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Clarifying TRIPS: A confidence-building measure

India's proposals at the WTO

1. The scenes of Seattle, both inside and outside the negotiating rooms, brought out many lessons for the WTO membership. One of these is that the long-term health of the multilateral trading system would depend, *inter alia*, on the extent of flexibility retained by Members in meeting their WTO obligations. Second is the expression of frustration in some quarters on the lack of empathy of the multilateral trading system with, *inter alia*, the protection of public health and nutrition, and the promotion of public interest in sectors of vital importance to socio-economic and technological development of the Member countries.

2. **In the WTO, these are times of introspection. Introspection to determine the extent of sovereign flexibility necessary to retain a balance between the right of peoples in Member countries to achieve their needs and aspirations, and the obligations of Member Governments to provide a predictable multilateral trading system. Introspection also to distinguish between what is the consensus of the membership on interpretation of what they have negotiated during the Uruguay Round and the "clarificatory" interpretation evolving through the strengthened dispute settlement mechanism¹.** The TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement is perhaps the most intrusive of the WTO Agreements and therefore, needs deeper introspection.

3. Article XVI: 4 of the WTO Agreement obliges each Member to ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the TRIPS Agreement. To determine whether such conformity is being ensured, recourse is available either through discussions in the TRIPS Council or through the Dispute Settlement Understanding (DSU)².

1. Article IX: 2 of the WTO Agreement provides the Ministerial Conference, the General Council and the TRIPS Council, in that order, the exclusive authority to adopt interpretations of WTO rules.
2. Article 3.2 of the DSU recognises, *inter alia*, that the dispute settlement system serves to clarify the existing provisions of the covered agreements in accordance with customary rules of interpretation of public international law.



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4. **The objectives of the TRIPs Agreement are contained in Article 7³. These objectives have two pillars: first, to promote inventions; and second, the transfer and dissemination of technology embodied in such inventions. The principles of the Agreement are contained in Article 8⁴.**
5. **The objectives and principles of the Agreement, and the fact that it is lodged in the WTO, demonstrate two things. Firstly, the TRIPs Agreement is a trade agreement with the overarching objective of promoting trade through international transfer of technology.** That, in fact, is the only reason it could become a part of the WTO acquis. Although export of pharmaceuticals or active ingredients, of sound recordings, films, software packages, etc. may have been the primary objective of the *demandeurs* of the Agreement, they sold it to the membership as a trade agreement and thus transfer of technology is necessarily an integral part of its objectives. **Second, the Agreement balances the private rights of inventors with the rights of the users of inventions. In any debate on the TRIPs Agreement, therefore, these objectives and principles need to be preserved.** This being the intention of the negotiators, the TRIPs Council as well as the Dispute Settlement Body (DSB) of the WTO need to reflect these objectives and principles in their discussions and decisions.
6. **The preambular objective of the WTO Agreement is to raise standards of living, ensure full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services. On a conventional economic analysis, raising intellectual property protection may actually reduce total domestic and even global economic welfare. It is important, therefore, that all discussions and decisions on interpretation of the TRIPs Agreement take account of the objectives of the WTO and circumscribe intellectual**

property rights protection with competing public values embodied in Articles 7 & 8. Whether this has happened or not can be assessed from the discussions in the TRIPs Council and decisions of the DSB.
7. Discussions in the TRIPs Council have focused on two aspects so far. First, practices of Members in implementing their obligations have been reviewed. Second, some mandated negotiations and reviews have been initiated. A survey of the numerous questions raised by Members, particularly developed country Members, themselves, on the legislation reviewed in the last four years leads to an interesting conclusion. This is that the **questions have all been based on obligations relating to minimum standards of protection provided for under the Agreement; no questions are asked on the extent to which the objectives and principles of the Agreement are translated into the legislation.** Rather, exercise of legislative or administrative flexibility by Members to accommodate competing public values, such as the use of compulsory licences or Government use, have been the subject of some repeated follow-up questions, meant primarily to question the use of such flexibility. Clearly, the transfer and dissemination of technology and the consequential increase in trade have been of little concern to the questioning Members. It could thus be argued that the TRIPs Agreement, instead of being a trade agreement that it is, has been sought to be converted into a means of enforcing private rights irrespective of their trade effects.
8. **During the discussions on the mandated negotiations and reviews in the TRIPs Council, while the developing countries have been emphasising the flexibilities available under the Agreement to pursue public interest, some developed countries have been proposing further strengthening of the rights of inventors irrespective of public interest.**
9. The developments in the dispute settlement body are no different. In an important dispute involving two

3. Article 7: "The protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations."

4. Article 8.1: "Members may, in formulating or amending their laws and regulations, adopt measures necessary to protect public health and nutrition, and to promote the public interest in sectors of vital importance to their socio-economic and technological development, provided that such measures are consistent with the provisions of this Agreement."

