

Chapter 16

WORLD TRADE ORGANISATION AND ITS IMPLICATIONS

The World Trade Organization (WTO), which was established in 1995 as a successor to the General Agreement on Tariffs and Trade 1947 (GATT 1947), is the principal international organization governing multilateral trade among Members. The WTO enshrines the principle of non-discrimination, based on the twin concepts of Most Favoured Nation (MFN) and national treatment between Members. This implies that a benefit related to trade in goods and services given to a Most Favoured Nation has to be extended to all other Members; and that exports from a Member can not be discriminated against vis-à-vis domestic products of the importing Member.¹

The WTO administers the implementation of a set of agreements, which include the General Agreement on Tariffs and Trade, other agreements in the goods sector (e.g., agriculture, textiles, sanitary and phytosanitary measures, trade related investment measures, anti-dumping, etc.), and in addition, agreements in two other areas, viz., trade in services, and trade related intellectual property rights. The WTO agreements were negotiated on the basis of a 'single undertaking', which implies that membership to the organization obligates the acceptance of the results of the Uruguay Round of multilateral trade negotiations without exception. Plurilateral agreements, such as the Government Procurement Agreement, were not a part of this single undertaking, and Members of the WTO have the option to accede or not to them.

The emergence of the WTO with its sweeping mandate and enforcement mechanisms has far reaching implications for developing countries. For India – a founding member of the GATT-1947 and the WTO – this new rule-based system provides both opportunities and challenges. The importance of WTO in trade creation and increasing market access for Members is widely acknowledged. However, there are also areas of serious concern for developing countries like India emanating from rights and obligations under certain agreements in the WTO. These include the following:

Agreement on Agriculture (AoA): The WTO Agreement on Agriculture (AOA) was one of the many agreements negotiated during the Uruguay Round of multilateral trade negotiations.

International trade in agricultural commodities has witnessed serious distortions over the years because of massive production and export subsidies given by the developed countries. While this has contributed to excess production, the industrialized world also imposed import restrictions to prevent imported agricultural products from reaching domestic markets. With the purpose of correcting these trade distortions, the AoA provides for (a) reduction in domestic subsidies, (b) reduction in export subsidies, and (c) tariff binding and progressive reduction of tariffs in agricultural commodities, i.e., market access.

The commitments for India under the AoA are as follows:

(i) In respect of domestic support, reduction commitments have been prescribed for trade-distorting subsidies covered by the Amber Box, while Green Box subsidies which are not deemed to be trade-distorting and Blue Box subsidies which are considered minimally trade-distorting are exempted from reduction commitments. For India, since the total Aggregate Measurement of Support (AMS) is negative, India is not required to undertake reduction commitments in any of its product or non-product-specific support programmes, including market price support. Moreover, the domestic support extended to low-income and resource poor farmers is exempted from any reduction commitments for developing countries, under Article 6.2 of the AoA. Even so, the margins between the ceiling level of support and actual subsidies provided by India are gradually diminishing.

(ii) In respect of export subsidies, except for marketing and transport subsidies, exporters of agricultural commodities in India do not get direct subsidies, which come under WTO's reduction commitments.

(iii) India did not undertake any commitments in regard to market access, since it was maintaining quantitative restrictions on imports due to BOP reasons. The only commitment India undertook in 1995 was to bind its tariff rates for primary agricultural products at 100 per-cent, processed foods at 150 per cent, and edible oils at 300 per cent

The implementation of the AoA has revealed serious implications for domestic agricultural production and farm incomes in India. In the post Uruguay Round phase, it is mainly the markets of the developing countries which have opened up; at the same time, the share of exports from these countries continue to hover around 30% of the world trade in agriculture. The anticipated rise in exports from the developing to the developed world has not materialized. In a synthesis of country case studies done by the FAO on the implications of the AoA on developing countries, it has been observed that there was "asymmetry in ... the growth of food imports and the growth of agricultural exports. While trade liberalization had led to ... surge in food imports, these countries were not able to raise their exports." It has been further observed that the process has marginalized small producers.¹ The challenge for developing countries, including India, thus lies in maintaining an appropriate mechanism to safeguard the livelihood of its vast population engaged in agriculture.

