Introduction to WTO and Opportunities for Chartered Accountants in International Trade Laws and WTO

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The Institute of Chartered Accountants of India

(Set up by an Act of Parliament)

New Delhi

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and
Opportunities for Chartered Accountants
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FOREWORD

The role of professional service provider has undergone sea-change and they would likely to become more and more integrated and focused with the shrinking of world through newer and newer meanings of delivery of services, opening up new horizon. International trade in services has expanded exponentially over the past two decades. Today, the service sector covers both conventional areas such as Finance, Transport, Telecommunications, Professional Services etc as well as emerging areas such as Computer related services, Environmental Services, educational services etc. The importance of the sector is heightened by the emergence of the IT enabled services industry as a sunrise area capitalizing on the rapid advents in technology and the demand generated by the growing presence of transnational corporations for a whole range of services.

While conventionally one would have thought the Chartered Accountant to be rendering the accounting related services alone; the focus of the Institute has all along been to groom the members as total business solution providers. The dawn of new economy has provided new areas to work upon and chartered accountancy profession being a key player in every sector of the economy accordingly needs to be conversant with the latest developments so that the stakeholders are able to reap the benefits of valuable professional services provided by professionals like Chartered Accountants.

It is a matter of great pleasure that Committee on Trade Laws and WTO is issuing publication on Introduction to WTO and Opportunities for Chartered Accountants in International Trade Laws and WTO. I am sure the members will be immensely benefited by this publication.

I congratulate the Chairman of the Committee on Trade Laws & WTO CA. Anuj Goyal and all the dedicated members of the

Committee in bringing out the publication on Introduction to WTO and Opportunities for Chartered Accountants in International Trade Laws and WTO, which is quite relevant to the members of the CA fraternity. I would also like to put on record the contribution of CA. Rajkumar S. Adukia, FCA in the publication. I also appreciate the efforts taken by Shri Rakesh Sehgal, Additional Secretary, CA. Mohit Baijal, Sr. Assistant Director & Secretary, Committee on Trade Laws & WTO, CA. Kuldeep Vashist, Executive Officer and other officers & staff in the Committee Secretariat in finalisation of this publication.

New Delhi. **CA. Ved Jain**

June 23, 2008 **President**

PREFACE

The macro-level dynamics of trade and its concomitant effect on all enterprises has brought about a radical transition in the manner businesses are managed and sustained. The dawn of cross border IT enabled services have seen the reality of borderless transactions and in the process, the commerce and industry have attuned themselves to the changing paradigm and imbibed the best practices being undertaken in different parts of the world to cater to a world market. Service sector has become the largest and most rapidly expanding sector in most economies, accounting for well over 60% of world GDP, making services trade liberalization a necessity for the integration of the world economy.

What is required is the vision and ability to foresee and change oneself to meet the emerging role, responsibilities and expectations. The new trade order also has its own imperatives and we need to develop ourselves in a position to render better services to our clients. Today, knowledge is the strength by which we can acquire more and more business and be of value to the society at large. We at Committee on Trade Laws and WTO are attempting to publish a series of research studies & publications to enable a wider dissemination of knowledge amongst the members on issues of International Trade Laws and WTO.

As there are lots of opportunities available for Professionals in the field of International Trade Laws and WTO the present publication on Introduction to WTO and Opportunities for Chartered Accountants in International Trade Laws and WTO is an attempt to make Chartered Accountants aware of the opportunities in this field. I sincerely hope that readers would find it useful.

I would like to place on record my sincere thanks to all the members of the Committee on Trade Laws & WTO for the Year 2008-09 namely, CA. Ved Kumar Jain, President, CA. Uttam Prakash Agarwal, Vice-President, CA. Shanti Lal Daga, Vice-Chairman, CA. Amarjit Chopra, CA. Sunil Talati, CA. S.

Santhanakrishnan, CA. Vinod Jain, CA. Pankaj Inderchand Jain, CA. Mahesh P. Sarda, CA. Vijay Kumar Gupta, Shri Jitesh Khosla, Shri O.P. Vaish, Shri Manoj K. Sarkar, Dr. Pritam Singh, CA. Mukund Hari Singhal, CA. M P Tony, CA. Ram Manohar, CA. Sushil Kumar and CA. Subhash Chandra Verma for rendering their support in bringing out this publication. I wish to place on record my thanks and gratitude for CA. Rajkumar S. Adukia for his efforts in the publication. I would also like to express my appreciation of the efforts put by Shri Rakesh Sehgal, Additional Secretary, CA. Mohit Baijal, Sr. Assistant Director & Secretary, Committee on Trade Laws & WTO, CA. Kuldeep Vashist, Executive Officer and other officers & staff in the Committee Secretariat in finalisation of this publication.

I am confident that the publication on Introduction to WTO and Opportunities for Chartered Accountants in International Trade Laws and WTO will be immensely informative to our members.

CA. Anuj Goyal

Chairman, Committee on Trade Laws & WTO

New Delhi.

June 23, 2008

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Chapter 1

Introduction to WTO

1.1 Introduction

The World Trade Organisation (WTO) represents the culmination of a long drawn process directed at establishing a formal world trade body after 47 years of de-facto trade regulation under GATT. With the completion of the Uruguay Round of Trade Negotiations in December, 1993, the Final Act as well as the Marrakesh Agreement Establishing the World Trade organization were signed at the last Ministerial meeting of the GATT held in Marrakesh in April, 1994, paving the way for beginning of a new era in world trade being the WTO to formally commence operations on 1st January, 1995. It has 152 members, as of 16 May 2008.

The WTO marks the establishment of a legal and institutional base for international trade which had been previously absent under the GATT; a contractual framework within which governments could formulate domestic trade policy; and the platform upon which trading relations among countries could evolve through collective debate, negotiation and adjudication. In the light of the history of attempts to establish a formal organisational presence to regulate international trade, the establishment of WTO marks a significant step forward.

While the establishment of the formal legal presence in the international trade remains the significant feature of the creation of WTO, its contribution to international trade regulation has been to inject more than just a degree of formality. WTO embodies the same architectural core as that of the International Trade Organisation (ITO) and GATT and its stated objectives remain those of its predecessors; first, non-discriminatory treatment in international

commerce; second, the pursuit of a reduction and possible elimination of barriers to trade; and third, the pacific settlement of disputes through a generalised adherence to a dispute settlement mechanism. To this end, MFN and its corollary national treatment remain the key principles of international trade regulation and are embedded throughout the Agreements administered by the WTO; the principle governing trade negotiations is that reciprocity; and the dispute settlement mechanism of the GATT has been modified to make it more rigorous, inclusive and binding.

The legal framework administered by the WTO has deepened the coverage of its architectural principles with the inclusion of regulations pertaining to trade in services (under the General Agreement on Trade in Services – GATS). The WTO has also incorporated an agreement on the much embittered area of agriculture; an attempt has been made to move away from the protectionism associated with the Multi Fibre Agreement (MFA) by bringing textiles and clothing under the umbrella of the WTO rules; and two of the selective Plurilateral Agreements negotiated under the auspices of the GATT have been phased out in an effort to create a more coherent, all – encompassing rules – based system.

It is visualized that the WTO will form a new trio of international organizations, the other two being International Monetary Fund and the World Bank. In a way, WTO represents a culmination of the original post-war idea of International Trade Organisation (ITO), which could not be implemented. This Global institutional framework combining WTO, IMF and the World Bank which, though still rudimentary, is firmly rooted and has gone some way towards consolidating its form. But, much of the recent consolidation in this global institutional framework can be attributed to the completion of the Uruguay Round of trade negotiations and the subsequent cooperation that has taken place among these three organizations viz. WTO, IMF and the World Bank. It is unlikely that we will witness any regression in the evolution of this framework of global economic governance though at time it will wax and wane.

Rather, we are likely to see further consolidation, development and evolution. Inevitably, this will ensure that these organisations remain the source of much attention. By exploring the legal framework of the WTO through the prism of multilateralism, we attempt to gain a sense of this evolving global structure.

1.2 Historical Background of the Trade Negotiations Leading to Birth of WTO

The origin of the debate on the need for an International Economic Order, based on inter-governmental consultations and agreement goes back to the economic crisis of the late 1920s and early 1930s, which destroyed the faith in the efficacy of free markets in international commerce and finance. It was a classic long-term depression, with very low growth, in some year's negative growth, fall in international trade and an unstable international monetary situation.

1.2.1 Bretton Woods Conference

With a view to avoid recurrence of the chaos that the world economic crisis of 1930s had produced, the non socialist, industrial, capitalist countries along with some Asian, African and Latin American countries had met at Bretton Woods in New Hampshire (USA) in July, 1944 to discuss the establishment of an International Economic Order.

In the Bretton Woods Conference, for the first time in the known history of the World, an organisationally managed international economic framework was developed. The Bretton Woods conference was sponsored by Big five, namely, the United States, United Kingdom, France, erstwhile USSR and China. However, at the time of finalising various international arrangements even the erstwhile Soviet Union came out of these negotiations primarily due to the engulfing cold war.

This group of countries established two central instruments for international financial monetary cooperation. The first instrument was

the International Bank for Reconstruction and Development (IBRD), also known as World Bank. The second instrument, which the Bretton Woods group, established was the International Monetary Fund (IMF). The voting rights in these two institutions were determined by the size of the quota of the country. The Original quotas of a country were established by the following factors:

1. National Income as of 1940.
2. Foreign Trade Volume during 1934-38.
3. Gold and Foreign exchange reserves as of 1943.
4. Some factors for political weighting.

When these two institutions were set up, the US had 27% of the voting power in both these institutions viz. IMF and the World Bank. Because, majority vote i.e. 80% was required for most ruling, the US maintained veto power in the two organisations.

A need was felt for a separate organisation for problems of commodities, their fluctuating prices and the consequent vulnerability of the under developed nations to such fluctuations in international market. Accordingly, the Havana charter was framed and signed in 1948 in Cuba. This Havana charter was to establish the International Trade Organisation (ITO). But it could not be established due to resistance from the US Senate. In its place, however, a protocol of Provisional Application was signed by 23 original members; India was one of the 23 members. The protocol ushered in General Agreement on Tariffs and Trade (GATT) on 1st January, 1948 to bring international trade in order.

1.2.2 General Agreement on Tariffs and Trade (GATT)

The GATT has been the only multilateral body around, from 1948 to 1994 that provided rules for much of the World Trade. The contracting parties of GATT continuously expanded the area and scope of the rules during the successive trade rounds.

The guiding principles of GATT were:

1. Trade should be on a non-discriminatory basis.
2. Domestic industry should only be protected by means of customs tariffs and not through other commercial measures.
3. The aim of consultations should be to avoid damage to the interest of the members.
4. GATT should serve as a forum within which negotiations could be held to reduce tariffs and other trade.

In the earlier rounds of talks only relatively simple issues were discussed and thus a negotiated settlement was found. For instance, it arrived at a negotiated settlement on the reduction of customs duties and other barriers to trade in goods and services, and the strengthening of the rules of multilateral trade to estimate world trade and help the global economy to grow.

During the first 30 years of the GATT's existence, seven major trade negotiations took place: The Geneva Round (Switzerland, 1947); Annecy Round (France, 1949); Torquay Round (England, 1951); Geneva Round (Switzerland, 1956); Dillon Round (Switzerland, 1960-62); Kennedy Round (Switzerland, 1964-67) and Tokyo Round (Japan, 1973-79). Finally, the Uruguay Round, the eighth round of negotiations commenced in September, 1986. Each of these negotiating rounds coincided with amendments to United States trade laws a fact which has often been cited as evidence of the symbiotic relationship between the U.S. and GATT and America's use of GATT as a vehicle for its own trade objectives.

THE GATT TRADE ROUNDS			
Year	**Place / Name of round**	**Subjects Covered**	**No. of Nations**
1947	Geneva	Tariffs	23
1949	Annecy	Tariffs	13

1951	Torquay	Tariffs	38
1956	Geneva	Tariffs	26
1960-61	Geneva/Dillon rd.	Tariffs	26
1964-67	Geneva/ Kennedy rd.	Tariffs & Anti dumping measures	62
1973-79	Geneva/Tokyo rd.	Tariffs, non-tariff measures framework agreements	102
1986-94	Geneva/Uruguay rd.	Tariffs, non-tariff measures, rules, services, IPRs, dispute settlement, textiles, agriculture, creation of WTO.	123

In the Geneva Round (1947), 20 schedules were established which covered tariff concessions. In the Torquay Round (1951), tariffs were reduced by 25 per cent in relation to the 1948 levels. Tariff concessions on a product-wise basis continued to be made in each successive round.

The earlier trade rounds were primarily focused over cuts in tariffs of goods, but later these gradually became more ambitious in scope. The Kennedy Round in 1967 addressed the area of anti-dumping actions for the first time. The Kennedy Round concentrated on four problems:

1. Progressive reduction (up to 50 per cent) in the duties of all but a few products, in place of the item-by-item bargaining that had prevailed earlier.

2. Inclusion of agriculture as well as of industrial products in the scope of the negotiations.

3. Discussion of non-tariff obstacles, as well as of custom duties.

4. Non-reciprocity for economically less developed countries.

While the developing countries drew little immediate advantage from this round, they were able to obtain the addition of a new part, titled, 'Trade and Development', to the GATT charter. In the Tokyo Round (1973-79), the average weighted tariffs on manufactured goods in the nine major Industrial markets were reduced from 7.0 per cent to 4.7 per cent. The Tokyo Round also established codes on subsidies and countervailing duties, technical barriers to trade, import licensing procedures, government procurement, customs valuation and separate agreements on dairy products, bovine meat and civil aircraft. As a result of these GATT Rounds, tariffs on manufactured goods were reduced to an average of 5 per cent in the rich industrialised countries as compared to the 40 per cent levels prevailing in the 1940s. The Tokyo Round in 1979 concluded agreement on areas, such as a code for subsidies, customs valuation procedures and other technical barriers to trade.

1.2.3 Uruguay Round of Trade Negotiations

The eighth round of trade negotiations known as Uruguay Round lasted around 8 years and had been the most comprehensive and the most contentions one. It covered almost all trade and was quite simply the largest trade negotiations ever undertaken in human history. Not only all the original articles of GATT were up for review, but virtually every outstanding policy issue like Trade in Services, Intellectual Property, reforms in trade in Textiles and Agriculture etc. were encompassed by the Uruguay Round negotiations.

The Uruguay Round was different from all previous rounds of trade negotiations under the GATT in several ways. First, these were the only round of trade negotiations in which the developing countries did not perceive any interest of their own, at least till recently. Secondly, these were the first GATT negotiations in which the target

was, apart from seeking the liberalisation of agriculture of the European Community, the markets of a dozen or so more developed among developing countries. Finally, these were also the first GATT negotiations whose scope had covered areas which were not within the jurisdiction of GATT.

The major impetus for new trade rounds has been the need felt by the world's industrialized countries to expand their export markets. This is a need felt not merely by the world's economic giants, the US, EC and Japan; but an increasing number of developing countries with outward-oriented economies. However, the impetus for the Uruguay Round came mainly from the US since 1980s – the same year in which the United States transformed from a net creditor to a net debtor nation and Japan had taken its place as the world's largest creditor. By the mid-1980s, Japan had also surpassed the U.S. in technological prowess; in 1987, America's National Academy of Engineering reported that Japan is superior to the U.S. in 34 critical areas of high technology. Japan had replaced the U.S. as the key player in world economic markets as Japanese corporations accounted for 48 percent of world capitalisation and fifteen of the twenty largest corporations in the world. Meanwhile, the U.S. faced recessionary conditions at home because of the declining international competitiveness of its industries. In response, the U.S. government identified two areas in which it could still dominate export markets especially if foreign countries were forced to open their markets; agriculture and services. The U.S. also hoped to maximise its monopolistic gains in the area of technology by raising the level of intellectual property protection globally. The best way to enforce such global regime, the U.S. thought, was by linking the substantive issues of intellectual property protections to trade negotiations and using retaliatory trade sanctions to compel others to agree to their proposals in this area. After half a century of heavy government subsidization allowed under the waiver obtained by the U.S. from the GATT provisions on agriculture, U.S. agro-business corporation led the world in terms of production capacity and technological strength. The U.S. Service industries especially

banking, insurance, informatics, telecommunications and air transport have also been highly successful internationally. The U.S. has also led the world in patenting genetically engineered plants and animals. Europe was also going through a similar crisis. A new round of trade liberalization was thought to be one way of getting out of recession. By the time the preliminary discussion about launching a new trade round began in the mid-eighties, it became clear that the US wanted a set of trade negotiations that would be far more ambitious than any of the earlier rounds. As mentioned earlier, it is only on the instigation of US trade lobby, three new controversial areas were introduced. The Service Sector (SS), Trade-Related Intellectual Property Rights (TRIPs), and Trade-Related Investment Measures (TRIMs) have been readied, as the spearheads of US's attack on the poor and developing countries.

The U.S. effort to enlarge the scope of GATT negotiations was vigorously resisted by some developing countries–led by India and Brazil along with Egypt, Yugoslavia, Nigeria, Tanzania, Bern, Cuba and Nicaragua. A compromise was reached whereby negotiations relating to services were to be conducted outside GATT framework, be guided by the objective of development of the developing countries and should not just be concerned with liberalization and dismantling existing regulatory structures. Indeed the national regulations were to be respected. It was further agreed that discussions on intellectual property should follow the approach already contained in Article XX (d) of the GATT Treaty which ensured that every member-country had the freedom to pursue its own regime of protection of intellectual property and which merely required that no member-country may use this freedom arbitrarily and in a discriminatory manner against the products or goods imported from another country into its territory. India's stance was universally recognized as proper and courageous. It virtually blocked the developed countries' move to extend GATT to new areas for further enhancement of their benefit and to the detriment of the development of developing countries.

In order to attempt a breakthrough, a ministerial meeting of the Trade Negotiating Committee was held in Montreal in December 1988. This was the so called mid-term Ministerial Review meeting. Despite heavy pressures, neither India nor Brazil agreed to bring IPRs within the ambit of negotiations at the mid-term review meeting. The EEC could not agree to the American radical proposals on the liberalisation of trade in Agriculture. The result was a statement and the mid-term review ended only in disagreement in crucial areas. These areas were then remitted to the negotiating machinery at Geneva.

Since the ministerial review, pressures were brought to bear by the US against India to agree to its demands to enlarge the scope of GATT under the omnibus Trade and Competitiveness Act of 1988. The 1988 Trade Act created two new provisions, viz. 'Super and Special 301', the former mandated the United States Trade Representative (USTR) to retaliate against foreign practices which are 'unjustifiable and burden to restrict U.S. commerce' and the latter required the USTR to investigate and retaliate against countries which allegedly deny 'adequate and effective protection of intellectual property rights.

At the official meeting at Geneva in April 1989, the U.S. backed down from its demand for reduction in farm subsidies and agreed to 'substantial progressive reductions' in trade-distorting farm supports, thus facilitating a breakthrough in the progress of negotiations. IPRs thus remained the only major area of disagreement.

On May 30, 1989, the USTR additionally placed India on a priority watch list under the 'Special 301' provisions of the 1988 Trade Act for its alleged failure to provide adequate patent protection for all classes of inventions, discrimination against foreign trade mark, failure to adequately register service marks, failure to enforce its copyright laws against piracy and improved access and distribution of U.S. motion pictures in India. Along with India, the USTR placed 7 other countries (Brazil, Mexico, People's Republic of China, Republic of Korea, Saudi Arabia, Taiwan and Thailand) on the 'priority watch

list' and the remaining 17 countries (Argentina, Canada, Chile, Columbia, Egypt, Greece, Indonesia, Italy, Japan, Malaysia, Pakistan, the Philippines, Portugal, Spain, Turkey, Venezuela and Yugoslavia) under a 'watch list'.

On 20th December 1991 Arthur Dunkel tabled a draft final act of the Uruguay Round. There were disputes between U.S. and E.C. on agriculture, which prolonged matters, and the U.S. Congress fixed 15th December 1993 as the dead line through fast track approach. On 15th December 1993, the final sessions concluded in Geneva and then Director General Sutherland brought his gavel down on seven years of Uruguay Round negotiations. On 15th April 1994 the ministerial meeting at Marrakesh (Morocco), ratified the result of the Uruguay Round.

The Final Act contains legal texts, which spell out the results of the negotiations since the Round was launched in Punta del Estate Uruguay, in September 1986. In addition to the texts of the agreements, the Final Act also contains texts of ministerial decisions and declarations, which further clarify certain provisions of some of the agreements, and together they constitute the GATT law as it were. The broad structural projection of GATT, 1994 and its transformation to the WTO is given as an introduction to the awesome halls of this new treaty edifice. Marrakesh was witness to the World Trade Ministers (including the Indian Commerce Minister) signatures approving over 20,000 pages of texts and tariffs schedules. These plural plenty of signatures laid the ground work for the creation of a new international organisation, the World Trade Organisation (WTO), which on 1.1.1995 took overall the business from the then existed GATT Secretariat.

1.2.4 The Main legal Instruments negotiated in the Uruguay Round

A. Marrakesh Agreement Establishing the World Trade Organisation.

B. Multilateral Agreements.

1. Trade in Goods

General Agreement on Tariffs and Trade 1994 (GATT 1994)

Associate Agreements:

- Agreement on Implementation of Article VII of GATT 1994 (Customs Valuation)
- Agreement on Pre-shipment Inspection (PSI)
- Agreement on Technical Barriers to Trade (TBT)
- Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)
- Agreement on Import Licensing Procedures
- Agreement on Safeguards
- Agreement on Subsidies and Countervailing Measures (SCM)
- Agreement on Implementation of Article VI of GATT 1994 (Anti-dumping) (ADP)
- Agreement on Trade Related Investment Measures (TRIMs)
- Agreement on Textiles and Clothing (ATC)
- Agreement on Agriculture
- Agreement on Rules of Origin

Understanding on Decision:

- Understanding on Balance-of-Payments Provisions of GATT 1994
- Decision Regarding Cases where Customs Administration

- Have Reasons to Doubt the Truth of Accuracy of the Declared Value (Decision on Shifting the burden of proof)
- Understanding on the Interpretation of Article XVII of GATT 1994 (State Trading enterprises)

Understanding on Rules and Procedures Governing the Settlements of Disputes:

- Understanding on the Interpretation of Article II : 1 (b) of GATT 1994 (Binding to tariff concessions)
- Decision on Trade and Environment
- Trade Policy Review Mechanism

2. Trade in Services

   General Agreement on Trade in Services (GATS)

3. Intellectual Property Rights (IPRs)

   Agreement on Trade – Related Aspects of Intellectual Property Rights (TRIPS)

C. Plurilateral Trade Agreements

- Agreement on Trade in Civil Aircraft
- Agreement on Government Procurement
- International Dairy Agreement
- International Bovine Meat Agreement
- World Trade Organisation (WTO)

With the birth of the World Trade Organisation (WTO) the long drawn Uruguay Round finally came to a successful completion. The new organisation which replaced the GATT on 1st January, 1995 is the body to implement the agreements negotiated under the Uruguay Round as well as take up several issues which remained unresolved during the negotiations. WTO, now encompasses, the General

Agreement on Tariffs and Trade (GATT), the General Agreement on Trade in Services (GATS), Trade Related Intellectual Property Rights (TRIPS) and Dispute Settlement Body.

1.3 Functions, Guiding Principal and Structure & Decision Making of WTO

1.3.1 Functions

The WTO is the umbrella organisation responsible for overseeing implementation of all agreements – multilateral and plurilateral that have been negotiated under Uruguay Round or will be negotiated in future. Article III of the Agreement Establishing the World Trade Organisation gives the following functions of WTO: -

1. The World Trade Organisation shall facilitate the implementation, administration, operation, and further the objectives of this Agreement and of the Multilateral Trade Agreement, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the ministerial conference.

3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes in Annexure 2 to this Agreement.

4. The WTO shall administer the Trade Policy Review Mechanism provided for in Annexure 3 to this Agreement.

5. With a view to achieving greater coherence in global economic policy-making, the WTO shall co-operate as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

1.3.2 Guiding Principles of WTO:

The Guiding principles of WTO (many inherited from GATT) are:

- Non-discrimination, which in practice means two things. First, Most Favoured Nation (MFN) Treatment, any trade concession offered by one member of WTO to another member, must be offered to all members. Second, National Treatment, imported goods should not be discriminated against the domestic goods-same treatment to be accorded.
- Freer trading system- with barriers coming down through negotiations.
- Predictable trading system-foreign companies, investors and governments should be confident that trade barriers (including tariffs, non-tariff barriers and other measures) would not be raised arbitrarily; more and more tariff rates are to be 'bound' against subsequent increase.
- More competitive trading system – by discouraging 'unfair' practices in the guise of export subsidies and dumping products at below cost.
- More beneficial to less developed countries by giving more time to adjust greater flexibility and special privileges.

1.3.3 Status of WTO:

1. The WTO shall have legal identity and shall be recognised by each of its members for such legal capacity as may be necessary for the exercise of its functions.