Article 8.2: "Appropriate measures, provided that they are consistent with the provisions of this Agreement, may be needed to prevent the abuse of intellectual property rights by right holders or the resort to practices, which unreasonably restrain trade or adversely affect the international transfer of technology"

public policy provisions in a Member's Patent Act, the dispute settlement mechanism appears to have relegated the objectives and principles to secondary importance as compared to the minimum standards of protection. So much so, in order to focus on standards of intellectual property right protection *per se*, and not on the larger context of the TRIPS Agreement as a trade agreement, the particular Panel took pains to clarify in the beginning of its findings that in interpreting the TRIPS Agreement they have taken into account the extended context, beyond the negotiating history, encompassing incorporated international instruments. These, of course, are intellectual property right-related instruments and not trade-related instruments. In interpreting "limited" in Article 30 of the Agreement, again, the Panel considered the expression solely from the perspective of the right holders, disregarding the policy goals or social purposes of the measure. It did not take guidance from the Appellate Body, which had earlier held that an exception provision does not ipso facto become "stricter" or "narrower"⁵. Instead, it did not even take a clue of the negotiating intent of the membership when the majority of third parties found both the impugned policy provisions as acceptable limited exceptions under Article 30. Another, perhaps more damaging, evolutionary interpretation of the dispute settlement mechanism in a particular case is its finding that the non-discrimination provisions in Article 27.1 of the Agreement apply to any exception granted under Article 30. Such an interpretation renders ineffective the otherwise legitimate and prescribed objectives and principles of the Agreement including legitimate social and economic objectives, health concerns and creation of a balance between private interests and public interest. After all, Article 30 is not subject to Article 27 by any reading or interpretation of the plain words of the Agreement. This reduces the legal security of both right holders and those social interests seeking to limit intellectual property protection. Therefore, in its evolutionary interpretation, the WTO dispute settlement mechanism has interpreted Article 30 in a very limited way. The importance of Articles 7 and 8 was limited, firstly, by counting them as two among many provisions which indicate the object and purpose of the Agreement and, secondly, by referring mainly to

the limitations of these Articles. Thus Article 30 has to virtually stand on its own feet, and will not be read as sub-serving the objectives and principles of the Agreement.

10. **Many developing country Members have sought the operationalisation of Articles 7 and 8 of the TRIPS Agreement in their proposals submitted during the preparations for the Seattle Ministerial Conference.** Documents WT/GC/W/147, WT/GC/W/302, WT/GC/W/209 and Corr.1, WT/GC/W/225, WT/GC/W/233 and Job (99)/3169 and Add.1 refer in this regard. While lip service has been given to the objectives and principles in the discussions on these proposals, there has been little accommodation in terms of accepting these principles and objectives in actual legislative or administrative practice. The developed country Members have shown little accommodation of the essence of these proposals in the preparations for the Seattle Ministerial Conference, or in considering related implementation issues during the Conference.
11. It is unfortunate that the WTO membership has handed over its primary responsibility of clarifying both the trade implications of intellectual property rights and the basic objectives and principles behind the TRIPS Agreement to the dispute settlement mechanism. The kind of rumblings heard in Seattle and reflected in a number of implementation issues proposed at and after Seattle will not die down if the membership refuses to take its responsibility and interpret the Agreement for itself rather than leaving it to the judgement of a few. **There is more reason for such action in the TRIPS Council than elsewhere because the TRIPS Agreement is uncharted territory for the WTO and would need revisiting to clarify the negotiating intent, wherever necessary. After all, the membership took firm steps in the Uruguay Round to revisit some of the other codes of the earlier rounds and evolved more appropriate guidance for dispute panels and the Appellate Body.**
12. **India is itself the repository of immense intellectual property and there is no doubt in our minds that intellectual property needs to be protected. It is also true that protection of**

5. "... merely characterising a treaty provision as an 'exception' does not by itself justify a 'stricter' or 'narrower' interpretation of that provision than would be warranted by examination of the ordinary meaning of the actual treaty words, viewed in the context and in the light of the treaty's object and purpose, or, in other words, by applying the normal rules of treaty interpretation". See document WT/DS26/AB/R pages 40-41

intellectual property coupled with liberal trade and investment policies are important for development, and India is autonomously pursuing this approach. However, the abjectly mercantilist use of intellectual property rights involving possible loss to health or achievement of other socio-economic objectives was neither intended by the negotiators nor should it be encouraged. Another worrying trend is the increased resort to the issuance of "bad patents"⁶. Although numerous examples of such bad patents could be given, it may suffice to mention the latest one here. On 11 May 2000, the Opposition Division of the European Patent Office at Munich adjudged that no inventive step was involved in a patent granted on "hydrophobic extracted neem oil - a novel fungicide". Commenting on this action, Mr. Hiltrud Breyer, a Member of the European Parliament stated "This action illustrates how the patent system is being abused by multinational companies (MNCs). Genetic resources that are freely available in the South are being expropriated without reward or recognition for their traditional custodians. This is bio-piracy at its crudest"⁷.

