsidies to their farmers, they are limited by the Agreement to de minimis amounts of trade-distorting support in the future. Developed countries, on the other hand, under the terms of the Agreement can provide their farmers with trade-distorting support well beyond de minimis levels. Net food-importing countries complain that the Marrakesh Decision was not followed up by concrete actions.[18]

WHICH COUNTRIES SHOULD BE ELIGIBLE FOR SDT?

SDT treatment is available to all developing countries in the WTO. But qualifying as a developing country is simply a matter of self-declaration. Thus the developing country category covers countries as different in their competitive capacity and economic potential as Singapore and South Korea, on the one hand, and Benin and Malawi on the other. Developed countries argue that greater differentiation among developing countries is required if they are to make more generous SDT treatment offers, and that the level of SDT treatment should be graduated according to a country's ability to accept WTO disciplines. So far, developing countries have rejected any suggestion that there should be greater differentiation.[19]

EFFECTS OF DEVELOPED COUNTRIES' SUBSIDIES ON DEVELOPING COUNTRIES:

The effect of agriculture subsidies in developed countries is that their farm production levels are kept artificially high and their producers dispose of their surplus in other countries, by

[18] ibid
[19] ibid

often dumping on world markets at less than the production cost. Farmers in developing countries incur losses in three ways:

(a) They lose export opportunities and revenues from having their market access blocked in the developed countries using the subsidies;

(b) They lose export opportunities in third countries, because the subsidising country is exporting to these countries at artificially low prices;

(c) They lose their market share in their own domestic market, or even lose their livelihoods, due to the inflow of artificially cheap subsidized imports.

REDUCTION OR ELIMINATION OF SUBSIDIES BY DEVELOPING COUNTRIES:

As explained above, developing countries have also been constrained in regard to domestic subsidies for local farmers. The overall amount of the relevant subsidies was recorded for 1995 as a ceiling, and developing countries (except LDCs) are required to reduce this amount by 13.3 per cent over a period of 10 years. There is a small general *de minimis* exclusion from the subsidy discipline for developing countries of 10 per cent of the value of production (for product-specific subsidies) and 10 per cent of the value of total agricultural production (for non-product-specific subsidies); and also exemptions for limited purposes (such as investment subsidies and input subsidies for poor farmers). These exclusions apart, developing countries are now constrained from increasing the level of domestic support to their farmers and instead have to bring down the level. Developed countries, which in general have offered very high levels of domestic support, have committed themselves to only slightly reducing these. Most developing countries have previously maintained low levels of subsidy and are unable to increase them beyond the exemptions. And even in areas where domestic support is permissible, most developing countries cannot avail themselves of the facility because of the lack of financial resources.

The concessions to developing countries are that the rates of reduction (of tariffs, domestic support and export subsidies) are two-thirds those for the developed countries, and that there is a longer implementation period (10 years compared to six years for developed countries). LDCs are exempt from reductions. These concessions are minor, especially in view of the fact that developed countries are allowed to continue to maintain very high levels of import protection and agricultural subsidies.

Meanwhile, serious problems of implementation have emerged in developing countries. Some countries were asked to reduce or eliminate subsidies, or institutions set up to assist farmers in marketing their products, under the loan conditionality's of the international or regional financial institutions. There is thus an unfair practice of double standards. Whereas the developed countries have maintained or increased their very high domestic support, several developing countries have had their agricultural subsidy system dismantled or their rates reduced.

CURRENT ASSESSMENT OF IMPLEMENTATION OF AGREEMENT ON AGRICULTURE:

During the Uruguay Round, it was expected that following the Agreement, distortions in agricultural trade would be reduced and scope for exports of products from developing countries would increase. The anticipated increase in exports of agricultural products from developing countries has not been realised. It was also expected that the contemplated fair trading regime would help the efficient producers in realising higher prices for their products. On the contrary, prices of most agricultural commodities are declining in the world markets. It was anticipated that due to the reduction in domestic support in developed countries, cereal production would shift from developed to developing countries. Empirical evidence, however, shows that there has not been much change in the pattern of world cereals production and exports.

A number of Developed Countries have continued to provide high domestic support to their agricultural sectors. At best the policies in many developed countries have only been cosmetically altered by shifting the support from one "box" to another. The continuation of the high domestic support to agriculture in many developed countries is a cause of concern as they encourage over-production in these countries leading to low levels of international prices. It is obvious, therefore, that benefits to developing countries in terms of increasing their exports will only occur after complete elimination of export subsidies and substantial reduction in domestic support in the developed countries has been effected. In this context, India has demanded a substantial reduction in the trade distorting domestic support and elimination of export subsidies by developed countries.

Market Access in the Developed Countries is also hampered by their maintaining high tariffs on products of interest to developing countries besides a plethora of non tariff barriers. In a recent study of 14 countries, Food & Agricultural Organisation (FAO) concluded that there was little change in the volume exported or in diversification of products and destination. Tariff peaks continue to block exports from developing countries to the developed world. Tariffs still remain very high in certain sectors, specially, in cereals, sugar and dairy products. Tariff escalation (increase in tariff with successive stages of processing) block exports of value-added products from developing countries to the developed countries. Stringent Sanitary and Phytosanitary (SPS) measures continue to be a major barrier in diversifying exports in horticulture and meat items. Fresh commitments have, therefore, to be negotiated to substantially improve market access for products of particular interest to developing countries. Since entry of new comers is difficult in the existing tariff quota (TRQ)* regime, India is demanding substantial expansion of TRQs pending their eventual abolition. It is *(also)* essential that administration of tariff quotas should become more transparent and equitable. *(* TRQ is a trading mechanism that provides for the application of a customs duty at a certain lower rate to imports of a particular good up to a specified quantity (in-quota quantity) and at a higher rate on imports of that good when it exceeds the in-quota quantity.)*

To sum up, the expectations about reductions in domestic support or export subsidies prevailing in the developed countries at the time of conclusion of AGREEMENT ON AGRICULTURE have not materialised. Market access has thus been effectively denied to developing countries.

IMBALANCES IN THE AGREEMENT:

The Agreement on Agriculture contains several types of imbalances that are favourable to developed countries and unfavourable to developing countries. These imbalances have been analysed by Das (1998) and in Third World Network (TWN 2001).

The essence of the imbalances is the following: "The WTO Agreement on Agriculture has permitted the developed countries to increase their domestic subsidies (instead of reducing them), substantially continue with their export subsidies and provide special protection to their farmers in times of increased imports and diminished domestic prices. The developing countries, on the other hand, cannot use domestic subsidies beyond a *de minimis* level (except for very limited purposes), export subsidies and the special protection measures for their farmers. In essence, developed countries are allowed to continue with the distortion of agriculture trade to a substantial extent and even to enhance the distortion; whereas developing countries that had not been engaging in such distortion are not allowed the use of subsidies (except in a limited way) and special protection" (TWN 2001).

The main form of unfairness is in the area of domestic support. Developed countries with high levels of domestic subsidies are allowed to continue these up to 80 per cent after the six-year period. In contrast, most developing countries (with a very few exceptions) have had little or no subsidies due to their lack of resources. They are now prohibited from having subsidies beyond the *de minimis* level (10 per cent of total agriculture value), except in a limited way. In addition, many types of domestic subsidy have been exempted from reduction, most of which are used by the developed countries. While these countries reduced their reducible subsidies to 80 per cent, they at the same time raised the exempted subsidies substantially. The result is that total domestic subsidies in developed countries are now much higher compared to the base level in 1986-88. Thus, in the EEC, the subsidy in the base period 1986-88 was US$83 billion, and it was increased to US$95 billion in 1996. In the United States, the corresponding levels are US$50 billion and US$58 billion. The professed reason for exempting these subsidies in the developed countries from reduction is that they do not distort trade. However, such subsidies clearly enable the farmers to sell their products at lower prices than would have been possible without the subsidy. They are therefore trade-distorting in effect.

The exemption from reduction applicable to developing countries is limited to four items: input subsidy given to poor farmers; land improvement subsidy; diversion of land from production of illicit narcotic crops; and provision of food subsidy to the poor. The scope is very limited and hardly half a dozen of the developing countries use these subsidies (Das 2000, 1998). Furthermore, subsidies exempted from reduction and used mostly by developed countries (Annex 2 subsidies) are immune from counteraction in the WTO; they cannot be subjected to the countervailing-duty process or the normal dispute settlement process. But those exempted from reduction and used by developing countries do not have such immunity.

With regard to export subsidies, the developed countries get to retain 64 per cent of their budget allocations and 79 per cent of their subsidy coverage after six years. The developing countries, on the other hand, had generally not been using export subsidies, except in a very few cases. Those that have not used them are now prohibited from using them, whilst those that have subsidies of little value have also to reduce the level.