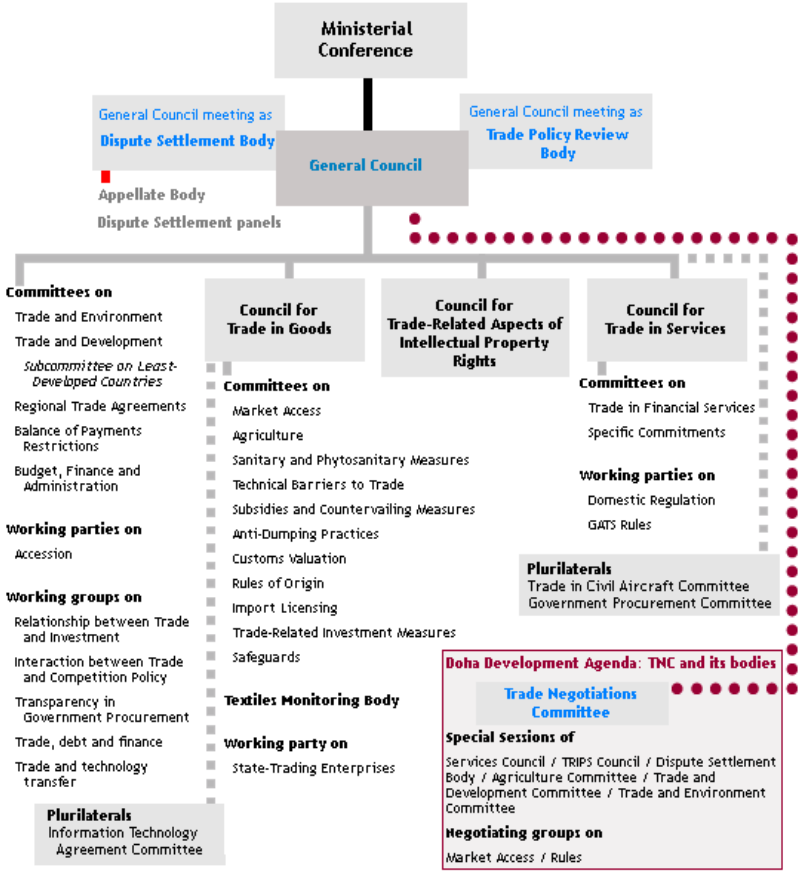
2. The WTO shall be accorded by each of its members such privileges and immunities as are necessary for the exercise of its functions.

3. The officials of the WTO and the representatives of the members shall similarly be accorded by each of its members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.

4. The privileges and immunities to be accorded by a member of the WTO, its officials and the representatives of its members shall be similar to the privileges and immunities stipulated in convention on the privileges and immunities of the specialised agencies, approved by the General Assembly of the United Nations on November 21, 1947.

5. The WTO may conclude a head quarter's agreement. It is feared that it may, in effect, provide a powerful framework for the developed countries to use trade instruments to enforce their priorities on developing countries' economic and technological development.

1.3.4 Structure and Decision Making of WTO



Key

Reporting to General Council (or a subsidiary)

Reporting to Dispute Settlement Body

Plurilateral committees inform the General Council or Goods Council of their activities, although these agreements are not signed by all WTO members

Trade Negotiations Committee reports to General Council

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body.

The negotiations mandated by the Doha Declaration take place in the Trade Negotiations Committee and its subsidiaries. This now includes the negotiations on agriculture and services begun in early 2000. The TNC operates under the authority of the General Council.

Ministerial Conference

The topmost decision-making body of the WTO is the Ministerial Conference, which has to meet at least every two years. It brings together all members of the WTO, all of which are countries or customs unions. The ministerial conference shall carry out the functions of the WTO and shall have authority to take decision on all matters under any of the Multilateral Trade Agreement.

Ministerial Conferences

- Hong Kong, 13 – 18 December 2005
- Cancún, 10-14 September 2003
- Doha, 9-13 November 2001
- Seattle, November 30 – December 3, 1999
- Geneva, 18-20 May 1998
- Singapore, 9-13 December 1996

General Council

General Council shall carry out the function of the ministerial conference between its meetings. General Council shall carry out the duties of the Dispute Settlement Body provided for in the understanding on rules and procedures governing settlement of dispute. The General Council shall also carry out the responsibilities of the Trade Policy Review Body.

- Council for Trade in Goods
- Council for Trade in Services
- Council for TRIPs
- Committee on Trade and Development

- Committee on Balance of Payments Restrictions
- Committee on Budget, Finance and Administration

The function of the WTO is to interpret and enforce the Multilateral Trade Agreements and the Plurilateral Trade Agreements by administering the understanding on rules and procedures governing the settlement of dispute. The WTO's subsidiary body, the dispute settlement Body (DSB), will enforce trade agreements by establishing a panel upon the request of the disputing countries after consultations and mediation have failed. The panel, applying the procedures will issue a ruling, which may be appealed to the Appellate Body. If a party can request the dispute settlement body to authorise it to suspend concessions granted to the defending party even in an area of trade or under an agreement other than that involved in the disputes, known as 'cross-retaliation'.

Notes:

1. All WTO members may participate in all councils etc. except Appellate Body, Dispute Settlement Panels, Textiles Monitoring Body and plurilateral committees and councils.
2. The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body.
3. Plurilateral Agreement are the agreement singed by a group of countries. These are binding on only countries signatory to all agreements.

1.4 Differences Between GATT & WTO

There are, many differences between the GATT and the WTO both with respect to the scope of cooperation as well as the way the world trade system is going to be monitored.

The first and foremost feature of the WTO agreement is that it establishes an international legislative body with a vast subsisting domain and with a built-in provision for continuing expansion of this

domain. GATT was essentially a border paradigm. It concerned itself largely with issues arising out of international trade of goods at the international borders. It did not seek to intrude into the sphere of autonomous decision-making of its member states.

Secondly, the WTO agreement has raised its functioning and decision-making to a political level. Article IV of the WTO agreement lays down that:

"There shall be a Ministerial Conference… which shall meet at least once every two years".

This body will have supreme decision-making powers. GATT functioned largely at the expert-bureaucratic level. The ministerial level meetings were few and far between. In the given situation, this was a desirable feature. No major departures could be made from the basic feature of the border paradigm at that level.

The other feature is that WTO will provide a permanent and continuous forum of negotiations. GATT functioned intermittently and in spurts. That is how we had so many 'Rounds' of negotiations under GATT. No formality of agreeing on, announcing and pushing through the laborious rounds of negotiations will any more be called for. Negotiations on all subjects will now be a continuing feature.

The preamble of the WTO while reiterating the objectives of the GATT, viz. raising standards of income, ensuring full employment and extension of trade, extends these objectives to services. In addition, it introduced the concept of sustainable development to protect the environment in a manner consistent with the stages of economic development. It also recognizes the need for special action to ensure a higher proportion of growth in international trade for developing countries.

GATT Vs. WTO

- GATT signified two things – GATT the body and GATT - the agreements.

- GATT – the body no longer exists, it was merged in WTO on 1st Jan'95.
- GATT – the agreement rests in WTO alongside other agreements.
- WTO includes now GATT GATS, TRIPS and Dispute Settlement body. GATT covered Trade in goods only, WTO covers Trade in Goods, Services and Intellectual Property as well.
- Throughout its life, from 1948 to 1994, GATT was ad hoc and provisional; WTO and its agreements are permanent.
- GATT had contracting parties, WTO has member nations.
- WTO is inherently superior system than GATT having a sound legal basis even its agreements are ratified in Member's parliaments.
- WTO has two significant functions, which GATT did not have; one, Trade Policy Review Mechanism – a periodic process to examine a country's trade policies and to note changes. Second, its in-built Dispute Settlement mechanism, its ruling cannot be blocked.
- WTO is more democratic in character than GATT If decisions cannot be reached by consensus; the matter is decided by voting; each WTO member having one vote.

Chapter 2

The WTO Agreements

2.1 Introduction

"The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations", signed by ministers in Marrakesh on 15 April 1994 is 550 pages long and contains legal texts which spell out the results of the negotiations since the Round was launched in Punta del Este, Uruguay, in September 1986. In addition to the texts of the agreements, the Final Act also contains texts of Ministerial Decisions and Declarations, which further clarify certain provisions of some of the agreements.

The Final Act covers all the negotiating areas cited in the Punta del Este Declaration with two important exceptions. The first is the results of the "market access negotiations" in which individual countries have made binding commitments to reduce or eliminate specific tariffs and non-tariff barriers to merchandise trade. These concessions are recorded in national schedules that form an integral part of the Final Act. The second is the "initial commitments" on liberalization of trade in services. These commitments on liberalization are also recorded in national schedules.

2.2 Agreement Establishing the World Trade Organization

The agreement establishing the World Trade Organization (WTO) calls for a single institutional framework encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices and the complete results of the Uruguay Round. The WTO framework ensures a "single undertaking approach" to the results of the Uruguay Round — thus, membership

in the WTO entails accepting all the results of the Round without exception.

The common institutional framework provided by the WTO covers:

- The Multilateral Trade Agreements (MTAs) – agreements and associated legal instruments that form an integral part of the Agreement Establishing the WTO, which is binding on all WTO Members; and
- The Plurilaterial Trade Agreements (PTAs) that are binding only on members who have accepted them. The PTAs include agreements and arrangements on civil aircraft, government procurement, dairy products and bovine meat.

The WTO has five main functions:

- To facilitate the implementation, administration, operation and further the objectives of the Agreement establishing the WTO. It will also provide the framework for the implementation, administration and operation of the PTAs;
- To provide the forum for negotiations concerning the multilateral trade relations of its members;
- To administer the Understanding on Rules and Procedures Governing the Settlement of Disputes;
- To administer the Trade Policy Review Mechanism; and
- To cooperate, as appropriate, with the International Monetary Fund, the International Bank for Reconstruction and Development and its affiliated agencies.

The most senior body of the WTO is the Ministerial Conference, which meets at least once every two years. A General Council has been established to oversee the operation of the WTO Agreement and ministerial decisions on a regular basis. This General Council acts as a Dispute Settlement Body and a Trade Policy Review Body, both of which concern themselves with the full range of trade issues

covered by the WTO. There are also subsidiary bodies such as a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights, and these can establish other subsidiary bodies.

The WTO continues the practice of decision-making by consensus followed under the GATT 1947. When voting is necessary, the decisions are taken by a majority of the votes cast, unless other wise provided for. For any decision on the interpretation of the WTO Agreement, as well as in most cases where a waiver is to be granted, approval by a three-fourths majority of the members is required. The WTO Agreement also contains detailed rules concerning the submission for acceptance, the voting and the obligations of each member with respect to amendments to the WTO Agreement and the PTAs.

The Agreement Establishing the WTO provides for non-application to allow a member not to apply the WTO Agreement vis-à-vis a newly acceding country, and vice versa. Original members of the WTO who were contracting parties to the GATT, may only invoke this provision, if, at the time of entry into force of the WTO, the non-application provision was already being invoked in respect of GATT 1947.

Contracting parties to the GATT 1947 that accepted the WTO Agreement automatically became original members of the WTO but only on lodgment of schedules of market access concessions and commitments (with respect to tariffs and non-tariff measures in industrial goods as well as undertakings in agriculture), and schedules of specific commitments in the area of services.

Countries and territories possessing full autonomy in the conduct of external commercial relations may accede to the WTO on terms agreed and approved by the Ministerial Conference. Accession of new members must be approved by a two-thirds majority of members.

Members of the World Trade Organization recognize that one of the objectives of the WTO will be to ensure that developing country members, and especially the least-developed countries, secure a share in the growth of international trade that is commensurate with their economic development needs. They also recognize that this objective will require a number of positive efforts from all members. The text of the Agreement Establishing the World Trade Organisation has been provided under **Annexure A**.

2.3 List of Annexes under the Agreement Establishing the World Trade Organisation

ANNEX 1

ANNEX 1A : Multilateral Agreements on Trade in Goods

General Agreement on Tariffs and Trade 1994

Uruguay Round Protocol GATT 1994

Agreement on Agriculture

Agreement on the Application of Sanitary and Phytosanitary Measures

Agreement on Textiles and Clothing

(Note: This Agreement was terminated on 1 January 2005)

Agreement on Technical Barriers to Trade

Agreement on Trade-Related Investment Measures

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-dumping)

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs Valuation)

Agreement on Preshipment Inspection

Agreement on Rules of Origin

Agreement on Import Licensing Procedures

Agreement on Subsidies and Countervailing Measures

Agreement on Safeguards

ANNEX 1B : General Agreement on Trade in Services and Annexes

ANNEX 1C : Agreement on Trade-Related Aspects of Intellectual Property Rights

ANNEX 2

Understanding on Rules and Procedures Governing the Settlement of Disputes

ANNEX 3

Trade Policy Review Mechanism

ANNEX 4

Plurilateral Trade Agreements

Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

International Dairy Agreement

International Bovine Meat Agreement

2.3.1 General Agreement on Tariffs and Trade 1994

Texts on the interpretation of the following GATT articles are included in the Final Act:

Article II — Schedules of Concessions. Agreement to record in national schedules “other duties or charges” levied in addition to the

recorded tariff and to bind them at the levels prevailing at the date established in the Uruguay Round Protocol.

Understanding on the Interpretation of Article XVII — State-trading Enterprises. Agreement increasing surveillance of their activities through stronger notification and review procedures.

Understanding on the Interpretation of Articles XII and XVIII: B

Balance-of-payments provisions. Agreement that contracting parties imposing restrictions for balance-of-payments purposes should do so in the least trade-disruptive manner and should favour price-based measures, like import surcharges and import deposits, rather than quantitative restrictions. Agreement also on procedures for consultations by the GATT Balance-of-Payments Committee as well as for notification of BOP measures.

Understanding on the Interpretation of Article XXIV — Customs Unions and Free-Trade Areas. Agreement clarifying and reinforcing the criteria and procedures for the review of new or enlarged customs unions or free-trade areas and for the evaluation of their effects on third parties. The agreement also clarifies the procedure to be followed for achieving any necessary compensatory adjustment in the event of contracting parties forming a customs union seeking to increase a bound tariff. The obligations of contracting parties in regard to measures taken by regional or local governments or authorities within their territories are also clarified.

Understanding on the Interpretation of Article XXV — Waivers. Agreement of new procedures for the granting of waivers from GATT disciplines, to specify termination dates for any waivers to be granted in the future, and to fix expiry dates for existing waivers. The main provisions concerning the granting of waivers are, however, contained in the Agreement on the WTO.

Understanding on the Interpretation of Article XXVIII — Modification of GATT Schedules. Agreement on new procedures for the negotiation of compensation when tariff bindings are modified or

withdrawn, including the creation of a new negotiating right for the country for which the product in question accounts for the highest proportion of its exports. This is intended to increase the ability of smaller and developing countries to participate in negotiations.

Understanding on the Interpretation of Article XXXV — Non-application of the General Agreement. Agreement to allow a contracting party or a newly acceding country to invoke GATT's non-application provisions vis-à-vis the other party after having entered into tariff negotiations with each other. The WTO Agreement foresees that any invocation of the non-application provisions under that Agreement must extend to all the multilateral agreements.

2.3.2 Uruguay Round Protocol GATT 1994

The results of the market access negotiations in which participants have made commitments to eliminate or reduce tariff rates and non-tariff measures applicable to trade in goods are recorded in national schedules of concessions annexed to the Uruguay Round Protocol that forms an integral part of the Final Act.

The Protocol has five appendices: Appendix I Section A: Agricultural Products — Tariff concessions on a Most-Favoured Nation basis; Appendix I Section B: Agricultural Products — Tariff Quotas; Appendix II:Tariff Concessions on a Most-Favoured Nation Basis on Other Products; Appendix III: Preferential Tariff — Part II of Schedules (if applicable); Appendix IV: Concessions on Non-Tariff Measures — Part III of Schedules; Appendix V: Agriculture Products: Commitments Limiting Subsidization — Part IV of Schedules, Section I: Domestic Support: Total AMS Commitments, Section II: Export Subsidies: Budgetary Outlay and Quantity, Reduction Commitments Section III: Commitments Limiting the Scope of Export Subsidies.

The schedule annexed to the Protocol relating to a Member shall become a Schedule to the GATT 1994 relating to that Member on the day on which the Agreement Establishing the WTO enters into force for that Member.

For non-agricultural products the tariff reduction agreed upon by each Member shall be implemented in five equal rate reductions, except as may be otherwise specified in a Member's Schedule. The first such reduction shall be made effective on the date of entry into force of the Agreement Establishing the WTO. Each successive reduction shall be made effective on 1 January of each of the following years, and the final rate shall become effective no later than the date four years after the date of entry into force of the Agreement Establishing the WTO. However, participants may implement reduction in fewer stages or at earlier dates than those indicated in the Protocol, if they so wish.

For agricultural products, as defined in Article 2 of the Agreement on Agriculture, the staging of reductions shall be implemented as specified in the relevant parts of the schedules. Details are given in the section of this paper concerning the Agricultural Agreement.

A related Decision on Measures in Favour of Least-Developed Countries establishes, among other things, that these countries will not be required to undertake any commitments and concessions which are inconsistent with their individual development, financial and trade needs. Alongside other more specific provisions for flexible and favourable treatment, it also allows for the completion of their schedules of concessions and commitments in Market Access and in Services by April 1995 rather than 15 December 1993.

2.3.3 Agreement on Agriculture

The negotiations have resulted in four main portions of the Agreement; the Agreement on Agriculture itself; the concessions and commitments Members are to undertake on market access, domestic support and export subsidies; the Agreement on Sanitary and Phytosanitary Measures; and the Ministerial Decision concerning Least-Developed and Net Food-Importing Developing countries.

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

The agricultural package provides for commitments in the area of market access, domestic support and export competition. The text of the Agricultural Agreement is mirrored in the GATT Schedules of legal commitments relating to individual countries.

In the area of **market access**, non-tariff border measures are replaced by tariffs that provide substantially the same level of protection. Tariffs resulting from this “tariffication” process, as well as other tariffs on agricultural products, are to be reduced by an average 36 per cent in the case of developed countries and 24 per cent in the case of developing countries, with minimum reductions for each tariff line being required. Reductions are to be undertaken over six years in the case of developed countries and over ten years in the case of developing countries. Least-developed countries are not required to reduce their tariffs.

The tariffication package also provides for the maintenance of current access opportunities and the establishment of minimum access tariff quotas (at reduced-tariff rates) where current access is less than 3 per cent of domestic consumption. These minimum access tariff quotas are to be expanded to 5 per cent over the

implementation period. In the case of "tariffied" products "special safeguard" provisions will allow additional duties to be applied in case shipments at prices denominated in domestic currencies below a certain reference level or in case of a surge of imports. The trigger in the safeguard for import surges depends on the "import penetration" currently existing in the market, i.e. where imports currently make up a large proportion of consumption, the import surge required to trigger the special safeguard action is lower.

Domestic support measures that have, at most, a minimal impact on trade ("green box" policies) are excluded from reduction commitments. Such policies include general government services, for example in the areas of research, disease control, infrastructure and food security. It also includes direct payments to producers, for example certain forms of "decoupled" (from production) income support, structural adjustment assistance, direct payments under environmental programmes and under regional assistance programmes.

In addition to the green box policies, other policies need not be included in the Total Aggregate Measurement of Support (Total AMS) reduction commitments. These policies are direct payments under production-limiting programmes, certain government assistance measures to encourage agricultural and rural development in developing countries and other support which makes up only a low proportion (5 per cent in the case of developed countries and 10 per cent in the case of developing countries) of the value of production of individual products or, in the case of non-product-specific support, the value of total agricultural production.

The Total AMS covers all support provided on either a product-specific or non-product-specific basis that does not qualify for exemption and is to be reduced by 20 per cent (13.3 per cent for developing countries with no reduction for least-developed countries) during the implementation period.

Members are required to reduce the value of mainly direct *export subsidies* to a level 36 per cent below the 1986-90 base period levels over the six-year implementation period, and the quantity of subsidised exports by 21 per cent over the same period. In the case of developing countries, the reductions are two-thirds those of developed countries over a ten-year period (with no reductions applying to the least-developed countries) and subject to certain conditions, there are no commitments on subsidies to reduce the costs of marketing exports of agricultural products or internal transport and freight charges on export shipments. Where subsidised exports have increased since the 1986-90 base period, 1991-92 may be used, in certain circumstances, as the beginning point of reductions although the end-point remains that based on the 1986-90 base period level. The Agreement on Agriculture provides for some limited flexibility between years in terms of export subsidy reduction commitments and contains provisions aimed at preventing the circumvention of the export subsidy commitments and sets out criteria for food aid donations and the use of export credits.

“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.

2.3.4 Agreement on Sanitary and Phytosanitary Measures

This agreement concerns the application of sanitary and phytosanitary measures — in other words food safety and animal and plant health regulations. The agreement recognises that governments have the right to take sanitary and phytosanitary measures but that they should be applied only to the extent necessary to protect human, animal or plant life or health and should not arbitrarily or unjustifiably discriminate between Members where identical or similar conditions prevail.

In order to harmonize sanitary and phytosanitary measures on as wide a basis as possible, Members are encouraged to base their measures on international standards, guidelines and recommendations where they exist. However, Members may maintain or introduce measures, which result in higher standards if there is scientific justification or as a consequence of consistent risk decisions based on an appropriate risk assessment. The Agreement spells out procedures and criteria for the assessment of risk and the determination of appropriate levels of sanitary or phytosanitary protection.

It is expected that Members would accept the sanitary and phytosanitary measures of others as equivalent if the exporting country demonstrates to the importing country that its measures achieve the importing country's appropriate level of health protection. The agreement includes provisions on control, inspection and approval procedures.

2.3.5 Agreement on Textiles and Clothing[1]

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

Integration of the sector into the GATT would take place as follows: first, on 1 January 1995; each party would integrate into the GATT products from the specific list in the Agreement which accounted for not less than 16 per cent of its total volume of imports in 1990. Integration means that trade in these products will be governed by the general rules of GATT.

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

All MFA restrictions in place on 31 December 1994 would be carried over into the new agreement and maintained until such time as the restrictions are removed or the products integrated into GATT. For products remaining under restraint, at whatever stage, the agreement lays down a formula for increasing the existing growth rates. Thus, during Stage 1, and for each restriction previously under MFA bilateral agreements in force for 1994, annual growth should be not less than 16 per cent higher than the growth rate established for the previous MFA restriction. For Stage 2 (1998 to 2001 inclusive), annual growth rates should be 25 per cent higher than the Stage 1

[1] Note: This Agreement was terminated on 1 January 2005.

rates. For Stage 3 (2002 to 2004 inclusive), annual growth rates should be 27 per cent higher than the Stage 2 rates.

While the agreement focuses largely on the phasing-out of MFA restrictions, it also recognizes that some members maintain non-MFA restrictions not justified under a GATT provision. These would also be brought into conformity with GATT within one year of the entry into force of the Agreement or phased out progressively during a period not exceeding the duration of the Agreement (that is, by 2005).

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

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

The agreement also stipulates that, as part of the integration process, all members shall take such actions in the area of textiles

and clothing as may be necessary to abide by GATT rules and disciplines so as to improve market access, ensure the application of policies relating to fair and equitable trading conditions, and avoid discrimination against imports when taking measures for general trade policy reasons.

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

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

2.3.6 Agreement on Technical Barriers to Trade

This agreement will extend and clarify the Agreement on Technical Barriers to Trade reached in the Tokyo Round. It seeks to ensure that technical negotiations and standards, as well as testing and certification procedures, do not create unnecessary obstacles to trade. However, it recognizes that countries have the right to establish protection, at levels they consider appropriate, for example for human, animal or plant life or health or the environment, and should not be prevented from taking measures necessary to ensure those levels of protection are met. The agreement therefore encourages countries to use international standards where these are appropriate, but it does not require them to change their levels of protection as a result of standardization.

Innovative features of the revised agreement are that it covers processing and production methods related to the characteristics of the product itself. The coverage of conformity assessment procedures is enlarged and the disciplines made more precise. Notification provisions applying to local government and non-governmental bodies are elaborated in more detail than in the Tokyo Round agreement. A Code of Good Practice for the Preparation, Adoption and Application of Standards by standardizing bodies, which is open to acceptance by private sector bodies as well as the public sector, is included as an annex to the agreement.

2.3.7 Agreement on Trade Related Aspects of Investment Measures

The agreement recognizes that certain investment measures restrict and distort trade. It provides that no contracting party shall apply any TRIM inconsistent with Articles III (national treatment) and XI (prohibition of quantitative restrictions) of the GATT. To this end, an illustrative list of TRIMs agreed to be inconsistent with these articles is appended to the agreement. The list includes measures which require particular levels of local procurement by an enterprise ("local content requirements") or which restrict the volume or value of imports such an enterprise can purchase or use to an amount related to the level of products it exports ("trade balancing requirements").