13. In this scenario it becomes even more important to check this trend through the objectives and principles of the TRIPS Agreement. The question of how to operationalise Articles 7 and 8 is a larger question and it would be more appropriate to answer it in the Council itself. The following are some suggestions in this regard:

- A clarification could be made of the language in Articles 7 and 8 for the benefit of national governments pursuing public interest and for the dispute settlement mechanism. For example, it could be clarified that Article 7 contains the objectives of the Agreement and is not circumscribed by any other provisions of the Agreements.
- The phrase "provided that such measures are consistent with the provisions of this Agreement" in

Article 8.1 could be clarified to emphasise that principles of the Agreement contained in this Article cannot be completely negated by this provision.

- A number of "implementation" proposals in paragraphs 21 and 22 of the Draft Ministerial Text (DMT) of the Seattle Ministerial Conference relate to objectives and principles contained in Articles 7 and 8. It would be a confidence-building measure to agree to these proposals and would also help in operationalising these Articles.

14. **Through this paper, India urges the TRIPS Council to examine the above issues in order to build the confidence of the weaker trading partners who may not otherwise be able to express their negotiating intent either through the existing agenda of the Council or through recourse to disputes. India also invites suggestions from other like-minded delegations for operationalisation of Articles 7 and 8 of the Agreement in such a way that our trade moorings are not uprooted and we are not subjected to protectionist objectives of commercially stronger companies and countries. This would be necessary also to preserve the democratic way of functioning of the GATT/WTO. It would also be guidance for the dispute settlement mechanism grappling with the balance between the principles and objectives of the TRIPS Agreement on the one hand and minimum levels of protection required under the Agreement on the other hand. Most important, it would be a confidence-building measure for those from whom greater accommodation is expected on some of the other proposals in the WTO aimed at further trade liberalisation.**

(Text of India's paper presented to WTO's Council for Trade Related Aspects of Intellectual Property Rights in Geneva on 22/10/2000.)

6. The Economist, 8 April 2000.

7. Quoted in Down to Earth, Vol.9, No.2, 15 June 2000, see www.oneworld.org/cse/html/dte/dte20000615/dte.news.htm



TEXT : From the Website of the
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The Agreement on Trade-Related Aspects of Intellectual Property Rights

- INTRODUCTION
- BUILT-IN AGENDA FOR REVIEW OF THE TRIPS AGREEMENT
- IMPLEMENTATION ISSUES

*Suggestions for built-in agenda of
the TRIPS Agreement may be sent to
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Introduction

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) provides for minimum norms and standards in respect of the following categories of intellectual property rights:

- (a) Copyrights and related rights
- (b) Trademarks
- (c) Geographical Indications
- (d) Industrial Designs
- (e) Patents
- (f) Layout designs of integrated circuits
- (g) Protection of undisclosed information
(trade secrets)

The Agreement sets out minimum standards to be adopted by the parties, though they are free to provide higher standards of protection. A transition period of five years is available to all developing countries to give effect to the provisions of the TRIPS Agreement. This period ended on 1.1.2000. No transitional period is available, however, for grant of national treatment and most-favoured-nation (MFN) treatment. Countries that did not provide product patents in certain areas of technology as on 1.1.1995, can

delay the grant of product patents in those areas for another five years i.e. upto 1.1.2005.

Where a country does not make available patent protection for pharmaceutical and agricultural chemical products as on 1.1.1995, they have to provide a means for accepting applications for such inventions (mailbox), apply applicable priority rights and provide exclusive marketing rights (EMRs) for such products. The EMRs have to be provided in India only if a set of conditions have been met, i.e. where a patent application has been filed after 1.1.1995 in any WTO Member country, patent and marketing approval granted in that Member country, an application has been filed in the mailbox in India and marketing approval obtained in India. The EMR is available for five years from grant or till the patent is granted or rejected, whichever is earlier. The Patent (Amendment) Act, 1999 was passed in March 1999 to provide for mailbox and EMR facility.

The state of play of India's obligations under TRIPS arising as on 1.1.2000 in respect of the seven IPRs covered under TRIPS is briefly given below:

(a) Copyrights and related rights

In the area of copyrights and related rights (i.e. rights of performers, producers of phonograms and broadcasting organisations), the Agreement requires compliance with the substantive provisions of the Berne Convention. Computer programmes are to be protected as literary works, the term of protection for copyrights and rights of performers and producers of phonograms is to be no less than 50 years. In case of broadcasting organisations, however, the term of protection is to be at least 20 years. India is already a signatory to the Berne Convention and our laws conform to the provisions of the Convention. India's copyright law has been amended and in some ways exceeds the requirements of the TRIPS Agreement, for example, on the period for copyright protection (which is 60 years in India). The law was amended in December 1999 to grant 25-year term of protection for neighbouring rights.

(b) Trademarks

The Trade and Merchandise Marks Act, 1958 was in its essential features in accordance with TRIPS, except that it did not cover service marks in its scope. This has been done by replacing it with the Trademarks Act 1999. We are now fully compliant with our TRIPS obligation.