Another inequity is in the operation of the "special safeguard" provision. Countries that had been using non-tariff measures or quantitative limits on imports were obliged to remove them and convert them into equivalent tariffs. Countries that undertook such tariffication for a product have been given the benefit of the “special safeguard” provision, which enables them to protect their farmers when imports rise above some specified limits or prices fall below some specified levels. Countries that did not undertake tariffication did not get this special facility. This has been clearly unfair to developing countries, which, with few exceptions, did not have any non-tariff measures and thus did not have to tariffy them. The result is that developed countries, which were engaging in trade-distorting methods, have been allowed to protect their farmers, whereas developing countries, which were not engaging in such practices, cannot provide special protection to their farmers (Das 2000, 1998).

This inequity and imbalance appears aggravated when one considers the limitation to the use of the general safeguard provision (in GATT) in the agriculture sector. One necessary requirement for taking a general safeguard measure is that there be injury (or threat thereof) to domestic production, which will be extremely difficult to demonstrate in this sector because of the large dispersal of farmers across the country.

Apart from these specific problems in the areas of subsidy and protection, there is a basic problem with the agreement. The Agreement on Agriculture is based on the assumption that production and trade in this sector should be conducted on a commercial basis. But agriculture in most of the developing countries is not a commercial operation, but instead is carried out largely on small farms and household farms. Most farmers take to agriculture not because it is commercially viable, but because the land has been in possession of the family for generations and there is no other source of livelihood. If such farmers are asked to face international competition, they will almost certainly lose out. This will result in large-scale unemployment and collapse of the rural economy, which is almost entirely based on agriculture in a large number of developing countries (TWN 2001).

FAILURE OF DEVELOPED COUNTRIES TO EFFECTIVELY REDUCE THEIR PROTECTION OR SUPPORT:

The Agreement on Agriculture was supposed to discipline the high levels of protection in the developed countries and, by doing so, offer very substantial benefits in terms of market access to many developing countries, as they have a comparative advantage in agricultural products. In reality, however, the developed countries have made little progress in reducing agriculture protection and subsidies.

1. High tariffs on selected items of potential interest to the South have had to be reduced only slightly.
2. Domestic support has increased rather than decreased.

Although the agreement was supposed to result in decreases in domestic support in agriculture, in fact, the overall value of such support has increased. The agreement obliged developed countries to reduce the Aggregate Measurement of Support. However, only some types of subsidies fall under the AMS, and two categories of subsidies are exempted. While developed countries reduced their AMS, they also increased their exempted subsidies significantly, thereby offsetting the AMS reduction and resulting in an increase in total domestic support.

There is a great imbalance in a situation in which developed countries with very high domestic support are able to maintain a large part of their subsidies (and in fact, due to loopholes in the agreement, to raise their level) while developing countries with low or no subsidies are prohibited from raising their level beyond the *de minimis* amounts.

Regarding *export subsidies*, the agreement also committed developed countries to reduce the budget outlay by 36 per cent and the total quantity of exports covered by the subsidies by 21 per cent. The base level was the average annual level for 1986-90 and the reduction is to be done over the period 1995-2000. Thus, even in the year 2000 the level of export subsidies is allowed to be as high as 64 per cent of the base level (Das 2000: 3).[20]

However, the Agreement on Agriculture is imbalanced in many ways. It has been fashioned in such a way as to enable developed countries to continue high levels of protection, whilst many developing countries have liberalised and their farmers are facing severe and often damaging competition, often from imports artificially cheapened through subsidies.[21] Hence, the Agreement on Agriculture has been criticised by civil society groups for reducing tariff protections for small farmers – a key source of income for developing countries. At the same time, the Agreement on Agriculture has allowed rich countries to continue paying their farmers massive subsidies which developing countries cannot afford.

[20] www.twnside.org.sg/title2/latestwto/**AGREEMENT ON AGRICULTURE FAO**.doc (visited on 12/05/2014)

[21] ibid

Third World Network states that; "This has allowed the rich countries to maintain or raise their very high subsidies by switching from one kind of subsidy to another... like a magician's trick. This is why after the Uruguay Round the total amount of subsidies in OECD countries has gone up instead of going down, despite the apparent promise that Northern subsidies will be reduced." Moreover, Martin Khor argues that the green and blue box subsidies can be just as trade-distorting - as "the protection is better disguised, but the effect is the same".

At the WTO meeting in Hong Kong in 2005, countries agreed to eliminate export subsidy and equivalent payments by 2013. However, Oxfam has stated that EU export subsidies account for only 3.5% of its overall agricultural support. In the US, export subsidies for cotton were announced to be removed but these represent 10% of overall spending which "does not address the core issue of domestic payments that have been proven to distort trade and facilitate dumping".[22]

STRATEGIC ISSUES FOR INDIA:

As Mandated under the General Agreement on Tariffs and Trade (GATT), signed in April 1994 at Marrakesh, the developed countries are to implement the terms of the Agreement on Agriculture by end 2000 and negotiations between all member countries to further the cause of trade reforms are to be carried out during the current year.

As India prepares to engage itself in negotiations which are deemed to benefit the country, a number of crucial issues have surfaced, which need to be debated within the country and presented to the special session of the WTO committee on Agriculture in Geneva. In the past, right from the early days of the Uruguay Round on Multinational Trade, including TRIPS, there have been serious criticisms that the Indian stand was never properly debated among the stakeholders within the country and hence the final outcome was none too favourable for India. It is important that a similar situation does not occur in the current exercise in the field of agriculture - an area of great significance to our predominantly agriculture-oriented economy.

[22] http://en.wikipedia.org/wiki/Agreement_on_Agriculture (visited on 14/05/2014)

The strategies to be adopted by India would consist of many components. It is important to introspect and carry out a quantitative evaluation of the impact the Agreement on Agriculture has on Indian agriculture, including production, pricing, imports and exports, current tariffs and committed revisions. It would appear from available data that there is considerable scope to argue for status-quo on tariffs, in view of our negative Total Aggregate Measure of Support, which means that, there should be no compulsion to reduce tariffs by 13% by 2004.

India does not provide any export subsidies which attract reduction commitments under GATT. The only benefit provided is exemption from Tax under 80 HHC, which is not classified as a subsidy. India does not use any of the other subsidies, allowed for developing countries, such as subsidies for marketing costs, freight, for most of the agricultural products.

India has never considered full utilisation of benefits available to her under the Green Box provisions, which include expenditure on R&D, domestic Food Aid and assistance for public stocking of food, food security, insurance etc. Similarly, India has not claimed or utilised Safeguard measures available to selected developing countries. With all the relevant Bills on Agriculture- related issues, such as the Biodiversity Bill and the Plant Varieties Protection Bill not yet enacted, a high degree of ambiguity exists with respect to optimising our efforts in the area of sustainable agriculture and adequate food security. There have been no policy decisions on new food crops developed through modern biotechnology and on their production and prices, all important aspects impinging on global trade. Labelling, producing and permitting the marketing of genetically modified foods are all issues which still have to be resolved.

It is to be realised that all these matters are strictly within the ambit of our own initiatives and decisions. Negotiations at the WTO meet on Agreement on Agriculture should take into account all the other major issues common to many other developing countries in the same socio-economic belt and analyse their impact on Indian agriculture from an Indian perspective. We also need to realise that sitting around the negotiating table without adequate study and assessment of the possible ramifications of forced settlements under the mandated reform process will seriously affect not only our agricultural production and distribution, but also the fundamental viability of the Country's agrarian economy.[23]

[23] http://hindu.com/2000/12/14/stories/0614000j.htm (visited on 13/05/2014)

AGREEMENT ON TEXTILES AND CLOTHING

Textiles and clothing products together constitute one of the most contentious issues at the WTO. While many developing countries have made textiles production a major part of economic output, developed countries have put in place complex systems of quotas and tariffs to protect their domestic industries from international competition. At first blush, it seems the elimination of textile quotas and tariffs would benefit developing countries. But China's accession into the WTO has left many developing countries wondering what will happen to their industries in the future.[24]

AGREEMENT ON TEXTILES AND CLOTHING:

For decades, International trade in textiles was subject to discriminatory quantitative restrictions put in place to protect domestic textile industries, particularly in the US, EU, Canada, and Norway. Under the WTO, these quotas fell under the auspices of the Multi-Fibre Arrangement (MULTIFIBRE AGREMENT). While some Nations with strong political ties to developed countries benefited from preference agreements that raised their quota levels or eliminated them, many developing countries suffered from severely restricted market access. During the Uruguay Round WTO Members signed the Agreement on Textiles and Clothing (ATC), effective in 1995 that established multilateral rules and subjected the textiles trade to the basic WTO principles of non-discrimination and National Treatment. The Agreement mandates that WTO members implement the Agreement to Textile and Clothing over a period of 10 years, from January 1, 1995 to January 1, 2005.