The agreement requires mandatory notification of all non-conforming TRIMs and their elimination within two years for developed countries, within five years for developing countries and within seven years for least-developed countries. It establishes a Committee on TRIMs, which will, among other things, monitors the implementation of these commitments. The agreement also provides for consideration, at a later date, of whether it should be complemented with provisions on investment and competition policy more broadly.

2.3.8 Agreement on Implementation of Article VI (Anti-dumping)

Article VI of the GATT provides for the right of contracting parties to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its "normal value" (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party. More detailed rules governing the application of such measures are currently provided in an Anti-dumping Agreement concluded at the end of the Tokyo Round. Negotiations in the Uruguay Round have resulted in a revision of this Agreement, which addresses many areas in which the current Agreement lacks precision and detail.

In particular, the revised Agreement provides for greater clarity and more detailed rules in relation to the method of determining that a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures. In addition, the new agreement clarifies the role of dispute settlement panels in disputes relating to anti-dumping actions taken by domestic authorities.

On the methodology for determining that a product is exported at a dumped price, the new Agreement adds relatively specific provisions on such issues as criteria for allocating costs when the export price is compared with a "constructed" normal value and rules to ensure that a fair comparison is made between the export price and the normal value of a product so as not to arbitrarily create or inflate margins of dumping.

The agreement strengthens the requirement for the importing country to establish a clear causal relationship between dumped

imports and injury to the domestic industry. The examination of the dumped imports on the industry concerned must include an evaluation of all relevant economic factors bearing on the state of the industry concerned. The agreement confirms the existing interpretation of the term “domestic industry”. Subject to a few exceptions, “domestic industry” refers to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

Clear-cut procedures have been established on how anti-dumping cases are to be initiated and how such investigations are to be conducted. Conditions for ensuring that all interested parties are given an opportunity to present evidence are set out. Provisions on the application of provisional measures, the use of price undertakings in anti-dumping cases, and on the duration of anti-dumping measures have been strengthened. Thus, a significant improvement over the existing Agreement consists of the addition of a new provision under which anti-dumping measures shall expire five years after the date of imposition, unless a determination is made that, in the event of termination of the measures, dumping and injury would be likely to continue or recur.

A new provision requires the immediate termination of an anti-dumping investigation in cases where the authorities determine that the margin of dumping is *de minimis* (which is defined as less than 2 per cent, expressed as a percentage of the export price of the product) or that the volume of dumped imports is negligible (generally when the volume of dumped imports from an individual country accounts for less than 3 per cent of the imports of the product in question into the importing country).

The agreement calls for prompt and detailed notification of all preliminary or final anti-dumping actions to a Committee on Anti-dumping Practices. The agreement will afford parties the opportunity of consulting on any matter relating to the operation of the

agreement or the furtherance of its objectives, and to request the establishment of panels to examine disputes.

2.3.9 Agreement on Implementation of Article VII (Customs Valuation)

The Decision on Customs Valuation would give customs administrations the right to request further information of importers where they have reason to doubt the accuracy of the declared value of imported goods. If the administration maintains a reasonable doubt, despite any additional information, it may be deemed that the customs value of the imported goods cannot be determined on the basis of the declared value, and customs would need to establish the value taking into account the provisions of the Agreement. In addition, two accompanying texts further clarify certain of the Agreement's provisions relevant to developing countries and relating to minimum values and importations by sole agents, sole distributors and sole concessionaires.

2.3.10 Agreement on Preshipment Inspection

Preshipment inspection (PSI) is the practice of employing specialized private companies to check shipment details — essentially price, quantity, quality — of goods ordered overseas. Used by governments of developing countries, the purpose is to safeguard national financial interests (prevention of capital flight and commercial fraud as well as customs duty evasion, for instance) and to compensate for inadequacies in administrative infrastructures.

The agreement recognizes that GATT principles and obligations apply to the activities of preshipment inspection agencies mandated by governments. The obligations placed on PSI-user governments include non-discrimination, transparency, protection of confidential business information, avoidance of unreasonable delay, the use of specific guidelines for conducting price verification and the avoidance of conflicts of interest by the PSI agencies.

The obligations of exporting contracting parties towards PSI users include non-discrimination in the application of domestic laws and regulations, prompt publication of such laws and regulations and the provision of technical assistance where requested.

The agreement establishes an independent review procedure — administered jointly by an organization representing PSI agencies and an organization representing exporters — to resolve disputes between an exporter and a PSI agency.

2.3.11 Agreement on Rules of Origin

The agreement aims at long-term harmonization of rules of origin, other than rules of origin relating to the granting of tariff preferences, and to ensure that such rules do not themselves create unnecessary obstacles to trade.

The agreement sets up a harmonization programme, to be initiated as soon as possible after the completion of the Uruguay Round and to be completed within three years of initiation. It would be based upon a set of principles, including making rules of origin objective, understandable and predictable. The work would be conducted by a Committee on Rules of Origin (CRO) in the WTO and a technical committee (TCRO) under the auspices of the Customs Cooperation Council in Brussels.

Much work was done in the CRO and the TCRO and substantial progress has been achieved in the three years foreseen in the Agreement for the completion of the work. However, due to the complexity of the issues the HWP could not be finalized within the foreseen deadline. The CRO continued its work in 2000. In December 2000, the General Council Special Session agreed to set, as the new deadline for completion of the remainder of the work, the Fourth Session of the Ministerial Conference, or at the latest the end of 2001.

Until the completion of the harmonization programme, contracting parties would be expected to ensure that their rules of origin are

transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner, and that they are based on a positive standard (in other words, they should state what does confer origin rather than what does not).

An annex to the agreement sets out a “common declaration” with respect to the operation of rules of origin on goods, which qualify for preferential treatment.

2.3.12 Agreement on Import Licensing Procedures

The revised agreement strengthens the disciplines on the users of import licensing systems — which, in any event, are much less widely used now than in the past — and increases transparency and predictability. For example, the agreement requires parties to publish sufficient information for traders to know the basis on which licenses are granted. It contains strengthened rules for the notification of the institution of import licensing procedures or changes therein. It also offers guidance on the assessment of applications.

With respect to automatic licensing procedures, the revised agreement sets out criteria under which they are assumed not to have trade restrictive effects. With respect to non-automatic licensing procedures, their administrative burden for importers and exporters should be limited to what is absolutely necessary to administer the measures to which they apply. The revised agreement also sets a maximum of 60 days for applications to be considered.

2.3.13 Agreement on Subsidies and Countervailing Measures

The Agreement on Subsidies and Countervailing Measures is intended to build on the Agreement on Interpretation and Application of Articles VI, XVI and XXIII which was negotiated in the Tokyo Round.

Unlike its predecessor, the agreement contains a definition of subsidy and introduces the concept of a "specific" subsidy — for the most part, a subsidy available only to an enterprise or industry or group of enterprises or industries within the jurisdiction of the authority granting the subsidy. Only specific subsidies would be subject to the disciplines set out in the agreement.

The agreement establishes three categories of subsidies. First, it deems the following subsidies to be "prohibited": those contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and those contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods. Prohibited subsidies are subject to new dispute settlement procedures. The main features include an expedited timetable for action by the Dispute Settlement body, and if it is found that the subsidy is indeed prohibited, it must be immediately withdrawn. If this is not done within the specified time period, the complaining member is authorized to take countermeasures.

The second category is "actionable" subsidies. The agreement stipulates that no member should cause, through the use of subsidies, adverse effects to the interests of other signatories, i.e. injury to domestic industry of another signatory, nullification or impairment of benefits accruing directly or indirectly to other signatories under the General Agreement (in particular the benefits of bound tariff concessions), and serious prejudice to the interests of another member. "Serious prejudice" shall be presumed to exist for certain subsidies including when the total *ad valorem* subsidization of a product exceeds 5 per cent. In such a situation, the burden of proof is on the subsidizing member to show that the subsidies in question do not cause serious prejudice to the complaining member. Members affected by actionable subsidies may refer the matter to the Dispute Settlement body. In the event that it is determined that such adverse effects exist, the subsidizing member must withdraw the subsidy or remove the adverse effects.

The third category involves non-actionable subsidies, which could either be non-specific subsidies, or specific subsidies involving assistance to industrial research and pre-competitive development activity, assistance to disadvantaged regions, or certain type of assistance for adapting existing facilities to new environmental requirements imposed by law and/or regulations. Where another member believes that an otherwise non-actionable subsidy is resulting in serious adverse effects to a domestic industry, it may seek a determination and recommendation on the matter.

One part of the agreement concerns the use of countervailing measures on subsidized imported goods. It sets out disciplines on the initiation of countervailing cases, investigations by national authorities and rules of evidence to ensure that all interested parties can present information and argument. Certain disciplines on the calculation of the amount of a subsidy are outlined, as is the basis for the determination of injury to the domestic industry. The agreement would require that all relevant economic factors be taken into account in assessing the state of the industry and that a causal link be established between the subsidized imports and the alleged injury. Countervailing investigations shall be terminated immediately in cases where the amount of a subsidy is *de minimis* (the subsidy is less than 1 per cent *ad valorem)* or where the volume of subsidized imports, actual or potential, or the injury is negligible. Except under exceptional circumstances, investigations shall be concluded within one year after their initiation and in no case more than 18 months. All countervailing duties have to be terminated within 5 years of their imposition unless the authorities determine on the basis of a review that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury.

The agreement recognizes that subsidies may play an important role in economic development programmes of developing countries, and in the transformation of centrally planned economies to market economies. Least-developed countries and developing countries that have less than $1,000 per capita GNP are thus exempted from

disciplines on prohibited export subsidies, and have a time-bound exemption from other prohibited subsidies. For other developing countries, the export subsidy prohibition would take effect 8 years after the entry into force of the agreement establishing the WTO, and they have a time-bound (though fewer years than for poorer developing countries) exemption from the other prohibited subsidies. Countervailing investigation of a product originating from a developing-country member would be terminated if the overall level of subsidies does not exceed 2 per cent (and from certain developing countries 3 per cent) of the value of the product, or if the volume of the subsidized imports represents less than 4 per cent of the total imports for the like product in the importing signatory. For countries in the process of transformation from a centrally planned into a market economy, prohibited subsidies shall be phased out within a period of seven years from the date of entry into force of the agreement.

In anticipation of the negotiation of special rules in the *civil aircraft* sector, under the subsidies agreement, civil aircraft products are not subject to the presumption that *ad valorem* subsidization in excess of 5 per cent causes serious prejudice to the interests of other Members. In addition, the Agreement provides that where repayment of financing in the civil aircraft sector is dependent on the level of sales of a product and sales fall below expectations, this does not in itself give rise to such presumption of serious prejudice.

2.3.14 Agreement on Safeguards

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 which is causing, or which is likely to cause, serious injury to the industry.

The agreement breaks major ground in establishing a prohibition against so-called “grey area” measures, and in setting a “sunset clause” on all safeguard actions. 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 were first applied or five years after the date of entry into force of the agreement establishing the WTO, whichever comes later.

The agreement sets out requirements for safeguard investigation which include public notice for hearings and other appropriate means for interested parties to present evidence, including on whether a measure would be in the public interest. In the event of critical circumstances, a provisional safeguard measure may be imposed based upon a preliminary determination of serious injury. The duration of such a provisional measure would not exceed 200 days.

The agreement 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 lays down time limits for all safeguard measures. Generally, the duration of a measure should not exceed four years though this could be extended up to a maximum of eight years, subject to confirmation of continued necessity by the competent national authorities and if there is evidence that the industry is adjusting. Any measure imposed for a period greater than one year should be progressively liberalized during its lifetime. No safeguard measure could be applied again to a product that had been subject to such action for a period equal to the duration of the previous measure, subject to a non-application period of at least two years. A safeguard measure with a duration of 180 days or less may be applied again to the import of a product if at least one year had elapsed since the date of introduction of the measure on that product, and if such a measure had not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

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.

Safeguard measures would not be applicable to a product from a developing country member, if the share of the developing country member in the imports of the product concerned does not exceed 3 per cent, and that developing country members with less than 3 per cent import share collectively account for no more than 9 per cent of total imports of the product concerned. A developing country member has the right to extend the period of application of a safeguard measure for a period of up to two years beyond the normal maximum. It can also apply a safeguard measure again to a product that had been subject to such an action after a period equal to half of the duration of the previous measure, subject to a non-application period of at least two years.

The agreement would establish a Safeguards Committee, which would oversee the operation of its provisions and, in particular, be responsible for surveillance of its commitments.

2.3.15 General Agreement on Trade in Services

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. 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 (MFN) 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 MFN treatment may not be possible for every service activity and, therefore, it is envisaged that parties may indicate specific MFN 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.

Evolution of GATS

The precursor to the WTO, GATT, had primarily dealt with goods alone. As way back as in 1984, the US had called for a framework of rules for trade in services comparable to the GATT rules for trade in goods. A number of GATT basic principles, such as market access, transparency and national treatment were identified as being applicable to services. With the lunching of the Uruguay Round in September 1986, agreement to negotiate on services was reached that concluded in GATS finding a place amongst the WTO agreements in 1995. GATS extends many of the principles applied to trade in goods to trade in services. Prior to the Uruguay Round, trade in services was not subject to any discipline at the international level. GATS takes a major step towards bringing the trade gradually under international discipline.

The new General Agreement on Trade in Services (GATS) for the first time extends internationally-agreed rules and commitments, broadly comparable with those of the GATT, into a huge and still rapidly growing area of international trade. Although reliable statistics on services are few, conventionally measured trade in services is generally agreed to be equivalent in value to about one-quarter of international trade in goods. A further unmeasured, but undoubtedly very large, proportion of international trade in services does not cross national frontiers, because the service supplier (such as a branch of a foreign bank) or the service consumer (such as a foreign tourist) does so instead. The reach of the GATS rules extends to all forms of international trade in services.

The GATS agreement, thus, represents a major new factor for a large sector of world economic activity. Since such a large share of trade in services takes place inside national economies, GATS requirements will from the beginning necessarily influence national

domestic laws and regulations in a way that has been true of the GATT only in recent years.

The GATS is an international trade agreement in the WTO system that establishes the multilateral trade rules governing cross-border of trade in services. All WTO Members are bound by the provisions of the GATS as part of their treaty obligations under the WTO Agreement. Any non-compliance or violation by them of their GATS obligations and commitments may render them open to binding and economically enforceable dispute settlement proceedings in the WTO.

The term 'services' covers a wide range of economic activities. The WTO Secretariat has divided these divergent activities into the following 12 sectors based on the MTN.GNS/W/120 of July 1991. These classifications cross refer to the United Nations Central Product Classification (UNCPC).

- Business services;
- Communication services;
- Construction and Engineering Services;
- Distribution services;
- Educational services;
- Environmental services;
- Financial (insurance and banking) services;
- Health services;
- Tourism and travel services;
- Recreational, cultural and sporting services;
- Transport services;
- Other services not included elsewhere.

These 12 sectors have been further divided into 161 sub-sectors; for a complete services sectoral classification list see Annexure C.

One of the main characteristics of services in contrast to goods is that they are intangible and invisible. Further, unlike goods, services cannot be stored. While international trade in goods involves the physical movement of goods from one country to another, only a few service transactions traditionally entail cross-border movements. Examples of cross border transactions are services that can be transmitted by telecommunications (e.g. transfer of money through banks) or services embodied in goods (e.g. consultant's technical report or software on a diskette).

In the bulk of service transactions, however, the time and place of consumption cannot be separated, and proximity between the service supply and consumer is required. Such Proximity can be established through a commercial presence in the importing country (by setting up a branch or a subsidiary company) or the movement of natural persons for temporary periods (e.g. lawyers or architects moving from one country to another to provide their services). Some services require the movement of the consumer to the country where services are available (e.g. tourists visiting countries of tourist interest; students visiting for higher education).

Modes of Supply

The different characteristics of services are embodied in the four modes of supply that are the basis for the GATS agreement.

Article 1 of the GATS agreement sets out a comprehensive definition of trade in services in terms of the four different modes of supply of services : cross – border, consumption abroad, commercial presence in the consuming country, and temporary movement of natural persons.

Cross border supply of services or 'Mode 1' corresponds with the normal form of trade in goods. It is in many ways the most straightforward form of trade in services, because it resembles the familiar subject matter of GATT. It does so in maintaining a clear geographical separation between seller and buyer; only the service

itself crosses the national boundaries, e.g. consultancy services, tele-medical services.

Consumption abroad or 'Mode 2' is the supply of a service "in the territory of one Member to the service consumer of another Member". Typically, this involves the consumer traveling to the supplying country, e.g. for tourism purposes. Another example of consumption abroad would be the repair of ship or aircraft outside the home country. Like cross-border supply of services, this is a straight forward form of trade which raises few problems, since it does not require the service supplier to be admitted to the consuming country.

Commercial presence is the 'Mode 3' that is the supply of a service through the commercial presence of the foreign supplier in the territory of another WTO member. Examples are, the establishment of branch offices or agencies to deliver such services as banking, legal advice or communications. This raises the most difficult issues for host governments and for GATS negotiations. A large proportion of service transactions require that the provider and the consumer be in the same place. But rules governing the commercial presence are very different from tariffs and other border measures that principally affect the trade in goods. While the GATT has only gradually become involved in some sensitive domestic policy issues such as subsidies and technical standards, the GATS right from the beginning, has been forced to grapple with internal policy issues such as rights of establishment that are inherent in the commercial presence of foreign interests. In doing so, and establishing multilateral rules that guarantee the opportunities for firms and individuals to establish themselves in a foreign market, the GATS has broken new ground.

Mode 3 does not necessarily require the presence of foreigners (the foreign supplier's office may be staffed entirely by local personnel). However, the supplier may well feel a need to employ some foreign managers or specialists. When this is the case, Mode 3 will be found together with "Mode 4": the *presence of natural persons*, or in

less opaque language, the admission of foreign nationals to another country to provide services there.

The presence of natural persons or 'Mode 4' is the admission of foreign persons and nationals to another country to provide services there. Mode 4 may be found alone, with no commercial presence, and the visiting persons involved may be employees of a foreign service supplier, or may be providing services as independent individuals looking for employment in another country or with citizenship, residence of employment requirements. Even if members undertake Mode 4 commitments to allow natural persons to provide services in their territories, they may still regulate the entry and stay of the persons concerned, for instance by requiring visas, as long as they do not prevent the commitments from being fulfilled.

Some of the services can be supplied in several of the four ways, while many others by their nature cannot. E.g. the services of a professional adviser may possibly be supplied through any of the four modes: by a visit to him by his foreign client, by mail, through an office maintained in the client's country, or by a personal visit to that country. Unlike market access for a shipment of goods going from one country to another, which is principally a matter of customs duties and other formalities at the border, the ability to provide a service to another country depends on government regulations that may be quite different for the modes of supply.

Box A: Examples of the four Modes of Supply (from the perspective of an "importing" country A)

Mode 1: Cross-border

A user in country A receives services from abroad through its telecommunications or postal infrastructure. Such supplies may include consultancy or market research reports, tel-medical advice, distance training, or architectural drawings.

Mode 2: Consumption Abroad

Nationals of A have moved abroad as tourists, students, or patients to consume the respective services.

Model 3: Commercial Presence

The service is provided within A by a locally-established affiliate, subsidiary, or representative office of a foreign-owned and controlled company (bank, hotel group, construction company, etc)

Mode 4: Movement of Natural Persons

A foreign national provides a service within A as an independent supplier(e.g. consultant, health worker) or employees of a service supplier

(e.g. consultancy firm, hospital, construction company.)

Current Negotiations

Written into the General Agreement on Trade in Services is a commitment by WTO member governments to progressively liberalize trade in services. Article XIX (paragraph1) commits them to start a new round in 2000. These negotiations are now underway.

Article XIX of GATS

”**Negotiation of Specific Commitments**

1. In pursuance of the objectives of this Agreement, Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization. Such negotiations shall be directed to the reduction or elimination of the adverse effects on trade in services of measures as a means of providing effective market access. This process shall take place with a view to promoting the interests of all participants on a mutually advantageous basis and to securing an overall balance of rights and obligations.

2. The process of liberalization shall take place with due respect for national policy objectives and the level of development of individual Members, both overall and in individual sectors. There shall be appropriate flexibility for individual developing country Members for opening fewer sectors, liberalizing fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign service suppliers, attaching to such access conditions aimed at achieving the objectives referred to in Article IV.

3. For each round, negotiating guidelines and procedures shall be established. For the purposes of establishing such guidelines, the Council for Trade in Services shall carry out an assessment of trade in services in overall terms and on a sectoral basis with reference to the objectives of this Agreement, including those set out in paragraph 1 of Article IV. Negotiating guidelines shall establish modalities for the treatment of liberalization undertaken autonomously by Members since previous negotiations, as well as for the special treatment for least-developed country Members under the provisions of paragraph 3 of Article IV.

4. The process of progressive liberalization shall be advanced in each such round through bilateral, plurilateral or multilateral negotiations directed towards increasing the general level of specific commitments undertaken by Members under this Agreement."

The Guidelines and Procedures for the Negotiations on Trade in Services (S/L/93) refer to the request-offer approach as the main method of negotiation. Under the Request and Offer process, each country tables its Requests to its trading partners (i.e., their lists of demands, seeking greater market access for their exports from them) and in turn also places its Offers to its trading partners (i.e., the concession that they are willing to offer giving greater market access to imports of services from them) sector-wise.

Key dates: Services Negotiations

Start: early 2000

Negotiating guidelines and procedures: March 2001

Timelines adopted at 4th WTO Ministerial Conference held in November 2001 at Doha:

Initial requests for market access: by 30 June 2002

Initial offers of market access: by 31 March 2003

Stock taking: originally 5th Ministerial Conference, September, 2003 (in Cancun, Mexico)

Overall negotiating deadline: 1 January 2005

Timelines adopted at 6th WTO Ministerial Conference held from 13 – 18 December, 2005 at Hong Kong:

Any outstanding initial offers shall be submitted as soon as possible.

Groups of Members presenting plurilateral requests to other Members should submit such requests by 28 February 2006 or as soon as possible thereafter.

A second round of revised offers shall be submitted by 31 July 2006.

Final draft schedules of commitments shall be submitted by 31 October 2006.

Current Status: - suspension of the WTO Doha Development Agenda negotiations since July, 2006

2.3.16 Agreement on Trade Related Aspects of Intellectual Property Rights, Including Trade in Counterfeit Goods

The agreement recognises that widely varying standards in the protection and enforcement of intellectual property rights and the lack of a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods have been a

growing source of tension in international economic relations. Rules and disciplines were needed to cope with these tensions. To that end, the agreement addresses the applicability of basic GATT principles and those of relevant international intellectual property agreements; the provision of adequate intellectual property rights; the provision of effective enforcement measures for those rights; multilateral dispute settlement; and transitional arrangements.

Part I of the agreement sets out general provisions and basic principles, notably a national-treatment commitment under which the nationals of other parties must be given treatment no less favourable than that accorded to a party's own nationals with regard to the protection of intellectual property. It also contains a most-favoured-nation clause, a novelty in an international intellectual property agreement, under which any advantage a party gives to the nationals of another country must be extended immediately and unconditionally to the nationals of all other parties, even if such treatment is more favourable than that which it gives to its own nationals.

Part II addresses each intellectual property right in succession. With respect to copyright, parties are required to comply with the substantive provisions of the Berne Convention for the protection of literary and artistic works, in its latest version (Paris 1971), though they will not be obliged to protect moral rights as stipulated in Article 6bis of that Convention. It ensures that computer programs will be protected as literary works under the Berne Convention and lays down on what basis databases should be protected by copyright. Important additions to existing international rules in the area of copyright and related rights are the provisions on rental rights. The draft requires authors of computer programmes and producers of sound recordings to be given the right to authorize or prohibit the commercial rental of their works to the public. A similar exclusive right applies to films where commercial rental has led to widespread copying which is materially impairing the right of reproduction. The draft also requires performers to be given protection from

unauthorized recording and broadcast of live performances (bootlegging). The protection for performers and producers of sound recordings would be for no less than 50 years. Broadcasting organizations would have control over the use that can be made of broadcast signals without their authorization. This right would last for at least 20 years.

With respect to trademarks and service marks, the agreement defines what types of signs must be eligible for protection as a trademark or service mark and what the minimum rights conferred on their owners must be. Marks that have become well-known in a particular country shall enjoy additional protection. In addition, the agreement lays down a number of obligations with regard to the use of trademarks and service marks, their term of protection, and their licensing or assignment. For example, requirements that foreign marks be used in conjunction with local marks would, as a general rule, be prohibited.

In respect of geographical indications, the agreement lays down that all parties must provide means to prevent the use of any indication, which misleads the consumer as to the origin of goods, and any use, which would constitute an act of unfair competition. A higher level of protection is provided for geographical indications for wines and spirits, which are protected even where there is no danger of the public's being misled as to the true origin. Exceptions are allowed for names that have already become generic terms, but any country using such an exception must be willing to negotiate with a view to protecting the geographical indications in question. Furthermore, provision is made for further negotiations to establish a multilateral system of notification and registration of geographical indications for wines.