(c) Geographical Indications

The Agreement contains a general obligation that parties shall provide the legal means for interested parties to prevent the use of any means in the designation or presentation of a good that indicates or suggests that the good in question originates in a geographical area other than the true place of origin of the good. We currently provide protection to geographical indications through passing off action in courts or through certification marks. However, to provide better protection to geographical indications a new law "the Geographical Indication of Goods

(Registration & Protection) Act, 1999 has since been enacted.

(d) Industrial Designs

Obligations envisaged in respect of industrial designs are that independently created designs that are new or original shall be protected. There is an option to exclude from protection, designs dictated by technical or functional consideration, as against aesthetic consideration, which constitutes the coverage of industrial designs. The Bill to amend Industrial Design Act was passed early this year.

(e) Patents

The basic obligation in the area of patents is that, inventions in all fields of technology whether products or processes shall be patentable if they meet the three tests of being novel, involving an inventive step and being capable of industrial application. In addition to the general security exception, which applies to the entire TRIPS Agreement, specific exclusions are permissible from the scope of patentability. These are available in the areas of inventions whose commercial exploitation is to be prevented to protect public order or morality, human, animal plant life or health or to avoid serious prejudice to the environment. In addition, we can exclude from patentability diagnostic, therapeutic and surgical methods for the treatment of human and animals, plants and animals other than microorganisms, and essentially biological process for the production of plants and animals other than non-biological and micro biological processes.

To meet our TRIPS obligation as on 1.1.2000, the Patents (Second Amendment) Bill, 1999 has been introduced in the Parliament in December 1999 and is before the Joint Committee of the Houses of the Parliament.

In respect of plant varieties, there is an obligation to provide for protection either by patents or by an effective sui generis system or by any combination thereof. The

Agreement does not spell out the elements of an effective sui generis system and it is left to each Government to determine the elements, which could be deemed to be providing effective protection. A decision has been taken to put in place a sui generis system as it is perceived to be in our national interest. A Bill in this regard is before the Joint Committee of the Houses of the Parliament.

(f) Layout Designs of Integrated Circuits

India is a signatory to the international agreement administered by WIPO (World Intellectual Property Organisation) on this subject known as the Washington Treaty. The main obligations of the Washington Treaty are also incorporated in the TRIPS Agreement with some enhancement and cover the protection of the intellectual property in respect of layout designs that are original in the sense of being the result of their creator's own intellectual effort. The obligations include national treatment to foreign right holders and a term of protection for 10 years. Accordingly, the semi-conductor Integrated Circuits Lay-Out-Design Act, 2000 has since been enacted by Parliament.

(g) Protection of undisclosed information

The Agreement provides in this area that natural and legal persons shall have the possibility of preventing information lawfully within their control from being disclosed to , acquired by or used by others without their consent in a manner contrary to honest commercial practices. Further, parties are required to protect against unfair commercial uses, undisclosed or other data obtained as a condition of approving the marketing of pharmaceutical or of agricultural chemical products.

In India we do not have a separate legislation dealing with trade secrets. Common law on the subject is evolving and the courts have provided relief where allegations of wrongful disclosure have been proven. It is not felt necessary to have a separate legislation on the subject.

Built-in agenda for review of the TRIPS Agreement

Article 71:

Article 71 of the TRIPS Agreement reads as under:

Review and amendment

- "1. The Council for TRIPs shall review the implementation of this Agreement after the expiration of the transitional period referred to in paragraph 2 Article 65. The Council shall, having regard to the experience gained in its implementation, review it two years after that date and at identical intervals thereafter. The Council may also undertake review in the light of any relevant new developments, which might warrant modification or amendment of this Agreement.
2. Amendments merely serving the purpose of adjusting to higher levels of protection of intellectual property rights achieved, and in force, in other multilateral agreements and accepted under those agreements by all Members of the WTO may be referred to the Ministerial Conference for action in accordance with paragraph 6 of Article X of the WTO Agreement on the basis of a consensus proposal from the Council for TRIPs".

This Article calls for a review of the implementation of the Agreement after the expiration of the transitional period, i.e. after 1 January, 2000. This review shall be conducted biannually thereafter. The first review, in the year 2000, will focus on implementation of the Agreement after the expiration of the transition period available to developing countries up to 1 January 2000. Therefore, it may be very difficult to review or seek to amend the provisions of the Agreement in this review. In the year 2002 and every two years thereafter, the TRIPS Council shall review the Agreement, having regard to the experience gained in the implementation of the Agreement. This review can suggest any amendment to the Agreement also. However,

such an amendment would have to be agreed to by consensus, as this is the practice in WTO. The article makes it easier for Members to propose amendments requiring a higher standard of protection, in line with the developments in other multilateral agreements (like WIPO). By implication amendments requiring lowering or dilution of the standard of protection would be more difficult.

In the built-in agenda for the review of the TRIPS Agreement from 2002 onwards, therefore, it may be possible to generate consensus for a higher form of IPR protection (e.g. higher protection for geographical indications other than wines and spirits). At the same time it may be very difficult to get a consensus on lowering of the standard of protection existing in the Agreement (e.g. seeking exemption for the pharmaceutical sector from patent protection).