The Agreement on Textiles and Clothing is a transitional instrument, built on the following key elements:

(a) The product coverage, basically encompassing yarns, fabrics, made-up textile products and clothing;

[24] http://www.cid.harvard.edu/cidtrade/issues/textiles.html (visited on 13/05/2014)

(b) A programme for the progressive integration of these textile and clothing products into GATT 1994 rules;

(c) A liberalization process to progressively enlarge existing quotas (until they are removed) by increasing annual growth rates at each stage;

(d) A special safeguard mechanism to deal with new cases of serious damage or threat thereof to domestic producers during the transition period;

(e) Establishment of a Textiles Monitoring Body ("TMB") to supervise the implementation of the Agreement and ensure that the rules are faithfully followed; and

(f) Other provisions, including rules on circumvention of the quotas, their administration, treatment of non-MULTIFIBRE AGREMENT restrictions, and commitments undertaken elsewhere under the WTO's agreements and procedures affecting this sector.[25]

The integration process is laid down in Agreement on Textiles and Clothing Article 2 and stipulates how Members shall integrate the products listed in the Annex into the rules of GATT 1994 over the 10-year period. This process is to be carried out progressively in three stages (3 years, 4 years, and 3 years) with all products standing integrated at the end of the 10-year period. The first stage began on 1 January 1995 with the integration by Members of products representing not less than 16 per cent of that Member's total 1990 imports of all the products in the Annex. At stage 2, on 1 January 1998, not less than a further 17 per cent was integrated. At stage 3, on 1 January 2002, not less than a further 18 per cent will be integrated. Finally at the end, on 1 January 2005, all remaining products (amounting up to 49 per cent of 1990 imports into a Member) will stand integrated and the Agreement terminates. Each importing Member decides itself which products it will integrate at each stage to reach these thresholds. The only constraint is that the integration list must encompass products from each of the four groupings: tops and yarns, fabrics, made-up textile products and clothing.

Concurrent with the integration process, there is a programme for liberalizing the existing restrictions, that is, for enlarging the bilateral quotas carried over from the former Multifibre

[25] http://www.wto.org/english/tratop_e/texti_e/texintro_e.html (visited on 13/05/2014)

Agreement on 1 January 1995 (Article 2.1) until such time as the products are integrated into GATT, at which time the quotas terminate. These former Multifibre Agreement quotas, when carried over into the Agreement on Textiles and Clothing on 1 January 1995, represented the starting point for an automatic liberalization process set out in Article 2. The former Multifibre Agreement growth rates applicable to each of these quotas were increased on 1 January 1995 by a factor of 16 per cent for the first stage of the Agreement and the new growth rate was applied annually. The stage 1 growth rate was further increased by a factor of 25 per cent for the second stage on 1 January 1998; and will be increased by a further 27 per cent for the last stage beginning 1 January 2002. To illustrate this process, a 6 per cent growth rate under the Multifibre Agreement in 1994 became 6.9 per cent under the Agreement On Textiles And Clothing and applied each year 1995/96/97; then it was increased to 8.7 per cent for each year 1998/99/2000/01; and then will be increased to 11.05 per cent for 2002/3/4. For small suppliers (as defined in Article 2.18) the growth factors (16 per cent, 25 per cent, 27 per cent) are to be advanced by one stage. Quotas will be eliminated either when the products concerned are integrated into GATT at one of the stages or at the end of the transition on 1 January 2005. There are additional provisions in Article 2 for early removal of quotas and integration of products.

Article 3 deals with quantitative restrictions (or measures with similar effect) other than those under the Multifibre Agreement. Members which had such restrictions in place, which could not be justified under a GATT provision, were required either to bring them into conformity with GATT rules or phase them out within the ten year transitional period, according to a plan to be submitted by the restraining Member to the Textiles Monitoring Body. There is no obligation to eliminate restrictions that are permitted under GATT rules.

A key aspect of the Agreement on Textiles and Clothing is the provision in Article 6 for a special transitional safeguard mechanism intended to protect Members against damaging surges in imports during the transition period from products which have not yet been integrated into GATT and which are not already under quota. This clause is based on a two-tiered approach - first, the importing Member must determine that total imports of a specific product are causing serious damage, or actual threat thereof, to its domestic industry and second, it must then decide to which individual Member(s) this serious damage can be attributed. Specific criteria and procedures are set out for each step. The importing Member must then seek consultations with the exporting Member(s). Such safeguard measures may be applied on a selective, country-by-country basis by mutual agreement or, if agreement is not reached through the consultation process within 60 days, by unilateral action. The quota may not be lower than the actual level of imports for that exporting country during a recent 12 month period, and the action taken may remain in place for up to three years only. If the measure is in place for more than one year, growth shall, with one exception, be no less than 6 per cent. In practice, the special safeguard was invoked on 24 occasions in 1995 by the United States, 8 times in 1996 (Brazil 7, US 1), 2 times in 1997 by the United States, and 10 times in 1998.

Article 5 of the Agreement on Textiles and Clothing contains rules and procedures concerning circumvention of the quotas through trans-shipment, re-routing, false declaration of origin, or falsification of official documents. These require, *inter alia*, consultation and full cooperation in the investigation of such practices by Members concerned. When sufficient evidence is available, possible recourse might include the denial of entry of goods. There is also a provision whereby all Members should establish, consistent with their domestic laws and procedures, the necessary legal provisions and/or administrative procedures to address and take action against circumvention. Administration of restrictions during the transition period will remain with the exporting Members and any changes in practices, rules or procedures shall be subject to consultations with a view to reaching mutually acceptable solutions (Article 4).

Provisions relating to the commitments undertaken in all areas of the Uruguay Round as they relate to textiles and clothing require that all Members “shall take such actions as may be necessary” to abide by these rules and disciplines so as to achieve improved market access, to ensure the application of fair and equitable trading conditions and to avoid discrimination against textiles and clothing imports (Article 7). If an exporting Member is found not to be complying with its obligations, the Dispute Settlement Body or the Council for Trade in Goods may authorize an adjustment to the quota growth for that country which is otherwise an automatic growth.

The Textiles Monitoring Body has been established to supervise the implementation of the Agreement on Textiles and Clothing and to examine all measures taken under it, to ensure that they are in conformity with the rules. It is a quasi-judicial, standing body which consists of a Chairman and ten TMB members, discharging their function on an ad personam basis and taking all decisions by consensus. The ten members are appointed by WTO Member Governments according to an agreed grouping of WTO Members into constituencies. There can be rotation within the constituencies. These characteristics make the TMB a unique institution within the WTO framework. In January 1995, the General Council decided upon the composition for the TMB for the first stage. In December 1997, the General Council decided upon the composition for the second stage (1998-2001) with TMB members to be appointed by WTO Members designated from the following constituencies: *(a) the ASEAN Member countries; (b) Canada and Norway; (c) Pakistan and China (after accession); (d) the European Communities; (e) Korea and Hong Kong, China; (f) India and Egypt/Morocco/Tunisia; (g) Japan; (h) Latin American and Caribbean Members; (i) the United States; and (j) Turkey, Switzerland and Bulgaria/Czech Republic/Hungary/ Poland/Romania, Slovak Republic/Slovenia.* Provisions were made for alternates to be appointed by the members in each of the constituencies and in some cases second alternates; there are also two non-participating observers from Members not already represented in this structure, one from Africa and one from Asia. The TMB Chairman is Mr András Szepesi.[26]

The Agreement on Textiles and Clothing requires the progressive elimination of all quantitative restrictions according to four stages. Members were required to bring no less than 16% of the products in question into conformity with multilateral trade rules, followed by an additional 17% by 1998 and another 18% by 2002. At this point, 51% of products will have had their quantitative restrictions eliminated. By 2005, members must bring the remaining 49% of their textiles trade policy into full conformity with the Agreement, at which point the textiles sector will be fully integrated into the multilateral trading system. While the first three stages of implementation have been completed, in the last stage, almost half of the process must still take place in just three years. Developing countries, particularly members of the International Textiles and Clothing Bureau, have criticized the European

[26] http://www.wto.org/english/tratop_e/texti_e/texintro_e.html (visited on 13/05/2014)

Union and other developed countries for designing the implementation period so that most of the liberalization of these key sectors if left for the very end. Developing countries are also concerned that the developed countries are only meeting the minimum requirements of the ATC, and that they may use other protectionist measures, for example, subsidizing domestic products or raising tariffs.[27]

THE IMPACT OF AGREEMENT ON TEXTILE AND CLOTHING ON PRODUCERS:

While developing countries should be enthusiastic for the implementation of the Agreement on Textiles and Clothing, India, Egypt, Pakistan, and some Latin American countries are concerned that the removal of quotas and the impact of China in the WTO will actually harm their textile industries. *First*, countries that have preferential trade agreements with developed countries will lose the edge they had when they were granted higher quotas than their competitors. Once quotas are removed completely, market share will go to countries with the cheapest labor and the cheapest raw materials. *Second*, since China has arguably the cheapest labor and one of the strongest textile industries in the world, developing countries are concerned that their products will not be able to compete in the global marketplace if China can export without limit. Even with quotas, Chinese textiles have ballooned on the US market, taking 30-40% of the market share in areas like brassieres and dressing gowns.