Industrial designs are also protected under the agreement for a period of 10 years. Owners of protected designs would be able to prevent the manufacture, sale or importation of articles bearing or embodying a design, which is a copy of the protected design.

As regards patents, there is a general obligation to comply with the substantive provisions of the Paris Convention (1967). In addition, the agreement requires that 20-year patent protection be available for all inventions, whether of products or processes, in almost all fields of technology. Inventions may be excluded from patentability if their commercial exploitation is prohibited for reasons of public order or morality; otherwise, the permitted exclusions are for diagnostic, therapeutic and surgical methods, and for plants and (other than microorganisms) animals and essentially biological processes for the production of plants or animals (other than microbiological processes). Plant varieties, however, must be protectable either by patents or by a *sui generis* system (such as the breeder's rights provided in a UPOV Convention). Detailed conditions are laid down for compulsory licensing or governmental use of patents without the authorization of the patent owner. Rights conferred in respect of patents for processes must extend to the products directly obtained by the process; under certain conditions alleged infringers may be ordered by a court to prove that they have not used the patented process.

With respect to the protection of layout designs of integrated circuits, the agreement requires parties to provide protection on the basis of the Washington Treaty on Intellectual Property in Respect of Integrated Circuits which was opened for signature in May 1989, but with a number of additions: protection must be available for a minimum period of 10 years; the rights must extend to articles incorporating infringing layout designs; innocent infringers must be allowed to use or sell stock in hand or ordered before learning of the infringement against a suitable royalty: and compulsory licensing and government use is only allowed under a number of strict conditions.

Trade secrets and know-how that have commercial value must be protected against breach of confidence and other acts contrary to honest commercial practices. Test data submitted to governments in order to obtain marketing approval for pharmaceutical or agricultural chemicals must also be protected against unfair commercial use.

The final section in this part of the agreement concerns anti-competitive practices in contractual licences. It provides for consultations between governments where there is reason to believe that licensing practices or conditions pertaining to intellectual property rights constitute an abuse of these rights and have an adverse effect on competition. Remedies against such abuses must be consistent with the other provisions of the agreement.

Part III of the agreement sets out the obligations of member governments to provide procedures and remedies under their domestic law to ensure that intellectual property rights can be effectively enforced, by foreign right holders as well as by their own nationals. Procedures should permit effective action against infringement of intellectual property rights but should be fair and equitable, not unnecessarily complicated or costly, and should not entail unreasonable time-limits or unwarranted delays. They should allow for judicial review of final administrative decisions. There is no obligation to put in place a judicial system distinct from that for the enforcement of laws in general, nor to give priority to the enforcement of intellectual property rights in the allocation of resources or staff.

The civil and administrative procedures and remedies spelled out in the text include provisions on evidence of proof, injunctions, damages and other remedies which would include the right of judicial authorities to order the disposal or destruction of infringing goods. Judicial authorities must also have the authority to order prompt and effective provisional measures, in particular where any delay is likely to cause irreparable harm to the right holder, or where evidence is likely to be destroyed. Further provisions relate to measures to be taken at the border for the suspension by customs authorities of release, into domestic circulation, of counterfeit and pirated goods. Finally, parties should provide for criminal procedures and penalties at least in cases of wilful trademark counterfeiting or copyright piracy on a commercial scale. Remedies should include imprisonment and fines sufficient to act as a deterrent.

The agreement would establish a Council for Trade-Related Aspects of Intellectual Property Rights to monitor the operation of the agreement and governments' compliance with it. Dispute settlement would take place under the integrated GATT dispute-settlement procedures as revised in the Uruguay Round.

With respect to the implementation of the agreement, it envisages a one-year transition period for developed countries to bring their legislation and practices into conformity. Developing countries and countries in the process of transformation from a centrally-planned into a market economy would have a five-year transition period, and least-developed countries 11 years. Developing countries which do not at present provide product patent protection in an area of technology would have up to 10 years to introduce such protection. However, in the case of pharmaceutical and agricultural chemical products, they must accept the filing of patent applications from the beginning of the transitional period. Though the patent need not be granted until the end of this period, the novelty of the invention is preserved as of the date of filing the application. If authorization for the marketing of the relevant pharmaceutical or agricultural chemical is obtained during the transitional period, the developing country concerned must offer an exclusive marketing right for the product for five years, or until a product patent is granted, whichever is shorter.

Subject to certain exceptions, the general rule is that the obligations in the agreement would apply to existing intellectual property rights as well as to new ones.

2.3.17 Understanding on Rules and Procedures Governing the Settlement of Disputes

The dispute settlement system of the GATT is generally considered to be one of the cornerstones of the multilateral trade order. The system has already been strengthened and streamlined as a result of reforms agreed following the Mid-Term Review Ministerial Meeting held in Montreal in December 1988. Disputes currently being dealt with by the Council are subject to these new rules, which include

greater automaticity in decisions on the establishment, terms of reference and composition of panels, such that these decisions are no longer dependent upon the consent of the parties to a dispute. The Uruguay Round Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) will further strengthen the existing system significantly, extending the greater automaticity agreed in the Mid-Term Review to the adoption of the panels' and a new Appellate Body's findings. Moreover, the DSU will establish an integrated system permitting WTO Members to base their claims on any of the multilateral trade agreements included in the Annexes to the Agreement establishing the WTO. For this purpose, a Dispute Settlement Body (DSB) will exercise the authority of the General Council and the Councils and committees of the covered agreements.

The DSU emphasizes the importance of consultations in securing dispute resolution, requiring a Member to enter into consultations within 30 days of a request for consultations from another Member. If after 60 days from the request for consultations there is no settlement, the complaining party may request the establishment of a panel. Where consultations are denied, the complaining party may move directly to request a panel. The parties may voluntarily agree to follow alternative means of dispute settlement, including good offices, conciliation, mediation and arbitration.

Where a dispute is not settled through consultations, the DSU requires the establishment of a panel, at the latest, at the meeting of the DSB following that at which a request is made, unless the DSB decides by consensus against establishment. The DSU also sets out specific rules and deadlines for deciding the terms of reference and composition of panels. Standard terms of reference will apply unless the parties agree to special terms within 20 days of the panel's establishment. And where the parties do not agree on the composition of the panel within the same 20 days, this can be decided by the Director-General. Panels normally consist of three persons of appropriate background and experience from countries

not party to the dispute. The Secretariat will maintain a list of experts satisfying the criteria.

Panel procedures are set out in detail in the DSU. It is envisaged that a panel will normally complete its work within six months or, in cases of urgency, within three months. Panel reports may be considered by the DSB for adoption 20 days after they are issued to Members. Within 60 days of their issuance, they will be adopted, unless the DSB decides by consensus not to adopt the report or one of the parties notifies the DSB of its intention to appeal.

The concept of appellate review is an important new feature of the DSU. An Appellate Body will be established, composed of seven members, three of whom will serve on any one case. An appeal will be limited to issues of law covered in the panel report and legal interpretations developed by the panel. Appellate proceedings shall not exceed 60 days from the date a party formally notifies its decision to appeal. The resulting report shall be adopted by the DSB and unconditionally accepted by the parties within 30 days following its issuance to Members, unless the DSB decides by consensus against its adoption.

Once the panel report or the Appellate Body report is adopted, the party concerned will have to notify its intentions with respect to implementation of adopted recommendations. If it is impracticable to comply immediately, the party concerned shall be given a reasonable period of time, the latter to be decided either by agreement of the parties and approval by the DSB within 45 days of adoption of the report or through arbitration within 90 days of adoption. In any event, the DSB will keep the implementation under regular surveillance until the issue is resolved.

Further provisions set out rules for compensation or the suspension of concessions in the event of non-implementation. Within a specified time-frame, parties can enter into negotiations to agree on mutually acceptable compensation. Where this has not been agreed, a party to the dispute may request authorization of the DSB to

suspend concessions or other obligations to the other party concerned. The DSB will grant such authorization within 30 days of the expiry of the agreed time-frame for implementation. Disagreements over the proposed level of suspension may be referred to arbitration. In principle, concessions should be suspended in the same sector as that in issue in the panel case. If this is not practicable or effective, the suspension can be made in a different sector of the same agreement. In turn, if this is not effective or practicable and if the circumstances are serious enough, the suspension of concessions may be made under another agreement.

One of the central provisions of the DSU reaffirms that Members shall not themselves make determinations of violations or suspend concessions, but shall make use of the dispute settlement rules and procedures of the DSU.

The DSU contains a number of provisions taking into account the specific interests of the developing and the least-developed countries. It also provides some special rules for the resolution of disputes which do not involve a violation of obligations under a covered agreement but where a Member believes nevertheless that benefits are being nullified or impaired. Special decisions to be adopted by Ministers in 1994 foresee that the Montreal Dispute Settlement Rules which would otherwise have expired at the time of the April 1994 meeting are extended until the entry into force of the WTO. Another decision foresees that the new rules and procedures will be reviewed within four years after the entry into force of the WTO.

2.3.18 Trade Policy Review Mechanism

The Trade Policy Review Mechanism (TPRM) was an early result of the Uruguay Round, being provisionally established at the Montreal Mid-Term Review of the Round in December 1988. Article III of the Marrakesh Agreement, agreed by Ministers in April 1994, placed the TPRM on a permanent footing as one of the WTO's basic functions and, with the entry into force of the WTO in 1995, the mandate of the

TPRM was broadened to cover services trade and intellectual property.

The purpose of the Trade Policy Review Mechanism is to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of, the trade policies and practices of Members. All WTO Members are subject to review under the TPRM.

The trade policies and practices of all Members are subjected to periodic review. The impact of individual Members on the functioning of the multilateral trading system, defined in terms of their share of world trade in a recent representative period, is the determining factor in deciding on the frequency of reviews. Thus, the European Union, United States, Japan and Canada, the Quad of trade super powers (counting the European Communities as one) are reviewed every two years. The next 16 in terms of importance are reviewed every four years. Other Members are reviewed every six years, except that a longer period may be fixed for least-developed country Members.

2.3.19 Decision on achieving greater coherence in global economic policy-making

This will set out concepts and proposals with respect to achieving greater coherence in global economic policy-making. Among other things, the text notes that greater exchange rate stability based on more orderly underlying economic and financial conditions should contribute to “the expansion of trade, sustainable growth and development, and the timely correction of external imbalances”. It recognizes that while difficulties whose origins lie outside the trade field cannot be redressed through measures taken in the trade field alone, there are nevertheless interlinkages between the different aspects of economic policy. Therefore, WTO is called upon to

develop its cooperation with the international organizations responsible for monetary and financial matters. In particular, the Director-General of WTO is called upon to review, with his opposite numbers in the World Bank and the International Monetary Fund, the implications of WTO's future responsibilities for its cooperation with the Bretton Woods institutions.

2.3.20 Government Procurement

The Final Act contains an agreement related to accession procedures to the Government Procurement Agreement, which is designed to facilitate the membership of developing countries. It envisages consultations between the existing members and applicant governments. These would be followed by the establishment of accession working parties to examine the offers made by applicant countries (in other words, the public entities whose procurement will be opened up to international competition) as well as the export opportunities for the applicant country in the markets of existing signatories.

This agreement should be distinguished from the new Agreement on Government Procurement.

(Source : The WTO Legal Text at *http://www.wto.org*)

Chapter 3

Opportunities for Chartered Accountants in International Trade Laws and WTO

3.1 Introduction

One may ask what a Chartered Accountant has to do in the area of international trade laws and WTO given the fact that his forte is in the area of accounting and auditing. One needs to look into this from the emerging perspectives of buoyancy in the arena of international trade covering both merchandise as well as services trade. As an integral component of the trade in services; be it in the form of accounting and reengineering of the financial statements of such entities or as an associate in employment in such trade bodies; the Chartered Accountants form the integral part of the dynamics of such activities taking place with the globalization of the economy and opening up of new horizon as a result of trade-in goods and services; the industry has perceptible requirements for professionals adept in the complex area of trade related issues in the post-WTO era. With the WTO becoming a stark reality, no amount of commercial activity can be said to take place in isolation. WTO has come upon to be part & parcel of each economic activity and it has all the more implications for professionals like chartered accountants in view of their constant association with trade and industry.

Slowly and gradually, akin to what holds good in the case of a product life-cycle; one needs to provide horizontal and vertical integration for the existing facilities in order to prosper in the complex scenario. With the market dynamics changing so radically one has to imbibe the tenets and shibboleths that will act as add-on and will

add value to the core area of the knowledge domain. The business environment needs total business solution provider and it is in this context that knowledge and expertise in issues arising out of WTO would come handy in mitigating and designing formulations.

3.2 Trade in the Domestic and Global Economy

International trade in services has expanded exponentially over the past two decades. Today, the service sector covers both conventional areas such as Finance, Transport, Telecommunications, Professional Services etc as well as emerging areas such as Computer related services, Environmental Services, educational services etc. The importance of the sector is heightened by the emergence of the IT enabled services industry as a sunrise area capitalizing on the rapid advents in technology and the demand generated by the growing presence of transnational corporations for a whole range of services.

According to a WTO report released on 11 June 2004, broadly, services and merchandise trade growth have evolved in a roughly similar way since 1990. For 1990–2003, trade in commercial services and goods both grew by about 6% per year on average, and therefore services' share of international trade remained at about 20% over the period. The faster growing sectors in the category of services include computer and information services, financial services, insurance, telecommunications, cultural and recreational services (the report calls these "other" services, i.e. not transport or travel) — up from 6.3% of world exports in 1985 to 9.4% in 2002. Its share of the national GDP is higher in developed countries, where it averages 60-70 percent, while it is lower in developing and least developed countries. The world exports of commercial services during the year 2005 amounted to US$ 2,415 billion of which India's share was about 2.8% valued at US$ 68 billion.

The growth of the services sector is a critical force in fostering economic development, competitiveness and productivity given the

strong inter-linkages between services and other sectors of the economy. Services such as Transport, Finance, Telecommunications, and even Professional Services and Computer Related Services are critical for performance in goods and in other service areas. Reform of the service sectors is desirable for several reasons. Firstly the rapid technological and economic changes make administrative regulation and control difficult to impose. Secondly, the quantum of investment and technology required for effective upgradation of services sector related to infrastructure cannot be sourced from government alone. In order to attract private and foreign investment and technology, reforms are necessary. Thirdly, reforms designed to enhance efficiency in specific sectors would have a dominant effect on down stream activities and thus improve economic performance in general. There is immense scope for improvement of efficiency since currently some services are under government control or limited monopoly. Lastly, introduction of reforms is expected to lead to an increase in the country's share of the International trade in the sector which, in turn, benefits the economy at large. Services being an essential aspect of manufacture and trade in goods, improved efficiency would enhance competitiveness of the goods sector as well. Broadly these gains are expected to offset the potential cost of adjustment and the impact on inefficient firms and low skilled workers.

3.3 Future of the Goods and the Services Sector

Services are coming to dominate the economic activities of countries at virtually every stage of development, making services trade liberalization a necessity for the integration of the world economy. The expansion of services has been driven, in particular by income-related demand shifts, benefiting for example the hotel and tourist industry; the economic stimulus resulting from new information and communication technologies; and the growing importance of the basic infrastructural services, including transport, communication, finance & professional services, for a wide range of user industries.

Services are the largest and most rapidly expanding sector in most economies, accounting for well over 60% of world GDP. Services account for a large share of production and employment in most economies.

While some service sectors, in particular international finance and maritime transport, have been largely open as the natural complements to merchandise trade, other major sectors have undergone fundamental technical and regulatory changes in recent decades which have dramatically increased their "tradability". Commercialisation and the reduction, or elimination, of existing barriers to entry have transformed policy regimes across many countries and sectors. The emergence of the Internet has helped to create a range of new, internationally tradable products from e-banking to tele-health and distance learning, and to remove distance-related barriers to trade for suppliers and users in remote locations (such as software development, consultancy and advisory services).

India's annual average merchandise export expansion at around 8% in the latter half of the nineties was higher than the growth of overall world trade and expansion of trade of developing countries resulting in the rise in the share of India's exports in world exports from 0.6 % in 1995 to 0.7% in 2000 to 0.89% in 2005. Between 2000 and 2005, India' s exports have increased by around 16% as compared to a rise of around 10% in world exports, suggesting some improvement in overall competitiveness of Indian exports. In 2002, India emerged amongst leading exporting nations as the world's fastest growing exporter after China recording a robust growth of 13.8% in dollar value. The growth in exports has been broadly maintained in 2003, resulting in retention of India's share in world exports at 0.89 % in 2005.

India's share of world services exports has also been on the rise and amounted to 2.8% in 2005. The annual percentage increase in exports from 2000 to 2005 is 33%. Further, India's exports of commercial services have increased steeply from 6.7 billion US

dollars in 1995 to 20.4 billion dollars in 2001, 24.9 billion dollars in 2003 and 68 billion US $ in 2005. India has thus become a dynamic player in the services arena. There is cause for optimism on the future growth of the sector since developed countries are likely to suffer from a shortage of skilled workers due to an ageing population and a falling birth rate. This shortage, which is expected to be especially pronounced in the IT, Medical, professional services for highly skilled labour and Education sector as well as in services related to caring for the aged would induce industry to manage its requirements through outsourcing and through hiring of foreign workers.

India is well positioned to take advantage of this situation given its wealth of trained English speaking workers, its low cost of service and its established competence in IT. However to maximize this advantage and face competition from countries like China, Mexico, Brazil, Malaysia, Indonesia steps must be taken to ensure that our professionals are able to meet the requirements of industry.

3.4 Challenges in the WTO Regime

The General Agreement on Trade in Services (GATS), promulgated by the WTO at its inception, initiates a new era in world trade. It is about trade liberalization and not deregulation. The inclusion of services in the Uruguay Round of trade negotiations led to the General Agreement on Trade in Services (GATS) which came into force in 1995 and sets out a framework of legally-binding rules governing the conduct of world trade in services. The right of a country to regulate is accepted implicitly and stated explicitly in all deliberations arising at the WTO. It offers the first-ever opportunity to interact in trade not only in the area of goods but also in services, a hitherto closed arena for many global corporations. The GATS covers all services with two exceptions – i.e. services provided in the exercise of governmental authority and, in the air transport sector, air traffic rights and all services directly related to the exercise of traffic rights. It is supported by a

number of schedules of specific commitments undertaken by individual WTO Members. These commitments bind Members not to introduce more restrictive rules which could have an adverse effect on trade. Since January 2000, they have become the subject of multilateral trade negotiations.

The service sectors which are under negotiations are based on the MTN.GNS/W/120 of July 1991 which divides services into 12 sectors with 161 sub-sectors. These classifications cross-refer to the United Nations Central Product Classification (CPC).

Services Sectors

1. Business services
2. Communication services
3. Construction and related engineering services
4. Distribution services
5. Educational services
6. Environmental services
7. Financial services
8. Health related and social services
9. Tourism and travel related services
10. Recreational, cultural and sporting services
11. Transport services and
12. Other services not included elsewhere

Accounting, auditing and book-keeping services are part of subsection "A" of "1 Business Services" of the Service Sectoral Classification List (MTN.GNS/W/120). The corresponding classification number under the United Nations' "Provisional Central Product Classification" (CPC) is 862.

Under the Provisional CPC, however, category of "Accounting, auditing and bookkeeping services" (CPC 862) is further sub-divided, as follows:

- **Accounting and Auditing Services (CPC 8621)**
  - Financial auditing services (CPC 86211)
  - Accounting review services (CPC 86212)
  - Compilation of financial statements services (CPC 86213)
  - Other accounting services (CPC 86219)
- **Book- keeping services, except tax returns (CPC 8622)**

Accountancy is one among many areas in the service sector that currently faces a challenge to come to terms with, grow and adapt to the changed world economic environment. Success at the WTO depends on the levels of communication among different and often contending parties, regular dialogue and creation and generation of awareness among different interested groups. This, in turn, can be achieved through access to information and making available authentic research data indicating ground realities. When various factors devolving upon the services sector in general are taken into consideration, a strategy may become visible, which could then be applied with a reasonable chance of success.

The Future

The role of Chartered Accountancy in this new milieu is multi-pronged. It opens up two avenues, which may be explored concurrently. The accountancy sector will be called upon to cater to the needs of other service providers and, simultaneously, the accountancy sector itself, as a service provider, may also be opened up to the global market. Either way, the role the profession will have to play will necessarily be multi-faceted, especially since it would have to mediate between different levels and areas of concern.

The Indian Context

Situating the role of Chartered Accountants specifically in the Indian context, the unique characteristics differentiating India from other countries would have to be taken into consideration. Behind a

backdrop of pulls and pressures, of tough negotiations and bargaining postures, the question naturally arises as to how our economy will respond to the rapidly evolving international trading environment. Will the response be a creative one, relying on intensive research and careful consideration and after coordination with different interested groups? The answer to the question is obviously in the affirmative. The task ahead is difficult and would require the deliberate and conscious efforts and cooperation of all sections of Indian society -- industry and trade, services, government, the polity and professional bodies, among others.

The Indian Professional

As a qualified professional, the Indian Chartered Accountant is in an advantageous position to provide the skills and services to different sections engaged in international trade. To perform this role effectively, the Chartered Accountant needs to understand the WTO regime and assess the importance and implications of various rules that could impinge on the country's trade activities and relations. It needs to be appreciated that each member country of the WTO has the right to negotiate with other countries and would invariably try and safeguard their own national economic interests. The Chartered Accountant has to be aware of the consequences of implementation or non-implementation of particular trade laws on the Indian economy.

3.5 Professional Opportunities in the WTO Regime

The field that lies ahead is vast and the opportunities available are plentiful. The secret of professional improvement lies in an individual's ability to cope constantly with change and encounter tough challenges.

Chartered Accountants are well known for their analytical ability, their technical skills and their meticulous work. Their experience, coupled with interpersonal interaction, provides an excellent

testimony to their communication skills. They possess an innate ability to assimilate and understand the complex processes of change. They also have the technical acumen that the profession demands and the ability to cater to specific and customized requirements.

There are a plethora of opportunities in the new international trading regime. Chartered Accountants would have to re-engineer their practical skills to cope with the new challenges. The basic skills required are an understanding of world tariff regimes, costing, taxation, accounting and economic trends – skills that every good CA should be possessing in any case. However, these skills have to be applied to the detailed requirements of WTO agreements. Since the profession has evolved by working with very specific issues, and not in terms of generalities, it is suited in particular to Indian Chartered Accountants.

To re-engineer a Chartered Accountant's practice, one would need to choose a particular area of interest, which has the likelihood of attracting clients. After collecting the necessary reference material and after analyzing case-laws on WTO disputes with respect to select agreements, Chartered Accountants would be in a position to take on assignments.

With the increase in the global trade in commodities and services; it has been a natural corollary that India has also started re-looking at the role it can play for increased trade levels for the benefit of the country as a whole. The increased level of trade would propel opportunities for professionals involved in various facets of industry and more so for the Chartered Accountants who are associated with the industry as well as with the Government through professional practice or employment. The liberalised trade scenario augers well for the service providers, in general, as it offers potential to provide services not only in the domestic market but is likely to give them an opportunity into various consultancy base assignments in overseas markets. These assignments will not be confined to the core areas of

accountancy but would emanate from the entire gamut of professional services.

Opportunities would primarily exist at three fundamental levels:

- **At Government levels**
- **At Revenue Authorities' level**
- **At Business Units' level**

3.5.1 Government Level

Government Interaction

Chartered Accountants can identify areas of concern, work on strategy and help evolve policies under the WTO regime. They can aid in the formulation of rules and enactment of laws for successful implementation of policies adopted by the Central and State governments. This would enable bureaucrats and political leaders to cope with and effectively tackle challenges posed by multilateral trade agreements and also take advantage of opportunities that would assist in the overall economic development of the country.

Claim Verification

Chartered Accountants can assist Government in the verification of claims and help draw up documents recommending the need for higher budgetary support to meet technical and financial requirements of a particular industry or service. Moreover, they can play an important role in the design of policies required to safeguard the interests of socially sensitive sectors under the WTO dispensation.

Information Systems

All protective trade measures such as anti-dumping and countervailing measures by WTO members are information-sensitive. Unless the claims of an affected country are proved with appropriate data, such claims will not be acknowledged by counter-

parties or Appellate Bodies at the WTO. Accordingly, the services of Chartered Accountants are required for development of right information systems and record keeping modules.

Administrative Structure

Given the reality of globalization coupled with the fact that more and more countries are periodically resorting to protective trade measures, authorities need to develop an excellent public administration structure with the suitably trained personnel and equipment to deal with situations that would arise from time to time. Chartered Accountants can study systemic issues at both State and Central government levels and devise appropriate administrative structures. They can also assist making the transition from a controlled regime to a globalised environment a smooth one.