As part of the process established for developing recommendations for the Seattle Ministerial Conference, some developed countries (Japan, EC) had made some proposals for further strengthening of the TRIPS Agreement, for example by harmonising the two existing systems for filling patent applications (first-to-file and first-to-invent), applying under TRIPS international agreements on IPRs like the WIPO agreement on Copyrights. No decisions were taken in the Conference. Similarly, some developing countries had, as a part of their implementation concerns, raised some issues like extension of transition period available to developing countries to meet their TRIPS obligations, and to extend the higher level of protection available for wines and spirits to other products. These issues may be raised during the review again.

Article 27.3 (b)

Article 27.3 (a) and (b) are as under:

Patentable subject matter

"3. Members may also exclude from patentability:

- a. diagnostic, therapeutic and surgical methods for the

treatment of humans or animals,

- b. 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. However, Members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by a combination thereof. The provisions of this sub-paragraph shall be reviewed four years after the date of entry into force of the WTO Agreement."

A review of clause (b) of para 3 of Article 27 was due in the year 1999 and was a part of the built-in agenda that the Third Ministerial Conference was to address. Various proposals had been received for this review in preparation for the Seattle Ministerial Conference. USA had made proposals to the effect that a higher level of protection of plant varieties and micro-organisms should be interpreted into this Article. India had also made a proposal basically to retain the flexibility available in this Article to exclude patents on life forms and to provide for benefit sharing mechanisms for utilisation of biological material in patents. However, as was the case with all the other issues raised by Members for decision in the Conference, this proposal also did not meet any success.

However, many Members have argued in the first TRIPS Council meeting in the year 2000 that the review of the Article should continue. The amendments to the Patent Act and the Bill on plant variety protection introduced by the Ministry of Agriculture in the Parliament are in line with the existing provisions.

USA already provides patents for plants and animals in its domestic law. Recently the EC had cleared a Directive on Biotechnology, which includes issues relating to patenting of genetically modified organisms (GMOs). The Directive has not yet been approved by the EU Parliament. The recently negotiated Biosafety Protocol in the Convention on Biological Diversity (CBD) may be considered trade

restrictive as it allows parties to install advanced information agreements for the imports of GMOs. Thus, there could be pressure from some developed countries to strengthen the standard of protection for life forms beyond that available in Article 27.3 (b). On the other hand there could be pressure from developing countries to ensure that the provisions of this Article do not adversely affect biological diversity, traditional knowledge etc.

Articles 23.4 and 24.2

Article 23.4 reads as under:

Additional protection for Geographical Indication for Wines and Spirits

"4. In order to facilitate the protection of geographical indications of wines, negotiations shall be undertaken in the Council of TRIPS concerning the establishment of a multilateral system of notification of geographical indications for wines eligible for protection in those Members participating in that system."

Article 24.2 reads as under:

International negotiations: Exceptions

"The Council for TRIPS shall keep under review the application of the provisions of this Section: the first such review shall take place within two years of the entry into force of the WTO Agreement. Any matter affecting the compliance with the obligations under these provisions may be drawn to the attention of the Council, which at the request of a Member, shall consult with any Member or Members in respect of such matter in respect of which it has not been possible to find a satisfactory solution through bilateral or plurilateral consultations between the Members concerned. The Council shall take such action as may be agreed to facilitate the operation and further the objectives of this Section".

Under Article 23.4 negotiations are proposed to facilitate the protection of geographical indications for

wines and spirits by establishing a multilateral system of registration of such products. India was able to single-handedly block progress of these negotiations by positing the need for grant of higher level of protection for products other than wines and spirits. The latter proposal for increasing the scope for higher protection was made as a part of the review of the section on geographical indications under Article 24.2. In the report of the TRIPS Council to the Ministers at Singapore, it was clarified that the review would include matters relating to the scope of protection. The TRIPS Council is currently discussing the issue. India has the support of EU, Switzerland, Czech Republic, Hungary, Turkey etc. However, there may not be any agreement on increasing the scope in the near future. Nevertheless, the law on geographical indications passed by the Indian Parliament has provided for grant of higher protection for products by notification. India would continue to raise this issue in the TRIPS Council in the future.

Article 64

Article 64 reads as under:

Dispute Settlement

1. The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement except as otherwise specifically provided herein.
2. Sub-paragraphs 1 (b) and 1 (c) of Article XXIII of GATT 1994 shall not apply to the settlement of disputes under this Agreement for a period of five years from the date of entry into force of the WTO Agreement.
3. During the time period referred to in paragraph 2, the Council for TRIPS shall examine the scope and modalities for complaints of the type provided for under sub-paragraphs 1 (b) and 1 (c) of Article XXIII of GATT 1994 made pursuant to this Agreement, and submit its recommendations to the Ministerial

Conference for approval. Any decisions of the Ministerial Conference to approve such recommendations or to extend the period in paragraph 2 shall be made only by consensus, and approved recommendations shall be effective for all Members without further formal acceptance process."