The main hope for textile producing countries is that the US, and other developed nations, will take advantage of an exception in the ATC that allows for 'safeguard' tariffs to be placed on Chinese textile goods until 2008 as a mitigating measure for market disruptions. China agreed to the exception as a way to assuage fears that its accession would harm WTO members. The US has been the first country to announce its intention to place tariffs on textiles from China in 2004, and again in 2005. For developing countries, this exception will provide a three-year window to take advantage of the quota-free trading environment and win precious market share in the US and EU before China is able to fully compete. Liberalization is expected to be beneficial to consumers who will be able to pay less for textile goods as

[27] http://www.cid.harvard.edu/cidtrade/issues/textiles.html (visited on 13/05/2014)

producers drop the premium they charge to make up for the costs of quotas. However, retailers are doubtful that the drop in prices will be significant enough to increase demand. As large corporations like Wal-Mart create competition by selling at lower prices, retailers will also cut prices but will not necessarily sell more, resulting in deflation in the clothing industries of many countries.[28]

CONCLUSION:

Integration of textile and clothing into GATT 1994, according to the plan laid out in ATC would definitely increase the magnitude of global textile and clothing trade. That clothing would be the engine of growth of such massive trade also appears to be quite clear. Market access to WTO member countries would become more predictable (with bound tariffs) and transparent (owing to Trade Policy Review Mechanism of GATT 1994). Moreover, with progressive reduction in tariffs themselves, the world is likely to see its massive price-effect on trading volumes. However, all this would come along with greater, more ruthless, and global nature of competition. Internationalisation of operations in order to realise most cost-effective overall operations would lead to a *borderless* world. No firm would remain unaffected by globalisation that is well under way. And all firms would have to match their operational effectiveness to that of best *global* competitor. In the emerging world of unfettered capitalism, firms would have to run in order to stand still. Textile and clothing is no exception.

Notwithstanding the winds of globalisation that is sweeping the international trading landscape, the counter force of protectionism is already rearing its head among developed countries in textile and clothing. For, in this sector, comparative advantage particularly in clothing certainly lies with the relatively low labour cost Asian countries. With most overt protectionist weapons having been prohibited under the WTO regime, newer forms of protectionism under the umbrella term of NTBs are emerging. And the developing countries need to guard against such tendencies. Indian textile and clothing industry contributes to almost 4% of national product, earns 35% of national foreign exchange, and supports over

[28] ibid

6.5 million persons directly and indirectly. It is, therefore, of paramount importance that the vectors of change in the global trading system are studied carefully, and industry competitiveness bolstered urgently. It is time for the industry to understand the nuances of WTO agreements, and widen their horizon to reach global frontiers of knowledge if the industry is to survive and compete. For, "competitive advantage ultimately results from an effective combination of national circumstances and *company strategy*. Conditions in a nation may create an environment in which firms attain international competitive advantage, but it is up to the company to seize the opportunity".

For long the Indian textile and clothing industry has admonished the developed countries-spearheaded by USA- for following the ATC in letter and not in spirit. It is time the Indian industry ceased censuring the developed countries for doing their homework on WTO better, and, for a change instead, sit down to do their homework assiduously.[29]

[29] http//www.cid.harvard.educidtradeissuestextiles.html (visited on 12/05/2014)

AGREEMENT ON IMPORT LICENSING PROCEDURE

BASIC OBLIGATIONS:

GATT ARTICLE VIII: Article VIII of GATT (entitled Fees and Formalities Connected with Importation and Exportation) deals with import licensing procedures in a non-specific manner.

1) Paragraph 1(c) establishes a general obligation concerning formalities whereby Members recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.

2) Paragraph 2 requires each Member "to review the operation of its laws and regulations in the light of the provisions of this Article" upon request by another Member.

3) Paragraph 3 prohibits Members from imposing "substantial penalties for minor breaches of customs regulations or procedural requirements."

GATT ARTICLE X: Article X requires Members to publish promptly laws, regulations, judicial decisions and administrative rulings of general application, including those pertaining to requirements on imports or exports and to administer them in a uniform, impartial and reasonable manner.

AGREEMENT ON IMPORT AND LICENSING PROCEDURE:

In heavily regulated agricultural markets trade is generally administered through licences, both for import and export purposes. The key provisions regulating import licensing are to be found in the Agreement on Import Licensing Procedures to ensure that import licensing procedures are not utilised in a manner contrary to the principles of GATT 1994 and that their inappropriate use does not impede international trade; to facilitate these procedures, ensure their neutral application and fair and equitable administration and provide for a consultative mechanism. *The Agreement on Import Licensing Procedures thus provides that import licensing should be simple, transparent and predictable.* For example, the agreement requires Governments to publish sufficient information for traders to know how and why the licences are granted. It also describes how countries should notify the WTO when new import licensing procedures or changes to existing procedures are introduced. WTO Members commit themselves to simplifying and bringing transparency to their import licensing procedures and to administering them in a neutral and non-discriminatory manner. There *are two basic licensing procedures*: *automatic and non-automatic*:

"Import licensing" is defined as the administrative procedures used for the operation of import licensing regimes requiring the submission of an application, or other documentation, to the relevant administrative body as a prior condition for importation into the customs territory of the importing country.

With respect to TRQ administration, the Licensing Agreement identifies seven principal methods of TRQ administration. WTO Members are required to notify the WTO of whether and how the tariff quotas listed in their tariff schedules are administered. The seven principal methods are:

a. *First-Come, First-Served Allocations*: no shares are allocated to importers and imports are permitted entry at the in-quota tariff rates until such a time as the tariff quota is filled. Then the higher tariff automatically applies. The physical importation of the goods determines the order and hence the applicable tariff.
b. *Applied Tariffs*: no shares are allocated to importers. Imports of the products concerned are allowed into the customs territory in unlimited quantities at the in-quota tariff rate or below.
c. *Licences on Demand*: importers' shares are generally allocated, or licences issued, in relation to quantities demanded and often prior to the commencement of the period during which the physical importation is to take place.

d. *Administering Through State Trading Enterprises*: import shares are allocated entirely or mainly to state trading entities which import the product concerned (or have direct control of imports undertaken by intermediaries).
e. *Auctioning*: importers' shares are allocated, or licences issued, largely on the basis of an auctioning or competitive bid system. The GATT compatibility of auctioning systems has been questioned.
f. *Import Licensing According To Historical Shares*: importers' sharesare allocated, or licences issued, mainly in relation to past imports of the product concerned;
g. *Other Criteria Or Mixed Systems*: administration methods which do not clearly fall within any of the above categories or administration methods involving a combination of the methods as set out above with no one method being dominant.

Moreover, Articles 1.2 and 3.2 make it clear that the Licensing Agreement is also concerned with, among other things, preventing trade distortions that may be caused by licensing procedures. It follows that wherever an import licensing regime is applied, these requirements must be observed. The requirement to prevent trade distortion found in Articles 1.2 and 3.2 of the Licensing Agreement refers to any trade distortion that may be caused by the introduction or operation of licensing procedures, and is not necessarily limited to that part of trade to which the licensing procedures themselves apply. There may be situations where the operation of licensing procedures, in fact, have restrictive or distortive effects on that part of trade that is not strictly subject to those procedures.[30]

The Agreement sets up time limits for the publication of information concerning licensing procedures, for processing of licence applications, and for notification to the Committee on Import Licensing. The Agreement requires prior publication of rules and all information concerning procedures for the submission of applications for licences, including the eligibility of persons, firms or institutions to make such applications, the administrative bodies to be approached, and the list of products subject to the licensing requirement, in such

[30] http://unctad.org/en/docs/edmmisc232add32_en.pdf (visited on 13/05/2014)

a manner as to enable Governments and traders to become acquainted with them. The Agreement further requires application forms for import licences and renewal forms to be as simple as possible. Foreign exchange is to be made available for licensed imports on the same basis as for goods not requiring import licences (Article 1.9).

GENERAL PROVISIONS OF THE AGREEMENT:

NEUTRAL APPLICATION, FAIR AND EQUITABLE ADMINISTRATION: Members are to apply import licensing procedures neutrally, and administer them in a fair and equitable manner (Article 1.3). Applications are not to be refused for minor documentation errors, not to be penalized heavily for any omissions or mistakes in documentation or procedures obviously made without fraudulent intent or gross negligence (Article 1.7). Licensed imports are to not be refused for minor variations in value, quantity or weight from the amount shown on the licence for reasons consistent with normal commercial practices (Article 1.8).

PUBLICATION OF RULES AND PROCEDURES: Rules and all information concerning procedures for the submission of applications, including the eligibility criteria for applicants, the administrative bodies to be approached and lists of products subject to import licensing are to be published, whenever practicable, 21 days prior to the effective date of the requirement but in all events not later than the effective date (Article 1.4 (a)).

SIMPLE FORMS AND PROCEDURES: Applications forms and renewal forms are to be simple (Article 1.5). Application procedures and renewal procedures are to be simple. Applicants are to be allowed a reasonable period to submit licence applications. Where there is a closing date for applications, this period should be at least 21 days. The number of administrative bodies which an applicant has to approach in connection with an application is not to exceed to a maximum of three (Article 1.6).

OTHER PRINCIPLES: (a) Foreign exchange for licensed imports is to be allocated on the same basis as for goods not requiring import licences (Article 1.9).

