

Why WTO Replaced GATT – An Overview

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Abstract

This paper attempts to study how when GATT's successor, the World Trade Organisation (WTO), was formed in 1995, **India became a founding member** and it's relation with **WTO**. World Trade Organization, as an institution was established in 1995. It replaced General Agreement on Trade and Tariffs (GATT) which was in place since 1946. In pursuance of World War II, western countries came out with their version of development, which is moored in promotion of free trade and homogenization of world economy on western lines. This version claims that development will take place only if there is seamless trade among all the countries and there are minimal tariff and non- tariff barriers. That time along with two Bretton wood institutions – IMF and World Bank, an International Trade Organization (ITO) was conceived. ITO was successfully negotiated and agreed upon by almost all countries. It was supposed to work as a specialized arm of United Nation, towards promotion of free trade. However, United States along with many other major countries failed to get this treaty ratified in their respective legislatures and hence it became a dead letter. It is expected that by 2018 India will consume electronic items worth \$ 400 billion. As per current situation, out of this it is likely to import atleast goods worth \$300 billion. Electronic hardware manufacturing is one of the main components of 'Make in India' and 'Digital India' program. Hence India stayed away from ITA-II. From India's point of view, services present a different picture from agriculture and industrial tariffs. As an emerging global power in IT and business services, the country is, in fact, a demander in the WTO talks on services as it seeks more liberal commitments on the part of its trading partners for cross-border supply of services, including the movement of 'natural persons' (human beings) to developed countries, or what is termed as Mode 4 for the supply of services. With respect to Mode 2, which requires consumption of services abroad, India has an offensive interest.

Consequently, GATT became de-facto platform for issues related to international trade. It has to its credit some major successes in reduction of tariffs (custom duty) among the member countries. Measures against dumping of goods like imposition of Anti-Dumping Duty in victim countries, had also been agreed upon. It was signed in Geneva by only 23 countries and by 1986, when Uruguay round started (which was concluded in 1995 and led to creation of WTO in Marrakesh, Morocco), 123 countries were already its member. India has been member of GATT since 1948; hence it was party to Uruguay Round and a founding member of WTO. China joined WTO only in 2001 and Russia had to wait till 2012.

Key words: WTO, India, GATT, business services, trade, Uruguay Round

Introduction

India has already acquired a substantial market share in the global cross-country, customized software–development market. Recognized as an important base for software development, its share in the global market has increased from 11.9 percent in 1991 to 18.5 percent in 1998. In 1997/98, more than 158 of the Fortune 500 companies outsourced their software requirements to India. Quality has become the hallmark of the industry with more than 109 Indian software companies having acquired international quality certification. Two out of six companies in the world that have acquired SEI CMM (Level 5) (the highest maturity level for a software process) are located in India, namely, Motorola and Wipro. After a major success in addressing the Y2K (year 2000) issue in the international market, India has set its sights on servicing Euro currency solutions, with 82 Indian software companies already participating in that effort. The strategic 12-hour time difference with the United States enables India to facilitate a 24-hour workday for many of the U.S. companies who prefer to “follow the sun.” U.S. has severe disliking for India’s position in atleast two spheres – Agriculture and Intellectual Property. Agreement on Agriculture which was hatched in Uruguay round negotiations is heavily tilted in favor of developed world. For balancing this India as part of Group of developing and least developed nations (G-33) proposed amendment to AOA in 2008. Current quest of G-33, toward achieving permanent solution is follow up story of this proposal only. As of now, Peace Clause agreed to in 2013, allows us perpetually to continue our food stocking program at administered prices, without being dragged into WTO for violation of AOA.

Further, as part of Doha Development Agenda, developing countries managed to tweak ‘Agreement on Trade related aspects of Intellectual Property’ (TRIPS) in favor of developing countries by allowing compulsory licensing in certain circumstances. First compulsory license was granted by Indian Patent Office to NATCO for ‘nexavar’ drug produced originally by German firm Bayer AG.