Assisting in Regulatory mechanism for preventing abuse of dominant position

In the process of capturing the market share, it is common amongst the enterprises to abuse its dominant position through imposing unfair or discretionary practices in their commercial transactions. Such practices may be selling or fixing price which is below the cost of goods or services (i.e., predatory pricing) denial of market access to new entrants, technical or scientific developments which may be prejudicial to the consumers interest. The regulatory mechanism in preventing these detrimental practices can be ensured successfully with the hands of a person who is independent professional. In this regard, Chartered Accountants shall be having better advantage in determining and arriving at the cost of production of goods or provisioning of services.

Investigations in the area of Competition law

The appropriate authority would be initiating an inquiry into an agreement of combination, which has caused or is likely to cause an appreciable adverse effect on competition in India. Chartered Accountants, well versed in competition law, can be having an

opportunity to carry out investigations on behalf of the authority as inquiry officer and in verification of books of accounts.

3.5.2 Revenue Authorities' Level

Audit and Verification

Chartered Accountants can assist revenue authorities at both the Central and State government levels in devising documents with various formats -- such as questionnaires in anti-dumping investigations -- as per regulatory requirements.

Providing a Link

Chartered Accountants have been providing a link between revenue authorities and business and trade organizations for more than half a century. They now need to re-engineer their profile to continue to provide such a crucial link in the transformed economic, legal and regulatory framework.

Grievance Redressal

Business entities have grievances, such as dumping in India by foreign firms and anti-dumping initiatives against India abroad, all of which cause harm to Indian industry, trade and the economy as a whole. These grievances can be tackled by Chartered Accountants. Apart from this, Chartered Accountants can perform other roles such as assisting revenue authorities to perform their normal responsibilities – such as proper tax collection, determination of credits, adjustments and exemptions from taxation. In addition, they can continue to play their traditional role in checking tax evasion and acting as a bridge between direct and indirect tax administrative authorities, such as between officials responsible for collecting value added tax (VAT) and those collecting personal income tax. Chartered Accountants could also assist in the certification of income tax returns of foreign entities that derive income in India

3.5.3 The Business Units' Level

At this level, Chartered Accountants have a wide variety of service areas to choose from:

- Helping Indian enterprises develop competitive strengths to face global competition;
- Identifying market opportunities for Indian enterprises;
- Providing services to enterprises from abroad that would like to access the Indian market;
- Working with Indian and foreign enterprises facing action under different provisions of WTO agreements;
- Advising Indian enterprises on performance management so as to improve core competencies;

International Dimension

- Provide services abroad by accessing foreign markets due to commitments undertaken by other countries under professional services with the opening up of service sector under GATS through:
  - Cross-border (electronically)
  - Consumption Abroad
  - Commercial Presence
  - Movement of natural persons
- Work in specific areas under various WTO Agreements at international level in complying with their procedural and other aspects
- Provide services to enterprises from abroad desirous of accessing Indian market
- Work with foreign enterprises facing action under different provisions of WTO agreements
- Provide consultancy services for cross-border investment
- Provide services by analysis of domestic legislations of different countries in order to take advantage of various WTO Agreements for domestic industry.
- Work with international agencies during investigations
- Increased networking possibilities.

- Consultancy services in cross-border investment, international taxation, foreign exchange management and country-wise advice on taxation, investment and related areas; and
- Chartered accountants can also continue to provide business enterprises with their traditional services in maintaining books of

account and record keeping and ensuring the submission of proper and accurate returns and certificates.

Specific Areas for Involvement of Chartered Accountants

3.6 Anti- Dumping, Anti- Subsidy and Safeguard Measures

In general, the professional opportunities in trade remedy measures can be discussed under the following heads.

I. Defining the Primary Parameters of an Investigation

Companies and professionals must address a number of technical issues in the early phase of every antidumping and countervailing duty action. These analyses are critical and go a long way in handling the anti-dumping proceeding. The focus point of treatment of trade remedy measures shall be:

- Pre-petition subsidy and pricing assessment
- Cost/benefit analysis of participation in a proceeding
- Analysis of product scope and matching issues
- Sales below cost allegations and rebuttals
- Use of statistical sampling techniques for determining respondents
- Surrogate country assessment for non-market economy cases
- Potential antidumping or subsidy margins

II. Preparing Price and Adjustment Data

One of the most difficult and critical elements of any antidumping proceeding is the preparation and analysis of transaction-specific pricing and adjustment data. Government investigative agencies require comprehensive data on prices, discounts, rebates,

transportation charges, and selling expenses. In many cases, this information must be sourced and compiled from multiple locations and/or multiple information systems, and merged into a single database. The data must be prepared rapidly and accurately with regards to the following:

- On-site review of accounting and production records
- Preparation of allocation methods and spreadsheet
- Drafting narrative questionnaire responses and technical appendices
- Coordinating the collection of data from multiple locations
- Preparing data for submission to the Department of Commerce

III. Analyzing Cost of Production

Nearly every antidumping proceeding requires the analysis and calculation of model or product specific cost of production information. The focus area for the purpose of analysing Cost of Production shall be on:

- Developing model or product specific costing systems for companies which lack such information in their normal accounting system
- Applying specialized current cost methodologies in "hyperinflationary" economies
- Assessing the reasonableness of company accounting methods and host country generally accepted accounting principles
- Conducting arm’s length pricing analysis of inputs provided by affiliated parties
- Calculating factor of production information for producers in economies considered to be "non-market"

IV. Assisting at Verification and Public Hearings

On-site verification of submitted information is a standard part of antidumping and countervailing duty investigations. Professional assistance is required by companies in preparing for these laborious audits, and provides assessments of the ensuing official verification reports.

- Prepare document traces
- Represent clients at on-site verification
- Provide technical arguments and analysis for briefs
- Testify at public hearings
- Meet with government officials

V. Assessing the Strategic and Commercial Implication of Trade Actions

A company's position on trade regulatory actions, such as antidumping proceedings, should be framed in advance with synchronisation with its overall business objectives. A Professional approach to deal with potential or actual trade actions prepares a company to effectively deal with Trade remedial actions.

Professional advice is required for the following :

- Assessment of strategic risks and rewards associated with participation in trade proceedings
- Assessing the potential costs of trade cases, in terms of impact on sales, production costs, and human resources.
- Considering alternative sourcing strategies

Professional Opportunities in Specific Areas include:

Anti-Dumping Investigations

- Consultation with regards to pricing structure for exports and imports

- Strategic planning, market research for domestic and international markets to avoid anti-dumping problems
- Analysis of substantive injury to the industry
- Analysis of various indices affecting the industry
- Assistance in Dumping calculations, injury studies, verification, expert evidence at hearings etc
- Preparing Price and Adjustment Data
- Analyzing Cost of Production
- Assisting at Verification and Public Hearings
- Assessing the Strategic and Commercial Implication of Trade Actions
- Providing detailed reviews of dumping calculation or injury analysis disclosures
- Assistance in preparing defense strategies in anti-dumping investigation
- Negotiations for price undertakings, cost records and financial implications etc. in the matter of initiation of the case or in the defense of a case initiated and on participating in the proceedings and minimizing the liabilities, both prior to and after the initiation of the formal proceedings.
- International pricing analysis
- Detailed cost accounting analysis
- Large-scale database analysis
- Price monitoring analysis
- Competitive industry analysis
- Statistical analysis

- Preparation of Legal briefings when cases filed with High Court / Supreme
- Court.
- Representation before WTO Dispute Settlement Forum
- Similar jobs during Interim Reviews & Sunset Reviews on behalf of domestic industry
- Representing exporters to face Anti-Dumping investigations by foreign countries
- Preparation of Application for filling with DGAD & further coordination

Anti Subsidy and Countervailing Duties

Preparing comprehensive representations on behalf of a client to prove that there is

- Financial contribution by the state or any public body, by way of, inter alia, a grant, loan or equity infusion or a potential transfer in the form of tax credits etc
- Subsidised provision of goods or services by State
- Payment to a funding mechanism by the State or indirectly granting funds or where revenue is foregone by the State, or
- Any kind of income or price support and the benefit is thereby conferred to the particular manufacturer(s)/service provider(s).
- Study of different subsidy schemes framed by National as well as State Governments.
- Consultation with regards to pricing structure for exports and imports.
- Representing exporters to face Anti-Subsidy investigations by foreign countries.

- Representation before WTO Dispute Settlement Forum & other statutory authorities.
- Preparation of Application on behalf of domestic industry.
- Government to take actions against the exporting countries & further coordination.

Safeguard measures

To prepare a comprehensive report

- To Show that imports of a product are increasing either absolutely or relatively
- To show that domestic producers of competitive products are seriously injured or threatened with serious injury, and that this injury or threat is caused by increased imports
- Representing exporters to face Safeguard investigations by foreign countries
- Representation before WTO Dispute Settlement Forum & other statutory authorities.
- Preparation of Application on behalf of domestic industry.
- Government to take actions against the exporting countries & further coordination.

Reference Material:

a) The agreement on Anti-dumping (i.e. the Agreement on the Implementation of Article VI of GATT, 1994)

b) Anti- dumping guidelines issued by Directorate General of Anti- dumping and allied duties, Ministry of Commerce- http://commerce.nic.in/ad_guide.htm

c) Legal framework and provisions on safeguard provisions issued by the Directorate General of Safeguards (Dept. of

Revenue, Ministry of Finance, Government of India) http://dgsafeguards.gov.in/default.asp

d) Safeguard Provisions under the Customs Tariff Act, 1975

e) Safeguard Duty Rules under the Customs Tariff Act, 1975

f) Transitional Safeguard Provisions under the Customs Tariff Act, 1975

g) Transitional Safeguard Duty Rules under the Customs Tariff Act, 1975

Related websites

Addresses and Web sites of Authorities and Organisation related to Trade measures

1	Govt. of India Directory	http://goidirectory.nic.in/
2	Ministry of Finance	http://finmin.nic.in/
3	Central Board of Excise & Customs	http://www.cbec.gov.in/
4	Ministry of Commerce	http:// commerce.nic.in /
5	Directorate General of Anti-Dumping	http://commerce.nic.in/ad_guide.htm
6	Director General of Safeguards	http://dgsafeguards.gov.in/default.asp
7	World Trade Organisation	http://www.wto.org/
8	Safeguard Measures – World Trade Organisation	http://www.wto.org/english/tratop_e/safeg_e/safeg_e.htm
9	United Nations	http://www.un.org/
10	The World Bank	http://www.worldbank.org/
11	Asian Development Bank	http://www.adb.org

3.7 Trade Related Intellectual Property Rights (TRIPS)

- Registration Services - Registration of Patents, Trademarks, Copy rights & Geographical indications etc. at both national & international level
- Representations before statutory authorities wherever permissible and possible.
- Documentation - Drafting of Application for registration of the Intellectual property rights
- Valuation of the Intellectual property rights and Strategic Advises related to Sale / Acquisitions of Intellectual property rights.
- Advisory Services on Taxation of Intellectual property rights - Service Tax , Income Tax and Capital gains
- Accounting of Intellectual property rights
- Negotiating Royalty , Agency, Distribution, Franchise , Drafting licenses , non-disclosure agreements and Licensing agreements
- Joint venture and Foreign Collaboration
- Intellectual Property Management & Audit
- Preparation for contesting opposition against application for registration of Intellectual property rights (in case of Patents, Trade marks, Geographical Indicators)
- Registration of copyright protected works i.e. literary, artistic, cinematographic work and computer programs.
- Patent and trademark litigation support including representation in hearings before the examiner, assistant, deputy, joint controller and controller of patents and assistant

registrar and registrar of trademarks, filing oppositions and initiating infringement actions.

- Function as an Arbitrator - resolve infringement matters - through Alternative Dispute Resolution when appropriate
- Advisory on acquisition of intellectual property assets and a thorough due diligence review of complex ownership issues.
- Advisory and assistance in negotiating and structuring intellectual property development agreements, including joint development agreements
- Analyzing and assisting in strategically positioning Intellectual property rights to achieve maximum valuation and growth
- Registration of Domain Names
- Infringement Analysis Opinions and certifications
- Advisory on assignments of Trademarks

Related websites

- Controller General of Patents, Designs and Trademarks-India http://www.ipindia.nic.in/
- Copy Right Authority http://www.copyright.gov.in/
- World Intellectual Property Organization (WIPO), http://www.wipo.int/about-wipo/en/what_is_wipo.html
- Agreement on Trade-Related Aspects of Intellectual Property Rights,http://www.wto.org/english/tratop_e/trips_e/trips_e.htm

3.8 Trade Related Investment Measures (TRIMS)

- Vetting / Drafting of FDI agreements and field study works.
- Vetting of Counter Guarantee Agreements signed by National & State Govts.

- Advisory services related to Foreign Collaborations, Joint Ventures and Acquisitions.
- Analysis of political and other factors affecting investment decisions of foreign parties.
- Representation before statutory authorities on behalf of either the domestic or foreign parties wherever permissible.
- Acting as Arbitrators when dispute arises.
- Valuation of Tangible and Intangible assets for settlement of trade disputes or initial / subsequent investments.
- Representation before WTO Dispute Settlement Forum when a dispute goes to their jurisdictions.
- Investigation Services when foreign parties require background verification of the domestic parties and vice versa when joint ventures occurred.
- Advising Corporates about Global FDI policies adopted in different countries and selection of suitable partners for joint ventures.
- Financial Evaluation of FDI proposals on behalf of industries and Government.

3.9 Agreement on Customs Valuation

- Representing the corporate and non-corporate clients before customs and subsequent statutory authorities.
- Helping the Customs Department in correct assessment of the valuation aspects of imported goods.

3.10 Drafting & Impact Study of Free Trade Agreements

- Helping the Governments in Pre-FTA & Post-FTA advocacy functions.
- Representation on behalf of Industries and other stakeholders with the Government officials.
- Drafting & Vetting of Free Trade Agreements.
- Representation at WTO regarding notification and final approval on the FTAs.
- Cross sectional Analysis of existing FTAs.
- Conducting Impact Study of FTAs on behalf of industries, political parties and Governments.
- Representation before statutory authorities for seeking relief under the ROO / Settlement of Disputes / Safeguard Measure clauses of the relevant FTAs on behalf of either Domestic Industries or Exporters of the foreign countries.

3.11 Investigations for Determination of Rules of Origin

- Investigations for various parameters specified under the Rules of Origin Agreement on behalf of Domestic or Foreign Governments.
- Investigations for various parameters specified under the Rules of Origin clauses of various FTAs.

3.12 International Commercial Arbitration

- To help clients in the process of undertaking settlement of Disputes at various international arbitration agencies.
- To act as an arbitrator for international commercial disputes.

- To draft commercial trade agreements in consonance with the principles of Alternative Dispute Resolution.
- Guidance to draft a proper arbitration agreement considering the arbitration rules promulgated by various international institutions.

Related websites

S. No	Arbitral Institutions - International	Web-site
1	International Chamber of Commerce in Paris (ICC)	http://www.iccwbo.org/
2	American Arbitration Association (AAA)	http://www.adr.org/
3	London Court of International Arbitration (LCIA)	http://www.lcia-arbitration.com/
4	WIPO Arbitration and Mediation Center	http://www.wipo.int/amc/en/center/index.html
5	International Center for Settlement of Investment Disputes (ICSID)	http://icsid.worldbank.org/ICSID/Index.jsp
6	Permanent Court of Arbitration	http://www.pca-cpa.org
7	Iran United States Claim Tribunal	http://www.iusct.org/
8	United Nation Compensation Commission	www.unog.ch/uncc/
9	The Claims Resolution Tribunal for Dormant Accounts in Switzerland	www.crt-ii.org/_crt-i/frame.html
10	Singapore International Arbitration Centre (SIAC)	www.siac.org.sg/
11	China International Economic and	www.cietac.org.cn/inde

	Trade Arbitration Commission	x_english.asp
12	China Maritime Arbitration Commission (CMAC)	www.cmac-sh.org/en/rules.asp
13	The International Institute for Conflict Prevention and Resolution (CPR)	http://www.cpradr.org/
14	Hong Kong International Arbitration Centre (HKIAC)	www.hkiac.org/
15	The International Council For Commercial Arbitration (ICCA)	http://www.arbitration-icca.org/
16	The Institute of Arbitrators & Mediators Australia (IAMA)	www.iama.org.au/
17	International Bar Association (IBA)	www.ibanet.org/legalpractice/Arbitration.cfm
18	National Arbitration Forum	www.arb-forum.com/
19	The Stockholm Chamber of Commerce.	www.sccinstitute.com/
20	Society of Maritime Arbitrators	http://www.smany.org/
21	Vietnam International Arbitration Centre (VIAC)	http://english.viac.org.vn/

3.13 Agreement on Agriculture

- Undertake research study works on behalf of Governments / International Agencies.
- Do advocacy function on behalf of Governments.

3.14 Representation for National Governments in The WTO Dispute Settlement Forum at Geneva

- Representation works for National Governments at WTO Dispute Settlement Forum.

- Participation and advisory on Dispute settlement by resorting to ADR by putting the case before DSB.

3.15 Competition Laws & Policies

I. Advisory and Consultancy Services to enterprises

- Advising any enterprise intending to set up business in India or to set up a branch or subsidiary in a foreign country to ensure that such setting up is not against the competition law.
- Advising the enterprise during the process of any inquiry or investigation into any trade practice.
- Help the parties in the drafting and registration of the agreement to ensure that the same is not anti -competitive.
- Applying to the commission for an inquiry or investigation into practice where any person is affected by any monopolistic, restrictive, or unfair trade practice of any other person.
- Representation with statutory authorities of various countries.
- Advising Corporates about international Mergers and Acquisitions.
- Study and investigations of Anti Competitive agreements.
- Advising and investigating for corporate and governments about unethical combinations like Cartels etc.
- Undertaking Certification works where permitted.
- Due-Diligence studies for international mergers from the financial angles as well as the angle of Competition Laws prevailing in the countries.
- Undertaking Research studies.

II. Drafting of anti-competitive agreements

III. To work as Expert for Commission under Section 17 of Competition Act

Sec17 (3) The Commission may engage, in accordance with the procedure specified by regulations, such number of experts and professionals of integrity and outstanding ability, who have special knowledge of, and experience in, economics, law, business or such other disciplines related to competition, as it deems necessary to assist the Commission in the discharge of its functions under this Act

IV. To appear before Commission and can represent a party in cases relating to anti-competitive agreements, abuse of dominance and combination (mergers etc.) Regulation cases **under section 35**

Sec 35 of Competition Act, 2002 specifically allows Chartered Accountants to represent a Complainant, Defendant or the Director General to present a case before the Competition Commission of India.

V. To appear before Competition Appellate Tribunal

Sec 53S (1) A person preferring an appeal to the Appellate Tribunal may either appear in person or authorise one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of its officers to present his or its case before the Appellate Tribunal.

VI. To be consultant to government in framing national competition policy

VII. To be consultant for framing policies of various ministries in Government of India

- Trade Policy
- Industrial policy

- Privatization policy
- Regulatory reform policy
- Investment and tax policy
- Intellectual property policy
- Regional development policy
- Labour policy
- Consumer policy
- Environment policy

Links on trade and competition policy

A) International Organizations and Entities

- Asia-Pacific Economic Cooperation (APEC) Competition Policy Database, http://www.apecsec.org.sg/loadall.htm?, http://www.apecsec.org.sg/committee/competition.html
- Free Trade Area of Americas (FTAA)- Competition Policy, http://www.ftaa-alca.org/ngroups/ngcomp_e.asp
- The International Competition Network http://www.internationalcompetitionnetwork.org/
- Organisation For Economic Co-operation And Development [OECD]
  Competition Law And Policy -http://www.oecd.org/daf/clp
- United Nation Conference on Trade and Development (UNCTAD) http://www.unctad.org/competition
- World Trade Organisation , http://www.wto.org/

B) Non-governmental organizations

- International Chamber of Commerce -http://www.iccwbo.org/

- International Bar Association Global Competition Forum- http://www.globalcompetitionforum.org

C) Indian Links

- Competition Commission of India http://www.competitioncommission.gov.in/
- The Office of the Director General of Investigation and Registration http://www.mca.gov.in/MinistryWebsite/dca/mcaoffices/dgir.html
- Monopolies and Restrictive Trade Practices http://www.mca.gov.in/MinistryWebsite/dca/mcaoffices/mrtpc.html

3.16 Advisory Services Related to Foreign Trade Policies & Instruments

- Advisory Services to National Governments in framing WTO Compliant Foreign Trade Policies & modifying the existing schemes.
- Analysis of business operations and facilitation services
- Formation of a company/subsidiary of a foreign company
- Setting up 100% EOU/STP/EHTP/BTP/SEZ units
- Assistance in fulfilling the regulatory and licensing requirements
- Obtaining government clearances
- Liasoning across related government agencies
- Development of strategies and implementation plans according to the specific needs of the clients.
- Consulting, documentation and facilitation for

  - Exports and imports for Export-Import Policy
  - Licenses
  - Incentives
  - Logistics
  - Exim Finance
  - Exim legal matters

- Getting Foreign Investment and related matters like Setting up of Business Operations in India including Liaison Office, Branch Office, Subsidiary Company, Joint Ventures.
- Approval of Investments from RBI/FIPB/Ministries.
- Quality certification for Foreign Companies exporting to India (as required under BIS regulations).
- Domestic operations & Incorporations like Formation of companies in India & related issues with ROC, RBI & other Government departments, Registrations with DGFT (IEC), EPC (RCMC), Industry Ministry (IEM), Income tax (PAN), Sales tax, Excise, Representation of Cases Before Central Excise Appellate Authorities, Customs Authorities, Fixation of /Brand Rates for Drawback, Rebate / Refund of Central Excise Duties, Customs Duties etc.
- Application and Issuance of DEPB, Advance License, EPCG License, Duty Drawback, Deemed Export Benefits.
- Representation and Liaison:
  - With DGFT, RBI and Ministries for import-export licenses & other matters,

- For Foreign companies/NRIs/OCBs in India, Indian Investments Abroad, OCBs etc
- Planning, Strategizing and implementation for clearances of Project Imports, Plant Relocations, Restricted Items Imports.

Reference Material

a. Foreign Trade Policy 2004-2009

b. Foreign Trade Procedure 2004-09

c. Public Notices

d. Glossary of Terms - Foreign Trade Policy

e. Customs Tariff Act, 1975

f. Foreign Exchange Management Act, 1999

g. Foreign Trade (Development and Regulation) Act 1992

h. Foreign Trade Regulation Rules, 1993

i. Foreign Trade (Exemption from Application of Rules in Certain Cases) Order, 1993

j. Central Excise Act, 1944

k. RBI Circulars.

Useful websites

S. No	Organisation	Web-site
1	Directorate General of foreign Trade- Ministry of Commerce	http://dgft.delhi.nic.in/
2	Ministry of Commerce	http://commerce.nic.in/
3	Govt. of India Directory	http://goidirectory.nic.in/

4	Ministry of Finance	http://finmin.nic.in/
5	Central Board of Excise & Customs	http://www.cbec.gov.in/
6	Federation Of Indian Export Organisations (FIEO)	www.fieo.org
7	Reserve Bank of India (RBI)	http://www.rbi.org.in/
8	Inland Container Depot (ICD) Delhi Customs	http://www.geocities.com /icddelhi/
9	Indian Mission & Posts, Ministry of External Affairs Government of India	http://meaindia.nic.in/on mouse/mission.htm
10	Directorate General of Anti-Dumping	http://commerce.nic.in/ad _guide.htm
11	Director General of Safeguards	http://dgsafeguards.gov.i n/default.asp
12	Ministry of External Affairs Government of India	http://meaindia.nic.in/
13	Office of Development Commissioner (MSME)	http://www.smallindustryi ndia.com/
14	Ministry of Textiles, Govt. of India - Office of the Textile Commissioner, Mumbai	http://www.txcindia.com/
15	World Trade Organisation	http://www.wto.org/
16	Safeguard Measures – World Trade Organisation	http://www.wto.org/englis h/tratop_e/safeg_e/safeg _e.htm
17	Center for Trade Development	http://www.centad.org/g wa_2.asp
18	The Cotton Textiles Export	http://www.texprocil.com/

	Promotion Council Of India [TEXPROCIL]	
19	World Customs Organisation	http://www.wcoomd.org/ie/index.html
20	World Bank, Washington, US	http://www.worldbank.com/

3.17 Advisory Services Related to Special Economic Zones/ 100 % Export Oriented Units (EOU) / Software Technology Parks (STP) / Electronic Hardware Technology Parks (EHTP)

- Assistance in preparation of project report
- A project report outlining the economic and commercial viability of the project needs to be attached along with Form A i.e. Application for setting up a unit in Special Economic Zone.
- Assistance in necessary applications, compliances etc. with the Board of Approval, State Government, Development Commissioner, Approval Committee, etc.
- Consultancy services for developing Special Economic Zones
- Consultancy services for setting up units in Special Economic Zones,
- Representation before Board of Approval on behalf of any person aggrieved by the order passed by the Approval Committee.