(b) The security exception provisions of Article XXI of GATT 1994 apply (Article 1.10).

(c) Members are not required to disclose confidential information contrary to the public interest or which would prejudice the legitimate commercial interests of particular enterprises (Article 1.11).

AUTOMATIC IMPORT LICENSING: Automatic import licensing (licensing maintained to collect statistical and other factual information on imports) is defined as import licensing where the approval of the application is granted in all cases (Article 2.1).

CONDITIONS: Automatic licensing procedures are not to be administered in such a way as to have restrictive effects on imports; there should be no discrimination among those applying for automatic licenses. Any person fulfilling the legal requirements should be equally eligible to apply for and obtain import licenses.

MAIN PROVISION FOR AUTOMATIC IMPORT LICENSING: 1. APPROVAL OF APPLICATION WITHIN 10 WORKING DAYS: Licence applications may be submitted on any working day before customs clearance; they shall be approved immediately on receipt but in any case within 10 working days (Article 2.2 (a)). Developing country Members which were not a Party to the Tokyo Round Code may, upon notification to the Committee, delay the application of those two requirements for two years from their date of WTO Membership (footnote 5 to Article 2.2).

2. USE: Automatic import licensing may be necessary whenever other appropriate procedures are not available. It is to be removed as soon as the circumstances which have given rise to its introduction no longer prevail (Article 2.2 (b)).

NON-AUTOMATIC IMPORT LICENSING: Non-automatic import licensing is defined as licensing not falling within the definition of automatic import licensing (Article 3.1). Non-automatic licensing is used to administer trade restrictions such as quantitative restrictions which are justified within the WTO legal framework.

MAIN PROVISIONS APPLICABLE TO NON-AUTOMATIC IMPORT LICENSING:

1. NO ADDITIONAL RESTRICTIVE OR DISTORTIVE EFFECTS: Non-automatic import licensing must not have restrictive or distortive effects on imports additional to those caused by the imposition of the restriction, and is to correspond in scope and duration to the measure it is used to implement (Article 3.2).

ALL RELEVANT INFORMATION TO BE PUBLISHED: Members are to publish all relevant information, including purposes other than the implementation of quantitative restrictions, exceptions or derogations, quota amounts, opening and closing dates of quotas and country-specific quota allocations. Whenever practicable, the information should be published 21 days prior to the effective date of the requirement, and in all events should be published not later than the effective date (Articles 3.3, 3.4, 3.5 (b)— (d)).

NO DISCRIMINATION AMONG APPLICANTS: There may be no discrimination among applicants. If a licence is refused, the applicant, on request, shall be given the reason for refusal, and shall have a right of appeal or review of the decision (Article 3.5 (e)).

TIME LIMITS FOR PROCESSING APPLICATIONS: The period for processing applications shall not be longer than 30 days if applications are considered as and when received, and not longer than 60 days if applications are considered simultaneously (Article 3.5 (f)).

VALIDITY OF A LICENCE: The validity of a licence is to be of reasonable duration and not be so short as to preclude imports, including those from distant sources (Article 3.5 (g)). Full utilization of quotas is not to be discouraged (Article 3.5 (h)). Licences are to be issued in economic quantities (Article 3.5 (i)).

OTHER PROVISIONS: Members are to provide, upon the request of any Member having an interest in the trade in the product concerned, all relevant information (Article 3.5 (a)). In allocating licences, Members should consider the import performance of an applicant and are to ensure a reasonable distribution of licences to new importers, particularly to those importers importing products originating in developing and least-developed country Members (Article 3.5 (j)). If quotas are not allocated by country, licence holders are to be free to choose the sources of imports; if they are allocated among supplying countries, the licence must clearly stipulate the countries (Article 3.5 (k)). Compensating adjustments may be made in future licence allocations, under Article 1.8, where imports exceeded a previous licence level (Article 3.5 (l)).

NOTIFICATIONS: 1. COPIES OF PUBLICATIONS AND FULL TEXT OF LAWS AND REGULATIONS: Members are required to submit copies of publications containing information on import licensing procedures and the full text of relevant laws and regulations (Articles 1.4 (a) and 8.2 (b)). In cases where the publications and legislation are not in a WTO official language, such notifications should be accompanied by a summary in one of the WTO official languages.

2. NOTIFICATION OF CHANGES: Members which institute licensing procedures or changes in these procedures are required to notify the Committee of them within 60 days of publication. Such notifications should include information on: products subject to licensing; contact point for information on eligibility; administrative bodies for submission of applications; date and name of publications where licensing procedures are published, together with copies of such publications; whether licensing is automatic or non-automatic; the administrative purpose of automatic import licensing procedures; measure implemented through non-automatic import licensing procedure; and expected duration of the licensing procedures (Articles 5.1-5.4).

3. REVERSE NOTIFICATION: Members have the possibility of making reverse notifications of non-notified import licensing procedures maintained by other Members

(Article 5.5).

ANNUAL QUESTIONNAIRE: Members are to complete the Questionnaire on Import Licensing Procedures by 30 September each year (Article 7.3, and appendix).

COMMITTEE ON IMPORT LICENSING: The Committee on Import Licensing, open to all Members, has been established under Article 4. It meets as necessary to consult on matters relating to the operation of the Agreement or the furtherance of its objectives.[31]

[31] http://www.wto.org/english/tratop_e/implic_e/implic_info_e.htm (visited on 16/05/2014)

THE AGREEMENT ON SAFEGUARDS

INTRODUCTION:

To re-establish multilateral control over safeguards, eliminate measures that escape such control, stipulate when States may take protective measures for their industries and make national procedures surrounding safeguards and serious injury more transparent. Article XIX of the General agreement allows a GATT member to take a "safeguard" action to protect a specific domestic industry from an unforeseen increase of imports of any product that is causing, or that is likely to cause, serious injury to the industry.

Safeguard measures were always available under GATT (Article 19). However, they were infrequently used, some governments preferring to protect their domestic industries through "grey area" measures. Using bilateral negotiations outside GATT'S auspices, they persuaded exporting countries to restrain exports "voluntarily" or to agree to other means of sharing markets. Agreements of this kind were reached for a wide range of products: automobiles, steel and semiconductors, for example. The Agreement on Safeguards, which is part of Annex 1(a) to the Agreement establishing the WTO, broke new ground. It prohibits "grey-area" measures, and it sets time limits (a "sunset clause") on all safeguard actions. The agreement says members must not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side. An import "surge" justifying safeguard action can be a real increase in imports (an absolute increase); or it can be an increase in the imports' share of a shrinking market, even if the import quantity has not increased (relative increase).[32]

The Agreement on Safeguards ("SG Agreement") sets forth the rules for application of safeguard measures pursuant to Article XIX of GATT 1994. Safeguard measures are defined as *"emergency"* actions with respect to *increased imports of particular products*, where such

[32] http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=579 (visited on 15/05/2014)

imports have *caused or threaten to cause serious injury* to the importing Member's domestic industry. Such measures, which in broad terms take the form of *suspension of concessions or obligations,* can consist of quantitative import restrictions or of duty increases to higher than bound rates. Major guiding principles of the Agreement with respect to safeguard measures are that such measures must be ***temporary***; that they may be imposed only when *imports are found to cause or threaten serious injury* to a competing domestic industry; that they be applied on a non-selective (i.e., *most-favoured-nation, or "MFN*", basis; that they be *progressively liberalized* while in effect; and that the Member imposing them must *pay compensation* to the Members whose trade is affected.[33]

Industries or companies may request safeguard action by their government. The WTO agreement sets out requirements for safeguard investigations by national authorities. The emphasis is on transparency and on following established rules and practices - avoiding arbitrary methods. The authorities conducting investigations have to announce publicly when hearings are to take place and provide other appropriate means for interested parties to present evidence. The evidence must include arguments on whether a measure is in the public interest. The agreement sets out criteria for assessing whether "serious injury" is being caused or threatened, and the factors that must be considered in determining the impact of imports on the domestic industry.

When imposed, a safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to help the industry concerned to adjust. Where quantitative restrictions (quotas) are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. In principle, safeguard measures cannot be targeted at imports from a particular country. However, the agreement does describe how quotas can be allocated among supplying countries, including in the exceptional circumstance where imports from certain countries have increased disproportionately quickly.

[33] http://www.wto.org/english/tratop_e/safeg_e/safeint.htm (visited on 15/05/2014)

When a country restricts imports in order to safeguard its domestic producers, in principle it must give something in return. The agreement says the exporting country (or exporting countries) can seek compensation through consultations. If no agreement is reached the exporting country can retaliate by taking equivalent action. For instance, it can raise tariffs on exports from the country that is enforcing the safeguard measure. In some circumstances, the exporting country has to wait for three years after the safeguard measure was introduced before it can retaliate in this way; i.e. if the measure conforms with the provisions of the agreement and if it is taken as a result of an increase in the quantity of imports from the exporting country. To some extent developing countries' exports are shielded from safeguard actions. An importing country can only apply a safeguard measure to a product from a developing country if the developing country is supplying more than 3% of the imports of that product, or if developing country members with less than 3% import share collectively account for more than 9% of total imports of the product concerned.