Since then US pharma industry has been apprehensive of frequent evocation of this principle in developing world. US not only want this concept to be done away with, it also wants a liberal IPR regime which allows evergreening of patents. Indian Patent Act as amended in 2005 allows protection of both product and process, but it allows patent only when there is enhanced efficacy of the substance. If a company re-invents a previously known substance in to new form e.g. from Solid to Liquid, then protection can’t be granted. India due to its promising pharmaceutical industry exploits these powers religiously. Since India’s course is not violative of TRIPS, question of India being challenged in WTO doesn’t arise

Objective:

This paper intends to explore and analyze **India’s relation with WTO** and existing development deficit in various **WTO agreements** , take necessary remedial action. Also what WTO has to recognize to **develop strategy that** has to be related to India specific situations.

Why WTO replaced GATT?

While WTO came in existence in 1995, GATT didn't cease to exist. It continues as WTO's umbrella treaty for trade in goods.

There were certain limitations of GATT. Like –

1. It lacked institutional structure. GATT by itself was only the set of rules and multilateral agreements.
2. It didn't cover trade in services, Intellectual Property Rights etc. It's main focus was on Textiles and agriculture sector.
3. A strong Dispute Resolution Mechanism was absent.
4. By developing countries it was seen as a body meant for promoting interests of west. This was because Geneva Treaty of 1946, where GATT was signed had no representation from newly independent states and socialist states.
5. Under GATT countries failed to curb quantitative restrictions on trade. (Non-Tariff barriers)

Accordingly WTO seeks to give more weightage to interests of global south in framing of multilateral treaties. Here, a number of other aspects have been brought into, such as Intellectual property under Trade related aspects of Intellectual Property (TRIPS), Services by General Agreement on Trade in Service (GATS), Investments under Trade related Investment Measures (TRIMS).

Uruguay Round and its Outcomes

This (8th round of multilateral negotiations) round began in 1986 and went on till 1994. Uruguay Round of negotiations covered more issues and involved more countries than any previous round. It prescribes, among other things, that tariffs on industrial products be reduced by an average of more than one-third, that trade in agricultural goods be progressively liberalized, and that a new body, the World Trade Organization, be established both to facilitate the implementation of multilateral trade agreements and to serve as a forum for future negotiations.

Agreements to **liberalize trade in industrial products** include reductions in tariffs and removal of quantitative restrictions. The advanced countries agreed to reduce tariffs on industrial imports amounting to 64 percent of the total value of their imports of such products; 18 percent of their industrial imports were already duty-free under commitments made prior to the Round. By comparison, the developing countries agreed to lower their tariffs on about one-third of their industrial imports, and the participating transition countries on three-quarters of theirs. Tariff reductions are to be completed by the year 2000 except for certain sensitive sectors such as textiles, for which the reductions must be completed by 2005. Further, outcome of

this round mandated reduction of import duty on Tropical Products, which are mainly exported by developing and least developed countries.

The most important of them were a fixed timetable for dismantling the multi-fibre agreement (MFA) governing trade in textiles enshrined in the agreement on textiles and clothing (ATC) and the agreement on agriculture (AOA). Consider each in turn.

As per the ATC, developed countries would progressively bring greater volumes of textile trade under the normal Gatt tariff disciplines. It was recognised that the developed countries (like any other country) also needed time for 'structural adjustment'. The time was mainly required for achieving domestic political acceptance of structural change in these economies. Accordingly, it was decided that by January 1, 2005 all textile trade would be off quotas. What was the actual experience?

While countries like Norway did follow the time table, both the US and the EU used simple arithmetic to postpone the end of quotas on exports of developing countries till the end of the period. This was done by the simple expedient of initially bringing out of quotas only those textile and clothing items where exports of developing countries were minimal. When 2005 approached, an attempt was made to scuttle the ATC by arguing that it would be harmful for exports of less competitive developing countries!

it was decided to bring the textile trade under the jurisdiction of the [World Trade Organization](#). The Agreement on Textiles and Clothing provided for the gradual dismantling of the quotas that existed under the MFA. This process was completed on 1 January 2005. However, large tariffs remain in place on many textile products.

