

Multilateral Trading System and Developing Countries: Prospects and Perspectives with Special Reference to India

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Extended Abstract

The World Trade Organization (WTO) and its predecessor General Agreement on Trade and Tariffs (GATT) have framed rules and disciplines (provisions) for ensuring multilateral trade² among countries. Multilateral trade negotiations are supposed to be held keeping in view the provisions of the WTO. This paper enumerates and reviews some of the provisions of the (WTO) along with the discussion of the possible constraints such provisions poses for trade and domestic policies of the member states. It also discusses the policy changes made by developing countries, including India in pursuance of the WTO commitments. In the light of these commitments this paper recommends some negotiating strategies for the developing countries. These countries may like to adopt such strategies in the next multilateral trade rounds . A critical review of the WTO provisions and in-depth study of the positions taken by developing countries like India leads up to the following strategies:

1. A mutually beneficial negotiation can occur in the multilateral framework where developing countries reduce ceiling bindings and perhaps some applied tariff rates and seek for further reductions in agricultural tariffs and peak level industrial tariffs of developed countries. Such a negotiation could yield benefits to the developing countries in a variety of ways. They would benefit both from their own liberalization-which typically accounts for the bulk of the estimated welfare gains-as well as improve stability in their own trade regimes through binding more products and doing so closer to applied rates. However, It may be difficult to reduce tariff rates due to internal reasons. This domestic situation may require developing countries like India to engage more actively multilaterally for furthering domestic reform. In this manner they would benefit from increased market access in other developing and developed country markets. External commitments can foster good domestic policies, by providing guarantees against reversal of current policies. Multilateral tariff reduction could reduce the disadvantage for most of the developing countries that are not part of regional agreements.

It should be possible to find means to negotiate for some credit for unilateral liberalization even if tariffs are not bound provided that provisions could be made for reciprocity on the part of developed countries, particularly in insisting for reduction in agricultural tariff rates by the developed countries. Because most of the prospective unilateral liberalization in the world is in developing countries, and because improved market access is greatly in their interest, this is an area where negotiations should be possible to the benefit of the group as a whole.

2 Developing countries were effective in bringing issues like agriculture and the agreement to phase out the MFA(Multi-Fibre Agreement) into the WTO. The MFA phase out is important quantitatively, and it is endloaded. Developing countries recognize, correctly, that it is vital that the Uruguay Round undertakings be carried out, and it is clearly in their interest to insist upon it. Any bargaining strategy that is developed should be structured in such a way as to insure that the unwinding of the MFA and the other undertakings already agreed to in fact take place.

3. As far as GATS is concerned, developing countries should support deeper and wider commitments for their benefit. Although the most serious challenges are domestic i.e. enhancing domestic competition and improving the regulatory framework, developing countries including India should be open to multilateral disciplines on services liberalization. This openness could serve as the basis for creating negotiating linkages i.e. trading domestic liberalization for increased mobility of individual service providers.

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² Multilateral trade is trade among several countries,whose exports and imports are not in balance between pairs of countries,though countries will tend to be in balance with regard to their total foreign payments and total foreign receipts.Such trade usually conforms to comparative advantage.

Agreement on ways to permit the temporary immigration of construction workers is another area of interest for developing countries. At the same time developing countries should strengthen domestic regulations and press for strengthened multilateral disciplines under the GATS on domestic regulation to address implicit barriers posed by qualification and licensing requirements. Developing countries may be advised to insist linking of services negotiations across sectors and to insure that the sectors of greatest interest to them are included in the negotiations. These sectors may be movement of professionals and workers, tourism, financial services and maritime services.

4. Almost all countries have an interest in negotiating a prohibition against export subsidies that are contingent upon the use of domestic over imported goods. Removal of tariffs is a far superior policy than giving export subsidies. India's experience shows export subsidies to have little impact on exports. Brazil and Mexico's experience shows export subsidies to be costly instrument of export diversification. In principle a case can be made for protecting infant export industries in the presence of externalities. But the empirical relevance of externalities remain as illusory for export industries as it was for import substitution industries. Even for developing countries that do subsidize their agricultural exports it is likely that the benefits accruing to less developed countries exporters (because developed countries have to bind the level of agricultural subsidies) will outweigh the costs associated with losses of domestic subsidies. The concern is, however, more with the implementation of the agreement than with its rules.

5. Developing countries should end domestic policies which discriminate against agriculture, particularly prohibiting agricultural taxes and export quotas. In the wake of high protection provided by developed countries to their agriculture there is a greater chance of agricultural sector liberalization under the multilateral trading system. Also, if developing countries bring the bound rates closer to current and future applied rates, particularly in case of agricultural imported goods, these countries may be in a better bargaining position to ask for concession on market access from partner countries. With respect to agriculture, the Indian position should be aggressive about keeping social concerns, like food security in the forefront. It is important that India tries to achieve a consensus with other developing countries on the issue of food security which should be an important aspect of negotiations on agriculture. Developing countries must oppose the position that agriculture is "multifunctional" and that food security is only one among many other functions. Developing countries must reiterate the demand that the support and subsidy levels in developed countries should be progressively reduced. It would be a good move for India to be aggressive and threaten retaliation if no concessions are made to developing country interests. If the developed countries resort to increased support and subsidy and refuse to lower the rates as they have undertaken to do, developing countries should counter the move by increasing their own tariffs. India should seriously consider aligning itself with the Cairns group of agricultural exporters consistent with an overall strategy of forming coalitions based on liberalizing ideology.

6. Developing countries should support development of such multilateral investment code that provide greater assurance to investors of their rights. Domestic policies need to be clearly designed to support such multilateral agreement on investment. Further any code on multilateral investment must ensure linkage between domestic environment policies and regulations with rules on investment. Commitments on foreign investment under GATS must be strengthened because any investment agreement is modeled under GATS. Preferably, competition policies needs to incorporate provisions on regulating anti-competitive behavior of foreign (and domestic) firms with additional measures designed to ensure transfer of technology and training of local workers.

7. In the negotiations India should oppose any move to circumscribe the definition or interpretation of the *sui generis* mode of protecting new plant varieties. It should insist on retaining the flexibility of the original *sui generis* as it was the conclusion of the UR under which countries were free to draft their own kind of *sui generis* legislation which would give Plant Breeders Rights (PBR) to the breeders of new plant varieties. India should oppose the use of UPOV as a model of *sui generis* and propose a more developing countries oriented platform like Convention of Farmers and Breeders (CoFaB) as an alternative and mobilize the support of other developing countries for supporting their proposal. Further in the *sui generis* legislation, the farmers rights must include the rights to save, exchange and sell non-branded seeds. The exception to patentability article must be included in further versions of TRIPs induced legislation. Institute workable systems for protecting traditional knowledge domestically in order to seek their replication internationally. Finally, amend the TRIPs agreement with respect to the knowledge of indigenous and local communities such that that provision on indigenous knowledge incorporates oral knowledge too. A new competition policy, combined with judicious use of compulsory licensing, can help mitigate the egregious impacts of

TRIPs agreement. . Developing countries should threaten to withdraw its obligation under TRIPs if the developed countries renege on their market access rights.

8.The WTO includes explicit rules on custom valuation that are intended to reduce the discretion that countries and their custom officers as well as traders themselves have in valuing at the border.By reducing uncertainty over the amount of tariff that an exporter will pay at the border, potential traders become more confident of the returns of trade and they may therefore be expected to trade more,that is,uncertainty over custom valuation itself acts as a barriers to trade,and by committing themselves to predictable and transparent valuation procedures,countries reduce this barrier.The agreement on custom valuation (ACV) does not explicitly provide for adoption of reference values as a method of valuation. Most of the developing countries like India have no objection to using such values for price comparison purposes to test the truth and accuracy of declared values and for rejection of the transaction value method.

9. In regards to the agreement on technical barriers to trade (TBT) many developing countries including India have raised their point that they need time, resources and special and differential treatment to develop their own capacity to prepare and adopt technical regulations and standards. Strengthen disciplines on mutual recognition agreements (MRAs) ensuring that they are non-discriminatory. An effective strategy for developing countries would be to push for multilateral disciplines on domestic regulations in goods and services based on "necessity test". Upgrade domestic standards for obtaining foreign recognition and for allowing foreign technical barriers to be credibly challenged. Developing countries that export any agricultural commodities have an interest in assuring that phytosanitary regulations are based on scientific evidence. As such, developing countries have a strong interest in participating in discussions of experience under the Uruguay Round to insure that changes in regulations enable the improved functioning of the system and does not permit the manipulation of phytosanitary standards for protectionist ends.

10.Raise concerns for arbitrary imposing labor and environmental standards on developing countries trade by the developed countries. It is important that developing countries indicate their lack of desire to have labor standards tied to trade issues. It is suggested that WTO and ILO can commit to work together to develop core labor standards that essentially respects not only workers rights but human rights everywhere. However,concrete actions may be taken by ILO only. The risks resulting from failure to reach environmental accords are that environmentalist in developed countries will lend their support to protectionist measure. In the wake of this development the developing countries may like to negotiate agreements that are less close to their ideal proportionate-to-population allocation. As a by product, protectionist measures against them may become somewhat reduced.

11.The focus on duty free treatment for electronic commerce is misplaced. Since the bulk of such commerce concerns services the relevant regime is that established by the GATS regime on cross border trade. Developing country concerns about foregone tariff revenues are clearly an exaggeration because most countries provide large scale tariff exemptions to their existing tariff schedules. Therefore, widen and deepen scope of cross border supply of commitments under GATS on market access(prohibiting quotas) and national treatment(prohibiting discriminatory taxation) to ensure current openness continues in areas of export interest like software and data bases. Developing countries should support the development of an appropriate regulatory design for electronic commerce.

12 Any WTO commitment should focus on establishing realistic transition periods and technical assistance to address constraints on developing countries institutional capacity.

13.Domestically, developing countries including India should enact a new competition policy and be willing to discuss multilateral disciplines on competition policy. These disciplines should include outlawing practices that involve negative international spillovers such as export cartels (as in shipping),and bringing anti-dumping within the ambit of competition policy.

14. Curtail domestic use of anti-dumping(AD) measures.Argue for drastic reform of multilateral anti-dumping rules to eliminate current protectionist use,ideally by subjecting them to competition policy. Competition laws on predatory pricing can provide appropriate safeguards against protectionist use of AD.Alternatively AD laws should be required to incorporate buyer/consumer interests and provide meaningful representation for such interests in AD proceedings.

15. Preferential trading arrangement rules should be strengthened and uniformly applied to the current and potential member states. Developing countries should insist on the inclusion of compensation provision for third countries who may be adversely affected by trade diversion. Further, there should be clear reaffirmation that mutual recognition agreements cannot be used as a means of discrimination.

16 Given the potential gains from more efficient and transparent government procurement, developing countries should be willing to undertake multilateral disciplines on government procurement.

17. In case the governments of the trading nations are contemplating use of economically unjustified subsidies, countervailing duties (CVDs) can act as an effective deterrent to the use of such subsidies. Thus one could argue that the use of CVDs should not just be permitted, but rather should be required, even in (or especially in) countries that have no domestic competing producer interest to ask for them. However, this presupposes that one can adequately make the necessary distinction between economically justified and unjustified subsidies. It would in the interest of developing countries to support any multilateral CVD regime which restrains use of CVDs as a protective device.

18. Under the new rules of the WTO provision on Safeguards, voluntary export restraints (VERs) are formally prohibited. Rules for safeguard have been modified to permit some discrimination and the requirement of compensation has been weakened. The hope is that the new safeguards rules will attract greater use, diverting governments from excessive use of AD duties and other measures for safeguards purposes.

19. Member countries are expected to implement any recommendations of the dispute settlement body panel report. If they do not, then complaining countries are entitled to compensation from them, or to use suspension of concessions (usually increased trade barriers) against them. If suspension of concession occurs, it is to be done preferably in the same sector as the dispute, or failing that under the terms of the same agreement (GATT, GATS or TRIPs). But if this too is impractical, suspension can come under another agreement. Thus, in particular, violations of the TRIPs agreement can lead to increased barrier to trade in goods or if there is denial on market access rights TRIPs can be used as a retaliatory device if the violations are not corrected in accordance with the recommendations of a panel report. This ability to extend dispute settlement across agreements is one of the strengths of the WTO and developing countries should use it for their benefit. It is suggested that dispute settlement process should be simplified.

There is a greater chance for developing countries to negotiate the WTO issues for their own benefit if they engage multilaterally. Active multilateral engagement can be incrementally helpful in facilitating domestic reform and gaining access for developing countries exports of goods and labor services. Further, the benefits by engaging with multilateral commitments may secure domestic reform that could induce trading partners to open their markets to developing countries. Also, multilateral commitment may help in inducing competition and checking vested interest of weak domestic industries. Developing countries, particularly India should increase their leverage substantially by forming coalitions based on common interest in wide range of areas and show their willingness to open its market in return for improved access into foreign markets. The success in Seattle of developing countries such as India in resisting demands for backdoor diplomacy is testimony to this possibility. However, success may not be certain in the future negotiations and the best possible path under the circumstances would then be to align itself with countries who agree to adopt policies of open trade.

Developing countries should preferably seek across the board liberalization in all sectors rather than negotiate on a sector-by-sector basis with the developed countries. Liberalizing on a sectoral basis diminishes the support for further cuts in other protected sectors. Most of the developing countries like India will benefit by supporting full liberalization of international agricultural markets.

Introduction

General Agreement on Tariffs and Trade (GATT) was signed at the Geneva conference in 1947. It came into effect on 1 January 1948. After nearly five decades of its existence, GATT made way to the formation of the World Trade Organization (WTO) on 1 January, 1995. GATT was a multilateral trade agreement that set rules of conduct for international trade relations and provided a forum for multilateral negotiations regarding the solution of trade problems and the gradual elimination of tariffs and other non-tariff barriers of trade. The agreement was based largely upon principles of non-discrimination and reciprocity so as to liberalize trade. With the exception of Custom Unions and Free Trade Areas (FTAs), all contracting parties were generally bound by the agreement's Most Favoured Nation (MFN) Clause. Protection were to be given to domestic industries through custom tariffs, thereby prohibiting import quotas and other restrictive trade practices. The agreement also provided for the binding of the tariff levels negotiated among member countries and established a framework for the settlement of grievances put forward by members who argued that their rights, under the terms of agreement, had been violated or compromised by other members trade practices. Eight rounds of trade negotiations were held under the aegis of GATT, the last being the most ambitious one i.e., the Uruguay Round (UR). UR negotiations was concerned both with old issues such as unfinished business of previous GATT rounds and with grievances

accumulated over the years and new issues such as trade in services, the protection of intellectual property rights, trade in agriculture and trade related investment measures.

Until the Uruguay round of multilateral trade negotiations, the developing countries were generally observers. They benefited as "free riders" from whatever reductions in trade barriers were negotiated among developed countries, while simultaneously they argued for, and to some degree received, special and differential treatment (S&D), both through the Generalized System of Preferences (GSP) and through the automaticity with which the balance of payments exception was used to permit them to continue reliance upon quantitative restrictions.

All that changed with the conclusion of the eighth and the most ambitious multilateral trade negotiation - the Uruguay Round on April 15, 1994. By that time many policy makers and development economists had become convinced that the highly protectionist policies followed by developing countries in the name of import substitution were inimical to sustained economic growth, and the outer oriented policies and integration with the international economy offered a better hope for rapid development. Sachs and Warner (1995) extensive study has shown that trade boosts economic growth. It is argued that developing countries achieved some considerable gains by participating in the round³.

As per the final act of the Uruguay round, the World Trade Organization (WTO) was established on January 1, 1995. The WTO builds upon the organizational structure that existed under the GATT auspices as of early 1990s. The basic underlying philosophy of the WTO is that open markets, non-discrimination, and global competition in international trade are conducive to the national welfare of all the participating countries. In the WTO, the principle of non-discrimination takes two forms: Most Favored Nation (MFN) treatment and National Treatment (NT). MFN assures that there is non-discrimination among foreign suppliers, while NT assures that there is non-discrimination between foreign suppliers and domestic suppliers. The institutional structure of the WTO contains three components, the revised GATT, the General Agreement on Services (GATS), and the Agreement on trade-related intellectual property issues (TRIPs).

The first WTO Ministerial Conference was held in Singapore in December 1996. The Second Ministerial Conference, held in Geneva in May 1998, carried forward the results of the Singapore Ministerial meeting and established the work programme to examine trade-related issues involving global electronic commerce. Attention was paid to preparations for the negotiations mandated under the Uruguay Round built-in agenda. There was an ongoing interaction among the WTO members as follow-up of the two ministerial meetings and for the preparation for the Third Ministerial Conference to be held in Seattle from November 30 to December 3, 1999. This conference was expected to launch a new round of multilateral trade negotiations to begin in 2000 (millennium round). This new round was to be devoted to items on the Uruguay built-in agenda together with new issues to be decided upon.

The Third Ministerial Conference ended in failures with the members of the WTO not being able to agree on an agenda for Millennium Round. There was number of reasons for the failure of the Seattle Ministerial to launch a new round. Domestic US politics played a key role. There was strong differences between the EU and the US on the issues relating to agricultural liberalization. Developing countries were unwilling to accept inclusion of labour standards and environmental issues within the purview of the new round.

The collapse of talks at Seattle is both sobering and heartening in their lessons for developing countries. Sobering because the threats are arising to the multilateral trading system not only in the form of proliferation of preferential trading arrangements but also with member countries resorting to anti-dumping measures and other forms of implicit protection not covered under WTO rule. Krueger (1999) notes that the postponement of a new round may lead to (a) sectoral liberalization which is a trend that bodes poorly for future multilateral liberalization and (b) in the absence of new round, small developing countries are left to their own (very weak) bargaining positions whereas a new round would enable them to cooperate and gain bargaining strength. Mattoo and Subramanian (2000) agree and note that "The hardening of partner country attitudes toward opening their own markets and the emergence of insidious forms of protectionism will make the bargaining climate less favorable for India in future". Equally, however, Seattle Round

³ See Safadi and Laird, 1996, "The Uruguay Round Agreements: Impact on Developing Countries", World Development, Volume 24, No 7, pp. 1223-1242 for a survey of the various estimates of the likely increases in world trade due to Uruguay Round and the effects of the round on developing countries. Also, see Dani Rodrik, "Developing countries after the Uruguay Round", paper prepared for the Group of 24, mimeo, August 1994, Will Martin and L. Alan Winters, editors, The Uruguay Round and the Developing Countries, Cambridge University Press, 1996, and T.N. Srinivasan, Developing Countries and Multilateral Trading System, Westview Press, 1998 for comprehensive surveys and assessment of the achievements of the developing countries in the Uruguay Round.

demonstrates the ability of developing countries to resist successfully these protectionist demands while claiming the high ground and retaining legitimacy.

Clearly, there are flaws in the structure of the multilateral system as well as limits to what it can deliver, an observation reinforced by the events in Seattle. But Seattle should not deflect attention from developing countries pressing need to reform domestically and to engage multilaterally. Multilateral engagement should be measured but broadly active and supportive, rather than defensive.

The first section of this paper critically reviews and enumerates the provisions of the WTO and discusses the possible constraints it poses for the trade and domestic policies of member states. It also has a discussion on the current policy positions of developing countries, particularly India on the WTO issues and recommends some negotiating strategies in the millennium rounds. The second section give an account of the advantages and limitations of multilateral engagements using political economy arguments. The third section discusses issues that interest all and the major groups of the developing countries in the future multilateral negotiations. The last section give conclusions.

Section I

This section critically reviews the major provisions of the WTO and the resulting constraining behavior (with exceptions) of the countries. It then gives an account of some negotiating strategies which developing countries, particularly India may like to adopt in the next multilateral rounds.

I.1 Tariff Binding: Basic to the GATT and the WTO is the commitment of the member countries to constraint their use of tariffs on imports. It requires countries to commit not to raise their tariffs above the "binding" levels. One achievement of the Uruguay round was the commitment of most countries to bind their tariffs, particularly for agricultural imported goods (cf last row of World, under A1, Table I below). For all of the imported agricultural goods all countries have committed themselves to 100% tariff bindings (last row). This is not the case for Industrial products (denoted by I). Approximately 90% of the industrial products come under the purview of binding tariff rates. While all low and middle income economies (LMIES) have committed to 100% binding on imported agricultural goods this is not the case for industrial products. For example, while India has committed to bind 100% of the agricultural tariff lines, approximately 69% of its industrial goods come under the purview of tariff binding. Table-I show that for 26 low and middle income economies pre-Uruguay round applied rates in more than 50% of the tariff lines in agricultural goods the applied tariffs are below their post Uruguay round bound rates (shown by A1 and A2). For High income economies (HIE) 85.4% of the tariff lines in agricultural goods (AI) have bound rates at the "before" Uruguay round applied rate (Cf row 6). Also, for HIE the post Uruguay round for 59.4 (37.7+21.7) percentage of industrial tariff lines (denoted by I) the bound rates is not below the pre-Uruguay round applied rate. That is a greater percentage of bound tariffs are equal to applied tariff rate (37.7) while 21.7% of the tariff lines have bound tariffs above the applied rates for industrial products. In fact for the importing group the whole World as such greater percentage of tariff lines for industrial goods have bound tariffs at or above the applied rates. However, for India around 41% of the tariff lines in industrial goods have bound tariffs below the applied tariff. The positional levels of pre-and post Uruguay Round (UR) applied tariff rates vis-à-vis MFN bound rates for agricultural as well industrial products have not changed since the end of UR both for developed and developing economies. A mutually beneficial negotiation could occur in the multilateral framework where developing countries reduce ceiling bindings and perhaps some applied rates as well, in exchange for further reductions in agricultural tariffs and peak level industrial tariffs of developed countries. Such a negotiation could yield benefits to the developing countries. They would benefit both from their own liberalization—which typically accounts for the bulk of the estimated welfare gains as well as improve stability in their own trade regimes through binding more products and doing so closer to applied rates. Also, tariff peaks⁴ in both developed and developing countries remain in industrial and agricultural products and the future negotiations should address these questions.