The WTO's safeguards committee oversees the operation of the agreement and is responsible for the surveillance of members' commitments. Governments have to report each phase of a safeguard investigation and related decision-making, and the committee reviews these report.[34]

The Agreement stipulates that a member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side. Any such measure in effect at the time of entry into force of the agreement would be brought into conformity with this agreement, or would have to be phased out within four years after the entry into force of the agreement establishing the WTO. An exception could be made for one specific measure for each importing member, subject to mutual agreement with the directly concerned member, where the phase-out date would be 31 December 1999. All existing safeguard measures taken under Article XIX of the General Agreement 1947 shall be terminated not later than eight years after the date on which they

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34 http://ec.europa.eu/world/agreements/prepareCreateTreatiesWorkspace/treatiesGeneralData.do?step=0&redirect=true&treatyId=579 (visited on 15/05/2014)

were first applied or five years after the date of entry into force of the agreement establishing the WTO, whichever comes later.

The Agreement also sets out the criteria for "*serious injury*" and the factors which must be considered in determining the impact of imports. The safeguard measure should be applied only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. Where quantitative restrictions are imposed, they normally should not reduce the quantities of imports below the annual average for the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

In principle, safeguard measures have to be applied irrespective of source. In cases in which a quota is allocated among supplying countries, the member applying restrictions may seek agreement with others. Members having a substantial interest in supplying the product concerned. Normally, allocation of shares would be on the basis of proportion of total quantity or value of the imported product over a previous representative period. However, it would be possible for the importing country to depart from this approach if it could demonstrate, in consultations under the auspices of the Safeguards Committee, that imports from certain contracting parties had increased disproportionately in relation to the total increase and that such a departure would be justified and equitable to all suppliers. The duration of the safeguard measure in this case cannot exceed four years.

The Agreement envisages consultations on compensation for safeguard measures. Where consultations are not successful, the affected members may withdraw equivalent concessions or other obligations under GATT 1994. However, such action is not allowed for the first three years of the safeguard measure if it conforms to the provisions of the agreement, and is taken as a result of an absolute increase in imports.[35]

[35] ibid

OBJECTIVES:

In its own words, the Safeguard Agreement, which explicitly applies equally to all Members, aims to:

(1) Clarify and reinforce GATT disciplines, particularly those of Article XIX;

(2) Re-establish multilateral control over safeguards and eliminate measures that escape such control; and

(3) Encourage structural adjustment on the part of industries adversely affected by increased imports, thereby enhancing competition in international markets.[36]

STRUCTURE OF THE AGREEMENT:

The Agreement consists of 14 articles and one Annex. In general terms, it has four main components:

(1) General provisions (Articles 1 and 2);

(2) Rules governing Members' application of new safeguard measures (i.e., those applied after entry into force of WTO Agreement (Articles 3-9));

(3) Rules pertaining to pre-existing measures that were applied before the WTO's entry into force (Articles 10 and 11); and

(4) Multilateral surveillance and institutions (Articles 12-14).

GENERAL PROVISIONS: COVERAGE OF THE AGREEMENT

Article 1 establishes that the SG Agreement is the vehicle through which measures may be applied pursuant to **Article XIX of GATT 1994**. That is, any measure for which the coverage of Article XIX (which allows suspension of GATT concessions and obligations under the defined “emergency” circumstances) is invoked must be taken in accordance with the provisions of the SG Agreement. The Agreement explicitly *does not apply* to measures taken pursuant to other provisions of GATT 1994, to other Annex 1A Multilateral Trade

[36] http://www.wto.org/english/tratop_e/safeg_e/safeint.htm (visited on 15/05/2014)

Agreements, or to protocols and agreements or arrangements concluded within the framework of GATT 1994. (Art. 11.1(c))

CONDITIONS FOR APPLICATION OF SAFEGUARD MEASURES: Article 2 sets forth the conditions (i.e., *serious injury* or *threat thereof caused by increased imports*) under which safeguard measures may be applied. It also contains the requirement that such measures be applied on an MFN basis.

RULES GOVERNING NEW SAFEGUARD MEASURES (APPLIED AFTER ENTRY INTO FORCE OF WTO AGREEMENT): INVESTIGATIVE REQUIREMENTS

New safeguard measures may be applied only following an investigation conducted by competent authorities pursuant to previously published procedures. Although the Agreement does not contain detailed procedural requirements, it does require reasonable public notice of the investigation, and that interested parties (importers, exporters, producers, etc.) are given the opportunity to present their views and to respond to the views of others. Among the topics on which views are to be sought is whether or not a safeguard measure would be in the public interest. The relevant authorities are obligated to publish a report presenting and explaining their findings on all pertinent issues, including a demonstration of the relevance of the factors examined. The Agreement also contains specific rules for the handling of confidential information in the context of an investigation.

FACTUAL BASIS FOR DETERMINATION OF SERIOUS INJURY OR THREAT THEREOF: The Agreement defines "*serious injury*" as significant impairment in the position of a domestic industry. "*Threat of serious injury*" is threat that is clearly imminent as shown by facts, and not based on mere allegation, conjecture or remote possibility. A "*domestic industry*" is defined as the producers as a whole of the like or directly competitive products operating within the territory of a Member, or producers who collectively account for a major proportion of the total domestic production of those products.

In determining whether serious injury or threat is present, investigating authorities are *to evaluate all relevant factors having a bearing on the condition of the industry, and are not to attribute to imports injury caused by other factors*. Factors that must be analyzed are the absolute and relative rate and amount of increase in imports, the market share taken by the increased imports, and changes in level of sales, production, productivity, capacity utilization, profits and losses, and employment of the domestic industry.

APPLICATION OF MEASURES:

Safeguard measures may only be applied to the extent necessary to remedy or prevent serious injury and to facilitate adjustment, within certain limits. If the measure takes the form of a quantitative restriction, the level must not be below the actual import level of the most recent three representative years, unless there is clear justification for doing otherwise. Rules also apply as to how quota shares are to be allocated among supplier countries, as to compensation to Members whose trade is affected, and as to consultations with affected Members.

The maximum duration of any safeguard measure is four years, unless it is extended consistent with the Agreement's provisions. In particular, a measure may be extended only if its continuation is found to be necessary to prevent or remedy serious injury, and only if evidence shows that the industry is adjusting.

The initial period of application plus any extension normally cannot exceed eight years. In addition, safeguard measures in place for longer than one year must be progressively liberalized at regular intervals during the period of application. If a measure is extended beyond the initial period of application, it can be no more restrictive during this period than it was at the end of the initial period, and it should continue to be liberalized.

Any measure of more than three years duration must be reviewed at mid-term. If appropriate based on that review, the Member applying the measure must withdraw it or increase the pace of its liberalization.

Under *critical circumstances*, defined as circumstances where delay would cause damage that would be difficult to repair, provisional measures may be imposed. Such measures may be in the form of tariff increases only, and may be kept in place for a maximum of 200 days. In addition, the period of application of any provisional measure must be included in the total period of application of a safeguard measure.

Repeated application of safeguards with respect to a given product is limited by the Agreement. Ordinarily, a safeguard may not be applied again to a product until a period equal to the duration of the original safeguard has elapsed, so long as the period of non-application is at least two years.

Nonetheless, if a new safeguard measure has a duration of 180 days or less, it may be applied so long as one year has elapsed since the date the original safeguard measure was introduced, and so long as no more than two safeguard measures have been applied on the product during the five years immediately preceding the date of introduction of the new safeguard measure.

CONCESSIONS AND OTHER OBLIGATIONS:

In applying a safeguard measure, the Member must maintain a substantially equivalent level of concessions and other obligations with respect to affected exporting Members. To do so, any adequate means of trade compensation may be agreed with the affected Members. Absent such agreement, the affected exporting Members individually may suspend substantially equivalent concessions and other obligations. This latter right cannot be exercised during the first three years of application of a safeguard measure if the measure is taken based on an absolute increase in imports, and otherwise conforms to the provisions of the Agreement.

DEVELOPING COUNTRY MEMBERS:

Developing country Members receive special and differential treatment with respect to other Members' safeguard measures, and with respect to applying their own such measures. A safeguard measure shall not be applied to low volume imports from developing country Members, that is, where a single developing country Member's products account for no more than 3 percent of the total subject imports, as long as products originating in those low-import-share developing country Members collectively do not exceed 9 percent of imports.

In applying safeguard measures, developing country Members may extend the application of a safeguard measure for an extra two years beyond that normally permitted. In addition, the rules for re-applying safeguard measures with respect to a given product are relaxed for Developing Country Members.

RULES GOVERNING PRE-EXISTING MEASURES (APPLIED BEFORE THE WTO'S ENTRY INTO FORCE):

PRE-EXISTING MEASURES IMPOSED PURSUANT TO GATT ARTICLE XIX: that were in effect at the time of the WTO Agreement's entry into force are to be terminated no later than eight years after they were first applied, or five years after the entry into force of the WTO Agreement, whichever comes later.