Principle of the Trading System – WTO

1) **Non Discrimination**

a) Most Favored Nation

Treating other nations equally- Under the WTO agreements, countries cannot normally discriminate between their trading partners. If they grant some country a special favor (such as a lower customs duty rate for one of their products), then they'll have to do the same for all other WTO members.

Some exceptions are allowed. For example,

1. Countries can set up a free trade agreement that applies only to goods traded within the group — discriminating against goods from outside.
2. Or they can give developing countries special access to their markets.
3. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate.

b) National Treatment :Treating foreigners and locals equally

This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS)

National treatment **only** applies once a product, **service or item of intellectual property** has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.(as this happens before entry into domestic market)

2) **Freer Trade** : Gradually through negotiation

Lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed

3) **Predictability**_: Through binding and Transparency

With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition — choice and lower prices. The multilateral trading system is an attempt by governments to make the business environment stable and predictable.

The Uruguay Round increased bindings

Percentages of tariffs bound before and after the 1986-94 talks

	Before	After
Developed countries	78	99
Developing countries	21	73
Transition economies	73	98

(These are tariff lines, so percentages are not weighted according to trade volume or value)

In the WTO, when countries agree to open their markets for goods or services, they “bind” their commitments. For goods, these bindings amount to ceilings on customs tariff rates. Sometimes countries tax imports at rates that are lower than the bound rates. Frequently this is the case in developing countries. In developed countries the rates actually charged and the bound rates tend to be the same.

4) Promoting fair competition

The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.

Many of the other WTO agreements aim to support fair competition: in agriculture, intellectual property, services, for example. The agreement on government procurement (a “plurilateral” agreement because it is signed by only a few WTO members) extends competition rules to purchases by thousands of government entities in many countries. And so on.

5) Encouraging Development and Economic Reforms

The WTO system contributes to development. On the other hand, developing countries need flexibility in the time they take to implement the system’s agreements. And the agreements themselves inherit the earlier provisions of GATT that allow for special assistance and trade concessions for developing countries.

Over three quarters of WTO members are developing countries and countries in transition to market economies. During the seven and a half years of the Uruguay Round, over 60 of these countries implemented trade liberalization programmes autonomously. At the same time, developing countries and transition economies were much more active and influential in the Uruguay Round negotiations than in any previous round, and they are even more so in the current Doha Development Agenda.

Major agreements of WTO

All these agreements were concluded during negotiations of Uruguay round i.e. in or before 1995. In most agreements new proposals have been brought in by different countries, which we will discuss later.

1. Agreement on subsidies and countervailing measures – SCM

The WTO SCM Agreement contains a definition of the term “subsidy”. The definition contains three basic elements: (i) a financial contribution (ii) by a government or any public body within the territory of a Member (iii) which confers a benefit. All three of these elements must be satisfied in order for a subsidy to exist.

In order for a financial contribution to be a subsidy, it must be made **by or at the direction of a government or any public body within the territory of a Member**. Thus, the SCM Agreement applies not only to

measures of national governments, but also to measures of sub-national governments and of such public bodies as state-owned companies.

Further, Such Financial contribution must also **confer benefit** to the industry. Now, in cash grants, benefit will be straightforward to identify, but in cases where there is loan or capital infusion from government/ Public body, it will not be that easy. Such issues are resolved by appellate body of WTO.

Only “specific” subsidies are subject to the SCM Agreement disciplines. There are four types of “specificity” within the meaning of the SCM Agreement:

1. **Enterprise-specificity.** A government targets a particular company or companies for subsidization;
2. **Industry-specificity.** A government targets a particular sector or sectors for subsidization.
3. **Regional specificity.** A government targets producers in specified parts of its territory for subsidization.
4. **Prohibited subsidies.** A government targets export goods or goods using domestic inputs for subsidization.

Hence there are two types of prohibited subsidies –

1. Subsidies contingent upon export performance.
2. Subsidies contingent upon use of domestic content over imported goods.

Further, there is separate category of ‘Actionable subsidies’. These are not prohibited but countries can take ‘Countervailing measures’ against these subsidies or they can be challenged in ‘dispute resolution body’ of WTO.