⁴ Tariff peaks for goods are defined here as products on which tariffs are atleast 12% or roughly three times their average MFN tariff

Table-I

Bindings of the Most Favoured Nation tariff rates before and after the Uruguay Round by Importing Economy and Group

Importing Economy/Group			Total Pre-UR	Total Post-UR	Above Applied rate	At Applied Rate	Below Applied Rat.
EU	% of imports GATT bound	A1	86.1	100	0.0	94.8	5.2
		A2	85.6	100	0.0	30.3	41.4
		I	99.5	100	17.7	39.0	43.3
		MT	98.2	100	15.8	42.9	38.6
India	% of imports GATT bound	A1	39.3	100	100	0.0	0.0
		A2	33.5	100	63.9	35.0	0.2
		I	11.9	69.3	14.8	7.8	41.1
		MT	11.6	58.5	16.5	8.8	29.1
Japan	% of imports GATT bound	A1	55.4	100	0.0	71.5	28.5
		A2	53.1	99.9	15.3	38.8	37.7
		I	89.4	95.9	0.1	53.7	42.1
		MT	72.7	83.4	1.9	42.3	38.1
US	% of imports GATT bound	A1	88.0	100	6.1	93.7	0.2
		A2	91.8	100	14.1	47.8	34.7
		I	99.7	100	14.0	43.5	42.5
		MT	91.5	92.5	13.6	41.4	37.4
East Asia & Pacific	% of imports GATT bound	A1	30.9	100	12.6	34.0	53.3
		A2	26.4	99.9	53.1	11.1	29.7
		I	16.7	81.5	20.8	15.3	44.5
		MT	15.9	77.3	22.1	13.7	40.3
High Income Eco	% of imports GATT bound	A1	73.6	100	3.1	85.4	11.4
		A2	71.0	100	7.8	39.6	34.9
		I	84.7	91.7	21.7	37.7	32.3
		MT	80.2	88.5	19.3	37.9	29.9
Latin America	% of imports GATT bound	A1	62.9	100	81.4	16.6	2.0
		A2	61.6	100	93.4	5.0	1.4
		I	52.3	99.9	95.4	3.1	1.0
		MT	49.7	100	88.3	3.4	1.0
South Asia	% of imports GATT bound	A1	31.6	100	100	0.0	0.0
		A2	27.4	99.8	57.3	32.9	0.2
		I	11	57.4	12.1	7.8	33.0
		MT	11.3	52.2	15.1	9.5	23.4
Sub Saharan Africa	% of imports GATT bound	A1	12.9	99.9	99.9	0.0	0.0
		A2	15.3	100	90.4	8.4	0.8
		I	21.4	23.9	7.4	15.3	1.1
		MT	26.8	40.1	17.3	22.0	0.8
LMIES	% of import GATT bound	A1	36.6	100	53.7	25.0	21.3
		A2	36.6	99.9	66.8	12.8	17.4
		I	31.8	83.6	36.4	13.0	33.4
		MT	30.1	80.8	36.8	12.7	28.7
World	% of imports GATT bound	A1	65.6	100	14.0	72.4	13.5
		A2	65.3	100	17.6	35.2	32.0
		I	77.3	90.6	23.8	34.2	32.4
		MT	73.1	87.4	21.8	34.3	29.7

Source:Finger,Ingco and Reincke(1996)

Note: Agriculture,exc Fish:Estimate I(A1),Agriculture,exc.Fish:Estimate 2(A2),Industrial Goods(I)⁵,All Merchandise Trade(MT)⁶

At present the wedge between the applied and the bound rate remain high for developing countries, particularly India. Table II shows that India's average applied tariff rates in agriculture is 26 % while bound rates in the WTO are 94%, a wedge of 68% points.

Table II

⁵ Industrial Goods include Wood,Pulp,Paper,and Furniture,Textiles and Clothing,Leather,Rubber,Footwear,Metals,Chemical and Photographic Suppl.,Transport Equipment,Non-Electric Machinery,Electrical Machinery,Mineral Prod.,Prec.Stones & Metals,Manufactured Articles nes.

⁶ Merchandise trade includes Industrial goods,Petroleum Oils,Fish and Fish Products and Agriculture.

Bound Tariff Rates and Effective Rates of Duty

Average unweighted tariff(%)	Bound Rate of Duty ^a by year 2005	Effective Rate of Duty ^b 1997/1998
Agriculture(ISIC 1)	94	26
Mining(ISIC 2)	36	25
Manufacturing(ISIC 3,includes food processing)	52	36
Whole Economy	54	35
Average unweighted tariff by stage of processing(%)		
Unprocessed	74	25
Semi-Processed	44	35
Processed	56	37

^a Includes only items bound during the Uruguay Round.The bound rates do not include the commitments under the Information Technology Agreement.

^bEffective m.f.n rate,i.e., actual rates applied where basic rates have been reduced by exempt rates.However,many exempt rates can not be incorporated such as where the exempt rate applies to only a part of HS six digit tariff line.the effective rate also excludes specific exemptions.

Source:WTO Secretariat

Table III indicates that in about 87% of agricultural tariff lines ,there exist a wedge between the MFN tariff rate and the Uruguay Round final bound rates as announced in Government of India.,Budget 1999/2000

Table III
Difference in Uruguay Round final bound rates and MFN tariff rates :Number of lines by different range groups

Range(UR-TR)	No.of Lines
UR-TR>=75	401
50=<UR-TR<75	155
25=<UR-TR<50	29
10=<UR-TR<25	39
0=<UR-TR<10	41
UR-TR<0	8
Total	673

TR=MFN Tariff Rate as announced in G.O.I., Budget 1999/2000

UR= Uruguay Round final bound rates

Notes:1 Tariff lines at 6-digit HS or sub groups of 6-digit HS.

2. Includes only agricultural products.

Bringing bound levels closer to current and future applied levels can engender confidence in the predictability of policies in future.However, according to the recent survey done by the Confederation of Indian Industries(CII) and the World Bank the domestic investors in India appear not to have confidence in the stability of government policies (cf Table IV).

Table IV
Predictability,Responses and Availability of Rules and Regulations(% of respondent ratings under different categories)

	Strongly agree	Agree	Slightly Agree	Slightly Disagree	Disagree	Strongly Disagree	Average Score,99
Predictability of government rules and regulations	2	7	46	29	12	4	3.46
Predictability of policy changes in the annual central budget	2	3	45	33	9	8	3.32
Advance information to firms about the changes affecting them	0	18	11	35	25	11	3.00
Score	6	5	4	3	2	1	

Source:World Bank-CII survey of 210 private sector firms,1999

Also, recent tariff policy increases-the special additional duty of 4% points imposed in 1998-1999⁷ and the surcharge equivalent to 10% of the basic custom duty levied in 1999-2000-illustrate the costs of not

⁷ Although this measure was intended to rectify negative protection by imposing a tax on imported goods whose domestic counterparts already faced a 4% sales duty,the manner in which it was levied resulted in affording some extra protection to domestically produced goods

having tighter external discipline on trade policies. Had such discipline existed in the form of bindings the government would have been forced to raise revenues through alternative, trade neutral and hence less costly measures. Also, to bring the bound rates closer to current and future applied rates in case of agricultural imported goods one may be in a better bargaining position to ask for concession on market access from partner countries. It may be required in this context to reduce the applied tariff rates in case of industrial imported goods to bring in par with the bound tariff rates for the same product category⁸. However, it may be difficult to reduce tariff rates due to internal reasons. This domestic situation may require India to negotiate multilaterally in future for furthering domestic reform (discussed in Section II in detail.)

India's tariff even after significant reform, remain exceptionally high and almost highest in the world (cf Table V). Further liberalization is desirable, particularly in the area of clothing and textile. Hertel and Martin (1999) estimate that reduction in tariff rates of textiles and clothing are likely to improve India's terms of trade and yield sizeable welfare benefits. Mattoo and Subramanian (2000) address the trade diversion effects of the formation of NAFTA on India's trade. They suggest that MFN tariffs on industrial products, particularly on leather and clothing and textiles must come down to reduce the costs of trade diversion.

Table:V

Simple Averages MFN Tariff Rates by Importing Economy or Group for Four Product Category -Agriculture (AI), Clothing and Textile (C&T), Industrial goods (I) and All Merchandise Trade (MT)

	AI		C&T		I		MT	
	Post-UR Applied Rate	Post-UR bound rate	Post-UR applied rates	Post-UR bound rates	Post-UR Applied Rate	Post-UR bound rate	Post-UR Applied rate	Post-UR bound rate
EU	20.	20.0	8.8	8.8	3.9	4.1	4.4	4.6
US	8.1	9.0	10.8	10.8	4.4	4.6	4.3	4.5
Japan	32	29.7	7.3	7.3	2.9	3.0	3.7	3.9
Brazil	-12.3	35.2	18.4	34.4	15.6	29.5	15.4	29.8
Sri-Lanka	-0.9	50.0	49.1	50.0	25.5	26.8	26.0	35.9
India	5.5	101	62.2	39.2	44.8	37.5	45	41.4
Malaysia	38.8	39.0	19.9	20.6	13.4	16.7	13.0	16.3
Argentina	-8.6	32.5	13.8	35.0	11.3	30.9	11.1	30.9
Mexico	9.4	25.1	16.6	35.0	13.4	34.7	13.4	34.7
Indonesia	13.6	59.9	30.2	40	17.9	38.5	18.3	39.4
Venezuela	-5.7	67.7	27.4	34.9	15.3	33.3	15.5	33.5
Columbia	-6.7	105.	18.2	36.8	11.4	35.5	11.5	38.1
Korea	39.7	39.6	15.9	17.6	10.7	10.3	11.5	13.3
Thailand	42.6	43.2	29.2	29	27.6	26.5	27.6	26.8
Zimbabwe	-9.6	150.	20.1	29	9.3	24.5	9.2	48.6

Source: Statistics on Tariff Concessions Given and Received-The Uruguay Round (Finger, et al, 1996)

Note: Here applied rates excludes the unilateral and preferential reductions that were not conditioned on reciprocal reductions by trading partners.

For non-agricultural goods India undertook, with a few exceptions, ceilings bindings of 40% ad valorem on finished goods and 25% on intermediate goods, machinery and equipment. The phased reduction in these bound levels from the high level prevailing in 1990 is, where necessary, in installment over the period March 1995 to the year 2005. In textiles, where reduction will be achieved over ten years, India has reserved the right to revert to the duty levels prevailing in 1990, if the integration process envisaged under the agreement on textile and clothing does not materialize in full or is delayed. In agriculture, where, except for a few goods, India's bound rates range from 100 to 300 percent, India is in the process of renegotiating some of its tariff bindings.

The major items such as rice (applied tariff of 0%), skimmed milk (0%), wheat (0%), pulses (0%), sugar (25%) and edible oils (15%) are virtually fully integrated with world markets (except for export of Ors) even though the bound rate is extremely high. These bindings do not date from the Uruguay Round, but go back many years. Naturally, these bindings had to be renegotiated under Article XXVIII of GATT. A tariff rate quotas (TRQs) kind of system has now been imposed. As long as TRQs exist they

⁸ See Hertel and Martin (1999) for a quantification of the benefits from further global liberalization of manufacturing tariffs.

amount to de facto reintroduction of quantitative restrictions(QRs). Logically, contesting TRQs in another countries and maintaining them in India do not make sense. Be that as it may, TRQs are now in place. Article XXVIII negotiations also require compensations to be offered to trading partners. Some compensation must have been offered, but that knowledge is not yet in the public domain. A similar problem exists for DAP fertilizers, with a bound duty of 5%. However, Article XXVIII negotiations on this have not yet begun. Also, state trading enterprises continue to influence trade in agricultural products. Industry must give a feedback on these items so that Government of India can take necessary steps.

Mehta (2000) suggests that if India does not want to increase the import of agricultural items , higher tariffs can be easily imposed. On similar lines (Michalopoulos, 1999) suggest that for most of the developing countries there is considerable scope for increases in protection in agriculture, should they wish to do so. Gulati (1999) , however , argues that trade protection in agriculture is uncalled for in case of India because food security concerns can be adequately addressed through policies other than domestic trade protection. Mehta(2000) suggests that for most of non-agricultural items(most of the consumer products and some industrial products) which remain unbounded in terms of tariff rates "an appropriate tariff rate" should be decided at the earliest by the Indian policy makers. This rate may become the base for future negotiations on tariff binding.

I.2. Quantitative Restrictions: Quantitative restrictions (QRs) are usually regarded as more onerous than tariffs because of the more limited flexibility that they permit in trade and because they place greater limits on the extent to which foreign and domestic sellers can compete. In addition, it is very difficult to measure the restrictiveness of a QR (Deardorff and Stern, 1985) and this makes it hard to negotiate only their partial liberalization. It is therefore only recently that QRs have come under the discipline of the GATT. The WTO, with some exceptions, largely prohibits their use. This includes both explicit quotas that are imposed on particular products, and also import licensing schemes that allocate foreign exchange in a manner that is discriminatory across goods or countries. Voluntary export restraints (VERs) which have taken quantitative form, are also prohibited as part of safeguards rules (discussed below). QRs are permitted, even on a discriminatory basis for a country which is experiencing severe excess demand for foreign exchange that is making it difficult to retain foreign exchange reserves. QRs have been used quite commonly in some sectors especially in agriculture and textiles /apparel sectors, implementation of this prohibition has required some major changes in policy. In agriculture, existing QRs have been replaced by "tariff equivalents additional tariffs that are intended to restrict imports to the level of the QR. These tariff equivalents will then be subjected to future liberalization through the same process of negotiated tariff binding that long has been used for other goods. In the case of textiles and apparel , on the other hand , the complex web of quotas that has spread over recent decades under the MFA is allowed to continue to exist temporarily with WTO members committed to schedule of removing them over the next ten years. The schedule for eliminating these quotas leaves the bulk of the trade to be liberalized only at the end of this ten year period, and it leaves to the discretion of importing countries which product lines they liberalize before that. Any bargaining strategy that is developed should be structured in such a way as to insure that the unwinding of the MFA and the other undertakings already agreed to in fact take place. Developing countries should recognize that it is vital that the Uruguay Round undertakings be carried out and it is clearly in their interest to insist upon it⁹.

India maintains QRs in the form of (1) prohibited items, which may not be imported under any circumstances (imports relating to religious and cultural sensitiveness or to fulfill international obligations such as Convention on International Trade in Endangered Services of Wild Fauna and Flora (CITES))¹⁰(2) restricted items, which require a specific import license or a Public notice for import. Almost all consumer goods are restricted, and their importation is permitted only with the license. Other restricted goods that require a license include : specific precious and other stones, safety, security and related items, seeds , plants and animals, insecticides and pesticides, drugs and pharmaceuticals, items relating to small sector . The importation of some restricted items (including certain consumer goods) has been liberalized by permitting

⁹ It will be difficult to get developed countries, especially the US, to negotiate their tariff rates on textiles and clothing, which under the agreement on textiles and clothing (ATC) would be the only mechanism of protection of this sector (for WTO members) after 2005. EU commissioner Brittan announced in March, 1999 that the EU would not exclude textiles and clothing from tariff negotiations.

¹⁰ Prohibited items include tallow, fat and/or oils, rendered, unrendered or otherwise, of any animal origin.

their importation through freely transferable Special Import Licenses(SIL)and (3) canalized items,which can be imported by public sector undertakings¹¹.

One of the specific important features of the Export-Import (EXIM) Policy of 200-01 is the removal of quantitative restrictions.The withdrawl of QRs has to be carried out under the obligation of mutual agreement between the US and India,within the provision of WTO.In this agreement it has been decided that India will remove QRs for 1429 items by March 31,2001.The withdrawal is being carried out in two phases:715 items by March 31,2000(as removed in the latest EXIM policy) and 714 items by March 31,2001.Most of the QRs which have been removed belong to the agricultural sector and industrial goods concentrated in commodity groups like fertilizers and vehicles.After the removal of the QRs,tariff rates will be the instrument for formulating India's trade policy. In the face of India's commitment for 100 % tariff binding on agricultural goods and 67 % in manufacturing (Trade Policy Review-India(TPR),1998) an attempt should be made to estimate the appropriate level of tariff(and binding rates) for which QR is being phased out.

India need to de-reserve¹² many of the items from the reservation list for the small-scale sector to become competitive in the international markets,particularly when the MFA will be phased out .In particular urgent consideration is necessary in garments(already done as per the Economic Survey,2000-2001), clothing and textiles.These are areas with large export potential and reservation prevents the development of domestic units of the size and technology level that can deliver the volume and quality needed for world markets.

I.3.Subsidies:Export subsidies¹³ are forbidden while the issue of providing subsidy to production¹⁴ has been dealt by defining three classes of subsidy,classes that are sometimes conveniently identified by the colors of a traffic light(Deardorff,1996).They include "Red light subsidies" whose redeeming values cannot be identified,and these are simply prohibited.They include export subsidies,as already mentioned,subsidies that are contingent upon the use of domestic over imported goods,plus an illustrative list of very explicit subsidies that fall into this category."Yellow light subsidies" on the other hand,are not prohibited at all,but their possible adverse effects on other countries producers are nonetheless recognized by permitting importers to levy countervailing duties against them under specified circumstances.They are called "actionable subsidies".Finally "Green light subsidies" are "non actionable subsidies" and include both subsidies that are not specific to particular firms or industries,plus certain subsidies for research and development,regional development, and adaption to environment regulations.

Although the deadline for developed countries to phase out prohibited subsidies has passed,least developed countries and countries with per capita GNP below \$1000 may maintain export subsidies indefinitely,and all other developing countries have until January 2003 to remove them,with possibility of extension in particular cases if this is found justified by economic, financial or development needs. Countries in transition to a market economy must phase out prohibited subsidies by January 2002;until then,they also enjoy some immunity from countervailing measures against their actionable subsidies.

The subsidy agreement figures in the WTO built-in agenda: Two important rules in the agreement apply only provisionally and must be reviewed.One, the presumption that certain subsidies such as those which amount to more than 5 % of the value of the product or are given to cover an industry's operating losses tend to give rise to adverse trade effects in developed countries and not in developing countries. A second review is to decide whether the permitted ("green") category of subsidies should continue to exist.Further, any experience gained of the export competitiveness by developing countries due to such subsidies should

¹¹ These include some petroleum products ,fertilizers,seeds,cereals,cloves & non-edible oils.

¹² The policy of reservations first introduced in 1967 and the list of reserved items originally consisted of 47 items.This was expanded to 800 in 1997 though the actual expansion in coverage was less than it appears because many of the items in the expanded list consisted of elaborations of sub-items within a broader definition in the original list.

¹³ In the Uruguay Round it was decided that export subsidies must be reduced by stipulated percentages on both volume(21% for developed countries and 16% for developing countries) and budgetary(36% for developed countries and 24% for developing countries) terms.In addition,there is minumum market access commitment of 5%,increasing to 5% over a period of six years.

¹⁴ On the one hand production subsidies tend to adversely effect producers in another country and on the other hand there exist a multitude of economic reasons why some production subsidies are atleast second best and sometimes even first best means of achieving various legitimate objectives. The simplest example in economic terms is the use of a subsidy to the production of a good that yields an external economic benefit for other parts of the economy. A more common and familiar example is the use of subsidy to promote growth of an infant industry.

not lead to gain of more than 3.25% of the world market is also under consideration. . The concern is however more with the implementation of the agreement than with its rules.

In a recent discussion paper entitled "Government Subsidies in India", presented to Parliament, the annual level of implicit and explicit subsidies was estimated to be around 14.5% of GDP in 1994/95 figures, including both Central and State Government spending. Of this amount "merit" goods or services, which include elementary education, public health, sewerage and sanitation, social welfare, soil and water conservation, scientific research and the PDS, amounted to around 3.7% of GDP in 1994/95 or around Rs 300 billion. The share of Central Government subsidies on non-merit goods is around 35% of the total, including for fertilizers, electricity, diesel and irrigation. Although the Central Government spends nearly 8% of its annual budgetary expenditures on explicit subsidies through its non-planning spending, implicit subsidies provided by both State and Central Governments are considerably higher. Of the explicit non-plan subsidies, the fertilizer industry is the largest recipient: however the subsidy for domestic and imported fertilizers has declined from around 45% of total non-plan subsidies in 1995/96 to a little over 40% in 1997/98. In 1997/98, the food subsidy is expected to be around 41% of total non-plan subsidies largely because of larger grain procurement required for the Targeted Public Distribution System (TPDS). Another subsidy that has risen rapidly in recent years is funding for concessional sales of fertilizers to farmers. In 1995/96 this was around 3.6% of total non-plan subsidies but has risen to 10% and 11% in 1996/97 and 1997/98, respectively. Other major recipients of total non-plan subsidies include the railways, for which subsidies have remained around 3% since 1995/96, and the handloom industry, as well as compensation for exchange loss; support is also provided for public sector enterprises.

The reduction of food and fertilizer subsidies, which account for nearly 10% of non-plan expenditures on revenue account, is needed. In case of food subsidies the recent increase in price of food grains for above poverty line (APL) families has meant that they can buy food grains in the private market at similar prices and there is no need for them to go to the public distribution system (PDS). Since these families account for as much as 40% of total PDS disbursements, 30% is accounted by the below poverty line (BPL) families while the rest is leakage to the market a substantial shrinkage can occur in the system. In turn this will lead to increased pressure on the government to do something about the bloated bureaucracy and wastage in the Food Corporation of India. In case of fertilizer subsidies the finance minister has agreed that the real beneficiaries of the subsidy are the fertilizer producers rather than farmers. Under the Retention Price Scheme (RPS) for nitogeneous fertilizers, the government assesses and underwrites the cost of production for every single fertilizer factory. Farmers on the other hand, pay a fixed price that is well below what would be necessary to cover the costs. Government subsidy fills the gap. Increases in subsidy are essentially the outcome of increases in the cost of production of fertilizers (Subramaniam, C, 2000). It is evident that under the RPS, fertilizer producers have no incentive to improve efficiency: a reduction in costs results in exactly equal reduction in the subsidy. Therefore, the solution lies in scrapping the RPS and forcing fertilizer producers to face competition from imports and each other while letting the price facing farmers to be aligned to the world price (Panagariya, 2000b). The recent increase in the urea prices may be a defensible move on efficiency grounds assuming that the price paid by farmers is below the world prices currently. But it is hardly solution to the problem of growing subsidies on fertilizers.