Rule 55 of Special Economic Zones Rules, 2006 states that any person aggrieved by an order passed by the Approval Committee under section 15 of the Special Economic Zones Act, 2005 or

against cancellation of Letter of Permission under section 16, may prefer an appeal to the Board in the Form J.

Rule 61 of the Special Economic Zones Rules, 2006 states every appellant may appear before the Board in person or authorize one or more chartered accountants or company secretaries or cost accountants or legal practitioners or any of his or its officers to present his or its case before the Board.

a. Certification of reports – Form I (Annual performance reports for Units)

b. There is a requirement under Rule 22 of the Special Economic Zones Rules, 2006 that the grant of exemptions, drawbacks and concession to the entrepreneur or developer of a Special economic zone will be subject to the condition that the Unit submits an Annual Performance Report in Form I to the Development Commissioner who in turn will submit it to the Approval committee for his consideration. The information given in the form should be authenticated by the authorized signatory of the unit and certified by a Chartered Accountant.

c. Audit report under section 80-I(7)/80-IA(7)/80-IB/80-IC of the Income-tax Act, 1961 in Form 10CCB

d. Report under section 10A (5) and Section 10 B (5) of the Income-tax Act, 1961in FORM NO. 56F and Form No. 56 G respectively certifying that the deduction has been made in accordance with the corresponding section

e. Report under section 80LA(3) of the Income-tax Act, 1961 in Form No. 10CCF

f. Report on Annual performance of units -The information given in the formats for APRs should be authenticated by the authorized signatory of the unit and should be certified for its correctness by a Chartered Accountant with reference to the account records and registers maintained by the unit (Appendix 14 –I-F Handbook of procedures of Foreign Trade Policy)

g. Certificate on production and exports- DTA sale of Gem & Jewellery items will be permitted on annual basis by the Development Commissioners up to 10% of FOB value of exports during the preceding year subject to certain conditions. One such condition is that The application by an EOU has be submitted to DC concerned on yearly basis (licensing-year) giving the details of production and exports made during the preceding licensing year duly certified by a Chartered Accountant and endorsed by the jurisdictional Custom Authority.(Appendix 14- I-H Handbook of procedures of Foreign Trade Policy)

h. Certificate for CST reimbursements certifying receipt of the goods(Appendix 14- I-I Handbook of procedures of Foreign Trade Policy)- The Export Oriented Units (EOUs) and units in Electronic Hardware Technology Park (EHTP) and Software Technology Park (STP) will be entitled to full reimbursement of Central Sales Tax (CST) paid by them on purchases made from the Domestic Tariff Area (DTA), for production of goods and services as per EOU Scheme subject to certain conditions

i. The unit has to present its claim for reimbursement of CST in the prescribed form

(Annexure - I) to the Development Commissioner of the SEZ concerned or the designated officer of the EHTP/STP.

j. Certification of Statement of Exports made in the preceding licensing year in the format given in Appendix 26 for Annual Advance License purposes (Handbook of Procedures Vol 1-2004-09)

k. Advance license can be applied for annual requirement for a particular product group by status holders and by the other exporters having at least past two years export performance. For the completion of the export obligation as stipulated in the condition of the license, the exporters are required to submit proof of export obligation fulfillment.

Related Websites:

The following are useful links to various websites from which the professionals can get more information on the above subjects

Directorate General of Foreign Trade	http://dgft.delhi.nic.in/
Ministry of Finance	http://finmin.nic.in/
Ministry of Commerce & Industry	http://commerce.nic.in/
Ministry of Corporate Affairs	http://www.mca.gov.in/
Reserve Bank of India	http://www.rbi.org.in/
Special Economic Zones in India	http://www.sezindia.nic.in
Software Technology Park of India/ Electronic Hardware Technology Park	http://www.stpi.in/
Agricultural and Processed Food	http://www.apeda.com/

Products Export Development Authority (APEDA)	
Free Trade and Warehousing Zones	
Free Trade Warehousing Private Limited (FTWPL)	http://www.ftwpl.com/
Bio Tech Parks In India	
Department of Biotechnology (DBT)) under the Ministry of Science and Technology	**http://dbtindia.nic.in/**
Special Economic zones in India	
Santacruz Electronics Export Processing Zone	http://www.seepz.com/
Kandla Special Economic Zone	http://www.kasez.com
Cochin Special Economic Zone	http://www.csez.com/
Madras Special Economic Zone	http://www.mepz.gov.in/
Visakhapatnam Special Economic Zone	http://www.vsez.gov.in/
Falta Special Economic Zone	http://www.fepz.com/
Noida Special Economic Zone	http://www.nsez.gov.in/
Surat Special Economic Zones	http://www.sursez.com/
Indore Special Economic Zone	http://www.sezindore.com/
Export Promotion Council	
Export Promotion Council for EOUs and SEZ Units	http://www.eouindia.gov.in/

3.18 Tax Havens

- Services of a professional are pertinent for the overall analysis of the investment decision and making a cost benefit analysis before selecting the location for expansion and investment in any enterprise intending to expand.
- Professionals could be hired to ensure legal and other regulatory compliances to avoid any legal complications in a foreign land.
- Using the tax incentives to the maximum extent possible legally would be one of the ways towards this goal. Various treaties and agreements between various countries; the extra burden imposed by our country for investing abroad in tax havens; comparison of the local and foreign tax incentives/holidays available need to be analysed for the purpose of carrying on of business in a particular location.
- Evaluating and appraising the performance of an organisation in a particular tax haven.
- The structure of the offshore organisation, the type of the entity and the functions to be transferred to that organisation should be decided with the help of professionals.
- Any enterprise intending to expand and invest has to make a cost benefit analysis before selecting the location for expansion and investment. This requires knowledge of the incentives and laws and regulations of various countries. While tax havens may provide high incentives in the form of low taxes or no taxes, there could be other demotivating factors like political crisis, stringent disclosure requirements, levy of heavy fees, etc. Services of a professional are pertinent for the overall analysis of the investment decision.

- Following the law in a foreign land is all the more necessary to avoid any legal complications. Professionals could be hired to ensure legal and other regulatory compliances.

Reference Material

Information on Tax Havens**-** http://en.wikipedia.org/wiki/Tax_haven

Related Websites

Some of the tax havens and their websites are:

- Andorra – a small country in Western Europe (www.**andorra**.com, http://www.govern.ad/);
- Anguilla – a group of islands in the Caribbean Sea, an overseas territory of the UK (http://www.gov.ai/);
- Antigua and Barbuda – a group of islands in the Caribbean Sea (www.ab.gov.ag, www.**antigua**.gov.ag, www.**antigua**barbuda.gov.ag);
- Aruba – a Caribbean island, part of the Kingdom of the Netherlands (www.**aruba**.com);
- The Bahamas – a group of islands off the coast of Florida (www.**bahamas**.gov.bs/);
- Bahrain – an group of islands off the coast of Saudi Arabia (www.**bahrain**.gov.bh);
- Barbados – a Caribbean island (www.**barbados**.org/govt.htm);
- Belize – a small country in Central America (www.**belize**.gov.bz);
- British Virgin Islands – a group of islands in the Caribbean Sea, an overseas territory of the UK (www.bvi.org.uk);
- Cyprus (www.**cyprus**.gov.cy/)

- Cook Islands – a group of islands in the South Pacific Ocean, self-governing but in free association with New Zealand (www.**cook**-**islands**.gov.ck/);
- Delaware (**delaware**.gov/)
- Dominica – a Caribbean island (www.avirtual**dominica**.com/**government**.cfm);
- Gibraltar – a small country in Southwestern Europe, an overseas territory of the UK (www.gibraltar.gov.gi/);
- Grenada – a group of islands in the Caribbean Sea (www.gov.gd/);
- Guernsey/Sark/Alderney – a group of islands in the English Channel, a dependency of the British Crown (www.gov.gg/, www.**sark**.gov.gg, www.**alderney**.gov.gg);
- Isle of Man – an island in the Irish Sea, a dependency of the British Crown (www.gov.im/);
- Liberia – a West African country (http://www.state.gov/r/pa/ei/bgn/6618.htm);
- Liechtenstein – a small country in Western Europe (http://www.liechtenstein.li/en/eliechtenstein_main_sites/portal_fuerstentum_liechtenstein/fl-staat-staat/fl-staat-regierung.htm);
- Maldives – a group of islands in the Indian Ocean (www.the**maldives**.com/**government**/);
- Malta (www.gov.mt/)
- Marshall Islands – a group of islands in the Pacific Ocean (www.rmiembassyus.org/);
- Mauritius – a financial regime that has a number of the key characteristics of a tax haven (www.gov.mu/);

- Monaco – a small country in Western Europe (www.**monaco**.gouv.mc/);
- Montserrat – a Caribbean island, an overseas territory of the UK (www.gov.ms/);
- Nauru – a small South Pacific island (www.dfat.gov.au/geo/**nauru**/**nauru**_brief.html);
- Netherlands Antilles – a group of islands in the Caribbean Sea, part of the Kingdom of the Netherlands (www.gov.an/);
- Niue – a small South Pacific island, self-governing but in free association with New Zealand (www.gov.nu/);
- Panama – a country in Central America (www.presidencia.gob.pa/, www.historycentral.com/NationbyNation/**Panama**/Gov.html);
- Samoa – a group of islands in the South Pacific Ocean (www.govt.ws/);
- Seychelles – a group of islands in the Indian Ocean (www.virtual**seychelles**.sc/gover/mfa.htm);
- St. Kitts and Nevis – a group of islands in the Caribbean Sea (www.gov.kn/);
- St. Lucia – a Caribbean island (www.**stlucia**.gov.lc/);
- St. Vincent and the Grenadines – a group of islands in the Caribbean Sea (www.gov.vc/);
- Switzerland (http://www.swissworld.org/eng/swissworld.html?siteSect=700, www.historycentral.com/nationbynation/**Switzerland**/Gov.html)
- Tonga – a group of islands in the South Pacific Ocean (www.pmo.gov.to/);

- Turks and Caicos – a group of islands in the North Atlantic Ocean, an overseas territory of the UK (www.**turks**and**caicos**islands.gov.tc/);
- Uruguay (www.presidencia.gub.uy/)
- US Virgin Islands – a group of islands in the Caribbean Sea, an external territory of the US (www.statelocalgov.net/other-vi.htm);
- Vanuatu – a group of islands in the South Pacific Ocean (www.**vanuatugovernment**.gov.vu/)

3.19 International Taxation

- Advisory on international tax consequences of specific investment proposals.
- Advisory on Profit Repatriation.
- Researching the tax attributes of potential overseas and domestic markets.
- Advisory on possible tax advantages of cross border trading, leasing, financing, or holding companies.
- Consulting for maximizing savings from treaty benefits, credits, deductions, exemptions, and incentives.
- Designing and implementing compliance systems.
- Conducting due diligence and transaction advisory services.

3.20 knowledge Processing Outsourcing/ Business Processing Outsourcing Sector

As a KPO, professionals can render services in the following ways:

- Finance and accounts – services can be rendered in areas similar to the following:

- Accounting and data preparation
- Maintenance of books and records
- Accounts receivables
- Debtors management
- Accounts payables
- Fixed assets accounting
- Asset accounting management
- Reconciliations
- Expense analysis
- General Ledger maintenance
- Payroll management
- Cash management
- Internal Financial Reporting
- Different types of reports on daily basis

➢ Research & Development – Research could be through web based market research solutions, secondary research methods, Government Publications, General Press, Industry Journals, Trade Associations, Public Company Filings, Investment Brokerages and Information Services, Newsgroups and UseNet. Other related services could be:

- Data search and collection
- Managing data
- Business Analysis
- Data Analysis
- Network Management

- Business & Market Research
- Equity research
- Research on fixed income markets
- Intellectual Property (IP) Research
- Legal research
- Market Analysis

➢ Financial Analysis

- Forecasting, Budgetary and decision support
- Consolidation and analysis
- MIS reporting
- Financial planning and analysis
- Credit rating analysis
- Examination and interpretation of financial statements
- Event analysis
- Risk management
- Treasury and investment management
- Financial research and investigations
- Investment analysis

➢ Consulting services

- Financial modeling
- Deal profiles
- Verification
- Assistance and guidance in transfer of operations

- Contribution towards continuous improvement of processes

- Services pertaining to legal matters –
  - Advice on the formation of e-Contracts
  - Legal research,
  - Documentation, reviewing documents and agreements, litigation matters, reporting requirements (drafting and reviewing reports required under various laws)
  - Advice on existing and developing legal and regulatory requirements domestic and international
  - Domain name registration
  - Advice on the risks and liabilities involved in electronic linkage to third party sites and the formation of third party alliances
  - Regulatory review of Web site content
  - Agreements for the licensing of software and the provision of support services to a licensee in connection with software licensing

- Education and related services – knowledge is power and the only thing that increases with giving. Some of related services that professionals can contribute in are:
  - Education
  - Training & Consultancy

- Other services
  - Valuation of companies
  - Evaluation of potential Mergers and acquisitions
  - Preparation of company profiles/reports

- Transitioning financial information between accounting standards
- Tracking of stock prices
- Internal audit
- Supporting internal activities
- Transfer pricing

Related Websites

- National Association of Software and Service Companies - http://www.nasscom.in/Default.aspx
- Department of Information Technology, Ministry of Communications and Information Technology - http://www.mit.gov.in/
- KPO Asia- www.kpoasia.com/ BPO India- http://www.bpoindia.org

3.21 Foreign Exchange Management Act

- Consultancy on compliance with FEMA rules and regulations
- Representation of party- Foreign Exchange Management (Adjudication Proceedings and Appeal) Rules, 2000
- Guidance in seeking approval or permission from the concerned Government or any Statutory Authority as the case may be under the relevant laws/regulations as envisaged under FEMA (Foreign Exchange (Compounding Proceedings) Rules 2000).
- Advisory role in filing of applications by persons committing contraventions related to any transaction without proper approval or permission from the concerned Government or any Statutory Authority as the case may be under the relevant laws/regulations as envisaged under FEMA, would

not be compounded unless the required approval is obtained from the concerned authorities

- A chartered Accountant can represent the applicant who has filed an appeal before the Appellate Tribunal under section 19 of the Act and appear and plead and act on his behalf before the Special Director (Appeal) under the Act.

3.22 Investment outside India

- Formulating an appropriate investment strategy for companies seeking to invest out of India
- Valuation of shares in certain cases for the purposes of investment by way of remittance from India in an existing company outside India
- Certification as required under various FEMA rules and regulations
- Audit of the statement showing receipts under off-site and on-site contracts, expenses and repatriation (in case of branches abroad)

3.23 Double Taxation Avoidance Agreements (DTAAs)

- Advisory services with reference to the DTAAs between India and various countries
- Issues connected with e-commerce taxation
- Assistance with withholding tax obligations of foreign companies in India
- Assistance to expatriates regarding tax implications under the DTAA on international relocation

Websites for reference :

1) Organization of Economic Co-operation and Development (OECD)-http://www.oecd.org

2) United Nations Model Double Taxation Convention between Developed and Developing Countries, 1980-http://unpan1.un.org/intradoc/groups/public/documents/un/unpan004554.pdf

3) United States Model Income Tax Convention of September, 1996.

   http://www.ustreas.gov/offices/tax-policy/library/model996.pdf

4) National website of the Income Tax Department of India-http://www.incometaxindia.gov.in/

3.24 Non-Resident Indian Taxation

- Advisory and consultancy on FEMA
- Income tax- Planning, compliance and representation
- Corporate Law- Incorporation of companies, secretarial work, Representations before Company Law Board/ Tribunal, Advisory services
- Property Management
- Investment consultancy

Relevant website:

http://www.incometaxindia.gov.in/

3.25 Transfer Pricing

- Transfer pricing related advisory services
- Transfer pricing studies and analysis

- Litigation support and representation before tax authorities

3.26 Sectoral Research Studies on Various International Issues

- **Undertaking research studies on behalf of industries / governments and other international agencies on various subjects related and affecting the international trade relations.**

Annexure A

AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION

The *Parties* to this Agreement,

Recognizing that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development,

Recognizing further that there is need for positive efforts designed to ensure that developing countries, and especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations,

Resolved, therefore, to develop an integrated, more viable and durable multilateral trading system encompassing the General Agreement on Tariffs and Trade, the results of past trade liberalization efforts, and all of the results of the Uruguay Round of Multilateral Trade Negotiations,

Determined to preserve the basic principles and to further the objectives underlying this multilateral trading system,

Agree as follows:

Article I

Establishment of the Organization

The World Trade Organization (hereinafter referred to as "the WTO") is hereby established.

Article II

Scope of the WTO

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

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

3. The agreements and associated legal instruments included in Annex 4 (hereinafter referred to as "Plurilateral Trade Agreements") are also part of this Agreement for those Members that have accepted them, and are binding on those Members. The Plurilateral Trade Agreements do not create either obligations or rights for Members that have not accepted them.

4. The General Agreement on Tariffs and Trade 1994 as specified in Annex 1A (hereinafter referred to as "GATT 1994") is legally distinct from the General Agreement on Tariffs and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment, as

subsequently rectified, amended or modified (hereinafter referred to as "GATT 1947").

Article III

Functions of the WTO

1. 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 framework for the implementation, administration and operation of the Plurilateral Trade Agreements.

2. The WTO shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement. The WTO may also provide a forum for further negotiations among its Members concerning their multilateral trade relations, and a framework for the implementation of the results of such negotiations, as may be decided by the Ministerial Conference.

3. The WTO shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes (hereinafter referred to as the "Dispute Settlement Understanding" or "DSU") in Annex 2 to this Agreement.

4. The WTO shall administer the Trade Policy Review Mechanism (hereinafter referred to as the "TPRM") provided for in Annex 3 to this Agreement.

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

Article IV

Structure of the WTO

1. There shall be a Ministerial Conference composed of representatives of all the Members, which shall meet at least once every two years. The Ministerial Conference shall carry out the functions of the WTO and take actions necessary to this effect. The

Ministerial Conference shall have the authority to take decisions on all matters under any of the Multilateral Trade Agreements, if so requested by a Member, in accordance with the specific requirements for decision-making in this Agreement and in the relevant Multilateral Trade Agreement.

2. There shall be a General Council composed of representatives of all the Members, which shall meet as appropriate. In the intervals between meetings of the Ministerial Conference, its functions shall be conducted by the General Council. The General Council shall also carry out the functions assigned to it by this Agreement. The General Council shall establish its rules of procedure and approve the rules of procedure for the Committees provided for in paragraph 7.

3. The General Council shall convene as appropriate to discharge the responsibilities of the Dispute Settlement Body provided for in the Dispute Settlement Understanding. The Dispute Settlement Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

4. The General Council shall convene as appropriate to discharge the responsibilities of the Trade Policy Review Body provided for in the TPRM. The Trade Policy Review Body may have its own chairman and shall establish such rules of procedure as it deems necessary for the fulfilment of those responsibilities.

5. There shall be a Council for Trade in Goods, a Council for Trade in Services and a Council for Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Council for TRIPS"), which shall operate under the general guidance of the General Council. The Council for Trade in Goods shall oversee the functioning of the Multilateral Trade Agreements in Annex 1A. The Council for Trade in Services shall oversee the functioning of the General Agreement on Trade in Services (hereinafter referred to as "GATS"). The Council for TRIPS shall oversee the functioning of the

Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the "Agreement on TRIPS"). These Councils shall carry out the functions assigned to them by their respective agreements and by the General Council. They shall establish their respective rules of procedure subject to the approval of the General Council. Membership in these Councils shall be open to representatives of all Members. These Councils shall meet as necessary to carry out their functions.

6. The Council for Trade in Goods, the Council for Trade in Services and the Council for TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective Councils.

7. The Ministerial Conference shall establish a Committee on Trade and Development, a Committee on Balance-of-Payments Restrictions and a Committee on Budget, Finance and Administration, which shall carry out the functions assigned to them by this Agreement and by the Multilateral Trade Agreements, and any additional functions assigned to them by the General Council, and may establish such additional Committees with such functions as it may deem appropriate. As part of its functions, the Committee on Trade and Development shall periodically review the special provisions in the Multilateral Trade Agreements in favour of the least-developed country Members and report to the General Council for appropriate action. Membership in these Committees shall be open to representatives of all Members.

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

Article V

Relations with Other Organizations

1. The General Council shall make appropriate arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.

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

Article VI

The Secretariat

1. There shall be a Secretariat of the WTO (hereinafter referred to as "the Secretariat") headed by a Director-General.

2. The Ministerial Conference shall appoint the Director-General and adopt regulations setting out the powers, duties, conditions of service and term of office of the Director-General.

3. The Director-General shall appoint the members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.

4. The responsibilities of the Director-General and of the staff of the Secretariat shall be exclusively international in character. In the discharge of their duties, the Director-General and the staff of the Secretariat shall not seek or accept instructions from any government or any other authority external to the WTO. They shall refrain from any action which might adversely reflect on their position as international officials. The Members of the WTO shall respect the international character of the responsibilities of the Director-General and of the staff of the Secretariat and shall not seek to influence them in the discharge of their duties.

Article VII

Budget and Contributions

1. The Director-General shall present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO. The Committee on Budget, Finance and Administration shall review the annual budget estimate and the financial statement presented by the Director-General and make recommendations thereon to the General Council. The annual budget estimate shall be subject to approval by the General Council.

2. The Committee on Budget, Finance and Administration shall propose to the General Council financial regulations which shall include provisions setting out:

(a) the scale of contributions apportioning the expenses of the WTO among its Members; and

(b) the measures to be taken in respect of Members in arrears.

The financial regulations shall be based, as far as practicable, on the regulations and practices of GATT 1947.

3. The General Council shall adopt the financial regulations and the annual budget estimate by a two-thirds majority comprising more than half of the Members of the WTO.

4. Each Member shall promptly contribute to the WTO its share in the expenses of the WTO in accordance with the financial regulations adopted by the General Council.

Article VIII

Status of the WTO

1. The WTO shall have legal personality, and shall be accorded by each of its Members such legal capacity as may be necessary for the exercise of its functions.

2. The WTO shall be accorded by each of its Members such privileges and immunities as are necessary for the exercise of its functions.

3. The officials of the WTO and the representatives of the Members shall similarly be accorded by each of its Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.

4. The privileges and immunities to be accorded by a Member to the WTO, its officials, and the representatives of its Members shall be similar to the privileges and immunities stipulated in the Convention on the Privileges and Immunities of the Specialized Agencies, approved by the General Assembly of the United Nations on 21 November 1947.

5. The WTO may conclude a headquarters agreement.

Article IX

Decision-Making

1. The WTO shall continue the practice of decision-making by consensus followed under GATT 1947.[1] Except as otherwise provided, where a decision cannot be arrived at by consensus, the matter at issue shall be decided by voting. At meetings of the Ministerial Conference and the General Council, each Member of the WTO shall have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member States[2] which are Members of the WTO. Decisions of the Ministerial Conference and the General Council shall be taken by a majority of the votes cast, unless

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1 The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no Member, present at the meeting when the decision is taken, formally objects to the proposed decision.

2 The number of votes of the European Communities and their member States shall in no case exceed the number of the member States of the European Communities.

otherwise provided in this Agreement or in the relevant Multilateral Trade Agreement.[3]

2. The Ministerial Conference and the General Council shall have the exclusive authority to adopt interpretations of this Agreement and of the Multilateral Trade Agreements. In the case of an interpretation of a Multilateral Trade Agreement in Annex 1, they shall exercise their authority on the basis of a recommendation by the Council overseeing the functioning of that Agreement. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members. This paragraph shall not be used in a manner that would undermine the amendment provisions in Article X.

3. In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a Member by this Agreement or any of the Multilateral Trade Agreements, provided that any such decision shall be taken by three fourths[4] of the Members unless otherwise provided for in this paragraph.

(a) A request for a waiver concerning this Agreement shall be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference shall establish a time-period, which shall not exceed 90 days, to consider the request. If consensus is not reached during the time-period, any decision to grant a waiver shall be taken by three fourths4 of the Members.

(b) A request for a waiver concerning the Multilateral Trade Agreements in Annexes 1A or 1B or 1C and their

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[3] Decisions by the General Council when convened as the Dispute Settlement Body shall be taken only in accordance with the provisions of paragraph 4 of Article 2 of the Dispute Settlement Understanding.

[4] A decision to grant a waiver in respect of any obligation subject to a transition period or a period for staged implementation that the requesting Member has not performed by the end of the relevant period shall be taken only by consensus.

annexes shall be submitted initially to the Council for Trade in Goods, the Council for Trade in Services or the Council for TRIPS, respectively, for consideration during a time-period which shall not exceed 90 days. At the end of the time-period, the relevant Council shall submit a report to the Ministerial Conference.

4. A decision by the Ministerial Conference granting a waiver shall state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver, and the date on which the waiver shall terminate. Any waiver granted for a period of more than one year shall be reviewed by the Ministerial Conference not later than one year after it is granted, and thereafter annually until the waiver terminates. In each review, the Ministerial Conference shall examine whether the exceptional circumstances justifying the waiver still exist and whether the terms and conditions attached to the waiver have been met. The Ministerial Conference, on the basis of the annual review, may extend, modify or terminate the waiver.