Quantitative Restrictions (QRs)- The WTO provides that trade restrictions, i.e., prohibitions or restrictions (other than duties) made through quotas, import or export licenses or other measures shall not be maintained by any Member, except those maintained for BOP purposes or consistent with the provisions of Articles XVII, XX and XXI of GATT 1994.

India phased out quantitative restrictions on imports maintained for BOP reasons by 1 April 2001.

¹ Item included in *Negotiations on WTO AoA – Proposals by India (G/AG/NG/W/102)*, 15 January, 2001

However, removal of QRs does not imply duty-free imports, nor does it mean removal of all import controls. To deal with the adverse fall-out of QR phase-out, several measures are possible: tariff adjustments within bound levels, levy of anti-dumping duties, countervailing duties on subsidized imported goods, safeguard action such as duties and temporary imposition of QRs. Non-tariff Measures (NTMs) such as Sanitary and hytosanitary (SPS) measures are also available for ensuring quality and hygiene of imports, especially agricultural and food items.

The 1994 WTO agreement, which brought agriculture within its policy framework for the first time, is inherently unequal among nations. Its implementation in the last six years has also shown that countries such as India have been unfairly treated, with industrialized nations not adhering to the WTO norms, further endangering the livelihood systems of the poor farmers, particularly in the developing countries.

To protect themselves, the industrialized countries introduced a number of safeguards such as the "Blue" and "Green" Boxes in the WTO agreement that provide them with cover for providing 'domestic support' (read subsidies) for their farmers. The provisions in the Green Box include policies that provide services or benefits to the agriculture or rural community, stockholding for food security, domestic food aid, investment subsidies and agricultural input subsidies for low-income and resource-poor families. The provisions in the Blue Box include direct payments to farmers under production-limiting programmes. For example, the United States operates an extensive scheme to match production and projected market demand. The farmers are paid not to produce a crop, yet the payment is not called a subsidy. This has helped ensure a steady and assured income to the farmers.

Thus, the industrialized nations have, through such mechanisms as also by putting up high tariff barriers (such as Japan's 2000 percent import duty on rice), ensured that the hoped for enlarged market access to the agricultural commodities from developing countries does not materialize. In contrast, the developing countries' markets have been opened up without any support systems and adequate proactive planning.

The removal of QRs would further endanger the livelihood systems of the poor farmers as the extent of domestic support to farming families is far below even the WTO-prescribed ceiling. There are also no export subsidies in India. In contrast, the total farm support increased by 8 percent to \$363 billion in 1998 in OECD countries.

It is essential that we press for a 'Livelihood Box' that would allow us to impose QRs. This must be done wherever there is clear evidence that such imports will kill livelihood opportunities for small and marginal farmers and landless agricultural labour, or those involved in small-scale agro-processing and agri-business activities.

Globalisation has promoted jobless economic growth. Without a Livelihood Box, we will not be able to stimulate job-led economic growth, which is the only path available to us to overcome poverty and chronic hunger. We should also recognize that our population is increasing every year by nearly 17 million. "If our agriculture goes wrong, nothing else in our economy and social fabric will have a chance to go right".

[from "*Livelihood Security must be the bottomline*"-
Frontline, February 16, 2001- Interview with Dr. M.S. Swaminathan]

India's priorities in WTO negotiations on agriculture would include the protection of domestic agricultural production and the welfare of farmers by conceding minimal market access and making nominal commitments. It is necessary to have methodologies for minimal tariff reduction and safeguards against import surges, particularly in sensitive items. Currently, developed countries have these provisions while developing and less developed countries do not. India is also seeking steep reduction in all forms of trade-distorting domestic support and export subsidies by developed countries. The country is in favour of retaining marketing and transport subsidies on exports.

[from *Business Standard* - 05.12.2002]

Trade Related Intellectual Property Rights (TRIPs)- Intellectual Property Rights (IPRs) refer to the legal ownership of by a person or business of an invention/ discovery attached to a particular product/ process which protects the owner against unauthorized copying or limitation.

The IPRs are of seven types, viz., copyrights, trademarks, geographical indications, industrial designs, patents, integrated circuits and trade secrets. A patent is a statutory privilege granted to the inventors and other persons deriving their rights from the inventor, for a fixed period of years, to exclude other persons from manufacturing, using or selling a patented product or from utilizing a patented process or method.