India does not provide direct subsidies to exporters. Instead, India relies on a wide range of indirect subsidies, including duty and tax concessions (export income is exempt from income taxes, Section 80 HHC of the Income Tax Act, 1961), export finance, export insurance and guarantee, and export promotion and marketing assistance. As far as Indian agricultural exporters are concerned there is some support in the form of exemption of agricultural export profits from income tax and subsidies on freight and for certain floriculture and horticulture exports. Almost all countries have an interest in negotiating a prohibition against export subsidies¹⁵. Even for developing countries that do subsidize their agricultural exports, there are almost certainly better uses for money elsewhere, and it is likely that the benefits accruing to less developed countries exporters because developed countries subsidies have stopped will outweigh the costs associated with losses of domestic subsidies (Krueger, 1999). Panagariya (2000a) has evaluated the case for export subsidies and reveals that arguments for export subsidies are as flawed as arguments for import substitution. In particular the argument that export subsidies may be useful for neutralizing import tariffs is spurious. In most practical situations, this is impossible. Removal of tariffs is a far superior policy. India's experience shows export subsidies to have little impact on exports. Brazil and Mexico's experience shows

¹⁵ The exceptions are the countries that are net grain importers, who therefore benefit from low prices for imported (subsidized) grain.

export subsidies to be a costly instrument of export diversification. In principle a case can be made for protecting infant export industries in the presence of externalities. But the empirical relevance of externalities remains as illusory for export industries as it was for import substitution industries. Also, those who argue that pro-export interventions were important in East Asia have not provided convincing evidence of a causal relationship between the interventions and growth.

I.4. Foreign Direct Investment: International Commerce is today conducted by multinational corporations with substantial investments in many countries and that there has long been call for international constraints not only on trade policies but also on policies affecting foreign direct investment. As a result, the Uruguay Round included negotiations on Trade Related Investment Measures (TRIMs), and the WTO too includes a TRIMs agreement. The TRIMs specifically includes measures employed to induce/compel MNCs to meet certain yardsticks of performance. These include local equity, licensing and local content requirements and sometimes clauses for foreign exchange and export commitments. The TRIMs agreement only prohibits investment measures that directly affect trade flows in a manner that violates NT or that violates the prohibitions of QRs. Prohibited most clearly are local content and trade balancing requirements both of which restrict the trade of an international direct investor. The agreement requirement is that all such measures be notified. Developed countries were required to eliminate them by January 1, 1997. Developing countries, however, have until 1 January 2000 to do so, and the least-developed countries until 1 January 2002. Moreover, developing and the least developed countries may be granted extension of their transitional periods if they can demonstrate "particular difficulties" in eliminating outstanding TRIMs, and the decision of the WTO's Goods Council on such requests is to take into account the development, financial and trade needs of the member concerned. Some 25 developing countries have notified that they may use TRIMs of the types covered by the agreement.

The TRIMs agreement envisages future negotiations. The review is to include consideration of "whether the agreement should be complemented with provisions on investment policy and competition policy". When negotiated, this provision was widely regarded as establishing an opening for the more substantial negotiations on investment desired especially by the United States and also for the negotiations on competition issues which some developing countries considered would be necessary as a matter of balance. In this context it may be said that liberalization of India's FDI regulations will yield substantial benefits¹⁶. A new domestic competition policy can regulate anti-competitive behavior of foreign (and domestic) firms with additional discretion to regulate FDI like measures designed to ensure the transfer of technology and training of local workers¹⁷. Also, linkage between domestic environmental policy & regulations with multilateral agreement on investment should be worked out while framing multilateral rules on investment. In fact some developing countries have made efforts to enact investment legislation with environment provisions. An example is the previous legislation under the PNDC Law 116 establishing the 1985 Ghana Investment Code. This code gave certain powers to Ghana Investment Centre to appraise enterprises likely to have an environmental effect, and proposed measures for the prevention, and control of such harmful effects to the environment. There is however a need for more research on whether other safeguards need to be built into an investment agreement to preserve the freedom to pursue national objectives. However, blanket opposition to any investment agreement is not easy to comprehend. Krueger (1999) agrees and argues for supporting the development of multilateral investment code which can ensure low-cost supply of foreign capital to countries, particularly developing countries like India which is hoping to attract foreign capital to accelerate their development process. It is in developing countries interest to support the development of such a code. However, Hoekman and Saggi (1999) argue that countries need to take cautious stand in this regard. They note that a more general agreement is neither needed nor feasible at this stage because there is potential for developing countries to cover various aspects of foreign investment in the voluntary commitments of GATS.

In case of India there is no separate law for foreign investment. The Industries (Development and Regulation) Act of 1951 outlines licensing procedures for industries. Foreign investment policy was incorporated in this Act to target industries in which foreign technology and foreign exchange was desirable. As far as investment measures are concerned from March 1995 India has agreed to maintain TRIMs in some of the consumer goods and pharmaceutical sectors (TPR, India, 1998). India allows foreign

¹⁶ In the case of India, despite considerable liberalization, FDI continues to be regulated and in adhoc manner, imposing serious costs (Das, 1999)

¹⁷ It is relevant that India has reserved the right to impose these requirements on foreign investment under the GATS, on which any investment agreement is likely to be modeled.

investment to varying levels of foreign equity participation ranging from 24% to 100% depending on whether the sector is given priority. All sectors of the economy except those relating to security concerns such as defence, railways and atomic energy and also the insurance sector are now open to foreign investment. Foreign investment in the small-scale sector is restricted to a 24% foreign equity participation. Local content requirements such as phased manufacturing program have been discontinued. However, a new requirement is that investors in the automobile sector sign Memorandum of Understanding (MOU) with the Director General Foreign Trade (DGFT). It is been claimed that one of the requirements of such MOUs is to increase indigenization of production (US Trade Representative, 1997). Another measure that continues to be applied is the requirement of dividend balancing for foreign companies in 22 sectors.

I.5. Services: Services were not included under the GATT, largely because they were not viewed as being tradable¹⁸ when the GATT was created. However, the increasing volume of international transactions in services industries, such as finance, transportation, and telecommunication, led to powerful political forces in the developed world, pushing to provide for services industries the same sorts of protections against capricious government policies that were provided for goods producers in the GATT. The result is the General Agreement on Trade in Services, GATS, which is part of WTO.

The aim of GATS is to require that services providers from all countries, when they compete in other countries, be subject to the same principles of MFN and NT that are the objectives of the GATT. In fact, because most of the traded services do not themselves cross national borders and are therefore not subject to the same kinds of tariffs as goods, the approach followed in the GATT of gradually bringing down those barriers through negotiations is not available for services. Instead members of the WTO have committed themselves to go all the way to national treatment in those services industries in which they have promised to do anything at all. In the Uruguay Round negotiations leading to the WTO, countries negotiated not on services barriers, but rather on lists of service sectors. Unfortunately, the number of such sectors turned out to be quite small and the extent of actual liberalization of trade in services that was achieved by the Uruguay Round was essentially zero (Hoekman, 1995). Continued negotiation of liberalization for the excluded sectors has been underway in the WTO since it began.

Article XIX of the GATS requires WTO members to "enter into successive round of negotiations, beginning not later than five years from the entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization". There is no termination date for the GATS negotiations which is set. The GATS does not have a timetable for putting obligations into force. Various studies by Brown, et al. (1996), Mattoo and Subramaniam (2000), among others recommend service sector liberalization because (a) There are substantial gains both from liberalization within countries, especially in key infrastructure services like telecommunications, transport and financial services, and from elimination of barriers to their exports (b) successful liberalization requires emphasis on competition more than change of ownership, credibility of policy and liberalization programs, domestic regulations to remedy market failures and pursuit of legitimate social goals with economic efficiency (c) effective market access requires elimination of explicit restrictions and disciplines of implicit regulatory barrier. Chadha (1999) uses a general equilibrium analysis to quantify the benefits to India of liberalizing services trade. These studies convey the basic idea that initiatives need to be taken at the domestic level. Nevertheless, there remains scope for constructive use of multilateral trading system both in realizing credible domestic liberalization and securing market access abroad.

In general, services are of importance in world trade. Developing countries have a strong interest in access to competitively-priced high quality services in support of their domestic producers, especially as they attempt to enter into and move upscale in export markets. As such support of services liberalization is generally warranted. Indeed many countries including developing countries have recognized the importance of services sector liberalization and have actively participated in the successful conclusion of two additional sectoral GATS negotiations since the end of Uruguay Round, those on financial services and on telecommunications. Nonetheless, it is clear that developing countries have made far fewer commitments for

¹⁸ Most services require the simultaneous presence of both the producer and consumer, so that if a service provider from one country wishes to sell to a buyer from another, either the seller must establish a presence in the buyers market, which typically require foreign direct investment (commercial presence) and/or movement of labor (movement of natural persons), or the buyer must travel to the sellers country (consumption abroad) as in the case of tourism. Cross border services created by modern technologies is another mode of services where it is difficult to observe traded services moving across national borders (Hoekman and Stern, 1991).

service liberalization than developed countries and on the whole will find themselves under pressure to make more. Also, in some cases, countries have liberalized certain aspects of their service provisions but have not "bound" these commitments in the WTO; which raises an issue analogous to the question of how to give "credit" to such liberalization in the context of negotiations which had also been raised in the Uruguay Round with respect to goods. Finally, one of the problems inhibiting some countries from liberalizing further is the absence of a suitable safeguard clause in the GATS. Negotiating guidelines are to cover two specific points of interest to developing countries: the treatment of autonomous liberalization undertaken by members since previous negotiations, and the special treatment to be given to least-developed countries. As far as developing countries are concerned they may be advised to insist linking services negotiations across sectors and to insure that the sectors of greatest interest to them are included in the negotiations.

Some developing countries including India and Turkey could develop significant economic activity in exporting construction services if it were possible to bring workers temporarily where construction is to be undertaken¹⁹. However, it is highly unlikely that significant liberalization of construction services will occur if efforts to negotiate it are made at a sectoral level. Rather, this is an area where cross-sectoral bargaining could achieve significant results. Countries with potential or actual comparative advantage in these services might well be advised to consider giving concessions on other services or issues of interest to developed countries in return for expanded access to construction activities in other countries.

Services in support of tourism, for example, are of great importance as tourism industry is already flourishing industry in many developing countries and has great growth potential as amenities (such as easy telecommunications, access to financial services, and travel) increase in attractiveness, both in quality and price.

Software exports is another emerging area for developing countries like India. Such countries can provide software services at competitive rates to developed countries markets using their low labor costs and their skilled and managerial manpower. Appendix Table I gives cross country comparisons of costs of software services for some developed and developing countries. A major constraint in the growth of the software industry, however, is the restrictive visa requirements imposed on computer professionals by the developed countries. (TPR-India, 1998). Also, there is a need to develop and export software packages rather than rely on low value added software services like contractual programming and development of custom-made software for off-shore clients²⁰.

For another group of developing countries, liberalization of maritime services is of greater than average interest, both because an increasingly competitive world maritime industry would lower costs for developing countries (and especially those with smaller volumes of trade or with greater distance to markets) and because some developing countries either have, or may be able to develop, a comparative advantage in maritime shipping.

As far as liberalization of financial services is concerned it is likely that companies from developed countries have a comparative advantage in most financial services in the short run. Then there is increasing evidence that access to financial services at world prices is greatly in the interest of developing countries. The presence of well-developed and competitively-priced financial is increasingly important to the ability of individual firms to export. High-cost or inefficient financial services can be equivalent to a tax on exports or, in some cases, an export prohibition because of the ability of exporters to compete with those in other countries with access to those services. Moreover, the presence of competition in financial services is healthy for domestic firms. There is evidence that, just as for industrial goods, financial services are higher-cost and most inefficient in countries where the domestic market has been most sheltered. Developing countries have a strong interest in an efficient international market in financial services. While it may be possible to support further liberalization of services "in exchange" for developed countries concessions on items of particular interest to developing countries, it should be borne in mind that financial service liberalization is in the interests of developing countries themselves.

In regard to movement of natural persons there has been some progress regarding the movement of qualified professionals to work abroad. However, developed country restrictions inhibit increased service

¹⁹ This already happened in several instances. Perhaps the best known is the case of Korea, where after the oil price increase of 1973 a large number of contracts with Middle Eastern oil exporting countries enabled Korean firms to bring in workers and materials, live temporarily in the area where construction was underway, and to depart once work was completed.

²⁰ Brahmhatt, et. al (1996) has emphasized this point for India.

earnings for developing countries through this mode. The commitments made regarding the movement of natural persons have primarily involved intra-corporate transferees and business visitors and to a lesser extent, independent professionals, including those providing services within a service contract. One of the limitations imposed by a large number of countries is an economic needs test (ENT). This typically involves judgements by government agencies based on non-transparent criteria, as to market conditions, availability of local service providers etc, regarding which foreign service providers to permit and which not. Of the 54 countries which have made commitments subject to a needs test, only three have stated criteria for the ENT. Frequently, the result is to nullify access commitments involving movement of "natural persons" (mode four of supply of services). Developing countries may wish to press both for liberalization of mode four supplies in more professional categories and through limiting the use of ENT in specific sectors and making the ENT criteria transparent and consistent. Progress is desirable in this area, although it should be recognized that developing countries also have restrictions in this mode of supply that should be lifted as part of the negotiations. Alternatively, Mattoo and Olarreaga (2000) have elaborated specific proposals based on the use of formulae, which can serve to extract meaningful commitments on the movement of individual service suppliers from trading partners. In essence this proposal would require a country to provide increased "foreign labour content entitlements" to their domestic firms in relation to the country's increased exports of services²¹. The proposal offers several advantages. First, it is internationally symmetric. All countries would be obliged to create such entitlements, though how much they are used would be determined by sound economic consideration of modal comparative advantage. The entitlements would not be bilateral, but international. Second it is based on a balance of concessions, an appealing principle in trade negotiations. Exporters of labor service would receive benefits commensurate with efforts to open up their domestic services markets. Finally, the scheme is also attractive because it generates a desirable liberalizing momentum.

The General Agreement in Trade in Services (GATS) covers a wide range of service activities²². India actively participated in the Uruguay Round services negotiations and its Schedule provides for specific commitments covering business, communication, construction work for civil engineering, financial, health related and social and tourism services (TPR, India-1998). The extent of commitments vary across sectors with certain restrictions on market access and national treatment in cross border supply, consumption abroad, commercial presence, and presence of natural persons. India has made commitments in 33 activities (compared with average of 23 for developing countries) out of a total of 161 (GATT, 1994). Broadly, these commitments bind the existing policy framework. In some cases, applied policy may be more liberal than the binding commitments.

There were three principal GATS framework elements left unfinished from the Uruguay Round: government procurement, emergency safeguard measures (ESMs) (discussed below in detail) and subsidies (discussed above).

For government procurement the issues being considered include definitions, how MFN and national treatment might apply, and the way in which any specific commitments might be undertaken according to negotiated disciplines. Work on this subject is also proceeding in parallel in other parts of the WTO.

A great deal of work will probably be necessary on ESMs so as to obtain consensus between two opposed groups. The developing countries want to create a 'safety valve' mechanism under which they can take emergency action, following liberalisation of their markets, if warranted by damaging 'surges' of imports. Other members view this with suspicion. They fear a loophole that could be seriously abused, and point instead to the great flexibility already built into the GATS framework. A paper tabled by the ASEAN group is being studied. It is based largely on the existing GATT procedures. Conceptually, however, certain aspects of the latter are not easy to transpose to services where measurement is so difficult and trade is not solely cross-border, but involves commercial presence and foreign workers in the market with 'acquired rights'.

The working part on GATS rules (WPGR) has been looking at subsidy programmes reported under the WTO Trade Policy Review mechanism to see if any are trade-distortive. The direct subsidising of

²¹ In a way Bill Gates recent testimony before Congress arguing for the need to allow software engineers to enter to maintain international competitiveness is not far removed from suggested scheme.

²² The WTO Secretariat has divided these activities into 12 sectors: business services; communication services; construction and related services; distribution services; educational services; environmental services; financial services; health-related and social services; tourism and travel related services; recreational, cultural and sporting services; transport services; and other services not included elsewhere.

exports seems not be very prevalent, and most subsidies are concentrated in the audio-visual, air and maritime transport, tourism and banking, with a few in other sectors such as construction, communications, health and education that worry the developing countries. Some subsidies do not conform with national treatment, and a few MFN Exemptions relate to subsidies. Possibly the subject will be approached bearing in mind the goods system where certain subsidies are given the 'green light', others are banned (being purely discriminatory), and yet others fall in between, and have to be justified if challenged, with a presumption against them. Cross-subsidisation is already discouraged in the context of the Basic Telecoms Reference Paper. In the case of network services, the position is complicated by the concept of Universal Service Obligations - for example an official requirement to provide telephones or transport in rural areas.

Much effort will also need to go into developing further the provisions of the GATS Article on Domestic Regulation. This article relates to "qualification requirements and procedures, technical standards and licensing requirements" and it requires that such measures "do not constitute unnecessary

.The working party on domestic regulation (WPDR) is the successor to the Working Party on Professional Services that studied the position of the accountants and produced guidelines on how the profession should be regulated and on the conclusion of mutual recognition agreements between countries whereby accountants are permitted to practise in a foreign market. It is likely that general principles can be adduced from this one-sector review that can be applied to other sectors, and the guidelines applied to other regulated professions with suitable adjustments that take account of specific differences.

India has listed m.f.n exemptions under Article II of the GATS, reserving the right to offer more favorable treatment to some WTO members (WTO documents GATS, April, 1994 & 12 December, 1997). Among the measures exempted from m.f.n treatment were those in the area of financial services (including banking and insurance) where favorable treatment to foreign suppliers incorporated outside India was granted on the basis of reciprocity in respect of entry and expansion. In the recently concluded financial services negotiations, India withdrew this m.f.n exemption and increased the annual limit for foreign bank branches from eight to twelve (now 15). In the area of transport services, India applies equality in freight lifting originating in the ports of Bulgaria, Pakistan and the United Arab Emirates, and equality in freight earnings. As a member of the UN Code of Conduct for Liners and conferences lines²³, cargo sharing between national lines of contracting States and third country lines is at a ratio 40:40:20 as provided in the Liner code.

India has made further commitments within the framework of GATS and other relevant WTO Agreements. India participated in the negotiations on basic telecommunications services, the results of which entered into force in early 1998. The major offer made by India includes permitting one new operator, in addition to the present government owned monopoly supplier, in each service area.²⁴ India has also committed to allow automatic approval of up to 25 % foreign equity participation (compared with the present policy of 49%) in the area of voice telephone services. India is among 43 countries who agreed to Take part in the Information Technology Agreement - covering computers, telecommunications equipment's, semiconductors, semiconductor manufacturing equipment, software, and scientific instruments - and has offered zero duties on 217 tariff lines at the HS six digit level by the year 2005 (TPR, India-1998).

However, in case of India the pace and extent of services sector liberalization has been modest, particularly in key infrastructure sectors (Ahluwalia 1999). In each of the three key infrastructure sectors, there has been reluctance to introduce meaningful competition through unimpeded entry; limited liberalization to foreign participation has been allowed with limitations on both equity and numbers and sometimes policy reversals in sectors like power and telecommunications has led to loss of policy credibility. While due recognition has been accorded to domestic regulation it has been late in coming²⁵. Moreover, the multilateral route has not been used to any significant extent to liberalize or to precommit to future liberalization.

In basic telecommunications, competition has been allowed to a limited extent in recent years in the local, intra-circle national long distance, and mobile segments but international telephony is still

²³ Liner service is a service provided by a shipping firm whereby cargo-carrying vessels are operated between ports on a regular basis, while conference line is an association of ship-owning lines that operate on a specific route.

²⁴ For the purpose of administering the telecommunications sector, India is divided into 20 circles (each roughly corresponding to a State) and four metro districts.

²⁵ The Telecom Regulatory Authority of India was established in 1997 and even the Supreme Court of India had upheld some of the appeals by private operators

monopolized. There is a need to bring in more competition in the basic telecommunication sector , particularly in the international telephony to reduce international call rates.However, efforts have been initiated by the GOI recently to reduce long term international call rates through internet telephony.Table VI compares international long distance tariff rates for different countries. It compares the price of international calls in several countries,with the call from the US to the country in question serving as a benchmark (since US is one of the most competitive markets).In the case of India, the benchmark is itself inflated because providers based in the US are obliged to pay the Indian monopolist the settlement rate for terminating calls and this inflates the price. The price of calling from India is nearly twice the internationally competitive price. This is significantly higher in absolute and relative terms than the price from locations such as Hong-Kong and Australia where competition has been induced and from Singapore where call back services have been permitted to reduce monopolistic price margins.