5. Decisions under a Plurilateral Trade Agreement, including any decisions on interpretations and waivers, shall be governed by the provisions of that Agreement.

Article X

*Amendment*s

1. Any Member of the WTO may initiate a proposal to amend the provisions of this Agreement or the Multilateral Trade Agreements in Annex 1 by submitting such proposal to the Ministerial Conference. The Councils listed in paragraph 5 of Article IV may also submit to the Ministerial Conference proposals to amend the provisions of the corresponding Multilateral Trade Agreements in Annex 1 the functioning of which they oversee. Unless the Ministerial Conference decides on a longer period, for a period of 90 days after the proposal has been tabled formally at the

Ministerial Conference any decision by the Ministerial Conference to submit the proposed amendment to the Members for acceptance shall be taken by consensus. Unless the provisions of paragraphs 2, 5 or 6 apply, that decision shall specify whether the provisions of paragraphs 3 or 4 shall apply. If consensus is reached, the Ministerial Conference shall forthwith submit the proposed amendment to the Members for acceptance. If consensus is not reached at a meeting of the Ministerial Conference within the established period, the Ministerial Conference shall decide by a two-thirds majority of the Members whether to submit the proposed amendment to the Members for acceptance. Except as provided in paragraphs 2, 5 and 6, the provisions of paragraph 3 shall apply to the proposed amendment, unless the Ministerial Conference decides by a three-fourths majority of the Members that the provisions of paragraph 4 shall apply.

2. Amendments to the provisions of this Article and to the provisions of the following Articles shall take effect only upon acceptance by all Members:

Article IX of this Agreement;

Articles I and II of GATT 1994;

Article II:1 of GATS;

Article 4 of the Agreement on TRIPS.

3. Amendments to provisions of this Agreement, or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would alter the rights and obligations of the Members, shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under this paragraph is of such a nature that any Member which has not accepted it within a period specified by the Ministerial

Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference.

4. Amendments to provisions of this Agreement or of the Multilateral Trade Agreements in Annexes 1A and 1C, other than those listed in paragraphs 2 and 6, of a nature that would not alter the rights and obligations of the Members, shall take effect for all Members upon acceptance by two thirds of the Members.

5. Except as provided in paragraph 2 above, amendments to Parts I, II and III of GATS and the respective annexes shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each Member upon acceptance by it. The Ministerial Conference may decide by a three-fourths majority of the Members that any amendment made effective under the preceding provision is of such a nature that any Member which has not accepted it within a period specified by the Ministerial Conference in each case shall be free to withdraw from the WTO or to remain a Member with the consent of the Ministerial Conference. Amendments to Parts IV, V and VI of GATS and the respective annexes shall take effect for all Members upon acceptance by two thirds of the Members.

6. Notwithstanding the other provisions of this Article, amendments to the Agreement on TRIPS meeting the requirements of paragraph 2 of Article 71 thereof may be adopted by the Ministerial Conference without further formal acceptance process.

7. Any Member accepting an amendment to this Agreement or to a Multilateral Trade Agreement in Annex 1 shall deposit an instrument of acceptance with the Director-General of the WTO within the period of acceptance specified by the Ministerial Conference.

8. Any Member of the WTO may initiate a proposal to amend the provisions of the Multilateral Trade Agreements in Annexes 2 and 3 by submitting such proposal to the Ministerial Conference. The

decision to approve amendments to the Multilateral Trade Agreement in Annex 2 shall be made by consensus and these amendments shall take effect for all Members upon approval by the Ministerial Conference. Decisions to approve amendments to the Multilateral Trade Agreement in Annex 3 shall take effect for all Members upon approval by the Ministerial Conference.

9. The Ministerial Conference, upon the request of the Members parties to a trade agreement, may decide exclusively by consensus to add that agreement to Annex 4. The Ministerial Conference, upon the request of the Members parties to a Plurilateral Trade Agreement, may decide to delete that Agreement from Annex 4.

10. Amendments to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XI

Original Membership

1. The contracting parties to GATT 1947 as of the date of entry into force of this Agreement, and the European Communities, which accept this Agreement and the Multilateral Trade Agreements and for which Schedules of Concessions and Commitments are annexed to GATT 1994 and for which Schedules of Specific Commitments are annexed to GATS shall become original Members of the WTO.

2. The least-developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

Article XII

Accession

1. Any State or separate customs territory possessing full autonomy in the conduct of its external commercial relations and of

the other matters provided for in this Agreement and the Multilateral Trade Agreements may accede to this Agreement, on terms to be agreed between it and the WTO. Such accession shall apply to this Agreement and the Multilateral Trade Agreements annexed thereto.

2. Decisions on accession shall be taken by the Ministerial Conference. The Ministerial Conference shall approve the agreement on the terms of accession by a two-thirds majority of the Members of the WTO.

3. Accession to a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XIII

Non-Application of Multilateral Trade Agreements

between Particular Members

1. This Agreement and the Multilateral Trade Agreements in Annexes 1 and 2 shall not apply as between any Member and any other Member if either of the Members, at the time either becomes a Member, does not consent to such application.

2. Paragraph 1 may be invoked between original Members of the WTO which were contracting parties to GATT 1947 only where Article XXXV of that Agreement had been invoked earlier and was effective as between those contracting parties at the time of entry into force for them of this Agreement.

3. Paragraph 1 shall apply between a Member and another Member which has acceded under Article XII only if the Member not consenting to the application has so notified the Ministerial Conference before the approval of the agreement on the terms of accession by the Ministerial Conference.

4. The Ministerial Conference may review the operation of this Article in particular cases at the request of any Member and make appropriate recommendations.

5. Non-application of a Plurilateral Trade Agreement between parties to that Agreement shall be governed by the provisions of that Agreement.

Article XIV

Acceptance, Entry into Force and Deposit

1. This Agreement shall be open for acceptance, by signature or otherwise, by contracting parties to GATT 1947, and the European Communities, which are eligible to become original Members of the WTO in accordance with Article XI of this Agreement. Such acceptance shall apply to this Agreement and the Multilateral Trade Agreements annexed hereto. This Agreement and the Multilateral Trade Agreements annexed hereto shall enter into force on the date determined by Ministers in accordance with paragraph 3 of the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations and shall remain open for acceptance for a period of two years following that date unless the Ministers decide otherwise. An acceptance following the entry into force of this Agreement shall enter into force on the 30th day following the date of such acceptance.

2. A Member which accepts this Agreement after its entry into force shall implement those concessions and obligations in the Multilateral Trade Agreements that are to be implemented over a period of time starting with the entry into force of this Agreement as if it had accepted this Agreement on the date of its entry into force.

3. Until the entry into force of this Agreement, the text of this Agreement and the Multilateral Trade Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. The Director-General shall promptly furnish a certified true copy of this Agreement and the Multilateral Trade Agreements, and a notification of each acceptance thereof, to each government and the European Communities having accepted this Agreement. This Agreement and the Multilateral Trade Agreements, and any

amendments thereto, shall, upon the entry into force of this Agreement, be deposited with the Director-General of the WTO.

4. The acceptance and entry into force of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement. Such Agreements shall be deposited with the Director-General to the CONTRACTING PARTIES to GATT 1947. Upon the entry into force of this Agreement, such Agreements shall be deposited with the Director-General of the WTO.

Article XV

Withdrawal

1. Any Member may withdraw from this Agreement. Such withdrawal shall apply both to this Agreement and the Multilateral Trade Agreements and shall take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO.

2. Withdrawal from a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

Article XVI

Miscellaneous Provisions

1. Except as otherwise provided under this Agreement or the Multilateral Trade Agreements, the WTO shall be guided by the decisions, procedures and customary practices followed by the CONTRACTING PARTIES to GATT 1947 and the bodies established in the framework of GATT 1947.

2. To the extent practicable, the Secretariat of GATT 1947 shall become the Secretariat of the WTO, and the Director-General to the CONTRACTING PARTIES to GATT 1947, until such time as the Ministerial Conference has appointed a Director-General in accordance with paragraph 2 of Article VI of this Agreement, shall serve as Director-General of the WTO.

3. In the event of a conflict between a provision of this Agreement and a provision of any of the Multilateral Trade Agreements, the provision of this Agreement shall prevail to the extent of the conflict.

4. Each Member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed Agreements.

5. No reservations may be made in respect of any provision of this Agreement. Reservations in respect of any of the provisions of the Multilateral Trade Agreements may only be made to the extent provided for in those Agreements. Reservations in respect of a provision of a Plurilateral Trade Agreement shall be governed by the provisions of that Agreement.

6. This Agreement shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic.

Explanatory Notes:

The terms "country" or "countries" as used in this Agreement and the Multilateral Trade Agreements are to be understood to include any separate customs territory Member of the WTO.

In the case of a separate customs territory Member of the WTO, where an expression in this Agreement and the Multilateral Trade Agreements is qualified by the term "national", such expression shall be read as pertaining to that customs territory, unless otherwise specified.

LIST OF ANNEXES

ANNEX 1

ANNEX 1A: Multilateral Agreements on Trade in Goods

General Agreement on Tariffs and Trade 1994

Agreement on Agriculture

Agreement on the Application of Sanitary and Phytosanitary Measures

Agreement on Textiles and Clothing

Agreement on Technical Barriers to Trade

Agreement on Trade-Related Investment Measures

Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994

Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994

Agreement on Preshipment Inspection

Agreement on Rules of Origin

Agreement on Import Licensing Procedures

Agreement on Subsidies and Countervailing Measures

Agreement on Safeguards

ANNEX 1B: General Agreement on Trade in Services and Annexes

ANNEX 1C: Agreement on Trade-Related Aspects of Intellectual Property Rights

ANNEX 2

Understanding on Rules and Procedures Governing the Settlement of Disputes

ANNEX 3

Trade Policy Review Mechanism

ANNEX 4

Plurilateral Trade Agreements

Agreement on Trade in Civil Aircraft

Agreement on Government Procurement

International Dairy Agreement

International Bovine Meat Agreement

Annexure B

FREQUENTLY ASKED QUESTIONS ON GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

Q.1. When did the General Agreement on Trade in Services (GATS) come into existence?

A.1. The General Agreement on Trade in Services (GATS) came into existence as a result of the Uruguay Round of negotiations and entered into force on 1 January 1995, with the establishment of the WTO.

The multilateral legal instruments resulting from the Uruguay Round were treated as a single undertaking. India also signed all the WTO agreements under the single undertaking rule and GATS is a part of this whole package.

Q.2. What is the main purpose of GATS?

A.2. Prior to the Uruguay Round, services were considered to offer less potential for trade expansion than goods, thanks to existence of technical, institutional and regulatory barriers. However, the development of new transmission technologies facilitating the supply of services (e.g. satellite communication, electronic banking, tele-education), the opening of monopolies in many countries (e.g. voice telephony), and gradual liberalization of hitherto regulated sectors like transport, banking and insurance combined with changes in consumer preferences, enhanced the "tradeability" of services. These developments increased international services flows and created a similar need for multilateral disciplines – as in the area of goods. Thus, the main purpose for the creation of the General Agreement on Trade in Services (GATS) was to create a credible and reliable system of international trade rules, which ensured fair and equitable

treatment of all countries on the principles of non-discrimination. It aims at stimulating trade and development by seeking to create a predictable policy environment wherein the member countries voluntarily undertake to bind their policy-regimes relating to trade in services.

Q.3. What is the importance of liberalization in the services sector to the economy?

A.3. The importance of services sector can be judged from the fact that world trade in commercial services amounted to US$ 2500 billion in the year 2005. In India, too, services accounted for 54.1% of GDP in 2005-06.

Similarly, our services exports more than doubled from US $ 25 billion in 2003-04 to US $ 60 billion in 2005-06 and now account for about 37% of our total exports.

The liberalization of trade in services is expected to lead to the following benefits:-

Economic performance: Presence of an efficient services infrastructure is a precondition for economic success. Services such as telecommunications, banking, insurance and transport, supply strategically important inputs for all sectors, both in goods and services.

Development: Access to world-class services help exporters and producers in developing countries to capitalize on their competitive strength, whatever goods and services they are selling.

Consumer Choice: There is strong evidence in many services, e.g. Telecom, that liberalization leads to lower prices, better quality and wider choice for consumers.

Technology transfer: Services liberalization encourages, foreign direct investment (FDI). Such FDI generally brings with it new skills and technologies that spill over into the wider economy in various ways.

Q.4. What services are covered under GATS and what areas are excluded?

A.4. The GATS covers all internationally traded services with two exceptions: services provided to the public in the exercise of governmental authority, and, in the air transport sector, traffic rights and all services directly related to the exercise of traffic rights.

The WTO Secretariat has divided all services into the following 12 sectors.

1. Business services (including professional and computer services)
2. Communication services
3. Construction and Engineering services
4. Distribution services (e.g. Commission agents, wholesale & retail trade and franchising)
5. Education services
6. Environment services
7. Finance (including insurance and banking) services
8. Health services
9. Tourism and Travel services
10. Recreation, Cultural and Sporting Services
11. Transportation Services, and
12. Other services not elsewhere classified.

These 12 areas are further divided into 161 sub-sectors.

Q.5. How are the supply of services categorized under GATS?

A.5. GATS provides for four modes of supply of services:

cross-border supply, consumption abroad, commercial presence, and presence/movement of natural persons.

Mode 1: Cross-border supply refers to a situation where the service flows from the territory of one Member country into the territory of another Member country. For example, an architect can send his architectural plan through electronic means; a teacher can send teaching material to students in any other country; a doctor sitting in Germany can advise his patient in India through electronic means. In all these cases, trade in services takes place and this is equivalent to cross-border movement of goods.

Mode 2: Consumption abroad refers to a situation where consumer of a service moves into the territory of another Member country to obtain the service. For example, a tourist using hotel or restaurant services abroad; a ship or aircraft undergoing repair or maintenance services abroad.

Mode 3: Commercial presence implies that service suppliers of a Member country establish a territorial presence (a legal presence) in another Member country with a view to providing their services. In this case, the service supplier establishes a legal presence in the form of a joint venture/subsidiary/representative/branch office in the host country and starts supplying services.

Mode 4: Presence or movement of natural persons (in simple language it is export of manpower) covers situations in which a service is delivered through persons of a Member country temporarily entering the territory of another Member country. Examples include independent service suppliers (e.g. doctors, engineers, individual consultants, accountants, etc.) However, GATS covers only temporary movement and not citizenship, residence or employment on a permanent basis in the foreign country.

Let us consider a specific example to distinguish between the four modes of supply. A particular firm in country 'X' establishes a

subsidiary in country 'Y'. This is supply of services through Mode 3 i.e. Commercial Presence. An architect of the said firm sends blueprints over the Internet to another firm in country "Y"- this is Mode 1 i.e. Cross Border Supply. An Engineer from the said firm is deputed to work in the subsidiary firm established in country 'Y' for a limited period for managerial operations – this is Mode 4 i.e. Movement of Natural Persons. Certain trainees from the subsidiary in country 'Y' visit country 'X' and consume both education and tourism services in country 'X' – this is Mode 2 i.e. Consumption Abroad for country 'X'.

Q.6. What are the general obligations under the GATS?

A.6. Obligations contained in the GATS may be categorized into two groups:

(i) General obligations which apply directly and automatically to all Member countries of the WTO, regardless of the existence of sectoral commitments;

(ii) Conditional obligations which apply to sectors where the Member country has assumed market access and national treatment obligations.

The general obligations include:

(a) **MFN Treatment**: Favour one, favour all. MFN means treating one's trading partners equally. Under GATS, if a country allows foreign competition in a sector, equal opportunities in that sector should be given to service providers from all other WTO members. (This applies even if the country has made no specific commitment to provide foreign companies access to its markets under the WTO).

MFN applies to all services, but some special temporary exemptions have been allowed. The only possible derogation/ exclusion from the MFN principle exists in the form of a so-called Article II- Exemption. At the time of entry into force of the WTO

Agreements, the member countries were allowed to schedule exemptions to the MFN principle, i.e. they could indicate their measures which they did not intend to multilateralise on an MFN basis to the WTO member countries. These MFN exemptions are subject to review and should, in principle, not last longer than 10 years.

Since negotiations are still under way in maritime and air transport services, members have elected to maintain existing bilateral and plurilateral agreements by taking necessary exemptions. The only air transportation services covered at present under GATS are aircraft repair and maintenance, selling and marketing of air transport services and computer reservation systems. Not included in GATS are traffic rights and services directly related to exercise of those rights since these are all governed by existing rights and obligations such as the Chicago Convention.

(b) **Transparency:** Member countries are required, inter alia, to publish all measures of general application and establish national enquiry points to respond to other Member's information requests.

(c) **Other unconditional obligations:** include the establishment of administrative review and appeals, procedures and disciplines on the operation of monopolies and exclusive suppliers.

Q.7. What are the conditional obligations under GATS?

A.7. GATS follows a positive list approach under which each member is expected to undertake specific liberalization commitments through a process called "scheduling". Each Member identifies the service sectors/ sub-sectors and modes of supply in which it is willing to make commitments. Then the member inscribes the conditions under which it will allow services and service suppliers access to its market. This is done by indicating limitations it wishes to place on market access and national treatment while granting access. Thus national treatment is not

mandatory in GATS but is negotiated on a sector to sector basis.

This contrasts with the way the national treatment principle is applied to goods – in that case, once a product has crossed a border and been cleared by customs it has to be given national treatment even if the importing country has not made any commitment under the WTO to bind the tariff rate.

a) Market Access: The granting of market access is a commitment undertaken by individual Members in specified sectors after negotiations.

It may be made subject to one or more limitations. For example, limitations may be imposed on the number of services suppliers, service operations or employees in a sector, the value of transactions, the legal form of the service supplier, or the extent of participation of foreign capital.

b) **National Treatment:** National treatment means treating one's own nationals and foreigners equally. In services, it means that once a foreign company has been allowed to supply a service in one's country there should be no discrimination between the foreign and local companies.

Under GATS, a country only has to apply this principle when it has made a specific commitment to provide foreigners access to its services market. It does not have to apply national treatment in sectors where it has not made any commitment even though the service is permitted under liberalized regime. Even in the sectors where it has made commitment for market access, GATS does allow limitations on national treatment to be taken fully or partially.

Q.8 What information is contained in services "schedules"?

A.8 Each WTO Member is required to have a schedule of specific commitments. It is a document which identifies the services sectors, sub-sectors or activities which are subject to Market

Access and National Treatment obligations and any limitations attached to them. The necessary indications must be entered with respect to each of the four different modes of services supply.

Most schedules consist of a sectoral and a horizontal section. The limitation(s) indicated in the sectoral section apply only to the particular sector/sub-sector to which the section refers. For instance, in the sectoral commitments relating to banking services, India has indicated that only 12 foreign bank branches would be allowed to open in a year. This means that the commitment is limited only to the banking services. This commitment was made in 1997 but autonomously we are permitting more foreign bank branches in a year. (However, in India's Revised Offer, this number has been raised to 20). On the other hand, the limitation(s) contained in the horizontal section would apply to all sectors/sub-sectors committed in the schedule. For example, if a member country undertakes a commitment in horizontal section that it will allow entry to business visitor(s) under Mode 4 for 90 days only, this will mean that the business visitor belonging to any service sector which has been committed in the schedule will be allowed entry for 90 days.

The schedules of specific commitments of various countries can be accessed on line at the WTO website (http://www.wto.org.) [http://tsdb.wto.org/wto/public nsf/Fset Predefined Report? Open Frame set]

Q.9 Can specific commitments be withdrawn or modified any ime?

A.9 Asper Article XXI of the GATS, specific commitments may be modified not earlier than three years after their entry into force. However, countries which may be affected by such modifications may request the modifying Member to negotiate compensatory adjustments. This does not mean monetary compensation but the replacement of the commitment withdrawn by another of an

equivalent value. Any such adjustments made are to be granted on an MFN basis.

Q.10. Can commitments be introduced or improved upon outside the context of multilateral negotiations?

A.10. Yes, any commitment can be added or improved at any time autonomously by the member concerned but it becomes a binding commitment only if it is scheduled. It may be mentioned here that autonomous policy is decided irrespective of commitments taken / offered in GATS. Once a commitment is taken in GATS, it cannot be rolled back. For example, in Telecommunication Services, India has undertaken commitments to allow 25% Foreign Direct Investment. This commitment is binding on us and cannot be rolled back.

Q.11. Are there any specific exemptions in the GATS to cater to important national policy interests?

A.11. Governments are free to pursue any national policy objectives provided the relevant measures are compatible with the GATS. More specifically, the GATS allows Members in specified circumstances to take or maintain measures in contravention of their obligations. This applies in particular to:

(i) Measures in reaction to serious balance of payments and external financial difficulties;

(ii) Measures necessary to protect public morals or human, animal or plant life or health; and

(iii) Measures necessary to secure compliance with laws or regulations not inconsistent with the Agreement including, among others, measures necessary to prevent deceptive or fraudulent practices.

Further, 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.

GATS recognizes the right of members to regulate, and to introduce new regulations on the supply of services within their territories in order to meet national policy objectives. Such legitimate objectives could include quality of service, safety of consumers, code of conduct etc. In short, there has to be a balance between the right to regulate and ensuring that such regulation is administered in a reasonable, objective and impartial manner on a non-discriminatory basis.

Further, Article VI: 4 of GATS states: "with a view to ensuring that measures relating to qualification requirements and procedures, technical standards and licensing requirements do not constitute unnecessary barriers to trade in services, the Council for Trade in Services shall, through appropriate bodies it may establish, develop any necessary disciplines. Such disciplines shall aim to ensure that such requirements are, inter alia:

1. Based on objective and transparent criteria, such as competence and the ability to supply the service;

2. Not more burdensome than necessary to ensure the quality of the service;

3. In the case of licensing procedure, not in themselves a restriction on the supply of the services.

As per the mandate of the Hong Kong Ministerial, efforts are under way to put in place disciplines in Domestic Regulation involving qualification requirement procedures, licensing requirement procedures and technical standards before the end of the current round. Developing countries, including India have argued to strike a balance between the right to regulate and regulations becoming unnecessary barriers to trade.

Q.12. Are there any provisions of interest to developing countries?

A.12. Article IV of GATS specifically provides that increasing the participation of developing countries in world trade shall be facilitated by different members through strengthening of their domestic services capacity, improvement of their access to distribution channels and information networks, and liberalisation of market access in sectors and modes of export interest to developing countries. The agreement also recognises that in the negotiations on liberalisation of trade in services, appropriate flexibility will be given to individual developing country members for opening fewer sectors, liberalising fewer types of transactions and attaching such access conditions which aim at achieving the objectives of Article IV while allowing foreign service suppliers access to their markets.

Q.13. What is the present status and calendar of the WTO negotiations on Services?

A.13. The GATS came into existence at the end of the Uruguay Round establishing the WTO in 1995. Under Article XIX of GATS, further round of negotiations for progressive liberalisation had been mandated to begin not later than 5 years from the date of establishment of WTO. Accordingly, negotiations have commenced from 1/1/2000.

To take stock of the progress of the Doha Round of trade talks, a Ministerial meeting was held in Hong Kong from 13th-18th December, 2005, in which the timelines were further revised as follows:

a) 28th February, 2006, for submitting plurilateral requests;

b) 31st July, 2006, for submitting the second round of Revised Offers; and

c) 31st October, 2006, for submitting the draft final schedule of commitments

The abovementioned dates could not be adhered to as there was lack of consensus amongst member nations on various issues in trade in Agriculture and NAMA. The talks were therefore suspended from July 2006 till February 2007. The talks have since resumed and discussions are going on for finalizing the timelines for submission of the Second Revised Offers on Services.

Q.14. What principles underlie the Negotiations?

A.14. The underlying principles of the services negotiations are contained in the Guidelines and Procedures for Negotiations on Trade in Services (NGP) which member countries were required to finalise. India played an instrumental role in finalisation of the NGP. India along with 22 other developing countries prepared and submitted a draft proposal on NGP entitled "Elements of Negotiating Guidelines and Procedures" for consideration of the WTO membership. The adopted NGP is largely based on India's proposal. According to NGP, the negotiations will fully preserve the right to choose the sectors and modes of supply while undertaking commitments. The process of liberalisation shall take place with due respect to the national policy objectives and the level of development. Due considerations will be given to the needs of small and medium-sized service suppliers, particularly those of the developing countries.

In so far as the developing countries are concerned, the negotiations shall aim to increase their participation in the Trade in Services. There shall be flexibility for developing country members in making commitments and special priority shall be given to the least developed countries in view of their special economic situation and their development, trade and financial needs. Recently, in the Hong Kong Ministerial Members agreed to enter into plurilateral negotiations in line with paragraph 11 of the

NGP. Two rounds of plurilateral negotiations have been held so far.

Q.15. What Negotiating methods are to be adopted?