Under TRIPs, all countries have to provide for protection of product patents from January 1, 1995. But developing countries like India, which did not have a regime of product patents, had a transition period of ten years-until January 1, 2005, to affect the switch over. During this transition period, they have to accept applications for patents (which would be considered and granted after January 2005) and provide EMR (Exclusive Marketing Rights) for the producers of patented drugs (in the pharmaceutical industry) and agro-chemicals.

The TRIPs Agreement purports to bring in uniformity in the standards of intellectual property rights among the WTO irrespective of their development status. While this is expected to result in technology transfer and flow of investment among the Members, the extent of benefits accruing will depend on domestic industries and the status of development of the countries.

The emergence of TRIPs in the WTO is the catalyst that led to transformation in India's policy on patents. The impact of TRIPs on two fields, viz., pharmaceuticals and agriculture, has been the most controversial in the country. Opponents of raising patent standards fear that allowing product patents in India would destroy the flourishing pharmaceutical industry (ranking fifth in the world in terms of production of pharmaceutical products), as firms would no longer be able to find alternative processes to produce patented drugs abroad. In agriculture, there are fears that the new patent regime will affect India's agricultural policy, since India's patent policy allowed very little scope for patents in agriculture. First, although TRIPs excludes plant varieties, there is confusion internationally on what would require patent protection, for

example, plant parts. However, *sui generis* system for plant protection is an answer. Second, India has revised its patent law to allow applications for product patents in agrochemicals, opening up an important field to patent protection. Third, several multinational firms have begun filing patent application in areas related to agriculture and agricultural biotechnology in the country. The lack of capability of domestic actors to acquire patents in the field could have enormous implications.

Geographical Indications- The TRIPs Agreement provides for mutual recognition of geographical indications. The Agreement contains a provision that a member shall provide the legal means for interested parties to prevent the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin in a manner which misleads the public as to the geographical origin of the good. There is, however, no obligation under the Agreement to protect geographical indications which are not protected in their country of origin or which have fallen into disuse in that country. In India, a law has been enacted and would be applicable from the day to rules are notified.

In this area there has been some gains in the last WTO Ministerial in 2001 wherein it was indicated, "Issues relating to the extension of the protection of geographical indications ... to products other than wines and spirits will be discussed in the Council of TRIPs". This may provide an opening for protecting some of the geographical indications of interest to India, in products such as Basmati rice, Darjeeling tea, etc.

Trade in Services - According to General Agreement on Trade in Services (GATS), the Most Favoured Nation (MFN) and "transparency" are two obligations that apply to all services. This is the first set of multilateral legally enforceable rules covering international trade in services. The commitments, viz., market access and national treatment apply according to specified negotiated commitments only and subject to conditions incorporated in the Schedule of Commitments. The Agreement covers all the four modes of delivery of a service, including cross-border supplies, "commercial presence" and "movement of natural persons". The services include, international telephony, tourism and education abroad, banking, legal advice and communication as part of 12 major sectors and 161 sub sectors.

Movement of natural persons is of special importance to India as the country enjoys a distinct comparative advantage in this area covering a whole range of services from computer and related services to hotel, health, engineering, construction and other professional services. However, hardly any commitment was made by the developed countries in regard to this mode for delivery of services under GATS.

Agreement on Sanitary and Phytosanitary Measures (SPS), and Technical Barriers to Trade (TBT) - These two WTO agreements have important implications for the Indian food industry. The SPS Agreement refers to the food and agriculture sector, and the agreement aims to protect human, animal and plant life and health including from pests and diseases arising out of imports of food and agricultural products. The TBT Agreement refers to all products including food products. The TBT Agreement deals with product

specifications such as size, shape, weight and packaging material requirements including labeling and handling safety.

The standards applied under the provisions of the SPS and TBT Agreements can act as barriers to trade. Developed countries, notably the EU, have been prolific in using the SPS and TBT measures and Indian goods such as peanuts, marine products, mushrooms, etc have often been denied access to the EU market on SPS/TBT grounds. Thus it is a rather thin dividing line, which exists between safety and protection.

Trade and Environment – The Multilateral Environment Agreements (MEA) are being brought in as part of the agreements on international trade. The Doha Declaration mandated negotiations on certain aspects of trade and environment relating to WTO rules and trade procedures for exchange of information between MEA and the WTO, and reduction/ elimination of tariff and non-tariff barriers on environmental goods and services.