Table VI:
Comparison of International Long Distance Tariffs(Telecom),1999

Country	From US(IN \$)	To US(IN \$)	Acc.Rate(IN \$)	Degree of Market Liberalization in International Long Distance	Call Back	% Of Foreign Ownership Allowed
Australia	0.25	0.14	0.42	Competition	Yes	NA
Hong-Kong	0.31	0.24	0.80	Competition	NA	NA
India	0.66	1.27	1.28	Monopoly	No	49
Singapore	0.35	0.51	0.85	Monopoly	Yes	49
Peru	0.55	0.71	1.13	Monopoly ends in 1999	No	100

Source:Fink and Mattoo(1999)

Also, India has underperformed in range of telecommunication sectors indicators like telephone density, line faults (TableVII) and telephone penetration ratio (Table VIII). The number of telephone lines almost quadrupled from 1985/86 to 1996/97 from 3.2 million lines to 14.5 million providing 1.7 lines per 100 inhabitants.Against this,the telephone penetration for the developing world is six lines per 100 inhabitants.India has also fewer lines per inhabitant compared to many other developing countries in Asia such as China(3.7),Pakistan(2) and Malaysia(13).The waiting list of a further 2.7 million customers indicates a large un-met demand, and the investment needed is well outside the Governments financing capability.

Table VII:
The Telecommunication Sector 1985-97

Telephone Lines	1985/86-91/92 ^a	1992/93	1993/94	1994/95	1995/96	1996/97
Total Lines(million)	5.02	6.80	8.03	9.80	...	14.54
New Connections(million)	0.49	0.99	1.23	1.77	2.18	2.56
Waiting List(million)	1.80	2.85	2.50	2.15	2.28	2.89
Telephone penetration (lines per 100 inhabitants)	0.62	0.78	0.90	1.08	1.41	1.72
Overseas services						
Telephone traffic(million minutes)		614.20	742.82	942.00	1117.56	1384.93 ^b
Telegrams(milli)		39.77	28.84	24.47	21.14	18.95 ^b

on words)						
Telex(million minutes)		38.67	30.99	24.19	20.40	17.35 ^b

... Not available

a Annual average

b Provisional

Note:Year beginning 1 April

Source:WTO Secretariat based on Government of India(1996),Department of Telecommunication Annual Report 1995/96

Table:VIII
Telecommunication Sector Indicators,1993

	Telephone Density per 100 population	Waiting Period(Years)	Faults per 100 lines per year
India	0.89	2.5	218
Europe	30.85	2.9	NA
Argentina	12.29	1.3	12.5
Mexico	8.79	1.0	NA
Brazil	7.51	0.7	43.2
Asia	4.27	1.4	NA
Egypt	4.26	5.8	NA
Thailand	3.71	6.5	32.2
Africa	1.6	4.9	NA
China	1.47	0.8	NA
Phillipines	1.31	9.9	10
Pakistan	1.31	4.9	120
Indonesia	0.92	0.5	49
Sri Lanka	0.90	>10	15

Source:ITUs World Telecommunications Development Report & World Telecommunications Indicators-1994/96

Private investment and association of the private sector would be needed in a big way to bridge the resource gap in the telecommunication sector. The National Telecommunication Policy, 1994 recommendation also are on the same lines. The National Telecommunication Policy,1994 states that "Private initiative would be used to complement the Departmental efforts to raise additional resources, both through increased internal generation and adopting innovative means like leasing, deferred payments ,BOT (build-operate-transfer),BLT(build-lease-transfer),etc." More foreign equity beyond 49% is required in basic telecommunication sector. There is a need to remove impediments on establishment like restrictions on number of firms which can operate in geographically defined circle to induce competition for increasing efficiency in the basic telecommunication sector. Also, one key form of cross border delivery-call back services -are not permitted by law and probably not much used in practice because of the difficulty of making payments in foreign currency.

Even though the scope of competition in the banking sector has been enhanced by allowing new private sector banks since 1993 and local area banking by the private sector since 1996,the RBI fixes the number of licenses for new banks and expansion by existing foreign banks on an annual basis.The scope for cross border delivery of financial services is limited by the non-convertibility of the rupee on capital account.

In summary India should widen and deepen its GATS commitments.

I.6.Intellectual Property Rights:Owners of many forms of intellectual property(IP)-copyrights,patents,trademarks,etc in the developed countries pressed for inclusion of intellectual property issues in GATT negotiations during the 1980s.In order to justify their inclusion in trade negotiations, discussion was normally restricted to Trade Related Intellectual Property Rights(TRIPS), although in fact the negotiations covered almost all aspects of IP protection. Developed Countries demand was re-inforced as many countries especially in the developing world did not have either IP laws that were comparable to those in developed world or they had such laws but were lax in enforcing them.²⁶.The result of these negotiations was that the WTO now includes along side the GATT and GATS,a TRIPS agreement on intellectual property.This agreement goes considerably beyond the MFN and NT principles and it seeks to

²⁶ As a result owners of copyrights ,patents, and trade marks were finding their products copied and counterfeited in the developing world with impunity.

harmonize the actual policies of the members countries. In fact all countries (from poorest to richest) are now required to adhere to certain minimum standards regarding intellectual property.

All developing countries except the least developed countries have to implement the Trade -Related Aspects of Intellectual Property Rights Agreement by January 1, 2000. Least developed countries have until January 1, 2006. However, there are several sets of problems that the agreement poses. At a general level there is concern that the efficiency losses resulting, for example, from significantly increased prices from pharmaceuticals would exceed any dynamic gains resulting from increased research and development or larger flows from foreign direct investment (Correa, 1998, Dearnorff, 1992). Or the length of time provided for patent protection is excessive. There is also general concern that the agreement does not provide for reasonable balance between the rights of producers and users of knowledge and technology; and that it is based on an outdated concept of "knowledge" which does not take into account the externalities of knowledge dissemination. But there is little agreement on how these broad issues can be addressed.

The patent system itself poses a variety of problems for a number of the poorer developing countries with an agricultural based economy. First, the patent system is unlikely to work as an incentive to local innovations, except in countries with a significant private scientific and technological infrastructure. At the same time the Agreement by not recognizing community property rights to traditional knowledge has led commercial firms in developed countries seeking to obtain property rights to traditional or product varieties (basmati rice and the bark of the neem tree are the known examples). The Agreement may also result in constraints on farmers use of their own seeds saved from harvest for replanting; and it is tended to encourage patents in process involving biotechnology aimed at providing substitutes for existing developing country exports. Also, developing countries have experienced difficulties in implementing the procedural and legal commitments required by agreement (UNCTAD, 1998, WTO, 1997-98).

Changing the number of these provisions to make the agreement more development friendly will not be easy due to the strength of the commercial and vested interests in developed countries; but it is certainly worth the effort for developing countries to suggest changes in the most detrimental aspects of the agreement. Mattoo and Subramaniam (2000) recommend that TRIPs agreement can be used as an enforcement device for India. The essence of the proposal is that India should alter its draft IP legislation to specify that the Indian executive retains the right to revoke some of the IP rights of foreign patent owners as and when necessary. For example, in the event that partner countries fail to comply with commitments that affect India's market access (i.e., if industrial countries renege on their commitment in textiles,) developing countries like India should withdraw or threaten to withdraw their TRIPs obligations. This is reinforced by the proposal of Subramaniam and Wattal (2000) which recommends that cross retaliation in TRIPs is feasible, effective and probably legal if designed with care. However, it may be said that IPRs are private rights conferred through domestic legislation and to withdraw them would be very difficult perhaps even unconstitutional in many legal systems. Furthermore, withdrawing rights would be of little value unless alternative sources of production for the patented products can be found. Over and above this developing countries must be able to argue that retaliation within goods for noncompliance by partners in goods is not practicable. The ability to use TRIPs as a retaliation device would also address broader concerns about the asymmetry of the WTO dispute settlement process and the lack of retaliatory power for developing countries.²⁷ However, the proposal by Mattoo and Subramaniam (2000) is worth a deep thought.

As part of the TRIPs Agreement India is required to increase the term of patent protection to 20 years from the date of filing in all categories and is expected to provide both product and process patents.²⁸ Due to its developing -country status, India has five years from the entry into effect of the Agreement to implement these changes. In the case of pharmaceuticals and agricultural chemical technologies India has a maximum period of ten years in which to implement the Agreement. On copyright, India amended its legislation in 1994 in compliance with the requirements of the TRIPs Agreement. With regard to trade marks, industrial designs, geographical indications and protection for plant varieties, India plans to make use of the transitional period before making the required amendments.

²⁷ It is notable that Ecuador has taken similar steps in retaliating against the European Union for its failure to remedy the WTO inconsistencies in its banana import regime.

²⁸ Some sectors, notably diagnostic, therapeutic and surgical methods for the treatment of humans or animals, plants and animals other than micro-organisms and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes are excluded from patentability (Article 27(a & b) of the TRIPs Agreement). Countries must however provide either patent or sui generis protection or a combination of the two for new varieties of plants (Article 27(B)).

Although India has until the year 2000 to amend its patent laws to comply with the TRIPS Agreement, it is required to provide a means for receiving product patent applications in the areas of pharmaceuticals and agricultural chemical products, and on fulfillment of certain conditions to provide for exclusive marketing rights for pharmaceuticals and agricultural chemical products in the interim period. India notified an ordinance on 31 December 1994 to amend the Patents Act, 1970. As per our obligations under the WTO Agreement, the Patents (Amendment) Act, 1999 was passed in March 1999 to provide for exclusive marketing rights-EMR (Economic Survey, 1999-2000). Fears regarding EMR is unwarranted. EMR will be extinguished by the end of 2004 and between now and that date probably 10 or less products will seek EMR. The reason is that it generally takes eight or ten years for new patented product to come into the world market from the date of filing the patent protection. (Ganesan, 1999). EMR include an article which provides the list of exceptions to patentability where the lists of essential drugs listed by WHO and also drugs and products derived from the Indian system of medicine are exempted from patent rights. Chapters 16 and 17 of the Indian Patents Act, 1970 contain provisions relating to compulsory licensing of patents. Provisions are made for the granting of compulsory licenses by the Controller General of Patents on determination that the "reasonable requirements" of the public have not been satisfied or that the price being charged is not reasonable²⁹. The Government is entitled to make an application to the Controller for a "license of right" at any time after the end of three years from granting of a patent if it is felt that these "reasonable" requirements have not been met. The patent may also eventually be revoked by the Controller after the end of two years following the granting of a compulsory license if it is felt that the public is not being served. In practice however, compulsory licenses are rarely ever revoked; during the last five years no applications for compulsory licenses have been filed. Under copyright law, compulsory licensees are granted in a case where an author refuses to allow the republication of the work or has refused communication of the work to the public through other forms, such as broadcast. In this case, the Copy right Board may, after holding an enquiry and giving the owner reasonable opportunity to be heard, grant a compulsory license enabling the work to be republished. Compulsory licenses can also be granted if the author is unknown, has died or cannot be traced. In this case, the applicant must publish the proposal in a newspaper with a broad circulation in India before the Board can grant a compulsory license for publication. (Indian Copy right Act, 1957, Section 31). No compulsory licenses have been issued under these provisions.

The two most important policy instruments available to India to mitigate some of the effects of high levels of patent protection are effective use of compulsory licensing and competition policies. While a number of conditions need to be fulfilled when these licenses are granted, it is possible for national authorities to meet them and yet dilute the monopolistic impact of the proprietary protection granted in the first place. (Wattal, 2000). The advantages of deploying competition policy are two fold. First, there is some latitude in determining the optimal degree of protection that balances the need to foster innovation while ensuring technological diffusion and consumer protection. For example, what constitutes abusive pricing is a question that will admit a wide variety of answers. The second advantage follows from the language of the TRIPs agreement. There is even greater flexibility in the use of compulsory licenses when they are granted to remedy anti-competitive practices,³⁰ which could be usefully harnessed by India. Domestic regulatory design needs to be properly designed particularly when there is opposition to the use of new technologies of biotechnology including genetic modification in India. India and other developing countries have made sensible proposals seeking greater protection for "intellectual property" generated in these countries in the form of indigenous knowledge and geographical indications³¹.

As regards product patent for pharmaceuticals while it is true that the prices of new products will be higher than what they would otherwise have been we must recognize that the inventor's rights have to be protected and piracy should not be rewarded. In the light of most of the developing countries decision to enact legislation granting product patents the best course of action for them would be to encourage R&D in

²⁹ The term reasonable requirements in this case includes instances, for example, where the demand for the patented article is not being met to an adequate extent or on reasonable terms, or the failures of the patentee to manufacture the patented article to an adequate extent (The Indian Patent Act, 1970, Section 90).

³⁰ When compulsory licenses are used to remedy anti-competitive practices, the TRIPs agreement provides that (1) no case needs to be made that the patentee was unwilling to license the patent on reasonable commercial terms as a precondition for granting the compulsory license; and (2) the principle that remuneration for the compulsory license should be "adequate" need not be respected.

³¹ On geographical indications, it might be sensible for India to seek to form an alliance with the European Union which is a major demandeur in this area.

the pharmaceutical sector .At the same time the government should effect improvements in the working of the patent office and in procedures relating to the grants of patents.

In the negotiations India should oppose any move to circumscribe the definition or interpretation of the *sui generis* mode of protecting new plant varieties.It should insist on retaining the flexibility of the original *sui generis* as it was the conclusion of the UR under which countries were free to draft their own kind of *sui generis* legislation which would give Plant Breeders Rights(PBR) to the breeders of new plant varieties.India has drafted a Plant Variety Protection and Farmers Rights Act giving rights to breeders but also to farmers.This was possible because of the flexibility in interpreting *sui generis* legislation. Sahai (1999) notes that in this regard *sui generis* legislation based on the Union for the Protection of New Plant Varieties(UPOV),a European/American forum which regulates plant breeders rights in the developed countries, may not be suitable for developing countries because it has no concept of farmers rights and is geared to an agricultural system different from those of developing countries, with no concerns about livelihoods or food security. India should oppose the use of UPOV as a model of *sui generis* and propose a more developing countries oriented platform like Convention of Farmers and Breeders(CoFaB)³² as an alternative and mobilize the support of other developing countries for supporting their proposal.Further in the *sui generis* legislation,the farmers rights must include the rights to save,exchange and sell non-branded seeds.³³ The exception to patentability article must be included in further versions of TRIPs induced legislation. Finally, amend Article 27.3(b) of the TRIPs, with respect to the knowledge of indigenous and local communities ,such that that provision on indigenous knowledge incorporates oral knowledge too. Developing countries may like to incorporate Bolar provisions in their own law and/or negotiate for such provisions within TRIPs. Bolar provisions allow experimental and research work to be conducted by generic pharmaceutical companies before the expiry of the originators patent. Japan's Supreme Court has held such provisions as not contradicting Japan's patent law "even if it involves the manufacture and use of substances covered by the patent."

The above discussion suggests that more research is needed in the area of protection required for new plant varieties and biotechnological invention to underpin informed policy positions. In particular some answers need to be given to the following questions.How extensive are genetic resources and indigenous knowledge and to what uses can they be put?How important is the potential economic value of these resources?.How can names in the public domain be restored to propriety protection? In these areas, a credible international negotiating position can be built if such systems of protection are instituted within India and shown to be workable.

I.7.Customs Valuation:The WTO includes explicit rules on custom valuation that are intended to reduce the discretion that countries and their custom officers as well as traders themselves have in valuing at the border³⁴. Deardorff (1996) notes that by reducing uncertainty over the amount of tariff that an exporter will pay at the border, potential traders become more confident of the returns to trade and they may therefore be expected to trade more, that is ,uncertainty over customs valuation itself acts as a barrier to trade,and by committing themselves to predictable and transparent valuation procedures,countries reduce this barrier.Fiscal dependence on international trade taxes in the case of most developing countries like India(Tanzi, 1987 ,1991 ;Hitiris ,1990 ;Satapathy,1994) also warrant correct valuation of goods and honest trading at the custom borders.

The developing countries were given a grace period of five years since the formation of the WTO to implement the Agreement on Custom Valuation(ACV) with a provision that a member may apply for further extension of the deadline.In essence,the custom valuation rules concluded under the Tokyo Round

³² The UNDP Human Development Report 1999 has cited CoFaB as a "strong and co-ordinated international proposal" which "offers developing countries an alternative to following European legislation,by focusing legislation on needs to protect farmers rights to save and reuse seed and to fulfil the food and nutritional security goals of their people".

³³ However,the large seeds industry,prime mover of the UPOV-based *sui generis* concept is a stiff opponent of the farmers rights to sell seed in any form

³⁴ The participants at a recently held international course on Customs Valuation(May,2000) organized by the Directorate of Valuation,Ministry of Finance,India Commonwealth Secretariat,the WTO and UNCTAD were referred to the number of cases of underinvoicing and overinvoicing.These cases include cases of fraudulent re-invoicing in third countries,double invoicing with the connivance of the foreign suppliers,misdeclaration of description,quantity and quality of imported goods to suppress value,overvaluation of exempted and low rated imports to transfer hard currency abroad and overvaluation of exports to get additional export incentives.The participants were particularly surprised to notice that valuation frauds were also committed by large multinational corporations as well by exporters from developed countries.

Agreement in 1979 have been now made compulsory for all developing countries with effect from January 2000. It is significant that despite a long gap of 21 years available for implementation, there are still requests before the WTO committee on custom valuation for grants for further time.

Implementation of ACV, however, poses many problems particularly for the custom administrations of developing countries, particularly for India due to high duty rates, value based import controls, rigid exchange controls, non-availability of reliable trade data electronically, dumped and undervalued imports³⁵ and the number of cases that have to be processed in a single day (Satapathy, 2000). Finger and Schuler (1999) are in agreement on these points and particularly on the last point for which they correctly observe "Where tariffs are high, accounting expertise and access to electronic information limited, shifting to a risk-based valuation system that depends on in-depth examination of a sample (15 or 20%) of shipments, might increase the number of shipments on which importers attempt to underinvoice. Traders might view the change as giving them better, not a worse chance to get away with underinvoicing." They also note that implementation of the ACV cannot be done in isolation without undertaking a broader reform of custom operations in the developing countries and without putting in place institutional safeguards to prevent misuse of the liberal valuation methods under the ACV which rely so much on transparency in trade transactions.

Finger and Schuler (1999) have dealt at some length on use of reference prices as means to providing an objective standard of custom valuation. At least for basic goods, a valuation system based on observed world prices might offer a better opportunity to introduce transparency, objectivity and accountability into the system. At periodic reviews of these reference prices both import users and import-competing interests might be given 'standing'; and could be offered the opportunity to submit evidence in support of revisions. It might also be possible to establish a collective system of reference prices, over which no one government had control. Schedules of reference prices might be determined by an intergovernmental group, their preparation and circulation might be contracted to an independent agency.

The ACV does not explicitly provide for adoption of reference values as a method of valuation. However, there may not be objection to using such values for price comparison purposes to test the truth and accuracy of declared values and for rejection of the transaction value method³⁶. It is during the Uruguay Round, that developing countries were able to secure a ministerial decision to the effect that subject to certain conditions customs could reject declared values the truth and accuracy of which were in doubt. The efforts of India, Brazil and Kenya in securing such a decision were particularly noteworthy. India has since amended its custom valuation rules in 1998 to incorporate this ministerial decision. An establishment of common valuation databases among nation states will further help custom officials for properly implementing the WTO ministerial decision on doubtful values.

India's legislation on customs valuation, the Custom Valuation Rules, 1998, has been amended since the completion of the Uruguay Round to bring it into conformity with the provisions of the WTO Agreement on Implementation of Article VII of GATT 1994, the Custom Valuation Agreement (Amended by notification No 26/95, 24 April 1995). However, India invoked the special provisions for developing countries under the Agreement relating to computed value and unit price of the imported goods. Under Indian legislation transaction value is the basis for custom valuation.

I.8. Product Regulations: Governments engage in a wide variety of regulatory actions many of which are not targeted at international trade but which nonetheless may affect the costs or feasibility of trade. There are many regulations, standards and other measures that restrict the form that a good may take or a manner in which it may be produced for sale in the domestic market. Such rules may be intended to protect the public safety or health, or they may only seek to insure compatibility of products that must be used in

³⁵ Preamble to the ACV declares that valuation procedures cannot be used to combat dumping. Recourse has to be taken under the WTO Agreement on Anti-Dumping to counter dumping.

³⁶ The transaction value (as defined in the Indian legislation) as the price actually paid for the goods when sold for export to India is adjusted to reflect some costs and services incurred by the buyer. The costs and services include, inter alia, commissions and brokerage, except buying commissions; containers; packing; goods and services for use in connection with the production and sale for export of imported goods such as materials components, tools and engineering work; royalties and licence fees; transportation; loading; unloading and handling charges; and insurance. Some WTO members have raised concerns regarding the rules for the estimation of transportation costs, loading, unloading and handling charges and/or insurance in the cases when these are not ascertainable. In such instances a specified 5% of the f.o.b value of the imports used in calculation of costs and services (WTO document G/VAL/M/3, 24 June, 1996).

combination. But in either case it is possible for such a rule to be biased against imported products, perhaps in the form that a product must take or perhaps in the procedures that are laid out for certifying that a rule has been obeyed. The WTO therefore includes its own constraints on how such rules should be established and enforced so not to be biased against imports. Two sets of constraints appear, one on Technical Regulations and Standards and another on Sanitary and Phytosanitary Measures³⁷, but both have essentially the same purpose. They do not prescribe what such regulations should be, only that they should be designed and enforced in ways that do not discriminate against imports. Like the agreement on custom valuation these too provide the additional benefit of reducing uncertainty in international trade. It is to be noted, however, that GATT provisions relating to environment had no explicit provision on the environment but only indirect references in Article 20(B) relating to the protection of human, animal or plant health and Article 20(G) relating to the conservation of scarce natural resources. However, under the Technical Barriers to trade provisions explicit reference was made to package labeling or labeling requirements which provide scope for trade related environmental barriers (such as eco labels). Environmental protection can also be institutionalized under the sanitary and phytosanitary provisions.