PRE-EXISTING “GREY AREA” MEASURES: that were in effect at the time of the WTO's entry into force are to be brought into conformity with the SG Agreement or phased out — pursuant to timetables to have been presented to the SG Committee by 30 June 1995 — within four years of the WTO's entry into force (i.e., by December 31, 1998). Although all Members had the right to an exception with respect to a single specific measure, whereby they would have had until December 31, 1999 for the required phase-out, no Member other than the EC (whose single exception is contained in the Annex to the Agreement itself) exercised this option.

MULTILATERAL SURVEILLANCE AND INSTITUTIONS:

Multilateral oversight of the use of safeguard measures is conducted through notification requirements, as well as through the creation of a Committee on Safeguards charged with reviewing safeguard notifications, among other duties. Members are required to notify the Committee of initiations of investigations into the existence of serious injury or threat and the reasons therefore; findings of serious injury or threat caused by increased imports; and decisions to apply or extend safeguard measures. Such notifications are required to contain the relevant information on which the decisions are based.

Members are required, before applying or extending a safeguard measure, to provide an adequate opportunity for consultations with Members who have substantial interests as exporters of the product. The aims of such consultations shall include review of information as to the facts of the situation, exchanging views on the proposed measures, and reaching an understanding as to maintaining a substantially equivalent level of concessions and obligations.

Provisional measures must be notified before being applied, and consultations must be initiated immediately after such measures are applied. The results of consultations, mid-term reviews of measures taken, compensation, and/or suspension of concessions, must be notified immediately to the Council for Trade in Goods through the ***Safeguards Committee*** by the Member concerned.

Members are obligated to notify their own laws, regulations and administrative procedures to the Committee, as well as their own pre-existing Article XIX and grey area measures. Members also are entitled to counter-notify other Members' relevant laws and regulations, actions, or measures in force. Members are not obligated to disclose confidential information in their notifications.

The ***Committee's role*** generally is:

a) To monitor (and report to the Council for Trade in Goods on) the implementation and operation of the Agreement,

b) To review Members' notifications, and to make findings as to Members' compliance with respect to the procedural provisions of the Agreement for the application of safeguard measures,

c) To assist with consultations, and

d) To review proposed retaliation.

Consultations and disputes arising under the Agreement are to be conducted in accordance with Articles XXII and XXIII of GATT 1994 as elaborated by the Dispute Settlement Understanding.[37]

[37] ibid

GENERAL AGREEMENT ON TRADE IN SERVICES

INTRODUCTION:

The creation of the GATS was one of the landmark achievements of the Uruguay Round, whose results entered into force in January 1995. The GATS was inspired by essentially the same objectives as *its counterpart in merchandise trade, the General Agreement on Tariffs and Trade (GATT):* creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalization.

While services currently account for over 60 percent of global production and employment, they represent no more than 20 per cent of total trade (BOP basis). This — seemingly modest — share should not be underestimated, however. Many services, which have long been considered genuine domestic activities, have increasingly become internationally mobile. This trend is likely to continue, owing to the introduction of new transmission technologies (e.g. electronic banking, tele-health or tele-education services), the opening up in many countries of long-entrenched monopolies (e.g. voice telephony and postal services), and regulatory reforms in hitherto tightly regulated sectors such as transport. Combined with changing consumer preferences, *such technical and regulatory innovations have enhanced the "tradability" of services* and, thus, created a need for multilateral disciplines.

All WTO Members, some 140 economies at present, are at the same time Members of the GATS and, to varying degrees, have assumed commitments in individual service sectors.[38]

The Services Agreement which forms part of the Final Act rests on three pillars. The *first* is a *Framework Agreement containing basic obligations which apply to all member countries.*

[38] http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm (visited on 15/05/2014)

The *second concerns national schedules of commitments containing specific further national commitments which will be the subject of a continuing process of liberalization.* The *third* is *a number of annexes addressing the special situations of individual services sectors.*

PART I of the basic agreement defines its scope — specifically, services supplied from the territory of one party to the territory of another; services supplied in the territory of one party to the consumers of any other (for example, tourism); services provided through the presence of service providing entities of one party in the territory of any other (for example, banking); and services provided by nationals of one party in the territory of any other (for example, construction projects or consultancies).

PART II sets out general obligations and disciplines. A basic Most-Favoured-Nation (M.F.N.) obligation states that each party "shall accord immediately and unconditionally to services and service providers of any other Party, treatment no less favourable than that it accords to like services and service providers of any other country". However, it is recognized that Most Favoured Nation treatment may not be possible for every service activity and, therefore, it is envisaged that parties may indicate specific Most Favoured Nation exemptions. Conditions for such exemptions are included as an annex and provide for reviews after five years and a normal limitation of 10 years on their duration.

Transparency requirements include *publication of all relevant laws and regulations.* Provisions to facilitate the increased participation of developing countries in world services trade envisage negotiated commitments on access to technology, improvements in access to distribution channels and information networks and the liberalization of market access in sectors and modes of supply of export interest. The provisions covering economic integration are analogous to those in Article XXIV of GATT, requiring arrangements to have "substantial sectoral coverage" and to "provide for the absence or elimination of substantially all discrimination" between the parties.

Since domestic regulations, not border measures, provide the most significant influence on services trade, provisions spell out that all such measures of general application should be administered in a reasonable, objective and impartial manner. There would be a requirement that parties establish the means for prompt reviews of administrative decisions relating to the supply of services.

The Agreement contains obligations with respect to recognition requirements (educational background, for instance) for the purpose of securing authorizations, licenses or certification in the services area. It encourages recognition requirements achieved through harmonization and internationally-agreed criteria. Further provisions state that parties are required to ensure that monopolies and exclusive service providers do not abuse their positions. Restrictive business practices should be subject to consultations between parties with a view to their elimination.

While parties are normally obliged not to restrict international transfers and payments for current transactions relating to commitments under the agreement, there are provisions allowing limited restrictions in the event of balance-of-payments difficulties. However, where such restrictions are imposed they would be subject to conditions; including that they are non-discriminatory, that they avoid unnecessary commercial damage to other parties and that they are of a temporary nature.

The agreement contains both general exceptions and security exceptions provisions which are similar to Articles XX and XXI of the GATT. It also envisages negotiations with a view to the development of disciplines on trade-distorting subsidies in the services area.

PART III contains provisions on market access and national treatment which would not be general obligations but would be commitments made in national schedules. Thus, in the case of market access, each party "shall accord services and service providers of other Parties treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its schedule". The intention of the market-access provision is to progressively eliminate the following types of measures: limitations on numbers of service providers, on the total value of service transactions or on the total number of service operations or people employed. Equally, restrictions on the kind of legal entity or joint venture through which a service is provided or any foreign capital limitations relating to maximum levels of foreign participation are to be progressively eliminated. The National-Treatment provision contains the obligation to treat foreign service suppliers and domestic service suppliers in the same manner. However, it does provide the possibility of different treatment being accorded the service providers of other parties to that accorded to domestic service providers. However, in such cases the conditions of competition should not, as a result, be modified in favour of the domestic service providers.

PART IV of the Agreement establishes the basis for progressive liberalization in the services area through successive rounds of negotiations and the development of national schedules. It also permits, after a period of three years, parties to withdraw or modify commitments made in their schedules. Where commitments are modified or withdrawn, negotiations should be undertaken with interested parties to agree on compensatory adjustments. Where agreement cannot be reached, compensation would be decided by arbitration.

PART V of the Agreement contains institutional provisions, including consultation and dispute settlement and the establishment of a Council on Services. The responsibilities of the Council are set out in a Ministerial Decision.

The first of the annexes to the Agreement concerns the *movement of labour*. It permits parties to negotiate specific commitments applying to the movement of people providing services under the agreement. It requires that people covered by a specific commitment shall be allowed to provide the service in accordance with the terms of the commitment. Nevertheless, the agreement would not apply to measures affecting employment, citizenship, residence or employment on a permanent basis. The annex on financial services (largely banking and insurance) lays down the right of parties, notwithstanding other provisions, to take prudential measures, including for the protection of investors, deposit holders and policy holders, and to ensure the integrity and stability of the financial system. However, a further understanding on financial services would allow those participants who choose to do so to undertake commitments on financial services through a different method. With respect to market access, the understanding contains more detailed obligations on, among other things, monopoly rights, cross-border trade (certain insurance and reinsurance policy writing as well as financial data processing and transfer), the right to establish or expand a commercial presence, and the temporary entry of personnel. The provisions on national treatment refer explicitly to access to payments and clearing systems operated by public entities and to official funding and refinancing facilities. They also relate to membership of, or participation in, self-regulatory bodies, securities or futures exchanges and clearing agencies.