Article 64 of the TRIPS Agreement relating to dispute settlement extends the Dispute Settlement Mechanism of the WTO to this agreement. However, the Dispute Settlement Mechanism of the WTO also covers non-violation complaints, meaning situations where there is nullification or impairment of benefits without there being any conflict with the WTO provisions. This was not applicable up to 1 January, 2000 as only disputes relating to violation of obligations under the Agreement were covered. This provision was to be reviewed before 1 January, 2000 by a consensus proposal to the Ministers. While proposals to this effect were made by many Members including India as a part of the preparations for the Seattle Ministerial Conference, as was the case with other issues, no agreement could be reached. As a consequence, non-violation complaints can now be made by WTO Members on TRIPS issues also. Since there is an attempt to interpret the failure at Seattle as leading to 'freezing' of the issues, some Members could revive the issue of extension of the non-application of non-violation complaints to TRIPS beyond 1 January, 2000. It will be important for India to resist expansion of the scope of dispute settlement to cover non-violation cases. It is however too early to assess whether there would be any consensus to revive the issue.

Implementation Issues

As a part of the preparation at the Seattle Ministerial Conference, Members were allowed to make proposals on implementation of the WTO Agreement, including proposals to remove imbalances in the existing agreements as well as proposals to operationalise special and differential provisions in favour of developing countries.

India had, along with like-minded developing countries made proposals under this category. In respect of the TRIPs Agreements, these proposals included the following:

1. To extend the period for application of non-violation complaints to the TRIPS Agreement.
2. To operationalise Articles 7 and 8 of the TRIPS Agreement by providing for transfer of technology on fair and mutually advantageous terms.
3. To establish a mechanism for disclosure of the source of origin of biological material used in an invention and obtaining the consent of the country of origin so that institutional mechanisms could be established at the national level for sharing of benefits arising out of the commercial exploitation of such inventions.

As a part of the confidence building measures, the General Council of WTO has taken a decision to resolve the "Implementation Issues" of the developing countries before the 4th Ministerial Conference. India will continue to press for the redressal of the Indian concerns on "Implementation of TRIPS Agreement".



Why Implementation Issues are Important

(Commerce Secretary, Mr. Prabir Sengupta, in an exclusive interview to "India & the WTO", talks about India's implementation concerns and gives an assessment of the deliberations of the Special Session of the WTO General Council on Implementation Issues, which he attended in Geneva on 18 October, 2000)

Q.1: What are Implementation Issues?

Ans: In the course of implementing the Uruguay Round Agreements, developing countries experienced various difficulties. **These implementation concerns fall broadly into three categories. The first category is the imbalances inherent in some of the Uruguay Round Agreements. For example, TRIPs extends a high protection to industrial products, but does not recognise the rights of countries of origin while seeking the grant of patents on products developed by using bio-resources or associated traditional knowledge.** Similarly, the subsidies agreement considers subsidies normally maintained in developed countries as non-actionable while subsidies generally used by developing countries for development, diversification and upgradation are not always so. **The second category is the lack of sincere implementation of provisions existing in the favour of developing countries. For example, under the Textile Agreement, integration of quota items of interest to developing countries has materialised only to the extent of 4-6%. Similarly, tariff peaks and tariff escalation in the tariff structure of developed countries, in spite of their lower average level of tariffs has affected market access to developing countries. The third category is the non-**

implementation of special and differential clauses in various agreements.

Q.2: Why are the Implementation Issues important for India?

Ans: India, like other Members, benefits from non-discriminatory market access in other WTO Members by being a party to the WTO. During the Uruguay Round, however, new disciplines, particularly on Textiles and Agriculture, were expected to increase our market access. These market access gains have not been fully realised. One important reason for this is that the developed countries did not implement the special and differential provisions in favour of developing countries in letter and spirit, though since the days of GATT, developed countries have undertaken obligations to accord high priority to the reduction and elimination of barriers that affect import interest of developing countries and to refrain from introducing measures that may hamper growth of consumption of products originating from developing countries. This is evident from Part-IV of GATT itself, and this thought was built into the Uruguay Round Agreements also. Unfortunately, these obligations or commitments have been couched in "best endeavour" terms. Hence, some developing countries including India have come

together to highlight these concerns and to seek their redressal upfront, without the developed countries seeking any 'fresh payment' for such redressal. We have also emphasised that implementation concerns need to be resolved suitably before determining the work programme for future negotiations, other than mandated negotiations, in the WTO.

Q.3: What is your overall assessment of the deliberations of the Special Session of the WTO General Council on Implementation Issues held in Geneva on 18 October ?

Ans: The deliberations in the Special Session of the General Council on 18 October, 2000 did not meet our expectations. The Chairman of the General Council, based on his informal consultations, presented a progress report on various issues that were included as implementation issues in paragraphs 21 and 22 of the Draft Ministerial Text which was presented to the Ministers at Seattle Ministerial Conference. While there was an agreement amongst the Membership that the Chairman has given a factual overview of the progress on paragraph 21, developing countries were almost unanimous in observing that the progress was far from satisfactory.

Q.4: There is a perception that the developed countries are not engaging seriously in the exercise to address the Implementation Issues. In the circumstances, what does India propose to do to ensure that implementation concerns are effectively addressed in the WTO?