The Agreement on the application of sanitary measures (SPS) are to be "based on scientific principles" and not maintained "without sufficient scientific evidence.." (Article 2.2). Members are also required to ensure that sanitary and phytosanitary measures (SPMs) are based "on an assessment as appropriate to the circumstances, of the risks to human, animal or plant life or health, taking into account risk assessment techniques developed by the relevant international organization" (Article 5.1). Finally, members are required to ensure that SPMs "do not arbitrarily or unjustifiably discriminate between members where identical or similar conditions prevail, including between their own territory and that of other members" and are not applied in a manner which would constitute a disguised restriction on international trade (Articles 2.3 and 5.5). The SPS Agreement favours international standards. Article 3.1 calls on WTO members to base measures "on international standards, guidelines or recommendations, where they exist, except otherwise provided in this Agreement." Measures conforming to such international standards are "presumed to be consistent with the relevant provisions of this Agreement and of GATT 1994" (Article 3.2). The SPS Agreement specifies the source of international standards: Codex Alimentarius as the international source relating to food, the international office of Epizootics relating to animals, and the International Plant Protection Convention relating to plants. Article 3.3 allows members to introduce or maintain SPMs which result in a higher level of protection that would be achieved based on relevant international standards "if there is scientific justification, or as a consequence of the level of sanitary and phytosanitary protection a member determines to be appropriate pursuant to procedures to assess risks." The agreement on SPS also incorporates the Precautionary Principle and permit members "in cases where relevant evidence is insufficient" to adopt provisional SPMs on the basis of "available pertinent information" (Article 5.7). Finally, it contains a special and differential treatment clause. For a discussion of other features of the Agreement on SPS see Barcelo, (1994).

The Agreement on Technical Barriers to Trade (TBT) and the Agreement on the Application of Sanitary Measures (SPS) have raised concerns across countries. As far as TBT is concerned many developing countries including India have raised their point that they need time, resources and special and differential treatment to develop their own capacity to prepare and adopt technical regulations and standards and a in-depth study of technical barriers to market access of developing countries suppliers. Croome (1998) quotes that "Further challenges to the TBT and SPS agreements will almost certainly arise because the measures they regulate are instruments of choice for responding to pressures not only from domestic producers seeking protection, but also from environmentalist and other non-governmental activists. Packaging and labeling requirements, requirements that fishing methods do not harm dolphins or sea turtles, and regulations that limit the use of tropical timbers fall within the ambit of the two agreements, and are liable to be found contrary to their provisions. Anxiety about the strains which high-profile disputes could put on the agreements, and the WTO itself, is widespread". Members of the Cairns Group of agricultural exporters, however, are strong supporters of the SPS agreement and in their recent declaration insisted that the SPS review should not be used as a pretext to relax present disciplines on the ground of non-scientific arguments. Their also members states from the developing countries which see these agreements as potentially the most sensible means of channeling environmental concerns in ways that will not serve protectionist ends by the developed world or put strains on the multilateral rules. If agreed

³⁷ Phytosanitary measures refer to the health of plants, while sanitary measures evidently refer to health of animals and people.

standards can be formulated in ISO and other international bodies like FAO/WHO Codex Alimentarius Commission to take account of environmental objectives such as those laid down in multilateral environmental agreements, the potential for subsequent difficulties in the WTO could be greatly reduced.

The main objectives of India's standards and certification procedures are to ensure that products are safe, of high quality and conform to the relevant Indian standards. According to the authorities the intent of policy to integrate India into the international economy has resulted in a greater emphasis on bringing Indian standards up to international standards. Most standards in India are voluntary although health and safety regulations are mandatory for several products. Progress has been made in harmonizing Indian standards with those set by the ISO there remain a number of non-transparencies in the system regarding the relationships between the various standard setting and enforcing bodies (TPR-India, 1998). Some policies may act against imports, such as distinctions made between imported and domestically produced bulk grains and compulsory product certification for some goods that may not be extended to imported goods. Enforcement of compulsory standards may also be a problem although steps are being taken to improve this.

In general, all products sold in India are required to carry a label indicating country or countries of origin. The authorities are in the process of ensuring that all products manufactured in India are marked with a "Made in India" label. Similarly, all imports into India must be marked with an indication of their origin. In addition, the Indian government instituted an "Eco Mark" in 1991 to indicate environmentally friendly products, although according to the authorities, it has yet to be successful. The Eco Mark is administered by the Bureau of Indian Standards (BIS) for a number of products including packing material, cosmetics and toiletries, and electrical and electronic items (Dun and Bradstreet, 1996).

Developing countries have a strong interest in preventing developed countries from perceiving that they will not negotiate regarding the environment at all; such a stand could induce environmentalists to push for trade enforced environmental measures. Willingness to discuss environmental issues in other forums, and efforts to persuade developed countries leaders that bases other than existing shares of environmental degradation would be well advised (Krueger, 1999). Effective market access for both goods and services requires the elimination not only of explicit restrictions but also of the implicit barriers created by standards and other domestic regulations. In goods, environmental standards and safety standards (for certain types of apparel) have both impacted on Indian exports. In services, trade restrictive effects have arisen from a variety of qualification and licensing requirements in professional and numerous other services.³⁸ Mattoo and Subramaniam (2000) suggests three international routes to dealing with such barriers: harmonization of national regulations (leading possibly to the creation of international standards); mutual recognition (Krueger, 1999 also recommends this route), and strengthening multilateral disciplines on national standards. However, with respect to the first proposal, Bhagwati and Hudec (1996) note that in both goods and services where countries have varying preferences for quality, including in relation to safety and the environment, harmonization is probably not desirable. Environmental diversity among countries is perfectly legitimate. It can arise not merely because the environment is differently valued in the sense that the utility function defined for consumption and pollution abatement is not identical and homothetic but also because of differences in endowments and technology across countries. In fact even with homothetic preferences, income matters: At the same cost of abatement relative to consumption, a country with ten times the income of another will spend ten times as much on abatement. Forcing the poor country to spend as much on abatement will reduce its welfare substantially. Hence the common presumption driving demands to harmonize standards or (alternatively) to countervail the 'social dumping' consequences of labor standards—that is the assumption that others with different cross country intraindustry harmonization standards are illegitimately and unfairly reducing their costs (those firms who work under lower labor and environmental standards)—is untenable. In the case of services the difficulty of harmonization is revealed by the absence of widely accepted international standards. Whereas such standards exist as in banking or maritime transport, meeting them is seen as a first step towards acceptability rather than as a sufficient

³⁸ The requirement of registration with or membership of professional organizations can also constitute an obstacle for a person wishing to provide the service on a temporary basis. For instance, in the United States requirements to practice medicine for foreign-qualified doctors vary from state to state. Candidates must also pass the qualifying examination of the Educational Commission for Foreign Medical Graduates and then undergo a period of graduate medical education at a hospital in the United States.

condition for market access. With regard to mutual recognition agreements in case of technical standards it should not be seen as a discriminatory device by the members states. Strengthening multilateral disciplines on standards can be an important strategy for addressing barriers through imposition of technical standards. In this regard the question of whether trade policy is the best instrument to address environmental and labour standards needs to be deeply scrutinized.

An important strategy for addressing barriers is to strengthen multilateral disciplines on standards. This can be done by supplementing the NT principle with the "necessity test" (Mattoo and Subramaniam, 2000). The test is already part of the UR agreement for goods and the recently established disciplines in the accountancy sector. For instance, in the case of professionals like doctor, a requirement to requalify would be judged unnecessary, since the basic problem, inadequate information about whether they possess the required skills could be remedied by a less burdensome test of competence. This test could also be applied to situations where a country is contemplating trade restrictive measures on the grounds that environmental or labour standards in a partner countries are too "low". The necessity test would not seek to deny a country's right to be concerned about environmental and labour problems in other countries, but subject the instruments it chooses to critical scrutiny. It would seem desirable to use the test to create a presumption in favor of economically efficient choice of policy in remedying market failure and in pursuing non-economic objectives. Finally, India must upgrade its standards and related institutions consistent with domestic preferences for quality. This would strengthen the case for obtaining foreign recognition and also allow foreign technical barriers to be credibly challenged.

Noticeably absent from the list of provisions (constraints) described above is any constraint on the sorts of unilateral action that the United States and other large trading blocks have used in the past to pressure other countries in their trade policies and even in their domestic policies. United States, for example, has frequently used Section 301 of its trade law which triggers unilateral retaliation against countries with perceived barriers to market access. Nowhere in the provisions discussed above are countries prevented from further use of such unilateral action (except for using Voluntary Export Restraints (VERs)). Nor, however, do the exceptions discussed below explicitly permit such action either. Use of Section 301 and bilateral initiatives are therefore left in an ambiguous state in the WTO, and there is disagreement among trade policy authorities as to whether particular ones of these initiative do or do not violate the GATT. It may be said that the more countries find themselves able to deal with perceived trade conflicts within the context of WTO, the less they may feel the need to go outside it. There is some reason for hope on this score since countries do seem to be taking their disputes increasingly to WTO.

Following provisions described below are exceptions permitted by the WTO and are optional for WTO members to use i.e. the WTO, like the GATT includes a number of policy options that either protect members partially from adverse outcome or, more commonly, that are needed to make membership in the organization acceptable to powerful domestic political interest.

1.9 Anti-Dumping: The WTO follows long established practice in permitting the use of anti-dumping (AD) duties under certain circumstances. Dumping is defined as the export of a good for an unfairly low price, defined either as below the price on the exporters home market or as below some definition of cost (in most cases below marginal cost). This definition itself causes some confusion on what constitutes dumping. Further, there are problems of estimating AD duties³⁹. In spite of this designation of unfairness, however, nothing in the WTO prohibits dumping itself, or asks member governments to try to restrain their firms from doing it. Rather, the WTO only addresses how importing countries may respond to dumping. When dumping is shown to cause injury, WTO rules permit importing countries to levy AD import duties equal to the "dumping margin" - the difference between the actual and the "fair market price". WTO does not require the use of AD duties. It only permits them and says how they may be used.

Little progress was made in the Uruguay Round in restraining anti-dumping measures. Transparency requirements were increased, and a 5-year sunset clause was introduced, but, as has been argued by Finger and others, these provisions have little impact as AD findings can be undertaken again and AD continues to

³⁹ AD duties are difficult to measure where marginal costs constitute very small relative to fixed costs and where marginal costs are significant portion of price. As a result it is impossible to find out those goods which are sold below cost. In case of India the anti-dumping duties are imposed on goods that are imported at less than their "normal" value. The anti-dumping duty may not be greater than the difference between the export price of the good and its normal value.

be domestic law, which producers view as an "entitlement"(Finger,1996).It is pertinent to point out that the use of anti-dumping has spread significantly from the five original industrial users (Australia, Canada,the EU,New Zealand and the US) to developing countries,including India.Since mid-1997,India has initiated 21 anti-dumping cases and 45 between 1993 and 1998, covering 18 products,with definitive duties imposed on 11 cases(WTO Secretariat;and information provided by the Indian authorities to the WTO Secretariat).It ranks as one of the largest users of anti-dumping actions(Appendix Table II),and the ambitions in this area are escalating,reflected in the recent upgradation of the anti-dumping cell into a full fledged directorate(Economic Times,4 April 1997).At the same time,India is also a major victim of antidumping actions.In fact the worst hit if measured in terms of antidumping actions per dollar of exports.(Appendix Table III).

Although economic theory suggests that measures to prevent predatory pricing (i.e., pricing below marginal cost with an intent to drive out actual or potential competitors and secure a monopoly position in a market) can improve welfare,in fact many of the AD actions taken by developed countries do not meet the criteria set forth in theory.In many instances,the measures actually used to determine the applicability of AD law bear little or no relation to the theory.(Krueger,1995 & Boltuck and Litan,1991). Krueger (1999) argues that developing countries are more vulnerable to AD actions because the industries in which they have comparative advantage marginal costs are a bigger percentage of price.Also, developing countries exports are often intensive in the use of unskilled labor; they are often goods that trigger protectionist efforts in developed countries.Thirdly,defending against an AD allegation is costly;when exports are smaller,the barrier to exporting posed by the threat of AD is greater because these costs loom larger.Because developing countries tend to have smaller volumes and values of exports of individual manufactured items,the extent to which fear of AD actions will deter potential exporters is greater in these countries.

There is a case for reviewing the WTO Agreement on anti-dumping to stop its misuse by countries. In fact, the discussions at the WTO General Council preparatory to the Seattle Ministerial Conference did provide an opportunity for many WTO members to propose such a review. It is understood that many WTO members had brought up several important issues in the context of agreement on anti-dumping. However, it was found that lot remained to be done to actually rectify the weakness of the agreement to prevent its abuse. We attempt to review some of the agreements on antidumping. First, the Article 2.4 of the agreement requires that comparison between normal value and export price should be fair. It requires dumping margins to be established on a weighted average basis or on transaction basis. It also provides for exceptions under which comparisons are permitted between individual export prices and weighted average normal prices. It is an experience to many countries that exceptions have become a rule in the hands of importing country administrations.The exceptions are preferred by these authorities as they result in computation of artificially high dumping margins. Many members feel that Article 2.4 of the agreement should be reviewed to avoid frequent use of the exceptions provided therein.Many members countries are dissatisfied by the way constructed value is computed and liberally used at the slightest pretext. Recourse to constructed value should be taken only when prices of third country markets are not available. This would require amendment of Article 2.3.Article 9.1 of the agreement leaves it to the discretion of anti-dumping authorities to impose an amount equal to the full margin of dumping or less.Many members feel that Article 9.1 should be amended to make it mandatory for imposing less duty if that is adequate to remove injury to the domestic industry rather than leaving it to the discretion of the importing country. Secondly,a major weakness of the agreement is the standard of review provision contained in Article 17. It unduly restricts the role of the WTO Dispute Settlement Panel to a mere determination of whether antidumping authority's establishment of the facts was proper and whether the evaluation of these facts were unbiased and objective. This is in total contrast with the power of the panels under Article 11 of the WTO Dispute Settlement Understanding. The Anti-Dumping Agreement, being an integral part of the WTO, should not have a different and more restrictive standard of review allowing anti-dumping authorities of importing countries to escape close scrutiny by the WTO panel. Article 17 requires to be reviewed as applied to disputes under other WTO agreements. Thirdly, many developing countries have been subjected to repeated anti-dumping investigations in respect of the same product. New investigations are often initiated on the same product immediately after the termination of an earlier investigation. This has become a serious concern for developing countries as their exports to major trading countries have been disrupted by such restrictive action. One of the proposal is to review Article 5.3 of the agreement to limit the scope for such repeated anti-dumping investigations on the same product. Another suggestion by Satapathy (1999) is that if there is an investigation resulting in non- imposition of anti-

dumping duties, there should be a gap of at least one year before investigation of the same product can be initiated. Article 5.8 of the agreement does not provide limit within which the determination has to be made as to whether the volumes of dumped imports are negligible or within the prescribed threshold. This gives rise to arbitrary and unilateral decision decisions for determining an appropriate time frame. Article 5.8 needs to be amended to incorporate the time limit so that there would be no scope of arbitrary unilateral action in this regard. Fourthly, there are also suggestions that the threshold limit under Article 5.8 should be increased from 3% to 5% for imports from developing countries and that the provisions for clubbing imports from different countries within the threshold limit for applying the collective limit of 7% should be abolished. There are also proposals for increasing the de-minimis dumping margin of 2% of export price to 5% for developing countries. This would ensure non-imposition of anti-dumping duty till the dumping margins exceed 5% on products from developing countries which may in many cases have a cost advantage over comparable products produced in developed countries. The de-minimis provision of 5% should apply not only in newly initiated cases but also in review and refund cases. Fifthly, Article 17 which says that constructive remedies should be explored before applying anti-dumping duties on developing members should be used more often. Although Article 17 of the agreement recognizes the special situation of developing countries its provisions lack clarity and have become practically inoperative. The developed country members have rarely explored the possibility of constructive remedies before taking anti-dumping actions against exports from developing countries. Developing member countries are of the view that Article 15 should be operationalized and made mandatory. Satapathy(1999) suggests that the fact that under Article 17 of the present agreement the WTO dispute panel does not have full authority to review the action of the anti-dumping authorities an alternative approach should be found for taking anti-dumping complaints to a neutral body such as the WTO panel for determination in a fair manner. He notes" that this would remove the bias of importing country administrations which faces enormous pressure from their domestic industry as well from legislators representing constituencies where home industries are located". Sixthly, there are number of possible ways of strengthening the provisions surrounding the administration of AD rules in individual countries that could significantly reduce their impact. For example, AD laws should be required to incorporate buyer/consumer interests and provide meaningful representation for such interests in AD proceedings. Finally, the WTO leaves open the question of whether AD will be used to undermine the liberalization efforts on goods and services. Many members feel that the present agreement gives excessive discretion to the anti-dumping authorities in the importing country to use the same as an instrument of protection rather than an instrument to counteract dumping. This question become relevant for countries like India which have taken steps to reduce its peak level custom duties since early 1990s. Further, the experience from other countries has been that antidumping actions are typically against the most efficient suppliers. This in turn signals other exporters to raise prices, inflicting terms of trade losses.

Cass and Boltuck (1999) have no hesitation in saying that the case for anti-dumping law, beyond the central cause of predatory price cutting, is open to question and that its administration is seriously flawed if the goal is to address welfare -reducing trade practices and not simply producers against competition. They have also alluded to the frequently advanced argument that anti-dumping codes have greatly facilitated international consensus about general trade liberalization. Satapathy (1999) raises doubts that the developed countries such as US, EU and Canada would agree to review and modify the WTO agreement on anti-dumping. It is for developing countries to put up a combined front and press for review. It is likely that countries like Japan would also support their cause at this juncture having been subject to some severe anti-dumping action recently.

Ideally, if ways could be found to change AD provisions to reflect the original intent-that is, to penalize efforts to monopolize markets through pricing below marginal cost the protective impact of AD measures could be restrained significantly. Competition law provisions on predation could provide the appropriate safeguards against protectionist use of AD. Countries like Hong-Kong, Korea and Mexico have pointed out that effective competition rules could make anti-dumping action superfluous. However, in the present scenario when countries are not showing any restraint on using AD, it would be in interest of developing countries to join and support the initiatives which could strengthen the development of multilateral AD regime

Authority to introduce anti-dumping measures in case of India is in the Customs Act, 1975 as amended by the Custom Tariff (Amendment) Act, 1995. The Act was passed to bring Indian legislation on anti-dumping actions into conformity with the WTO Agreements on Subsidies and

Countervailing Measures and Implementation of Article VI of the General Agreement on Tariffs and Trade 1994. The Act came into force on 1 January, 1995. (Notifications by India to the WTO).

II.10. Countervailing Duties (CVDs): CVDs are being permitted in response to "actionable" subsidies. When an importer establishes that domestic producers have been injured by imports that have benefited from a government subsidy abroad, and when the nature of that subsidy satisfies certain requirements like that they are not available to other industries, then the importing country is permitted to levy a CVD equal in size to the subsidy. WTO does not take a position that such subsidies are bad or good but only that countries should be protected from any adverse effects that the subsidies may cause on them.⁴⁰

Legislation on subsidies and countervailing measures have been amended to bring it into conformity with the results of the Uruguay Round. (WTO documents, December, 1996). India's countervailing legislation requires the investigating authority to issue a public notification as well to inform the exporting country upon initiation of an investigation. The investigating authority is the designated authority. The procedures followed are similar to those under an anti-dumping investigation; they involve determination of material injury and a link between injury caused and the imported goods. The authority must give its final findings within one year from the date of initiation of the case and final duty must be imposed within three months of the date of publication of these findings. The continued need for the duty must be reviewed by the Central Government within a year of imposition of the final duty.

Deardorff (1996) argues for not only permitting CVDs but rather making it a requirement. His argument is that besides prohibited subsidies there are some "actionable subsidies" which are economically unjustified and should be prohibited. In case the governments of the trading nations are contemplating use of such economically unjustified subsidies, CVDs can act as an effective deterrent to the use of such subsidies. Thus one could argue that the use of CVDs should not just be permitted, but rather should be required, even in (or especially in) countries that have no domestic competing producer interest to ask for them. However, this presupposes that one can adequately make the necessary distinction between economically justified and unjustified subsidies. Krueger (1999) notes that it would be in the interest of developing countries to support any multilateral CVD regime which restrains use of CVDs as a protective device.

1.11. Safeguards: The Safeguards Clause of the WTO permits members to partially and temporarily back out of their agreements if they prove too costly. Thus, if the concession made in joining the WTO are causing substantial injury⁴¹ to domestic producers, then countries are permitted to protect those producers temporarily with a trade barrier.

The Safeguard clause has been available throughout the history of the GATT but it was used less and less over time. The reasons for this were several, including the requirement that users of safeguard compensate the foreign countries who were adversely affected by them, the prohibition under the old rules against discriminatory safeguard tariffs, and the greater difficulty of getting safeguards protection, in comparison of AD duty due to more stringent requirements. Instead, industries routinely sought AD protection rather than safeguard protection even when the reason for their petition had more to do with injury than with the low price. Alternatively, for major industries, governments negotiated Voluntary Export Restraints (VERs) with the relevant foreign exporters, thus achieving both discrimination and compensation without needing to formally contravene the GATT (Deardorff, 1987).

Under the new rules of the WTO, VERs are formally prohibited. Rules for safeguard have been modified to permit some discrimination and the requirement of compensation has been weakened. The hope is that the new safeguards rules will attract greater use diverting governments from excessive use of AD duties and other measures for safeguards purposes. No government appears to seek changes in the agreement, but developing countries should continue to keep a close watch on how it is applied.

India has not used, GATT Article XIX safeguard measures. The legal authority to take such measures was established in February 1997 with the introduction of new Section 8A in the Custom Tariff

⁴⁰ However, WTO identifies another group of "prohibited" subsidies—primarily export subsidies and their equivalents—that are also subject to CVDs and that are designated as undesirable.

⁴¹ The injury test for safeguards is stronger than those for AD duties and CVDs.

Act,1975.⁴² India notified initiation of its first safeguard investigation under the WTO Safeguard rules in January 1998(WTO Document, Jan, 1998).