For a subsidy to be actionable, 3 conditions should be present –

1. Injury to domestic industry due to subsidized imports of other country.
2. There is **serious prejudice**: Serious prejudice usually arises as a result of adverse effects (e.g., export displacement) in the market of the subsidizing Member or in a third country market. For e.g. If India starts subsidizing its textile sector heavily, then China can claim that this subsidy is causing serious prejudice to its textile industry.
3. **Nullification or impairment** of benefits accruing under the GATT 1994. It means when benefit to be accrued from reduction of tariffs (under GATT) are nullified by increase in subsidies.

Against such subsidies members can take Countervailing Measures, such as imposing countervailing duties or antidumping duty. These can only be done in a transparent manner and a sunset period should be specified. Recently, India imposed Anti- Dumping duty on imports of stainless steel from China.

Countervailing Duty – It is imposed on imported goods to counterbalance subsidy provided by the exporter country.

Anti-Dumping Duty – At times countries resort to subsidize production or exports so heavily that exporters are able to sell goods below domestic price or even cost of production in foreign markets. It is aimed at wiping out target country's industry. Anti-Dumping Duty is aimed at counterbalancing such subsidization.

2. General Agreement on Trade in Services – GATS

The GATS was inspired by essentially the same objectives as its counterpart in merchandise trade, GATT: creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalization.

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

De-Minimis provision

Under this provision developed countries are allowed to maintain trade distorting subsidies or ‘Amber box’ subsidies to level of 5% of total value of agricultural output. For developing countries this figure was 10%.

So far India's subsidies are below this limit, but it is growing consistently. This is because MSP are always revised upward whereas Market Prices have fluctuating trends. In recent times when crash in international market prices of many crops is seen, government doesn't have much option to reduce MSP drastically. By this analogy India's amber box subsidies are likely to cross 10% level allowed by de Minimis provision.

India's stand?

On issues like investment and competition policy, India feels that having a multilateral agreement would be a serious impingement on the sovereign rights of countries. To an extent, of course, this is inherent in any multilateral treaty, but investment is seen as an area in which ceding sovereign rights would leave governments, particularly developing country governments, with too little room for maneuver in directing investments into areas of national priority.

These are concerns that many other developing countries also share. In addition, on the specific issue of competition policy as applicable to “hardcore cartels,” India has pointed out that there is no clarity on whether these would include export cartels. The Organisation of Petroleum Exporting Countries (OPEC) is perhaps the best known example of an export cartel that rigs prices by fixing production ceilings. On the issue of transparency in government procurement, the Indian position is that while the principle is entirely acceptable, there cannot be a universal determination of what constitutes transparent procedures. On trade facilitation, India has argued that once again while the idea is unexceptionable, developing countries may not have the resources — by way of technology, or otherwise — to bring their procedures in line with those in the developed world over the short to medium term.

Conclusion

India is one of the prominent members of WTO and is largely seen as leader of developing and under developed world. At WTO, decisions are taken by consensus. So there is bleak possibility that anything severely unfavorable to India’s interest can be unilaterally imposed. India stands to gain from different issues being negotiated in the forum provided it engages with different interest groups constructively, while safeguarding its developmental concerns.

In absence of such a body we stand to lose a platform through which we can mobilize opinion of likeminded countries against selfish designs of west. Thanks to vast resources of developed countries they can easily win smaller countries to their side. WTO provides a forum for such developing countries to unite and pressurize developed countries to make trade sweeter for poor countries. Accordingly, India remains committed to various developmental issues such as Doha Development Agenda, Special Safeguard Mechanism, Permanent solution of issue of public stock holding etc. However, of late developed countries are dragging their feet here too. They now claim that big developing countries like India, China, Brazil and South Africa are unreasonable in their demand and only least developed countries are rightful claimant of differential treatment. Here it is inconceivable that poor countries like India are to be treated at par with western developed world. At the December 2005 Hong Kong ministerial, members agreed to five S&D provisions for least developed countries(LDCs), including the duty-free and quota-free access.

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