There is widespread concern in the developing world, including India, that environment and social issues, which has been brought into the work programme of WTO, have the potential of being used as trade distorting measures. There is also a very strong view that trade is basically aimed at exploiting markets, and the preservation of the environment is not in consonance with this objective, and hence should be outside its purview.

Trade and Investment – The introduction of the investment issue to the Uruguay Round was a departure from the multilateral trade regime. Despite resistance from the developing countries, the Agreement on Trade Related Investment Measures (TRIMs) was incorporated in the final Act of the UR. The TRIMs Agreement requires Members to phase out performance requirements such as local content requirements and foreign exchange neutrality.

There are many implications for the developmental objectives for the host country in terms of inviting foreign investment under this Agreement. A multilateral framework cannot guarantee an increase in FDI inflows although it threatens to adversely affect the quality of the inflows. The link between trade and investment is also somewhat ambiguous. The bulk of FDI flows continue to be market-seeking (or tariff-jumping) type, and these inflows actually substitute trade.

There are also many other areas wherein India is faced with the need to be both proactive and reactive in terms of WTO issues. New areas, which are essentially non-trade issues are being sought to be brought under the WTO agenda. Among these, the investment and competition policy, along with trade facilitation and transparency in government procurement, (the 'Singapore issues') are subjects, which need to be examined in detail before the next WTO ministerial at Cancun, Mexico, in September 2003.

Impact of WTO on TN Agriculture and Agro-based Industries

An estimated 62 percent of the total workforce in Tamil Nadu derives their livelihood from the primary sector. It is a matter of concern that the contribution of this sector to the overall GSDP of the State has been declining.

The State Government has committed itself to achieving an agricultural growth rate of 4 % during the Tenth Plan Period. While this would call for increase in agricultural production and productivity, attention would also have to be paid to increasing public-private investment in this sector.

Under the aegis of the WTO, minimum market access and reduced tariffs are expected to create a wider market for Indian/ TN exports. It will be necessary for TN to exploit the market access opportunities in commodities where it has comparative advantage and export surplus potential, like sugarcane, turmeric, banana, mango, grapes and tea.

The percentage of Aggregate Measure of Support (AMS) is negative for the agricultural commodities like mangoes, banana, potatoes, onion, cotton, chillies, oilseeds and tea. Except chillies, most of the commodities besides turmeric (for which TN is already one of the major exporters) are highly competitive and potential exists for export of these commodities if the developed countries open up their market for import.

Tamil Nadu has also has a comparative advantage in horticultural and floricultural produce. Processed agricultural commodities provide a new potential for export to Asian and European countries. However, this potential needs to be further augmented by improving the infrastructure in processing, cold storage, transportation, etc.

(from article on "Indian Agriculture and Management in the context of World Trade Organisation" by C. Ramasamy, N. Raveendren & N. Ajjan of TNAU)

Challenge to Industries

As the economy opens up further under WTO rules, TN's firms face three key challenges: First, they face much greater competition at home, in the domestic market from cheaper imports on the one hand, and from better quality, higher value-added imports from advanced industrial countries, on the other. Second, to succeed, firms will have to increasingly compete in the international market. Entering the international market will not be easy, particularly for firms whose production strategy depended upon the old protections of the Indian market. The key challenge facing firms is how to break out of bottlenecks that have stymied productivity in the past, and meet international production standards to successfully penetrate overseas markets.

Finally, the international economy in which Tamil Nadu's firms are beginning to compete today is itself dramatically different from previous decades. What it takes for a firm to compete successfully in the international economy today is starkly different than in previous periods. In contrast to the stable markets of even a few decades ago, the international economy today is much more volatile and unpredictable. It demands much higher standards of product quality, much greater product variety, and compliance with tough environmental and (increasingly) labor standards, just-in-time delivery and quick turnaround times. Rapid technological change, shortened product cycles, massive FDI flows across countries, and an intensely competitive environment have all produced a new geography of production where growth is increasingly based on innovation and new cross-border alliances, rather than low costs alone. To compete successfully in this world, therefore, Tamil Nadu's firms will have to compete both, on cost, as well as on quality, consistency and quick delivery times.