1.12. Preferential Trading Arrangements (PTAs): Despite its underlying principle of nondiscrimination embodied in the MFN requirement,the WTO permits preferential trade agreements so long as they reduce to zero essentially all of the tariffs among the participants.Thus it is permitted to form free trade area,where this is done without changing each country's tariff against nonmembers,as well as customs union that also include a common external tariff.In the latter case the WTO requires that the external tariff does not increase the average protection against nonmember exports.

These restrictions do not assure that PTAs are beneficial from the perspective of world welfare since they will still inevitably cause welfare reducing trade diversion as well as trade creation.⁴³ There has been proliferation of PTAs from mid 1980s,especially after the formation of NAFTA and expansion of EU.However,WTO has done little to answer questions that whether movement towards the PTAs will act as "stepping stone" or a "stumbling block"(protectionist in nature) towards achieving multilateral liberalization(Srinivasan,chapter 7,1998) and how beneficial are PTAs for member states?It is to be noted that the latter question can be answered if the WTO PTA provisions had insisted that PTAs stand ready to admit new members on the same terms as existing members.

It is unlikely that developing country members of PTAs can block entry of new members should the major developed countries-the US,Japan, and the EU-decide upon enlargement.For that reason,there is a significant interest even among developing countries already in PTA for attempting to find rules governing formation of PTAs that are more consistent with the open multilateral trading system.⁴⁴

For a variety of reasons,there appears to be little support among developed countries at the present time for strengthening Article XXIV.One area where it may be possible to make progress is with regard to the types of rules of origin(ROOs) that are permitted under Free Trade Areas(FTAs).Because they can be itemized,ROOs can be formulated in ways that discriminate against suppliers from third countries.Indeed,much of the fear of protectionism arising from FTAs is based on concern about ROOs.In the NAFTA,for example,the ROOs for textiles and apparel is "triple transformation",implying that all the materials used in producing the goods are made in North America.By contrast,the ROOs for automobiles is a 50% North American value added.In other cases,ROOs are based on the material inputs used.

Were ROOs required to be uniform, concerns about discriminatory aspects of FTAs against third countries would be significantly reduced. The simplest possible rule governing ROOs would be one which specified that they must be specified across all import categories at a single specified percentage value added within the PTA. It would then not be possible for a country to have one ROOs for automobiles, another for textiles and apparel and still others for other products.Since many of the concerns about PTAs are based on fears for developing countries whose trading partners are sufficiently widely dispersed that a PTA with any group of them does not solve the problem,a requirement that all ROOs be based on a value added criterion,and that the value added be the same across all activities,would greatly reduce protectionist potential and thus be in the interest of most developing countries.

It is doubtful whether developing countries could, by themselves, lead an initiative to achieve significant change. Nonetheless, it would be much in their interest to support such an initiative should it arise during the course of negotiations.

India receives and grants tariff preferences under (I) the Bangkok Agreement⁴⁵,(ii)the South Asian Preferential Trading Arrangement(SAPTA)⁴⁶,and (iii) the Global System of Trade

⁴² Unless the Central Government is of the opinion that a safeguard duty should continue to be imposed for helping the domestic industry to adjust, in which case an extension can be granted for not longer than ten years from the date of imposition.

⁴³ Trade creation occurs when members of a PTA import from each other what they previously produced themselves, presumably at higher cost. Trade diversion occurs when members import from each other what they previously imported from nonmembers, presumably at lower cost.

⁴⁴ Possible rules might be: 1. only custom unions are permitted; 2. each free trade agreements must specify a single common % value added as the only acceptable rule of origin for all commodity category; 3. PTAs may only be formed when the lowest preexisting tariff for any member of the group becomes the tariff that prevails in the Free Trade Area. 4. Inclusion of compensation provision for third countries adversely affected by trade diversion

⁴⁵ Bangkok Agreement-Members: Bangladesh, India, Papua New Guinea, Republic of Korea, Sri-Lanka (Indonesia, Malaysia, Nepal, Phillipines and Thailand as observers)

⁴⁶ SAPTA Members: Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri-Lanka

Preferences(GSTP)⁴⁷.The preferential margins vary substantially among the products covered,but are the same for all participants,except for least developed countries which generally receive larger margins of tariff preferences(WTO,1995,Trade Policy Review-Sri Lanka; and Academy of Business Studies-Easy Reference Custom Tariff,1997/98).

India,like most countries,does not apply rules of origin to imports from m.f.n. sources.However, within the framework of several preferential trading arrangement India applies rules of origin based on value added criteria(TableIX).Under India's regional trade agreements-the Bangkok Agreement,the SAPTA and the GSTP- a minimum local value added requirement of 50% in the exporting country is generally applied.A somewhat lower origin requirement is applied to the least developed countries under the Bangkok Agreement and SAPTA,while the SAPTA and the GSTP require higher local value added if several members are involved in the production process.Less strict rules apply to imports from the declared "preferential tariff areas" of Mauritius,the Seychelles, and Tonga.(Custom Tariff Rules,1977).No rules of origin apply to the bilateral preferential trade arrangements with Bhutan,Myanmar and Nepal.

Table IX
Rules of Origin

Agreement/Area	Rules of Origin ^a
Bangkok Agreement	Minimum 50% value added in general;40 % for the least developed countries
South Asian Preferential Trading Arrangement	Minimum50% of value added if a product originates from a single member state;40% for the least developing countries;60% if several members are involved
Global System of Preferences(GSTP) "Preferential Tariff Area"(Mauritius,Seychelles,and Tonga)	As above Minimum 25% value added in general;min 50% for a few products ^b

a.The Bangkok Agreement and the Commonwealth Preferences stipulate a minimum local content in the exporting member country as a certain percentage of the imported products factory cost of manufactures,while the GSTP and the SAPTA stipulate the same requirement as a % of the products f.o.b value added in the exporting country.

b.Sewing and knitting machines,cycles,motor cars,motor cars,omnibuses,vans,lorries,motor cycles,and motor scooters

Source:WTO Secretariat based on information provided by the Indian authorities.

WTO involves a long list of commitments by the member countries. But without some mechanism to enforce these agreements countries will depart from them whenever they perceive it in their interest to do so. The dispute settlement mechanism of the WTO serves that purpose.It is designed to provide security and predictability to the multilateral trading system.

1.13.Dispute Settlement in the WTO:The Dispute Settlement Mechanism under the WTO is the subject matter of Chapter 27 under Section V.Articles XXII and XXIII of GATT 1947,which formed the core rules on dispute settlement,have been carried over to GATT 1994 but with stronger teeth.The extended dispute settlement provisions are the main institutional innovations of the Uruguay Round.The dispute settlement panels have powers equivalence to those of judicial benches.The power to enforce an international law is a major breakthrough in international affairs(Chadha,2000).The case law provides a listing of 179 cases of dispute brought before the WTO during the period January 1,1995 to August 31,1999.

The dispute settlement mechanism of the WTO works as follows. First, when one country believes that another is violating any aspect of the agreement (including GATS and TRIPs,as well as GATT),the complaining country first requests consultation with the offending country,and the two seek to resolve the dispute on their own.If consultation fails,then the complaining country requests establishment of a panel,consisting of three persons with appropriate expertise from countries not party to the dispute.This panel assesses the evidence in the context of its interpretation of the WTO rules and issue a report.This report is automatically accepted unless all WTO members,acting through their Dispute Settlement Body(DSB),decide by consensus against its adoption,or if one of the parties to the dispute voices its intention to appeal.Therefore,the process requires unanimity among WTO members not to accept a panel report,in marked contrast to the procedures of the old GATT,where a panel report could be blocked by any one country,including the country that was complained for.

To hear appeals,the WTO has established an Appellate Body,composed of seven members,of which three will serve on any given case.This Appellate Body is to consider only issues of law and legal interpretations by the panel,and it too issues a report which must be accepted by a unanimous decision of the DSB.

⁴⁷ 41 developing countries(Sri-Lanka,Myanmar and Venezuela negotiating membership)

Once this process is completed, countries are expected to implement any recommendations of the panel report. If they do not, then complaining countries are entitled to compensation from them, or to use suspension of concessions (usually increased trade barriers) against them. If suspension of concession occurs, it is to be done preferably in the same sector as the dispute, or failing that under the terms of the same Agreement (GATT, GATS or TRIPs). But if this too is impractical, suspension can come under another agreement. Thus, in particular, violations of the TRIPs agreement can lead to increased barrier to trade in goods if the violations are not corrected in accordance with the recommendations of a panel report. This ability to extend dispute settlement across agreements is one of the strengths of the WTO, and in no doubt is one of the things that motivated advocates of extended intellectual property protection to incorporate it into the Uruguay Round negotiations (Deardorff, 1996). However, there is a possibility that countries retaliate by withdrawing concessions or commitments even before the panel gives its report. This issue needs to be addressed under the dispute settlement mechanism of the WTO (dealt earlier in the section on intellectual property rights). Also, there is a possibility that ultimate reliance on suspension of concession by trading nations either (1) would be defeating the purpose of the WTO in case the cases do not get settled either by implementing the panel recommendations or by compensation or (2) expedite the rest of the process work and lead to cooperation if there is a threat of suspension. Deardorff (1996) notes that the threat of expulsion from WTO membership in case of violation of rules will not be effective because members will be reluctant to set a precedent by expelling another lest the same thing later happen to them.

It is to be noted that most developing countries, partly because they are small and partly because of lack of experience are finding it difficult to cope with the WTO's new dispute settlement mechanisms. Blackhurst (1997) points out that two thirds of the least developed countries in the WTO have no representation. For the other third, there is typically only one person covering all the international organizations. Given the active participation of members in the work of the WTO, this inevitably leads to under representation of their interests and their inability to participate and have any influence on WTO decisions. An enlargement of the WTO Secretariat to permit the establishment of a service which could provide legal advice on procedures and other aspects of dispute settlement would benefit not only developing countries but also some of the smaller developing countries.

In response to criticism being leveled against the dispute settlement understandings (DSUs) own rules and procedures from NGOs, President Clinton⁴⁸ has proposed that "hearings by the WTO be open to the public, and all briefs by the parties be made publicly available and that the WTO provides the opportunity for stakeholders to convey their views... to help inform the panels in their deliberations". Most WTO members, including India are expected to resist such proposal of transparency in the dispute settlement process on the grounds that NGOs may not be expected to interfere in the policy decisions of the member states.

Under GATT, India was involved in one dispute, with Poland. India requested consultations under Article XXIII:1 of GATT 1947, concerning a modification of Poland's tariff structure on motor car imports from countries outside European Economic Community. A mutually agreed solution was notified in September, 1996. India has used the WTO's dispute settlement mechanism four times between 1995 and 1998. Recently

US has requested the establishment of a panel to examine India's trade related measures (TRIMs) in the motor vehicle sector. It claimed that under these measures, manufacturers could not obtain import licenses for automobile components unless they agree to a series of local content, trade and foreign exchange balancing requirements that contravene provisions of the GATT 1994 and the TRIMs Agreement. India maintained that the measure in question were not TRIMs, and that they were not inconsistent with the GATT and the TRIMs Agreement. If these measures were to be considered as TRIMs, India recalled the May decision of the General Council for the Goods Council Chairman to carry out consultations regarding the issue of TRIMs extension. Philippines and Cuba said the US panel request was premature pending the completion of the TRIMs consultation. The Dispute settlement body agreed to revert to the US panel request. Table X tabulates the complaints that have been notified in the WTO.

Table: X

Summary Indicators of WTO Disputes

All Complaint

⁴⁸ Speech by President Clinton at WTO Ministerial Conference 18 May, 1998. Detailed proposals were tabled by the US and the EU in the General Council on 22 July, 1998.

Complainant	Defendant		Total
	Developed	Developing	
Developed	63	42	105
Developing	21	11	32
Total	84	53	137

Complainant	Completed Panels ^b		Total
	Developed	Developing	
Developed	9(7)	7(7)	16(14)
Developing	8(8)	2(0)	10(8)
Total	17(15)	9(7)	26(22)

Source:WTO

^b Figures in brackets refer to number of cases in which complainants were successful.

Developing countries account for about one fourth of all complaints and have been defendants in forty percent of the complainants. Developing countries have won all the cases that have been brought against the developed countries. India has successfully prosecuted all three cases against developed country partners. The fact that developing countries have been defendants in a lot of cases, is actually reaffirmation of the usefulness of the system as a safeguard at least insofar as it reflects reduced extra-systematic pressure. To settle disputes within the system affords greater protection to the weaker party than settling outside it. However, it will not be out of place to suggest that dispute settlement process should be simplified.

Section II^a

There is a need for developing countries including India to formulate correct mix of both domestic and external economic policies. Efficient domestic policies in the area of goods will include injecting competition from outside by reducing trade barriers; in services by eliminating barriers to entry. Good policies for both goods and services will include judicious regulation of both to remedy market failures and achieve social objectives efficiently. The challenge however is a domestic one.

Multilateral engagement can be harnessed to serve the ends of good domestic policy and overall policy reform, particularly in the wake of arguments that such engagements and international commitments undertaken by countries necessarily entail a loss in sovereignty—the freedom that countries have to make unconstrained choices. Sovereignty can be strategically ceded to further domestic reforms and secure an open trading system, which countries like India as a large and a growing trader has some ability to shape.

In order to see when multilateral engagement can both facilitate domestic reforms and make it possible to extract concessions from trading partners it is useful to examine three situations. 1) If a country is wedded to self sufficiency, as India and other developing countries were until recently, it cannot be a bargainer. If India is not willing to open its own markets India does not have obvious means of inducing its trading partners to do so. In this context it may be said the move of developing countries to ask for special and differential treatment at GATT and WTO could only seek limited preferential access as supplicants were unwilling to liberalize on their own. This stand by developing countries may suit the interest of developed countries by continuing their protectionist interests in areas like Textiles and Clothing - areas where developing countries have a comparative advantage. 2) Paradoxically, if a country is credibly committed to reform and can successfully implement it, it cannot be a credible bargainer either. Partner countries can basically refuse market access knowing very well the internal commitments of reform. The situation does not change much if a reformer proceeds with liberalization unilaterally but refuses to bind openness under the WTO in the hope of extracting concessions. 3) A third situation, probably suited to developing countries like India, arises in relation to a willing reformer whose ability to implement reform is constrained by domestic opposition. In this case, domestic reform could be facilitated if a government could demonstrate that there were payoffs, in terms of increased access abroad, to domestic opening. The gainers from the increased access, be it

^a This section draws heavily from Mattoo and Subramaniam(2000)

exporters of textiles, software, professional services or other products, could represent a countervailing voice to groups (import competing industries) resistant to reforms. China's recent agreement with the US on its accession to the WTO illustrates this political economy at work and where it has been able to secure its present existing access rights. Crucially the need for improved foreign access to facilitate domestic reform (by easing the domestic political constraint) makes a country more credible bargainer and enables it to extract more meaningful concessions from trading partners. Developing countries including India may adopt this policy in the area of TRIPS and environment and labor standards for asking compensation in the wake of domestic opposition in these areas. However, it may be pointed out that the possibility of bargaining does not imply that developing countries like India should delay unilateral liberalization. In fact the process should be facilitated by multilateral engagements. In this manner forces could be harnessed to secure domestic reform and credibly extract concessions from trading partners.

Another benefit of multilateral engagement is to precommit for future liberalization. This may strike a balance between the reluctance to unleash competition immediately and the desire not to be held hostage to the weakness of domestic industry or to vested interests. WTO's GATS commitment provides a valuable mechanism to do so. Unfortunately, India has failed to take advantage of this mechanism and committed only to review its policies in basic telecommunications at specified future dates.

As explained in the earlier section, dispute settlement process of the WTO can be an effective tool for the enforcement of rights of developing countries including India. As far as India is concerned, in case developed countries renege on market access rights in the area of textiles and clothing India can wield an effective retaliatory weapon in the form of its TRIPS obligations⁴⁹ (discussed earlier).

Multilateral liberalization can also become a bulwark against regionalism and mutual recognition agreement (whereby countries choose to accept the standards of some but not all partner countries) particularly when member states use it for protection or limited market access. There are very few multilateral traders left in the world and India has for the most part been one of those who had propounded multilateralism.⁵⁰ Strengthening the provisions in goods and services on preferential trading arrangements is overdue.

Developing countries including India's negative approach towards introduction of new issues warrants second thought. It was right to resist insidious protectionism in the form of higher labor and environment standards or rent transfer mechanism such as TRIPS agreement. However, it is difficult to justify the objection to the introduction of competition policies and government procurement.

The prospects for significant gains in market access are not as bleak as they have been hitherto. Especially, in the area of labor mobility, with labor shortages developing in the US, the environment might be more propitious than it has ever been. Also, internationally India should be now more open to align itself with countries following open policies and form coalitions with countries that form a shared premise of liberal policies. For example, India's natural allies should be Cairns group in agriculture, Japan and Hong Kong on antidumping, and the EU on investment and competition policies.

There is no success in the short term but in the longer-term good arguments and pro-liberalization coalitions can be successful.

Section III

Interest of Developing Countries in the WTO and Multilateral Trading System: Developing countries were never a homogeneous group with common interest in the international trading system. Some of them have shared a certain ambivalence towards the GATT from its inception. The original twenty-three contracting parties of the 1947 GATT included the following eleven developing countries: Brazil, Burma (now Myanmar), Ceylon (now Sri-Lanka), Chile, Cuba, India, Lebanon, Pakistan, Southern Rhodesia (now Zimbabwe), and Syria. Burma, Ceylon, and Southern Rhodesia were not independent then. This group of twenty three was also the preparatory committee for the Havana Conference as well as the committee that drafted the charter for the International Trade Organization (ITO) for discussion at the conference. Fifty-six countries including thirty developing countries participated in the

⁴⁹ This policy action may be warranted in the wake of banana and hormones disputes where compliance by larger trading partners has been delayed. More generally, there is the perception that developing countries' ability to secure compliance by the larger traders is ultimately limited by small size of developing country markets and the consequential limited impact of any retaliatory actions.

⁵⁰ The recent initiatives in the South Asian region are an exception to India's general preference for multilateralism.

conference. Initially, the developing countries condemned the draft submitted by the preparatory committee as serving the interests of the developed countries and holding no hopes for development. Nonetheless, except for Argentina and Poland all the other countries approved the charter that emerged at the end of the conference. The charter was not notified by the US and the ITO did not come into being; instead the treaty on tariff reductions namely the GATT came to be provisionally applied. In their decision making contracting parties of the GATT have almost always adopted a consensus procedure in spite of the fact that Article XXV of the GATT required only a simple majority of votes cast for a decision with each contracting party having one vote. Thus in principle, developing countries could have had a significant influence in the GATT decisions. Nonetheless, they tended to view GATT as promoting the interest of developed countries. Indeed, the first United Nations Conference on Trade and Development (UNCTAD) in 1964 subsequently institutionalized as a 'permanent organ' of the General Assembly of the United Nations, provided a forum in which developing countries tried to evolve and articulate a common position on matters relating to trade. The GATT was not intended to be such a forum and had an oversight role in trade matters that UNCTAD never had. Until the Tokyo Round of trade negotiations many developing countries did not participate effectively and they had no significant influence on the outcomes of the Tokyo Round, where they were united, though not necessarily in ways that served their long-term interests. They chose to participate much more actively and had a greater influence on the UR agreement. It is therefore certain considerations which suggest that sometimes all and some major group of developing countries have common interest in strengthening the multilateral trading system. The multilateral trade talks can potentially be a guarantor not only of a rule based global trading order that protects the economically less powerful developing countries but also of their active participation in the making and enforcing of decisions that affect international commerce. It would also be worthwhile to not only participate in the WTO trade talks but also raise concerns, if any, in the development of the articles of the WTO. Besides this it may include their interest to discuss some new issues i.e. competition policies and public procurement in the next rounds. More explicitly, these considerations are: First, the protection that a well functioning international trading system can offer is far more important to developing countries than it is to larger developed countries. Second, most of the developing countries are relatively smaller in size to developed nations like US and EU and to have bargaining power visa-vis them are limited. Thirdly, not only most of the developing countries have economies that are small and therefore highly dependent on trade, they have comparative advantage in a much smaller range of goods than do large developed countries. Fourthly, there are certain instances where it is possible to link issues in such a way that developing countries as a group are able to present a solid front (Agricultural negotiations). In many instances, however, it will be more likely that countries may find alignments with those other developing countries with similar interests and with developed countries. Lastly, there are issues like competition policies and labor and environment standards in which by forming coalitions with other developed and developing countries bargaining as a group may enhance the outcome for all.

We discuss below issues which warrants common interest among all and some times group of developing countries.

1. protection against capricious antidumping or countervailing duty actions on the part of the developed countries.
2. insuring that the undertakings made under the Uruguay Round, especially with respect to agriculture and the Multi-Fibre Agreement, are carried out
3. thwarting efforts to achieve protection against developing countries exports via labor standards and/or environment agreements.
4. Avoiding sectoral approach to trade negotiations
- 5 providing means for developing countries to defend their interest in WTO dispute settlement mechanism.
6. supporting and strengthening the multilateral institution and coherence among them
7. forming coalitions on the subject of agriculture
8. Reducing tariffs (binding and actual peak level duties)
9. Supporting services sector liberalization
10. Supporting development of multilateral investment code
11. Supporting development of competition policy and standards (bargaining issue)
12. Strengthening rules of preferential trading arrangements (PTAs)
13. Strengthening rules for electronic commerce, particularly for those developing countries which see themselves as important players in the information technology industry
14. Support liberalization of government procurement.

15. Credit for unilateral liberalization.

Issues in 1, 2, 5, 8, 9, 10, 12 have been dealt in earlier sections. We discuss the rest of them.

a. Avoidance of Embodied Protection in Labor Standards or Environmental Regulations.