Ans: It is true that the response from developed countries to the implementation concerns has so far been nowhere near the expectations of the developing countries. However, the implementation issues are now firmly on the agenda of WTO and there is a growing recognition among the developed countries about the need to put in place some confidence-building measures for the developing countries before the next Ministerial Conference. In the General Council meeting on December 13-14, 2000, it has been decided to continue consultations on the implementation issues. The task before the developing countries nevertheless continues to be a difficult one and India has been maintaining close liaison with like-minded countries. We are hopeful that the process initiated in the General Council to address the implementation issues would yield dividends.



Monthly report on the salient multilateral trade developments in WTO in October 2000: A Summary

Highlights

Important meetings held in WTO in Geneva in the last week of September and in October 2000 included Special Session of the General Council on Implementation Issues on 18 October 2000, 3rd Special Session of the Committee on Agriculture on 28-29 September 2000, Meeting of the Council for Trade in Services (CTS) and its Subsidiary bodies as part of the Services Week, a General Council meeting on 10.10.2000, and Meeting of the Dispute Settlement Body (DSB) on India's Auto policy.

Important meetings in New Delhi during the month included the Commerce and Industry Minister's meeting with Mr. H. Arai, Minister International Trade Affairs of the Japanese MITI on 12 October to discuss inter alia WTO issues; Commerce Secretary's meeting with DDG (WTO) Mr. Ravier regarding the current state of play on Implementation Issues etc. at WTO; and a meeting with domestic stakeholders taken by the Special Secretary on 24.10.2000 regarding 'Accession of the Russian Federation to WTO', which was attend by representatives of concerned ministries, industry associations and export promotion councils.

Meetings held in Geneva

Special Session of the General Council on Implementation Issues on 18 October 2000

The second phase of the Special Session of the General Council on Implementation Issues was held on 18 October 2000. Commerce Secretary Mr.Prabir Sengupta attended the meeting. As per Trade Policy Division's assessment of the Chairman's statement at the Special Session on Implementation Issues held on 18.10.2000 it appears that the developed countries are not willing to concede any of our substantive demands

unless something worthwhile is given to them in exchange for such concessions. In short, they are merely going through a ritual of giving consideration to our implementation demands, without actually conceding anything. Moreover, proposals relating to agreements important to India , like Textiles and Clothing, Anti-dumping etc.have not yet been taken up for intensive consultation by the Chairman. Therefore, from a qualitative point of view also, the progress achieved so far is far from satisfactory. It, therefore, appears that without the launch of new negotiations, the developed countries may not be in a mood to yield on implementation issues.

At the review meeting held by Commerce Secretary with Special Secretary and other Trade Policy Division officers on 3 November, 2000, it was felt that we may explore the possibility of (a) launch of a further joint initiative with like-minded developing countries through a joint proposal on common Implementation demands to be tabled in the WTO's General Council; (b) in the context of unfolding of second generation reforms, engaging in a continuing reassessment with Trade and Industry and other stakeholders as to which of the Singapore and New issues need to be resisted/accepted and to what extent.

Third Special Session of the Committee on Agriculture on 28-29 September 2000

In this Special Session of the Committee on Agriculture, the proposals submitted by various countries/groups were examined. Developing countries including India have opposed almost all the proposals submitted by the EC on Blue Box, Food Quality, Animal Welfare due to their trade distortive nature. Most of the countries were in agreement with the objective of the EC proposal on "Export Competition". However, they were not ready to link the disciplines on export subsidies with the to progress in all other areas of export competition like export credits, export insurance and export guarantee etc.

The proposal submitted by India and 10 other developing countries on "Market Access" was received well by almost all the countries. This proposal demands substantial reduction in tariffs including elimination of tariff peaks and tariff escalations, and transparent administration to tariff rate quotas for increased market access opportunities.

From the deliberations that have taken place at the Special Session, it is observed that Members have started taking negotiating positions.

Meetings of the Council for Trade in Services (CTS) and its Subsidiary bodies as part of the Services week

A series of meetings were held in Geneva of the Council for Trade in Services (CTS) and its Subsidiary bodies in the last week of September and the first week of October as part of the Services week. In the Special Session of CTS on **5th and 6th of October**, the salient points which emerged related to:

(a) Formulation of Negotiating Guidelines and Procedures - US and EC had made proposals. **India is considering floating a joint proposal with certain other countries like Malaysia, Philippines, Pakistan, Argentina, Brazil, Dominican Republic, etc, having the following main features are:**

- **Basic Architecture of GATS is to be preserved** and flexibility provided to developing countries not to be diluted in any way.
- **Request and Offer to be the primary Approach**, supplemented if necessary, by other Approaches as agreed to by Members.
- **Starting points for negotiations to be the actual bound level of commitments** in the Uruguay Round and the subsequent negotiations.
- **Due credit for autonomous liberalisation undertaken** by Members after the Round should be given.
- **Special attention to be paid to sectors and modes of export interest to developing countries** so as to effectively operationalise Article IV

of GATS regarding increasing participation of developing countries in world Services Trade.