The *Annex on Telecommunications* relates to measures which affect access to and use of public telecommunications services and networks. In particular, it requires that such access be accorded to another party, on reasonable and non-discriminatory terms, to permit the supply of a service included in its schedule. Conditions attached to the use of public networks should be no more than is necessary to safeguard the public service responsibilities of their operators, to protect the technical integrity of the network and to ensure that foreign service suppliers do not supply services unless permitted to do so through a specific commitment. The annex also encourages technical cooperation to assist developing countries in the strengthening of their own domestic telecommunications sectors. The annex on air-transport services excludes from the agreement's coverage traffic rights (largely bilateral air-service agreements conferring landing rights) and directly related activities which might affect the negotiation of traffic rights. Nevertheless, the annex, in its current form, also states that the agreement should apply to aircraft repair and maintenance services, the marketing of air-transport services and computer-reservation services. The operation of the annex would be reviewed at least every five years.

In the final days of the services negotiations, three Decisions were taken — *on Financial Services, Professional Services and the Movement of Natural Persons.* The Decision on Financial Services confirmed that commitments in this sector would be implemented on an MFN basis, and permits Members to revise and finalize their schedules of commitments and their MFN exemptions six months after the entry into force of the Agreement. Contrary to some media reports, the audio-visual and maritime sectors have not been removed from the scope of the GATS.[39]

SERVICES APPLICABLE:

The GATS applies in principle to all service sectors, with two exceptions:

a) Article I (3) of the GATS *excludes "services supplied in the exercise of governmental authority"*. These are services that are supplied neither on a commercial basis nor in competition with other suppliers. Cases in point are social security schemes and any other public service, such as health or education that is provided at non-market conditions.

b) The Annex on Air Transport Services *exempts from coverage measures affecting air traffic rights and services directly related to the exercise of such rights.*

MODES OF SUPPLYING SERVICES:

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

1) **Cross-Border Supply:** is defined to cover services flows from the territory of one Member into the territory of another Member (e.g. banking or architectural services transmitted via telecommunications or mail);

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;

3) **Commercial Presence:** implies that a service supplier of one Member establishes 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); and

[39] http://www.wto.org/english/docs_e/legal_e/ursum_e.htm#lAgreement (visited on 14/05/2014)

4) **Presence of Natural Persons:** consists of persons of one Member entering the territory of another Member 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.

The supply of many services is possible only through the simultaneous physical presence of both producer and consumer. There are thus many instances in which, in order to be commercially meaningful, trade commitments must extend to cross-border movements of the consumer, the establishment of a commercial presence within a market, or the temporary movement of the service provider himself.

OBJECTIVES:

The GATS expressly recognizes 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.

OBLIGATIONS:

Obligations contained in the GATS may be categorized into two broad groups:

a) General obligations, which apply directly and automatically to all Members and services sectors.

b) Specific Commitments concerning market access and National Treatment in specifically designated sectors. Such commitments are laid down in individual country schedules whose scope may vary widely between Members. The relevant terms and concepts are similar, but not necessarily identical to those used in the GATT; for example, National Treatment is a general obligation in goods trade and not negotiable as under the GATS.

(A) GENERAL OBLIGATIONS:

MFN TREATMENT: Under Article II of the GATS, Members are held to extend immediately and unconditionally to services or services suppliers of all other Members “treatment no less favourable than that accorded to like services and services suppliers of any other country”. This amounts to a prohibition, in principle, of preferential arrangements among groups of Members in individual sectors or of reciprocity provisions which confine access benefits to trading partners granting similar treatment.

Derogations are possible in the form of so-called Article II-Exemptions. Members were allowed to seek such exemptions before the Agreement entered into force. New exemptions can only be granted to new Members at the time of accession or, in the case of current Members, by way of a waiver under Article IX:3 of the WTO Agreement. All exemptions are subject to review; they should in principle not last longer than 10 years. Further, the GATS allows groups of Members to enter into economic integration agreements or to mutually recognize regulatory standards, certificates and the like if certain conditions are met.

TRANSPARENCY: GATS Members are required, *inter alia*, to publish all measures of general application and establish national enquiry points mandated to respond to other Member's information requests. Other generally applicable obligations include the establishment of administrative review and appeals procedures and disciplines on the operation of monopolies and exclusive suppliers.

(B) SPECIFIC COMMITMENTS:

MARKET ACCESS: Market access is a negotiated commitment in specified sectors. It may be made subject to various types of limitations that are enumerated in Article XVI(2). For example, limitations may be imposed on the number of services suppliers, service operations or employees in the sector; the value of transactions; the legal form of the service supplier; or the participation of foreign capital.

NATIONAL TREATMENT: A commitment to national treatment implies that the Member concerned does not operate discriminatory measures benefiting domestic services or service suppliers. The key requirement is not to modify, in law or in fact, the conditions of competition in favour of the Member's own service industry. Again, the extension of national treatment in any particular sector may be made subject to conditions and qualifications.

Members are free to tailor the sector coverage and substantive content of such commitments as they see fit. The commitments thus tend to reflect national policy objectives and constraints, overall and in individual sectors. While some Members have scheduled less than a handful of services, others have assumed market access and national treatment disciplines in over 120 out of a total of 160-odd services. The existence of specific commitments triggers further obligations concerning, *inter alia*, the notification of new measures that have a significant impact on trade and the avoidance of restrictions on international payments and transfers.

The majority of current commitments entered into force on 1 January 1995, i.e. the date of entry into force of the WTO. New commitments have since been scheduled by participants in extended negotiations (see below) and by new Members that have joined the WTO. Any Member is free to expand or upgrade its existing commitments at any time.

Pursuant to Article XXI, Specific Commitments may be modified subject to certain procedures. Countries which may be affected by such modifications can request the modifying Member to negotiate compensatory adjustments; these are to be granted on an MFN basis.

The results of sectoral negotiations in telecommunications and financial services are new specific commitments and/or MFN exemptions related to the sector concerned. Thus, they are neither legally independent from other sector-specific commitments nor constitute agreements different from the GATS. The new commitments and MFN exemptions have been incorporated into the existing Schedules and Exemption Lists by way of separate Protocols to the GATS.

SCHEDULE:

Each WTO Member is required to have a Schedule of Specific Commitments which identifies the services for which the Member guarantees market access and national treatment and any limitations that may be attached. 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.

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. All schedules are available on the WTO website.

SPECIFIC EXEMPTIONS TO CATER FOR IMPORTANT NATIONAL POLICY INTERESTS:

The GATS permits Members in specified circumstances to introduce or maintain measures 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:

1. Protect public morals or maintain public order;
2. Protect human, animal or plant life or health; or
3. Secure compliance with laws or regulations not inconsistent with the -Agreement including, among others, measures necessary to prevent deceptive or fraudulent practices.

4. Moreover, 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*.
5. 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.

DEVELOPING COUNTRIES:

Developing country interests have inspired both the general structure of the Agreement as well as 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 requires 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 liberalization of market access in areas of export interest to these countries.

While the notion of progressive liberalization is one of the basic tenets of the GATS, Article XIX provides that liberalization takes place with due respect for national policy objectives and Members' development levels, both overall and in individual sectors. Developing countries are thus given flexibility for opening fewer sectors, liberalizing 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 Secretariat.

CRITICISM:

In services, the Uruguay Round was only a first step in a longer-term process of multilateral rule-making and trade liberalization. Observers tend to agree that, while the negotiations succeeded in setting up the principle structure of the Agreement, the liberalizing effects have been relatively modest. Barring exceptions in financial and telecommunication services, most schedules have remained confined to confirming status quo market conditions in a relatively limited number of sectors. This may be explained in part by the novelty of the Agreement and the perceived need of Members to gather experience before considering wider and deeper commitments. Moreover, many administrations needed time to develop the necessary regulation — including quality standards, licensing and qualification requirements — that ensures that external liberalization is compatible with, and conducive to, core policy objectives (quality, equity, etc.) in socially or infrastructural important services.

More than ten years have passed since the Agreement's inception, and the economic importance of services — in terms of production, income, employment and trade — has continued to rise. There thus appears ample scope for new and/or improved commitments in new negotiations.

Under Article XIX, Members are self- committed to launch successive rounds of services negotiations with a view to achieving a progressively higher level of liberalization. The first such round was to begin no later than five years from the date of entry into force of the Agreement and, accordingly, started in January 2000. The initial focus was mainly on the built-in agenda with a view to creating a sound basis for the negotiations of new specific commitments. During a stock-taking session in March 2001, Members agreed on the Negotiating Guidelines and Procedures for the new round (document S/L/93) and discussed a first series of sector proposals which had been submitted by individual countries.[40]

[40] http://www.wto.org/english/tratop_e/serv_e/gatsqa_e.htm (visited on 15/05/2014)

CONCLUSION

The WTO agreements cover goods, services and Intellectual Property. They spell out the principles of liberalization, and the permitted exceptions. They include individual countries' commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. They set procedures for settling disputes. They prescribe special treatment for developing countries. They require Governments to make their trade policies transparent by notifying the WTO about laws in force and measures adopted, and through regular reports by the secretariat on countries' trade policies.

These Agreements are often called the WTO's trade rules, and the WTO is often described as "rules-based", a system based on rules. But it's important to remember that the rules are actually Agreements that Governments negotiated.

Thus we can conclude that the World Trade Organization and its Agreements play a vital role in the peaceful functioning of the World's Economy.

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