This issue has been of greatest concern to all developing countries. Developed countries want labor or environmental standards enforceable through the WTO. Some standards, endorsed by ILO, have already been embedded in WTO—i.e., the injunction against the use of prison labor. And, when there is universal agreement among countries that certain practices are abhorrent, an international agreement through the ILO can surely be reached i.e., most of the countries have viewed that labor standards should be addressed in the ILO. Within the ILO, however, difficult negotiations led to agreement, at the organization's annual conference in June 1998, on a "declaration of fundamental workers right" which in its trade aspects essentially says much the same as the Singapore declaration of a commitment to core labor standards. It is suggested that WTO and ILO can develop core labor standards that essentially respects not only workers rights but human rights everywhere. Concrete actions may be taken by ILO, however.

Questions arise regarding both the standards to be included and the linking of those standards to trade issues. The question of standards is perhaps more important in the case of labor issues, while the linkages are probably more questionable in the case of environmental concerns.

Labor standards can be legitimately raised on humanitarian concerns by well meaning individuals appalled at low wages and poor working conditions in low income countries and by union representatives and producer/employers in industries that use relatively large amounts of unskilled labor in developed countries. However, to insist upon wages and working conditions that are above those that can result in full employment in developing countries is to deny a significant portion of their comparative advantage. There is an element of protectionist content by choking developing countries comparative advantage in labor intensive industries.

There is a general agreement on the following labor standards by all including developing countries to prohibit namely prohibit forced slave labour, minimize hazardous or unsafe working conditions, agree to remove or reduce incidence of child labor in poor countries with certain conditions and adopt freedom of association and the right to bargain collectively.

It would be indeed churlish to dismiss out of hand the humanitarian concern of the citizens of rich countries with high labor standards about poor conditions of work or employment of children in developing countries. However, contrary to the belief among proponents of linking trade policies and labor standards, it is not necessarily the case that such a concern is best dealt with through linkage. First, it is not inconceivable that a country threatened with trade sanctions for failure to raise its labor standards would not respond by raising them but instead choose to forego gains from trade. Second, instead of relying on the indirect means through linkage, which depends on the desired response by the developing countries for its success, the citizens of developed countries could adopt a more effective direct means of pressurizing their own governments to lift any restrictions on the immigration of workers from countries with poor labor standards. If they chose to migrate, such workers would enjoy the higher labor standards prevailing in the country of immigration. Indeed, there is support for lifting such restrictions on moral-philosophical grounds as in the writing of Rawls, J. (1933). He views freedom of movement and freedom of choice of occupation as essential primary goods equivalent to other basic rights and liberties, the entitlement to which is not open to political debate and allocation through the political process. Even lifting immigration restrictions is deemed unfeasible politically, citizens of rich countries could make income transfers to workers in poor countries. With higher incomes, it is reasonable to presume that the supply price (broadly defined to include labor standards) of their labour would rise, and to restore labor market equilibrium, labor standards would have to rise. Indeed a test of the depth of their humanitarian concern is the price that citizens are willing to pay for translating the concern into actual increase in welfare of workers in poor countries. In fact, without transfers, imposing higher labor standards than a less developed economy can sustain could mean lower employment and welfare levels for its citizens. The willingness to make needed income transfers is a demonstration of the willingness to pay the price. An alternative to income transfers other than linkage concerns the actions of citizens of developed countries in their markets for imported products. By not buying products of a firm or a country that does not observe what consumers view as acceptable labor standards, they can send a clear and effective signal to that firm or country to force it to choose between observing standards and retaining the market or losing the market altogether⁵¹. If it chooses to retain the

⁵¹ It might appear that consumers must have information needed to distinguish the nonobserving firms from the observing ones to engage in such behavior. However, market forces might themselves generate such

market by observing acceptable labor standards, to the extent the cost of import goes up because of such observance, both the exporting industry and buyers of imports share the cost of improving labor standards. If it chooses to forego the market, then although workers in the exporting industry do not gain welfare through higher standards, there is a penalty to the firm in the form of lost exports. If the citizens of the developed countries are interested only in raising the welfare of the workers and not in penalizing the exporting firm, they will have to compensate the firm or make income transfers to workers. The basic point is that there is a real cost to raising labor standards, and this cost has to be incurred if the intended benefit is to come about.

As far as child labor is concerned there are many ways of creating such conditions—for example trying to improve the wages and productivity of adult workers so that they do not have to send the children out to contribute to family income. In this context once again citizens of developed countries concerned with the welfare of such working people in developing countries could influence the choice of parents away from putting their children to work altogether or at least reduce the amount of work done by their children through income transfers to parents. There is no need to link trade with enforcing labor standards. The domestic challenge would be for example, governments can try to make existing schools more attractive for the children—to make schools better and more accessible to them through better transport, provision of meals in schools as well as more scholarships. Also there is a possibility of paying a subsidy to the mother conditional on her child's school attendance. In India the number of children working is quite large, but the number of children who are neither working nor going to school is many times larger than the children who are working. Most of such children are girls who are looking after siblings. An obvious solution would be to think of starting a good number of day care centres. In case the child labor is banned altogether and there is an increase in prices of the products developing countries can ask for funds to earmark for improving schools and for better and more schools for child workers from poor families. Most child labor in poor countries is in the non-trade sector. For example, in India only about 5% of child labor is in the export sector. WTO sanctions which are being pressed by many developed countries, will push these children into the non-traded sectors where the sanctions do not apply, and that their conditions may be worse. One needs coordination among business units, government, NGOs and international agencies so that no company employs child labor and no one is able to undercut other companies when the price increases as a result of the agreement. As discussed earlier the proceeds can go for betterment of school facilities and infrastructure for displaced child labour. ILO can play a constructive role in this by providing some leadership in bringing the parties together.

Another view which is being made is that transnational companies are attracted to countries just for their poor labour standards. There is very little systematic evidence for that. Multinationals go to poor countries not primarily because of poor labour standards. In fact, labour standards in the multinational companies, by and large, are somewhat better than in the domestically run factories. It does not mean that the working conditions are good. They are dismal in many factories, domestic or foreign. It requires coordination between governments, NGOs, business and making labour union effective in improving the working conditions.

Labor standards may be introduced in such a way that developed countries can impose protection against imports from developing countries⁵² and that reasonable harmless standards will initially be set⁵³. But that over the years, labor unions and others will succeed in having these standards elevated until they finally achieve the protectionist content that impairs developing countries' comparative advantage in labor intensive industries. Certainly developing countries should be alert to the danger that, once any standards

information as long as the consumers refuse to buy that product (or all products from a country) if they suspect some firms (or some products from that country) are being produced under unacceptable conditions. In such a case, producers (or countries) who maintain acceptable standards will have an incentive to invest in signaling (in a credible way) to consumers that they in fact do so and thus distinguish themselves from those that do not.

⁵² The practical problem associated with implementing labor standards are formidable. A key question is whether trade sanctions should be permitted only when exporting firm is found guilty of failing to meet standards in producing the good for export, when the firm is guilty of violating in any of its operations, or would the issue arise whenever anyone in the country was violating standards.

⁵³ The labor standard code associated with the Mexican accession to NAFTA is relatively innocuous. It is being attacked in the U.S as being much too weak, and there are pressure groups attempting to raise it. Meanwhile, however, groups interested in achieving labor standards within the WTO are arguing that NAFTA set a good example.

are accepted, the barriers against using them for protectionist purposes are greatly weakened. Developing countries should strongly resist labor standard as a topic for inclusion in the new round of negotiations.

Environmental standards raise some other issues. First of all, when the only environmental damage is borne by residents of a country, there is no obvious case for international standards of any kind to be applied. When there are "spillovers", the question becomes one of allocating "pollution" rights among countries. Most economists agree that, when there is a serious case for restriction of particular pollutants, such as CFC's, on a global basis the appropriate policy response is to allocate pollution "rights" or permits, and then to permit trade in those permits.

The key issue for reaching accords is the basis on which permits will be allocated. On one hand, developed countries generally are currently generating a large fraction of the pollutants; if rights were allocated in proportion to existing pollution rates, developed countries would receive most of the permits. On the other hand, if rapid growth for developing countries is in prospect for next several decades, it is clear that their share of the increase in pollutants would be very large in the absence of environmental restraints. Moreover, environmental restraint would entail some brake on growth rates that would otherwise be attainable. For these reasons, developing countries tend to advocate the allocation of pollution permits, or rights, in proportion to population, while developed countries advocate allocation on the basis of existing shares in pollutant-generation.

The disagreement is fundamental, and until it is resolved, it is difficult to expect significant progress. Bhagwati and Srinivasan (1996) argue that a first-best solution is to have taxes and subsidies that reflect the externalities of various activities imposed on those undertaking them, combined with free trade. Since, it is seldom, if ever, that trade itself generates the externality, the appropriate policy measure is to impose the tax on the activity that generates the externality, presumably production in most cases. In case the offending country fails to do so then it may make sense to have 'second best solution' by imposing trade restraints on exports from the offending country. The chief questions concerning trade policy when global pollution problems such as ozone layer depletion and global warming are involved instead take different turn related to cooperative solution oriented multilateral treaties that are sought to address them. They are however essentially tied into non-compliance (defection) by members and 'free riders' by nonmembers.

There are several set of interrelated issues that have formed the basis of the debate so far, and the positions on these issues vary among both among developed and developing countries. An outline of the issues is attempted here.

1. The relationship between trade provisions of Multilateral Environmental Agreements (MEA) and the WTO. This includes question such as, which MEAs to include; what to do in case the measures are incompatible with the WTO; what to do regarding countries which are not members of a particular MEA; and which dispute settlement to use. Most developed countries want prior assurance that action taken under the terms of an MEA cannot be challenged in the WTO. The EU, in particular, proposes that such action should be recognized as covered by GATT Article XX(b), which allows measures "necessary to protect human, animal or plant life or health", provided they are not used to discriminate unfairly between countries or as a disguised restriction on trade. Developing countries in general wish to retain some possibility of WTO challenge of actions taken under an MEA. They are not fully reassured by evidence that most MEAs do not have trade provisions, or that no WTO disputes have yet arisen over actions under an MEA. The discussion has also included how improved WTO disciplines might help to further environmental objectives. Agricultural exporters such as Argentina and New Zealand point, for example, to the role of subsidies in encouraging pollution through excessive use of chemicals on crops, as well as in depletion of fish stocks through overfishing.

2. Whether the WTO members need to adopt comparable process and production methods (PPMs) in their respective countries and if yes and how to take into account these as they relate in the framing of trade rules; and in this connection what weight to put on multilateral agreements (for example on ozone depleting substances) or unilateral judgements, such as those used by US in the tuna-dolphin⁵⁴ or the precautionary principle used by EC concerning import of meat and meat products derived from cattle to which either the natural hormones: oestradiol-17B, progesterone, or the synthetic hormones: trebolone acetate, zeranol or melengestrol (MGA), had been administered for growth promotion purposes (for details see Hammonds 1990, Meng, 1990). In the same context, what to do of eco-labelling schemes, which could adversely effect imports from specific developing countries, and how to bring them in conformity with broader WTO rules

⁵⁴ In the early 1990s Mexico complained against the United States concerning the US ban on imports of tuna caught by fishing methods which endangered dolphins.

on standards. As regards standards-related environmental measures, a central problem, in the view of many developing countries, is that in many cases these aim to enforce requirements that do not concern the product itself, but rather the way in which it is produced, this being seen as an unacceptable effort to extend the jurisdiction of the country applying the measure beyond its borders.

3. The general relationship between trade, environment and development. This has many facets, including the formal recognition that poverty is a major cause of environmental degradation; provision of assistance to developing countries to promote sustainable development; issues related to the impact of new environmentally motivated standards imposed by developed countries on the competitiveness of developing countries exports and the broad relationship of different trade liberalization measures and the environment (Bhagwati and Srinivasan, 1996).

Developing countries face the following dilemma: should they negotiate an agreement covering the various complex trade and environment issues, which would involve legitimizing through explicit detailed understanding different market access restraints on environmental grounds, but would limit the more blatant unilateral developed country abuses; or should they leave the system as it is, when developed countries can use the broad language of GATT Article XXIV b to restrain trade on environmental grounds (recently interpreted very broadly), and rely on the WTO Dispute Settlement Mechanism to curb developed country abuses? Various developing countries would respond to this dilemma differently.

The risks resulting from failure to reach environmental accords are that environmentalists in developed countries will lend their support to protectionist measures. In the wake of this development the developing countries may like to negotiate agreements that are less close to proportionate-to-population allocation than would, from their viewpoint, be ideal since, as a by-product, protectionist measures against them would be somewhat reduced. This point is further explained. Given the strong pressure that both the EU and the US would bring to bear on including this issue and the difficulties developing countries may have faced in using the DSM, they may wish to agree to including environment in the agenda as part of an overall understanding on a set of negotiations that meet their own objectives, e.g., regarding restricting developed countries subsidies in energy, fisheries, or agriculture which may have adverse effects on the environment; and/or provision of assistance to developing countries to help them address poverty issues that contribute to environmental degradation. However, it may be said that member nations should domestically exercise their right to set appropriate standards for health, safety, environment and biodiversity. Chimni (2000) acknowledges that developing countries have to pursue an independent and self-reliant path of sustainable development. However he notes that "environmental measures addressing transboundary or global environmental problems should as far as possible be based on international consensus. The cooperative approach represents an integrated response based on the principle of common, but differential responsibility. "The legal form that the cooperative solution should assume is a matter of debate. Its goals could be achieved either through separate multilateral trade agreements or as side agreement in WTO or through innovation in the WTO dispute settlement system.

b. Avoiding sectoral approach to negotiations: In recent years, developed countries have begun to negotiate agreements on issues such as telecom and information technology. There are several difficulties with this approach: 1) once those sectors are liberalized, producers in those areas have a reduced incentive to support import liberalization in protected sectors; and 2) developed countries are selecting the sectors for negotiation in which they believe (probably correctly in most instances) that they have a comparative advantage. The sectors of interest to most developing countries (agricultural sector) will be much more difficult to negotiate on a sector-by-sector basis because they are largely import competing, and the political economy of trade liberalization is such that political resistance will be strong unless offset by exporting interests in developed countries. Developing countries do not need to choose between a new round and sectoral negotiations in agriculture; they can strongly support a new round, and nonetheless enter into negotiations with respect to agriculture should there be no decision for a new round. The difficulty, however, is that there is likely to be significantly less agricultural sector liberalization than there would be if the negotiations took place as part of an overall multilateral trade negotiations.

c. Increasing coherence among multilateral institutions. In the Ministerial meeting in Marrakesh to give formal approval to the Uruguay Round, ministers called for "greater coherence" between the IMF, the World Bank, and the WTO. In this, there was clear recognition of the linkages between global trade and monetary policies and the ability of developing countries to achieve rapid economic growth on a sustainable basis. The need for greater coherence has been apparent at least since the debt crisis of the 1980's, when simple arithmetic showed that heavily indebted developing countries could not service their debt and resume growth (a monetary issue) unless their exports grew at a sufficiently rapid rate. That rate was well above the

rate of growth of world GDP; as such, it was clear that should protectionist measures in developed countries increase, efforts of the World Bank and IMF to support the necessary measures in developing countries would in any event be destined to failure. The same is still true. Healthy growth of world trade cannot continue unless the underlying functioning of the international monetary system and of international capital flows is sound. Likewise, healthy evolution of the international financial system, and of the flow of capital from countries with lower real rates of return to those with higher real rates of return cannot persist without an open multilateral trading system. It is clearly in the interest of all countries, developed and developing, to attempt to achieve greater coherence among themselves.

d. Forming coalitions on issue of agriculture: Bringing agriculture under WTO disciplines was a significant achievement. Not only were any further increases in subsidies and agricultural protection among the developed countries ruled out, but there was some relatively minor rollback (with a commitment to a 20% reduction in the total (distorting) support provided by government to agriculture and a cutback in export subsidies) and the commitment to shift to tariffication was highly significant.

In terms of their immediate interest, the developing countries can be divided into three groups. First, there is the group of major exporters of agricultural commodities (Argentina, Thailand) which are members of the Cairns Group⁵⁵. These countries position is a) early, total elimination and prohibition of export subsidies which tend to undermine the competitive position of efficient developing country producers; and in the same connection, seek to regulate the provision of export credits; b) deep cuts in tariffs, removal of non-tariff barriers, increase in trade volume under tariff-quotas so to enhance market access prospects; c) elimination of trade distorting domestic support measures (WTO, 1998). At the same time they need to safeguard those aspects of the Agreement on Agriculture (as well as add new ones, if appropriate) which permit them to extend assistance of various types to poor farmers as well as maintain programs of assistance and food security to the poor. But these measures should not introduce distortions between selling to domestic market and abroad or between sectors. India should try to align itself with the Cairns Group consistent with forming coalitions based on liberalizing ideology. The combination of a relatively unprotected domestic regime and potential comparative advantage means that India has real interest in seeking to eliminate protection in international agricultural markets. India's sugar and dairy exporters have already expressed a serious interest in reducing barrier to their exports. As in manufacturing, India also suffers from the preference granted to competing suppliers in sectors such as sugar. It is therefore has a real interest in reducing agricultural tariffs.

Second, there is a large group, consisting of the net food importing developing countries and others with a significant agricultural sector which produce but also import food and export various agricultural products. Past policies in many of these countries tended to penalize rather than support the agricultural sector. Two kinds of concern have been raised by several of these countries. First, while supporting reductions in export subsidies and trade distorting domestic supports in developed countries, the limits to aggregate support and export subsidies contained in the agreement (and their possible further tightening in the new negotiations), would limit their capacity to increase support to the agricultural sector should they in the future decide to do so.⁵⁶ Second, that although reduction in export subsidies by developed countries will be beneficial to their own domestic agricultural production, the resulting increase in prices of foodstuffs would increase foreign exchange outlays for poor and net food importing countries which they can ill afford⁵⁷. There is also a third group with small non diversified agricultural sectors, either because of climatic conditions or land constraints (e.g. small island economies), which are not likely to be significant participants in these discussions.

While the Uruguay Round agreement on agriculture focussed on distortions primarily introduced to agricultural trade by developed country practices, it contains provisions which permit developing countries to increase support to agriculture (and to poor consumers) through means not available to developed

⁵⁵ Cairns group-Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay.

⁵⁶ Some also point to the "unfairness" of the agricultural agreement as it still permits greater support levels for developed countries--which had in the past given a great deal of assistance to their agricultural sector--as opposed to the developing countries which penalized agriculture in the base period (Das, 1998)

⁵⁷ There is little evidence that the export subsidy reductions of the Uruguay Round agreements have led to an increase in import expenditures of poor net food importing developing countries. Even so, it is legitimate to ask what might happen in the future and what is the proper international response to such a potential problem.

countries.⁵⁸For example ,direct and indirect investment and input subsidies to poor farmers are excluded from the calculation of aggregate measures (AMS)⁵⁹; reduction in support commitments by developing countries can take ten years to be implemented while least developed countries are totally exempt;food subsidies to urban and rural poor are excluded from the calculation of support,etc.

It can be argued however,that the exception of the investment and input subsidies provided to poor rural households from the calculation of the AMS is subject to the "peace clause"-Article 13 of the Agreement on Agriculture and thereby limited to the 1992 levels of support(Kwa and Bello,1998).This may indeed result in unreasonable restraints for low income developing countries which may wish overtime to increase their support for the rural poor.To eliminate this ambiguity,such subsidies could be included in the "Green Box" of measures which are permitted under all circumstances⁶⁰.But on the whole,and with the possible exceptions noted above,it is difficult to visualize circumstances where the Agreement seriously constrain developing countries efforts to pursue policies that would efficiently promote their agricultural sector.

Direct domestic support for agricultural products in India is provided through price and market support programmes.India presently provides market support for 24 products,including rice,maize,wheat,cotton and sugarcane.On domestic support of Agriculture ,India's Aggregate Measure of Support(AMS) was below the permissible limit of 10% stipulated for developing countries in respect of product specific and non-product specific support.In fact,total AMS to India agriculture tends to be negative suggesting taxation rather than protection of agriculture(TableXI).This is due to the fact that domestic prices are significantly below international prices,India's total(product specific)AMS is negative.Therefore,India is not required to reduce its domestic support .On comparison in 1999 the total support to agriculture by member countries of the OECD was to the tune of \$361 billion(Gulati & Hoda,2000).They notes that about 60% of this support slipped through the net of the Aggregate Measurement of Support devised in the agreement for capturing trade distorting domestic support and securing reduction of the same.It is imperative for India to seek a major reduction by all members with more than de minimis levels of support⁶¹ in the totality of trade distorting support in the future negotiations. There should also be a cap on the AMS and the minimum market access commitment can be linked to the actual level of AMS⁶².

Table: XI

Aggregate Measure of Support to Indian Agriculture(selected crops)

Year	Product Specific Support(as % of value of agricultural output)	Non-Product Specific Support(as % of value of agricultural output)	Total AMS(as % of value of agricultural output)
1986	-34.29	2.25	-32.04
1987	-32.08	3.2	-28.88

⁵⁸ It should be recalled however,as part of Uruguay Round agreement and previous negotiations,there were significant reductions in tariffs on horticulture and floriculture products of interest to developing countries.

⁵⁹ AMS calculations in India are made in accordance with the provisions of Annex 3 of the Agreement on Agriculture.There are certainly methodological issues in computing AMS that need to be cleared up in subsequent negotiations.The AMS methodology is based on differences between the external reference price and domestic administrative price,multiplied by the quantity of production eligible for support.There is however,no explicit recognition of domestic inflation or currency depreciation.

⁶⁰ An alternative would be to exempt from challenges under the subsidies agreement.Also,there can be possibility that members states artificially transfer subsidies to the green box to show lower levels of AMS.

⁶¹Under the Agreement on Agriculture support to specific products must be kept at less than 10% of the value of production of the products concerned and non-product specific support cannot exceed 10% of the total value of agricultural production.

⁶² Base period(1986-1988) AMS levels were high.Consequently,reductions take place on a high AMS and even after stipulated reductions,AMS levels in some countries,particularly in developed countries continue to be high.