A.15. The main method of negotiations shall be the request and offer approach. In a request-offer approach at the initial stage countries would lay on the table their requests on other trading partners (i.e. their list of demands, seeking greater market access for their exports from them) and in turn also place their offers to other trading partners (i.e. the concession that they are willing to offer giving greater market access to imports of services from its trading partners). Subsequently, it will be followed by negotiations between countries either bilaterally or between Groups of Countries or multilaterally. Any commitments agreed to during this process with a particular country or a Group of countries or multilaterally will be made applicable in respect of other countries at the end of negotiations. The starting point of negotiations will be the existing schedules of specific commitments of the member countries.

Q.16. What are the sectors of interests to developed countries?

A.16. The main sectors of interest to developed countries in the current negotiations are business services, telecommunication services, financial services, transport services, distribution services, energy services, environmental services and education services. The main mode of supply of particular interest to developed countries is Mode 3, i.e. commercial presence because they have the financial capability required for establishment of legal presence in the territory of the trading partner.

Q.17. What are the sectors and modes of supply of particular interest to India ?

A.17. The modes of supply of interest to India are Mode 1 (Cross border supply) and Mode 4 (Movement of Natural Persons.

Trade through Business Process Outsourcing (BPO)/Information Technology Enabled Services (ITES) is undertaken through electronic modes of delivery i.e., Mode 1. BPO/ITES and off-shoring are likely to continue as major thrust areas from India's point of view. In the present Round of Services negotiations, one of our major objectives is to achieve better access for our service suppliers under this mode. When it began, outsourcing had a limited objective to achieve cost savings in transaction-intensive, back-office business processes. However, it has now emerged as a flexible and powerful approach to address even tactical and strategic aims. There has been a movement up the value chain with India emerging as the new hub for Research & Development activities in Financial Services, Engineering related Services, Medical and related Services etc.

India has also a large pool of well-qualified professionals in the services sectors like computer and related services, education services, audiovisual services, accountancy services, architectural services, construction and engineering services, heath services and consultancy services. India has a fairly large comparative advantage over other Member countries with regard to supply of professional services in these service sectors.

In the recent past, Mode 3 is also becoming important for India because of overseas expansion of a number of Indian companies (eg. banking (ICICI, State Bank), Pharma (Dr Reddy's, Ranbaxy), Non-Conventional Energy (Suzlon), Telecom (VSNL, Reliance) and IT (Infosys, WIPRO).

Q. 18. What is India's strategy for achieving its objectives in Mode 1?

A.18. India has been seeking support for broad based commitments in Mode 1 from a critical mass of countries, at least in some of the key areas except in some sensitive sectors sectors such as Financial, Telecommunications and Audio visual Services. The objective is to freeze the existing liberalisation in

those countries, thus removing potential future hurdles in outsourcing of business to countries like India. In this regard, India, Chile and Mexico co-sponsored a joint

statement (JOB (04)/87 dated 28 June 2004) on this issue. Recently, another Joint Statement on the Cross-Border supply (JOB (05)/90 dated 1 June 2005) was also tabled in the WTO.

Q.19. What is India's strategy to achieve greater liberalisation in Movement of Natural Persons?

A.19. India is a proponent of liberalisation of trade in services through Mode 4. In order to promote the liberalization of mode 4, India has been submitting negotiating proposals at the WTO. In November, 2000 India submitted a proposal on "Liberalisation of Movement of Professionals" (S/CSS/W/12 dated 24th November, 2000). The Indian proposal notes that the developed member countries have taken limited commitments in Mode 4, which is of significant interest to developing countries. These commitments are further reduced in scope on account of various measures taken by developed member countries, such as Economic Needs Test (ENT); restrictive visa regimes; Non-recognition of qualifications etc. The proposal suggested various strategies for improving access for Indian service providers such as transparency in the visa regimes, creation of a separate GATS visa different and less onerous from the normal immigration visa, facilitation of Mutual Recognition Agreements (MRAs) etc. Subsequently India also tabled various proposals along with other like minded members, for liberalization of Movement of Natural Persons. The proposal contained in paper No. TN/S/W/14 dated 3rd July 2003 addressed similar issues and suggested several remedial measures. The paper on Categories of Natural Persons for commitments under Mode 4 of GATS (**TN/S/W/31 dated** 18 February 2005) stressed on the need for arriving at a common understanding on a list of categories of natural persons for whom commitments are being sought, along with common parameters and market access conditions attached to them. The objective of the paper was to

ensure greater uniformity and clarity in scheduling commitments and improving the level of commitments in Mode 4. In addition, India has also tabled along with other countries at the WTO a paper on the "Assessment of Mode 4 offers of members" (JOB (05)/131 dated 30.6.2005).

In the area of disciplining of domestic regulations, which is important for gaining effective market access for our service providers, India has been playing a pro-active role at the WTO. In this regard, India has put in several proposals for discussions on this subject, including a paper on Development of Disciplines for Professional Services (JOB (03)/192 dated 30 September 2003. Recently, India along with some other developing countries such as Chile, Mexico, Pakistan and Thailand again tabled a proposal (JOB (05)/50, dated 30 March 2005) suggesting some alternative approaches for addressing the issue of recognition such as development of disciplines for Professional Services; establishing guidelines for recognition of qualification; possibility of undertaking Additional Commitments for verifying a foreign service provider's competence to provide the service etc.

In pursuance of the Hong Kong Ministerial, disciplines in Domestic Regulations have to be concluded before the end of this round. Discussions on this are under way in the Working Party on Domestic Regulation (WPDR). In this connection, India along with some other countries had submitted a Room Document on 1.5.2006 on Disciplines on Qualification Requirements and Procedures and Chairman of the WPDR has also circulated a consolidated working paper based on the proposals submitted by WTO members on 12.7.2006 on the matter.

Q.20. Is it possible that there could be surge of imports in any service sectors? If yes, what could be done?

A.20. The GATS architecture is based on a positive list approach where the member countries have a right to choose the sectors and the modes of supply in which they would undertake

commitments. Normally, it is expected that the commitments made would be in accordance with the comfort level of the member countries. In most cases, autonomously similar liberalisation policies are in any case being followed. It is, therefore, unlikely that there would be a surge in imports on account of the commitments undertaken. However, in view of the possibility, the GATS provides for negotiations on emergency safeguard measures under Article X. The negotiations are now under progress on the question of Emergency Safeguard Measures whose purpose would be to provide for the suspension of a commitment in case of injury or the threat of injury to a domestic service sector on account of surge in imports.

Q.21. Will the Services Negotiations force India to open all the service sectors to foreign competition?

A.21. There is no obligation on any WTO member to allow foreign supply of any particular service. Governments are free to choose those services on which they will make commitments guaranteeing access to foreign suppliers. Each member must have a national schedule of commitments but there is no rule as to how extensive it should be.

India had also undertaken commitments at the end of Uruguay Round (1994). In this Round, commitments were taken only in 33 sub-sectors and while taking commitments a number of limitations on market access and national treatment were made in the schedules consistent with our national policy objectives. In most cases, these were no more than the autonomously liberalised policies already in force in India.

Under the Doha Round of services negotiations, India submitted its conditional Initial Offer at WTO in January 2004. In the Initial Offer, India substantially improved access in critical service sectors and offered commitments in 47 sub-sectors.

India also submitted its Revised Offer at WTO on 24th August

2005. Building further on the improvements in the initial offer, India has offered to undertake extensive commitments in a number of new sectors/sub-sectors and also improved its existing commitments in various service sectors and modes. Under Mode 4, we have already made improvements to our commitments by including Contractual Service suppliers and Independent professionals in the Initial Offer, the definitions and conditions for which have further been refined in the Revised Offer. India's Revised offer to WTO can be accessed at http://commerce.nic.in.

Q.22. What is the plurilateral process in the WTO Services negotiations?

A.22. The plurilateral process was mandated in the Hong Kong Ministerial Conference to provide greater momentum to the services negotiations and reduce the transaction cost of such negotiations. Plurilateral process has also been recognized in the Negotiating Guidelines and Procedures (NGP) of the WTO for the Services negotiations. It entails a group of members putting a single request in sectors / Modes of interest to them.

It is intended to supplement the bilateral request – offer process which would continue to be the primary method of negotiations. The participation is limited to the requesting and requested members and the outcome would only be reflected in the Revised Offers of each individual member as is the case with the bilateral requests.

As a part of the plurilateral process, 21 plurilateral groups have been formed at the WTO in service sectors/areas viz: 1) Air Transport Services, 2) Architecture, Engineering and Integrated Engineering Services; 3) Audio Visual Services; 4) Computer and Related Services (CRS); 5) Construction and Related Engineering Services; 6) Education Services; 7) Energy Services; 8) Environment Services; 9) Financial Services; 10) Legal Services; 11) Logistics; 12) Maritime Services; 13) Postal/Courier Services (including Express Delivery); 14) Telecom Services; 15)

Distribution Services; 16) Cross Border Supply; 17) Mode-3 (Commerce presence); 18) Mode-4 (Presence of natural persons); 19) MFN Exemptions (General); 20) MFN Exemptions (Financial Services); and 21) MFN Exemptions (Audio-Visual Services)

Q.23. What is the current status of plurilateral negotiations and what has been India's role in these negotiations?

A.23. It has been agreed that all Members making requests will be considered to be deemed recipients of the request except in Mode 4. The first and second rounds of meetings of all plurilateral groups were held from 28th March to 6th April 2006 and 15th -24th May 2006 respectively. India is the coordinator of Mode-1 (Cross Border Supply) and Mode-4 (Temporary Movement of Natural Persons) plurilateral groups. India has also participated as a requesting member in the Computer and Related Services (CRS) group and Architecture, Engineering and Integrated Engineering Services (AEI) group.

As a part of the plurilateral process, India has also received a number of plurilateral requests in all the sectors/areas listed in para 4.2 above except for the Horizontal Request in Mode 3 (Commercial presence), MFN Exemptions (General) and MFN Exemptions (Financial Services). India has therefore received requests in 14 sectors/areas, excluding those sectors/areas in which India is a requesting member and therefore a deemed recipient.

All Members, including India, are expected to respond to the plurilateral requests and bilateral requests placed on them by making improved Offers in the second round.

At present, the discussions on bilateral and plurilateral requests are going on and the Second Revised Offers will be submitted as and when the timelines are agreed upon by the member countries.

[Source: Website of Ministry of Commerce & Industry at http://commerce.nic.in]

Annexure C

SERVICES SECTORAL CLASSIFICATION LIST

WORLD TRADE ORGANIZATION

RESTRICTED

MTN.GNS/W/120

10 July 1991

(98-0000)

Special Distribution

SERVICES SECTORAL CLASSIFICATION LIST

Note by the Secretariat

The secretariat indicated in its informal note containing the draft classification list (24 May 1991) that it would prepare a revised version based on comments from participants. The attached list incorporates, to the extent possible, such comments. It could, of course, be subject to further modification in the light of developments in the services negotiations and ongoing work elsewhere.

SERVICES SECTORAL CLASSIFICATION LIST

SECTORS AND SUB-SECTORS		CORRESPONDING CPC
1.	BUSINESS SERVICES	Section B
A.	Professional Services	
a.	Legal Services	861
b.	Accounting, auditing and bookeeping services	862
c.	Taxation Services	863
d.	Architectural services	8671
e.	Engineering services	8672
f.	Integrated engineering services	8673
g.	Urban planning and landscape architectural services	8674
h.	Medical and dental services	9312
i.	Veterinary services	932
j.	Services provided by midwives, nurses, physiotherapists and para-medical personnel	93191
k.	Other	
B.	Computer and Related Services	
a.	Consultancy services related to the installation of computer hardware	841
b.	Software implementation services	842
c.	Data processing services	843
d.	Data base services	844
e.	Other	845+849
C.	Research and Development Services	
a.	R&D services on natural sciences	851
b.	R&D services on social sciences and humanities	852
c.	Interdisciplinary R&D services	853

D.	Real Estate Services	
a.	Involving own or leased property	821
b.	On a fee or contract basis	822
E.	Rental/Leasing Services without Operators	
a.	Relating to ships	83103
b.	Relating to aircraft	83104
c.	Relating to other transport equipment	83101+83102+83105
d.	Relating to other machinery and equipment	83106-83109
e.	Other	832
F.	Other Business Services	
a.	Advertising services	871
b.	Market research and public opinion polling services	864
c.	Management consulting service	865
d.	Services related to man. consulting	866
e.	Technical testing and analysis serv.	8676
f.	Services incidental to agriculture, hunting and forestry	881
g.	Services incidental to fishing	882
h.	Services incidental to mining	883+5115
i.	Services incidental to manufacturing (except for 88442)	884+885
j.	Services incidental to energy distribution	887
k.	Placement and supply services of Personnel	872
l.	Investigation and security	873
m.	Related scientific and technical consulting services	8675
n.	Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	633+ 8861-8866

o.	Building-cleaning services	874
p.	Photographic services	875
q.	Packaging services	876
r.	Printing, publishing	88442
s.	Convention services	87909*
t.	Other	8790
2.	COMMUNICATION SERVICES	
A.	Postal services	7511
B.	Courier services	7512
C.	Telecommunication services	
a.	Voice telephone services	7521
b.	Packet-switched data transmission services	7523**
c.	Circuit-switched data transmission services	7523**
d.	Telex services	7523**
e.	Telegraph services	7522
f.	Facsimile services	7521**+7529**
g.	Private leased circuit services	7522**+7523**
h.	Electronic mail	7523**
i.	Voice mail	7523**
j.	On-line information and data base retrieval	7523**
k.	electronic data interchange (EDI)	7523**
l.	enhanced/value-added facsimile services, incl. store and forward, store and retrieve	7523**
m.	code and protocol conversion	n.a.

*The (*) indicates that the service specified is a component of a more aggregated CPC item specified elsewhere in this classification list.

** The (**) indicates that the service specified constitutes only a part of the total range of activities covered by the CPC concordance (e.g. voice mail is only a component of CPC item 7523).

n.	on-line information and/or data processing (incl.transaction processing)	843**
o.	other	
D.	Audiovisual services	
a.	Motion picture and video tape production and distribution services	9611
b.	Motion picture projection service	9612
c.	Radio and television services	9613
d.	Radio and television transmission services	7524
e.	Sound recording	n.a.
f.	Other	
E.	Other	
3.	CONSTRUCTION AND RELATED ENGINEERING SERVICES	
A.	General construction work for buildings	512
B.	General construction work for civil engineering	513
C.	Installation and assembly work	514+516
D.	Building completion and finishing work	517
E.	Other	511+515+518
4.	DISTRIBUTION SERVICES	
A.	Commission agents' services	621
B.	Wholesale trade services	622
C.	Retailing services	631+632 6111+6113+6121
D.	Franchising	8929
E.	Other	
5.	EDUCATIONAL SERVICES	
A.	Primary education services	921
B.	Secondary education services	922
C.	Higher education services	923

D.	Adult education	924
E.	Other education services	929
6.	ENVIRONMENTAL SERVICES	
A.	Sewage services	9401
B.	Refuse disposal services	9402
C.	Sanitation and similar services	9403
D.	Other	
7.	FINANCIAL SERVICES	
A.	All insurance and insurance-related services	812**
a.	Life, accident and health insurance services	8121
b.	Non-life insurance services	8129
c.	Reinsurance and retrocession	81299*
d.	Services auxiliary to insurance (including broking and agency services)	8140
B.	Banking and other financial services (excl. insurance)	
a.	Acceptance of deposits and other repayable funds from the public	81115-81119
b.	Lending of all types, incl., inter alia, consumer credit, mortgage credit, factoring and financing of commercial transaction	8113
c.	Financial leasing	8112
d.	All payment and money transmission services	81339**
e.	Guarantees and commitments	81199**
f.	Trading for own account or for account of customers, whether on an exchange, in an over-the-counter market or otherwise, the following:	
	- money market instruments (cheques, bills, certificate of deposits, etc.)	81339**

	- foreign exchange	81333
	- derivative products incl., but not limited to, futures and options	81339**
	- exchange rate and interest rate instruments, inclu. products such as swaps, forward rate agreements, etc.	81339**
	- transferable securities	81321*
	- other negotiable instruments and financial assets, incl. bullion	81339**
g.	Participation in issues of all kinds of securities, incl. under-writing and placement as agent (whether publicly or privately) and provision of service related to such issues	8132
h.	Money broking	81339**
i.	Asset management, such as cash or portfolio management, all forms of collective investment management, pension fund management, custodial depository and trust services	8119+** 81323*
j.	Settlement and clearing services for financial or assets, incl. securities, derivative products, or and other negotiable instruments	
k.	Advisory and other auxiliary financial services on all the activities listed in or Article 1B of MTN.TNC/W/50, incl. credit reference and analysis, investment and portfolio research and advice, advice on acquisitions and on corporate restructuring and strategy	8131 8133
l.	Provision and transfer of financial information, and financial data processing and related software by providers of other financial services	8131

C.	Other	
8.	HEALTH RELATED AND SOCIAL SERVICES (other than those listed under 1.A.h-j.)	
A.	Hospital services	9311
B.	Other Human Health Services	9319 (other than 93191)
C.	Social Services	933
D.	Other	
9.	TOURISM AND TRAVEL RELATED SERVICES	
A.	Hotels and restaurants (incl. catering)	641-643
B.	Travel agencies and tour operators services	7471
C.	Tourist guides services	7472
D.	Other	
10.	RECREATIONAL, CULTURAL AND SPORTING SERVICES (other than audiovisual services)	
A.	Entertainment services (including theatre, live bands and circus services)	9619
B.	News agency services	962
C.	Libraries, archives, museums and other cultural services	963
D.	Sporting and other recreational services	964
E.	Other	
11.	TRANSPORT SERVICES	
A.	Maritime Transport Services	
a.	Passenger transportation	7211
b.	Freight transportation	7212
c.	Rental of vessels with crew	7213
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7214

f.	Supporting services for maritime transport	745**
B.	Internal Waterways Transport	
a.	Passenger transportation	7221
b.	Freight transportation	7222
c.	Rental of vessels with crew	7223
d.	Maintenance and repair of vessels	8868**
e.	Pushing and towing services	7224
f.	Supporting services for internal waterway transport	745**
C.	Air Transport Services	
a.	Passenger transportation	731
b.	Freight transportation	732
c.	Rental of aircraft with crew	734
d.	Maintenance and repair of aircraft	8868**
e.	Supporting services for air transport	746
D.	Space Transport	733
E.	Rail Transport Services	
a.	Passenger transportation	7111
b.	Freight transportation	7112
c.	Pushing and towing services	7113
d.	Maintenance and repair of rail transport equipment	8868**
e.	Supporting services for rail transport services	743
F.	Road Transport Services	
a.	Passenger transportation	7121+7122
b.	Freight transportation	7123
c.	Rental of commercial vehicles with operator	7124
d.	Maintenance and repair of road transport equipment	6112+8867
e.	Supporting services for road transport services	744

G.	Pipeline Transport	
a.	Transportation of fuels	7131
b.	Transportation of other goods	7139
H.	Services auxiliary to all modes of transport	
a.	Cargo-handling services	741
b.	Storage and warehouse services	742
c.	Freight transport agency services	748
d.	Other	749
I.	Other Transport Services	
12.	OTHER SERVICES NOT INCLUDED ELSEWHERE	95+97+98+99

Annexure D

LIST OF MEMBERS AND OBSERVERS - THE WORLD TRADE ORGANISATION

List of Members and Observers

– **The World Trade Organisation**

152 members on 16th May 2008(with dates of membership)

Albania 8 September 2000
Angola 23 November 1996
Antigua and Barbuda 1 January 1995
Argentina 1 January 1995
Armenia 5 February 2003
Australia 1 January 1995
Austria 1 January 1995
Bahrain, Kingdom of 1 January 1995
Bangladesh 1 January 1995
Barbados 1 January 1995
Belgium 1 January 1995
Belize 1 January 1995
Benin 22 February 1996
Bolivia 12 September 1995
Botswana 31 May 1995
Brazil 1 January 1995
Brunei Darussalam 1 January 1995
Bulgaria 1 December 1996
Burkina Faso 3 June 1995
Burundi 23 July 1995
Cambodia 13 October 2004
Cameroon 13 December 1995
Canada 1 January 1995

Central African Republic 31 May 1995
Chad 19 October 1996
Chile 1 January 1995
China 11 December 2001
Colombia 30 April 1995
Congo 27 March 1997
Costa Rica 1 January 1995
Côte d'Ivoire 1 January 1995
Croatia 30 November 2000
Cuba 20 April 1995
Cyprus 30 July 1995
Czech Republic 1 January 1995
Democratic Republic of the Congo 1 January 1997
Denmark 1 January 1995
Djibouti 31 May 1995
Dominica 1 January 1995
Dominican Republic 9 March 1995
Ecuador 21 January 1996
Egypt 30 June 1995
El Salvador 7 May 1995
Estonia 13 November 1999
European Communities 1 January 1995
Fiji 14 January 1996
Finland 1 January 1995
Former Yugoslav Republic of Macedonia (FYROM) 4 April 2003
France 1 January 1995
Gabon 1 January 1995
The Gambia 23 October 1996
Georgia 14 June 2000
Germany 1 January 1995
Ghana 1 January 1995
Greece 1 January 1995
Grenada 22 February 1996

Guatemala 21 July 1995
Guinea 25 October 1995
Guinea Bissau 31 May 1995
Guyana 1 January 1995
Haiti 30 January 1996
Honduras 1 January 1995
Hong Kong, China 1 January 1995
Hungary 1 January 1995
Iceland 1 January 1995
India 1 January 1995
Indonesia 1 January 1995
Ireland 1 January 1995
Israel 21 April 1995
Italy 1 January 1995
Jamaica 9 March 1995
Japan 1 January 1995
Jordan 11 April 2000
Kenya 1 January 1995
Korea, Republic of 1 January 1995
Kuwait 1 January 1995
Kyrgyz Republic 20 December 1998
Latvia 10 February 1999
Lesotho 31 May 1995
Liechtenstein 1 September 1995
Lithuania 31 May 2001
Luxembourg 1 January 1995
Macao, China 1 January 1995
Madagascar 17 November 1995
Malawi 31 May 1995
Malaysia 1 January 1995
Maldives 31 May 1995
Mali 31 May 1995
Malta 1 January 1995
Mauritania 31 May 1995

Mauritius 1 January 1995
Mexico 1 January 1995
Moldova 26 July 2001
Mongolia 29 January 1997
Morocco 1 January 1995
Mozambique 26 August 1995
Myanmar 1 January 1995
Namibia 1 January 1995
Nepal 23 April 2004
Netherlands — For the Kingdom in Europe and for the Netherlands Antilles 1 January 1995
New Zealand 1 January 1995
Nicaragua 3 September 1995
Niger 13 December 1996
Nigeria 1 January 1995
Norway 1 January 1995
Oman 9 November 2000
Pakistan 1 January 1995
Panama 6 September 1997
Papua New Guinea 9 June 1996
Paraguay 1 January 1995
Peru 1 January 1995
Philippines 1 January 1995
Poland 1 July 1995
Portugal 1 January 1995
Qatar 13 January 1996
Romania 1 January 1995
Rwanda 22 May 1996
Saint Kitts and Nevis 21 February 1996
Saint Lucia 1 January 1995
Saint Vincent & the Grenadines 1 January 1995
Saudi Arabia 11 December 2005
Senegal 1 January 1995
Sierra Leone 23 July 1995

Singapore 1 January 1995
Slovak Republic 1 January 1995
Slovenia 30 July 1995
Solomon Islands 26 July 1996
South Africa 1 January 1995
Spain 1 January 1995
Sri Lanka 1 January 1995
Suriname 1 January 1995
Swaziland 1 January 1995
Sweden 1 January 1995
Switzerland 1 July 1995
Chinese Taipei 1 January 2002
Tanzania 1 January 1995
Thailand 1 January 1995
Togo 31 May 1995
Tonga 27 July 2007
Trinidad and Tobago 1 March 1995
Tunisia 29 March 1995
Turkey 26 March 1995
Uganda 1 January 1995
Ukraine 16 May 2008
United Arab Emirates 10 April 1996
United Kingdom 1 January 1995
United States of America 1 January 1995
Uruguay 1 January 1995
Venezuela (Bolivarian Republic of) 1 January 1995
Viet Nam 11 January 2007
Zambia 1 January 1995
Zimbabwe 5 March 1995

Observer governments

Afghanistan
Algeria
Andorra

Azerbaijan
Bahamas
Belarus
Bhutan
Bosnia and Herzegovina
Cape Verde
Comoros
Equatorial Guinea
Ethiopia
Holy See (Vatican)
Iran
Iraq
Kazakhstan
Lao People's Democratic Republic
Lebanese Republic
Liberia, Republic of
Libya
Montenegro
Russian Federation
Samoa
Sao Tomé and Principe
Serbia
Seychelles
Sudan
Tajikistan
Uzbekistan
Vanuatu
Yemen

Note: With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers.

(Source : The WTO at http://www.wto.org)