1988	-35.54	3.32	-32.22
1989	-36.97	3.39	-33.58
1990	-31.78	3.36	-28.42
1991	-62.23	3.6	-58.63
1992	-69.31	3.46	-65.85
1993	-54.75	3.14	-51.61
1994	-43.27	3.4	-39.87
1995	-44.09	3.9	-40.19
1996	-45.84	3.62	-42.22
1997	-32.16	4.12	-28.04
1998	-41.89	3.49	-38.4

Source: Gulati(1999)

With respect to direct agricultural export subsidies, India provides income tax exemptions for profits from agricultural exports under Section 80 HHC of the Income tax Act. In addition the authorities state that their "Green Box" measures include buffer stock operations for food security and sales to consumers through the Public Distribution System at relatively low and stable prices, crop insurance schemes, relief measures, and investment aid for dry farming, reclamation of alkaline soils, and environmental programmes. Under the WTO Agreement on Agriculture, developing countries are not required to reduce indirect support of the latter kind.⁶³ India is nevertheless required to make regular notifications to the WTO on its domestic AMS and also its direct export subsidies every two years.

With respect to agriculture, the Indian position should be aggressive about keeping social concerns, like food security⁶⁴ in the forefront. It is important that India try to achieve a consensus with other developing countries on the issue of food security being an important aspect of negotiations on agriculture. Developing countries must oppose the position that agriculture is "multifunctional" and that food security is only one among many other functions. Besides this in the agriculture negotiations, specifically, Sahai(1999) strongly notes that India should demand that food production for domestic consumption be kept out of the purview of the agreement on agriculture and the conditions/support extended to small, marginal and household farmers must also be excluded from the negotiations. Developing countries must reiterate the demand that the support and subsidy levels in developed countries should be progressively reduced. It would be a good move for India to be aggressive and threaten retaliation if no concessions are made to developing country interests. If the developed countries resort to increased support and subsidy and refuse to lower the rates as they have undertaken to do, developing countries should counter the move by increasing their own tariffs. India should seriously consider aligning itself with the Cairns group of agricultural exporters consistent with an overall strategy of forming coalitions based on liberalizing ideology. In this regard, many of the specific proposals in Gulati (1999), including elimination of export subsidies, elimination of tariff quotas, moving from aggregate AMS to product specific AMS commitments and disciplining blue box measures are some measures worthy of consideration.

The recently negotiated Food Aid Convention (International Grains Council, 1999) stipulates that, when allocating food aid, priority should be given to LDCs and low income countries. Other net food importing developing countries can also be provided with food aid "when experiencing food emergencies or international recognized financial crisis leading to food shortage emergencies or when food aid operations are targeted on vulnerable groups". But there is nothing and there should be nothing automatic about the assistance provided. Indeed, if a need can be shown to exist, the international response should not be limited to food aid but extend to all kinds of general purpose financing on appropriate terms. The latter would be better than food aid, which is frequently tied to procurement from a particular donor and determined by food stock availability in the donor rather than the needs of the recipient.

Another area of interest to developing countries that are agricultural exporters concerns import access rights. Until the Uruguay Round (UR), there was no provision for access. Under the UR, all countries were immediately obliged to insure up to 5% market access for imports. Increasing minimum access under tariff-quotas, and setting a ceiling on the maximum rate of tariff or tariff equivalent would be in the interest of most exporting countries.

⁶³ Provided these are not applied in a manner that would circumvent commitments.

⁶⁴ The most comprehensive and possibly most acceptable definition is what came out of the World Food Summit at Rome in 1996. "Food security exists when all people, at all times, have physical and economic access to sufficient, safe and nutritious food to meet their dietary needs and food preferences for an active and healthy life."

Developing countries that export any agricultural commodities have an interest in assuring that phytosanitary regulations are based on scientific evidence. As such, developing countries have a strong interest in participating in discussions of experience under the UR to insure that changes in regulations enable the improved functioning of the system and do not permit the manipulation of phytosanitary standards for protectionist ends. PSP regulations that have been negotiated call for mutual recognition, which is strongly in the interests of developing countries. If there are difficulties, they probably lie in the willingness of developed countries to send delegations to attest to the testing procedures in developing countries.

In recent years, a number of countries have been interested in protecting claims of geographic origin of particular commodities. The issue has arisen in several cases with regard to developing countries: a prominent example is basmati rice which has been mentioned as the name of a special rice that should be labeled only if originating in South Asia. While there are a few agricultural commodities where the rights to claiming names and geographic origin may be of interest to developing countries, in general the developing countries' interest lies on the other side of the issue. Rights to particular names and geographic origin designations are generally restrictive and tend to increase the difficulty of entry into a market. As developing countries are generally potential late entrants into markets, efforts to restrict the use of particular names is generally not in their interest, and is an issue which developing countries should negotiate with care.

The above discussion yields that developing countries need to form coalitions on varied issues and make sure that these issues are discussed in length at the ongoing tranche of WTO agricultural negotiations.

Competition Policies (bargaining issue): National competition law can be defined as the set of rules and disciplines maintained by governments relating either to agreements between firms that restrict competition or to the abuse of dominant position (including attempts to create a dominant position through merger). Competition policy has a much broader domain. It comprises the set of measures and instruments used by governments that determine the "condition of competition" that reign on the markets. Anti-trust or competition law is a component of competition policies. Other components can include actions to privatize state-owned enterprises, deregulate activities, cut firm-specific subsidy programs and reduce the extent of policies that discriminate against foreign products or producers. A key distinction between competition law and competition policy is that the latter pertains to both private and governmental actions, whereas anti-trust pertains to behavior of private entities (firms). Many dimensions of competition policy are already on the WTO agenda—e.g., trade policy, subsidies, intellectual property protection, market access in services. The focus of the debate in the WTO is therefore on whether there should be specific rules pertaining to national competition law and its enforcement.

Competition policy seeks to prevent predatory pricing and monopolization of markets. It should provide guaranteed access to national courts without discrimination between domestic and foreign firms, enact basic standards of enforcement's such as transparency of proceedings, the applications of sanctions and an effective competing authority. It is clearly in the interest of developing countries to have a modern competition policy⁶⁵, particularly regarding the possibility of substituting AD and CVD measures with competition policies (discussed above also). In the context of the TRIPs agreement, competition policy coupled with compulsory licensing offers one avenue for mitigating some of the most egregious effects of TRIPs agreement. More fundamental domestic reasons, such as concentration of production in several sectors sometimes associated with the entry of foreign investors, also dictate the adoption of a new domestic competition policy.

Developing countries tend to be attracted by the idea of cooperation to deal with abuses by multinational companies, a theme they have pursued for many years in the context of the United Nations. Some (notably Hong-Kong) argue that mutually consistent trade and competition policies, including the incorporation of additional competition concepts into the WTO system, could reduce the need for governmental trade measures that discriminate against competitive suppliers, and in particular for anti-dumping actions. However, the prospects of this happening in the near future are dim given the opposition of the United States and the European Union.

Developing countries may like to support the development of multilateral case for competition policy, particularly to tackle the possibility of negative spillovers across markets. This is done by cooperation among all to ensure that the outcome maximizes global welfare. Several examples of potential interest to developing countries can be found. Excessively high levels of IP protection can inhibit transfer

⁶⁵ See Bhattacharjea, "Trade and Competition Policy in a Developing Country Context," (1999)

of technology. Foreign export cartels may charge excessively high prices. In the shipping market, international cartelization inflicts terms of trade losses for some developing countries, particularly India. In all these cases, although domestic competition policy could attempt to redress the anti-competitive impact, it may be relatively ineffective because of the jurisdictional problems or because remedial measures (for example, refusing foreign IPR owners or foreign suppliers of essential products access to domestic markets) may not be credible. Enforcement can be more effective when taken at source, involving the cooperation of partner countries. However, it may be apt to say that multilateral rules on competition policies are likely to be very general and probably not very ambitious. Competition policy standards, practices and institutions are divergent enough between industrial countries as to militate against very detailed and specific multilateral rule making. On balance, it would seem that the most substantial gains for India would arise from the creation of an effective domestic competition policy. Multilateral rules on competition policy are likely to provide net benefits, albeit small in magnitude, especially if the prospects of addressing the menace of anti-dumping are slim.

f. Electronic Commerce: Electronic Commerce⁶⁶ accounts for a small but rapidly growing proportion of world trade in goods and services. This growth has occurred in legal vacuum with few accepted rules and disciplines. Moreover, the cross border nature of transactions has made the issue of legal jurisdiction unclear. There is little doubt that over time, a framework of global rules for transactions through the internet will have to be established. The key issue is whether there is enough understanding of the issues and enough international consensus to attempt to reach an agreement as part of a new round of WTO negotiations.

This topic was first discussed in 1998 at the WTO, particularly in the context of the US proposal of permanently not imposing any custom duties on all electronic delivered products⁶⁷. Many developing countries were put off by the proposal at the time as it was felt that it had not been sufficiently explored and discussed. In subsequent discussions, developing countries raised a variety of concerns: Some thought that such a commitment will result in countries foregoing future opportunities to collect custom revenue⁶⁸; others were concerned as to whether the electronic mode of service supply should be given preferential status relative to other modes which were being regulated. Others raised the question whether certain electronically delivered product should be classified as services or goods like the contents of book, audio CDs, films, computer software, etc. These products, when delivered on physical media, have all along being classified as goods and charged to custom duty or exempted from it depending on the prevalent tariff at national borders of respective member countries. However, these products are now capable of being digitalized and transmitted through internet. The debate is on the classification of digitalized products such as music, books, software, etc - whether these can be classified as goods or services and whether GATT or GATS principle will apply. The other uncertainties are a) how to ensure privacy of transactions and how to value encrypted data; b) what are the links to TRIPs e.g., copyright protection for electronic and database material; c) And finally, there are many standards related issues involving interconnection and interoperability of systems which need to be addressed to ensure that standards setting by governments does not impede electronic commerce (WTO, 1999)

The initial inhibitions regarding loss of tariff revenues are clearly an exaggeration - after all most countries provide large scale exemption to their existing tariff schedules. Mattoo and Schuknecht (1999)

⁶⁶ There is no single definition of electronic commerce. The widest definition would include transactions where any one or more of the following three stages are carried out by electronic means: the pre-purchase stage including advertising and information seeking; the purchase stage including ordering and payment; and the delivery stage. The WTO decision concerns only electronically delivered products.

⁶⁷ In principle, all types of products can be advertised and purchased over electronic networks, the potential for electronic delivery, and the scope of the WTO decision not to impose duties is more limited. It requires that a final product be presented as digitized information and transmitted electronically, typically over the Internet. The bulk of the products that can be supplied in this manner are services legal customized software, etc. Some information and entertainment products typically characterized as goods, such as books, standardized software, music and videos embody digitalized information that can also be supplied electronically over the Internet.

⁶⁸ With respect to the proposal - imposing no duties on electronically delivered goods, India has drifted from its earlier position to the one which supports the proposal, probably due to the growing importance of software exports. India has now joined the many countries that are in support of the existing duty free treatment for electronic commerce to be made legally binding.

estimated the tariff revenue countries collected from these products⁶⁹. Even if all delivery of digitable media products moved online—an unlikely prospect—the revenue loss would be minimal. India would lose 0.4% of tariff revenue and 0.1% of total revenue. Since the bulk of such commerce concerns services, the relevant regime is that established by the GATS regime on cross border trade. This Agreement allows countries to decide whether to commit to market access, i.e., not to impose quotas, and to national treatment, i.e., not to discriminate in any way against foreign services and suppliers. If a country has already made such a commitment, then any further promise not to impose duties is superfluous because custom duties inherently discriminate against foreign services. If a country has not made such a commitment, then the promise not to impose custom duties is worth little, because a country remains free to impede access through discriminatory internal taxation. Worse they may take recourse to quotas which are ironically still permissible in spite of being economically inferior instruments. Hence, the focus on duty-free treatment is misplaced. The objective for countries like India should rather be to push trading partners into making deeper and wider commitments under the GATS on cross border trade regarding market access and national treatment⁷⁰.

The sheer pervasiveness of the Internet makes it impossible for even the best-intentioned regulators to keep out. Such issues as privacy, consumer protection, intellectual property rights, contracts and taxation cannot be left entirely to self-regulation if e-commerce is to flourish. Also, in case of electronic commerce antitrust action may be more important online than off line. Satapathy (2000) notes that some of the areas where the government can play a regulatory role are the following:-

1. Provision of a legal and regulatory framework to facilitate e-commerce by recognition of electronic records and providing for certification of digital signatures rules of encryption and secure electronic transmission.
2. Protection of copyright and other intellectual property rights.
3. Data protection and protection of privacy of individuals and corporate entities.
4. Consumer protection
5. Prevention of cyber frauds in electronic money transactions, including money laundering.
6. Other regulatory issues relating to public morality (e.g., child pornography) and criminality (e.g., facilitating sale of narcotic drugs, assisting terrorists, etc).

WTO members currently have decided that electronic delivery of products will continue to be free from custom duties. For the moment this commitment is temporary and political, but there are proposals to make it durable and legally binding. Two aspects of the commitment are notable. First, only electronic transmissions are covered; goods ordered through electronic means but imported through normal channels are explicitly excluded. Secondly the standstill/prohibition applies only to custom duties; there is no mention of other forms of restrictions.

g. Government Procurement: There are many good reasons to liberalize government procurement. Some benefits are analogous to those arising from the liberalization of trade, but to these must be added the budgetary benefits of efficient procurement and significant reductions in rent seeking which is rampant in procurement. Thus, both the consumer and the taxpayer will benefit. But WTO experience shows that most countries (developed and developing) are reluctant to immediately accept full liberalization of procurement.

For India, Srivastava (1999) estimates that the total value of purchases by the central and state governments and public enterprises, which could in principle be subject to international government procurement rules, varies between 3.4 and 5.7% of GDP. For certain procurement contracts, a price preference of 15% is given to indigenous equipment suppliers, requiring that at least 20% value must be added in India. In the shipping sector, price preferences up to 30% apply to Indian bidders on procurement

⁶⁹ In this study the assumption was that services are not subject to custom duties. Therefore, the study looked at the fiscal implications if international trade in digitalized products currently classified as goods shifts to internet, and if no tariffs are levied on such products. The estimates were reasonably reliable for the most important categories where trade and tariff data were available for the most important countries.

⁷⁰ Mattoo and Subramaniam (2000) have summarized the current state of commitments on cross-border supply in some of the areas in which developing countries have an export interest. In software implementation and data processing, of the total WTO Membership of over 130, only 56 and 54 members, respectively, have made commitments; and only half of these commitments guarantee unrestricted market access, and similar proportion guarantee unqualified treatment. In all professional services, there are commitments from 74 members, but less than a fifth assure unrestricted market access and national treatment, respectively. There clearly remains scope for widening and deepening commitments.

contracts .If more efficient procurement practices can be implemented domestically, Srivastava (1999) calculates that the total saving could be as much as 1.7% of GDP or about US \$ 8 billion. Even if only a fraction of the estimated savings is realized, the gain can be substantial.

One of the biggest problems in procurement is moral hazard (the tendency of the procurer to aggravate risks) on the part of procurer. The significant benefit of a multilateral agreement is in helping to overcome national agency problems in procurement by creating mechanisms for reciprocal international monitoring supported by multilateral enforcement. It achieves this by shifting the legal scope for monitoring from dispersed taxpayers who may have little interest in monitoring individual procurement decisions to the bidders for contracts who have a significant stake. Two elements of a possible multilateral agreement are crucial in this context. First, the agency problem is mitigated by creating obligations on the procurer to be transparent. Secondly, foreign suppliers are given the opportunity to challenge the decisions of the procurer before national courts or independent and impartial review bodies. As a starting point the countries may like to increase transparency and strengthen enforcement⁷¹.Alternatively, it has also been suggested that countries could continue to maintain preference margins, but agree to bind them and make them subject to unilateral or negotiated reductions. In addition to improved domestic policy, government procurement offers the potential for making negotiating linkages. Foreign suppliers can only effectively contest the market for government procurement if they are not unduly handicapped by restrictive trade measures. Hence, the creation of genuine international competition for procurement contracts depends crucially on the liberalization of trade. It would, therefore, be natural for developing countries to make willingness to accept disciplines on government procurement depend on future negotiations on market access for goods and under the GATS on measures affecting trade in services⁷².

h.Credit for unilateral liberalization. Developing countries have unilaterally reduced their levels of protection.Because it has been outside of multilateral tariff negotiations, and because in many instance tariffs have not been bound⁷³,developing countries have received no "credit" for these liberalization in the negotiating rounds. In part, this has been because countries that have liberalized their regimes have nonetheless been reluctant to bind their tariff levels and hence lose right to restore protection should circumstances arise that induce them to do so. From the viewpoint of the major trading countries, credit cannot be given in this circumstance because of the possibility of revocation. A strong case can be made that developing countries should bind tariff reductions in their own self interest. It is an effective means of liberalization because refusal to bind casts doubt as to the intentions of policy makers to maintain trade liberalization. Nevertheless, it should be possible to find means to negotiate for some credit for liberalization even if tariffs are not bound, provided that provisions could be made for reciprocity on the part of developed countries,particularly in insisting for reduction in agricultural tariff rates.Because most of the prospective unilateral liberalization in the world is in developing countries, and because improved market access is greatly in their interest,this is an area where negotiations should be possible and to the benefit of the group as a whole.

Section IV

Conclusions: It is in the interest for the developing countries to take an informed stand on the WTO issues. Developing countries should seriously involve themselves in WTO discussions and proceedings to make sure that emerging interpretations and practices concerning provisions in the agreement does not result in either an increase in obligations or dilution of their rights. Developing countries including India need to formulate an appropriate mix of domestic and external policies. However, the challenges are, above all, domestic. Active multilateral engagement can be incrementally helpful in facilitating domestic reform and gaining access for developing countries export of goods and labor services. Liberalization based coalition/coalitions (which can differ across issues) can be an effective force for reform internationally with beneficial internal consequences. Insofar as developing countries can influence the agenda for the next

⁷¹ A recent paper (Evennett and Hoekman,1999),however,suggests that it is important to eliminate preferences in government procurement before improved competitive practices are put in place.This is because,if the opposite sequence is followed,under certain circumstances,preferences on government procurement could lead to increased misallocation.

⁷² As most government purchases relate to services rather than merchandise trade, the issues have to essentially with liberalization and national treatment of foreign service providers.

⁷³ In the Indian tariff regime some of the consumer and industrial products still do not have binding tariff rates.

round of multilateral trade round, keeping negotiations cross -sectoral, indicating lack of desire to have labor and environmental standards tied to trade issues , insuring that the undertakings made in the Uruguay Round (especially with respect to the multi-fibre agreement and agriculture) are carried out, and measures that reduce protection in developed countries should surely be at the top of the agenda for developing countries. Developing countries should not be averse to discuss new issues like the development of multilateral codes in investment, competition policies, anti-dumping, government procurement, services and standards in the future multilateral rounds. As far as GATS is concerned, developing countries should support deeper and wider commitments. .It is also in the interest for developing countries to bind their tariff levels because it can be an effective means of liberalization.

Since it is in the developing countries interest that there be a strong and effective WTO underpinning the open multilateral trading system, it will clearly be in the interest to support a new round, and to seek outcomes which offer prospects for accelerated growth of international trade and their access to each others and developed countries markets. Instead of watchfully waiting to support meaningful proposals originating from other countries it is time that developing countries should take initiative to evolve and design beneficial policies on their own.

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Appendix Table: I
Cross Country Comparisons of Costs of Software Services

Country	Cost per line of code(US\$)		Average salary of programmer(US\$)	
	Development	Support	Development	Support
US	18	1.1	46550	43395
Canada	10	0.6	35156	33846
Australia	NA	NA	34940	30644
Japan	21	1.2	NA	NA
Austria	NA	NA	33000	33000
Denmark	19	1.1	NA	NA
England	11	0.7	38785	38179
France	13	0.8	36750	41250
Germany	22	1.3	42058	34848
Greece	6	0.4	NA	NA
Ireland	10	0.6	NA	NA
Italy	10	0.6	17655	17655
Netherlands	NA	NA	33994	47069
Scotland	NA	NA	24842	NA
Switzerland	27	1.6	48869	48869
Israel	11	0.6	NA	NA
Estonia	NA	NA	12000	8000
Brazil	NA	NA	20032	20032
Colombia	NA	NA	NA	16000
Mexico	NA	NA	10843	13292
China	NA	NA	28266	16366
India	5	0.3	3638	4316

Source:Rubin(1999)

Note:Data refer to 1996-98 averages.

Appendix Table: II

Anti-Dumping Initiations by Economy Taking Action.

Number of AntiDumping Actions

Economy	1991-1994	1995-1998	Index of antidumping initiations 1995-98 per dollar of imports, USA=100 ^{a/}
Australia	213	77	1096
Canada	84	39	199
EU	135	122	210
US	226	94	100
All developed economies	678	353	74
Argentina	59	72	2627
Brazil	59	54	871
India	15	78	1875
Korea	14	34	204
Mexico	127	31	275
South Africa	16	72 ^{b/}	2324
All Developing Economies	394	509	313

Note:a./Based on numbers of antidumping initiations 1995-98 and values of merchandise imports for 1996
b./1995-1997 figure

Source:WTO Secretariat,Rules Division,Antidumping Mesaures Database

Appendix Table: III
Antidumping Initiations by Exporting Economy.

Number of Antidumping Initiations

Economy	1992-1994	1995-1997	Index of antidumping initiations per dollar of exports, USA=100
France	26	8	34
Germany	35	30	70
Italy	16	16	77
Japan	32	23	67
UK	20	16	74
US	70	48	100
Brazil	50	23	585
China	115	94	751
India	24	21	779
Korea	50	40	385
Taiwan	31	30	323
Thailand	26	21	451

Source:WTO Secretariat,Rules Division,Antidumping Measures Database.