The next Special Session to be held in December would substantively discuss all these proposals and it is expected that the Secretariat would come out with a possible draft after the December 2000 meeting. There are chances of this being finalised by March 2001, when the stocktaking exercise for the first phase of negotiations is to be conducted by the Special Session of Council for Trade in Service.

(b) Use of Cluster Approach: A number of developed countries have been suggesting the use of Cluster Approach and certain proposals in this connection have been put by EC and Australia. India has voiced its opposition to the Cluster Approach as this could change the basic Architecture of GATS and reduce the flexibility of developing countries for scheduling commitments. However, some dilution in Approach has occurred vis-a-vis the earlier EC proposal and they are now indicating that Cluster may be simply a Check List to be used by negotiators to bring about effective liberalisation in various connected sectors.

General Council Meeting on 10/10/2000

Important items discussed in the meeting included a **Work Programme on Electronic Commerce, Proposal on amending some provisions of the DSU and Reports of the Special Session on Agriculture & Trade in Services, and External & Internal Transparency.**

In this meeting, many members expressed disappointment at the slow progress in the Work Programme on Electronic Commerce. **In the discussions, no decision could be reached on the establishment of a Task Force or Working Group. The four subsidiary bodies would examine the horizontal issues and report to the General Council based on which establishment of an ad-hoc Group on cross-cutting issues would be considered.**

With regard to the agenda item on **amending some provisions of the DSU**,* it is interesting to note that a proposal (No. WT/GC/W/410 dated 29/9/2000) was jointly

* Dispute Settlement Undertaking

sponsored by a group of developed as well as developing countries. This proposal is based on para 21 of the October 1999 draft proposals for the Seattle Ministerial Conference reflecting the proposals of India and other like-minded developing countries. India welcomed the proposal but also expressed concern that the proposal does not deal with all sequencing related effects and does not address other issues on which India wanted the membership to take conscious decisions for reversing the jurisprudence that has been developed by the Appellate Body.

EC introduced a discussion paper (No.WT/GC/W/412 dated 6/10/2000) on the **functioning of the WTO system**. The **US** introduced a paper (No. WT/GC/W/413 dated 11/10/2000) on **external transparency**.

Meeting of the Dispute Settlement Body (DSB) on our Auto Policy

Selection of Panel members in the case of the Panel established against India by USA on Indian "Auto Policy" has not yet been completed. In the meanwhile Japan has joined as third party in the dispute. EC has requested for the establishment of a separate Panel on our "Auto Policy". We objected to the establishment of a Panel. However, as per the provisions of the Agreement on Dispute Settlement Understanding, in case EC repeats the request at a later meeting of the DSB, the request would be accepted and a Panel would be set up. The Panel Members are likely to be common in both the Panels since the measure is the same.

Meeting of the Committee on Technical Barriers to Trade

At this meeting on 6 October, 2000 the EC tried to introduce a paper on the Precautionary Principle, which was hotly contested inter-alia by India on the ground that the Precautionary Principle per se is not relevant to the TBT Agreement and is only an attempt to "mainstream" environmental concerns into the respective WTO Agreements without addressing the basic issue of the relationship between Trade and Environment as mandated by the Marrakesh decision on the said subject.

Other important meetings held in Geneva

These included the 11th meeting of the Working Group on Transparency in Government Procurement (25-26

September), informal meetings of the Committee of Participants of ITA (29 September, 13 October and 26th October), 31st Session of the Committee on Trade and Development (27 October), Meeting of the Committee on Trade and Environment (24-25 October), Meeting of Working Group on Trade and Investment (11-12 October), Meeting of the Working Group on Trade and Competition Policy (2-3 October), Meeting of the Trade Policy Review of Bahrain (11 and 13 October), the TRIMS Review (16 October), Meeting of the Committee on Import Licensing (11 October) and Meeting of the Committee on LDCs (16 October).

Important informal meetings held in Geneva

These included the bilaterals held between the Indian and the US Ambassadors on 6th October, 2000, when the Indian Ambassador stated that without a meaningful solution to implementation issues, it would be difficult for India to undertake new commitments, even in mandated areas like Agriculture and Services.

Consultations held in Delhi with domestic stakeholders

A meeting of the representatives of the concerned ministries, industry associations, export promotion councils etc was chaired by Special Secretary on 24 October, 2000, to formulate our strategy and prepare our request list in the context of the accession of the Russian Federation to the WTO.

Other important developments

These included the following:

(i) Commerce and Industry Minister Mr. Murasoli Maran addressed the **Economic Editors' Conference** in New Delhi on 18 October 2000. While referring to WTO issues concerning India in his speech, he dwelt on issues of market access for our goods and services under the WTO regime. Mr. Maran inter-alia stated that it has been demanded by India along with other developing countries that the various "Implementation Issues" should be addressed upfront without the developing countries being asked to pay again by way of taking any further fresh obligations.

While dwelling on the mandated negotiations in respect of Services and Agriculture which commenced since January

2000, the Minister told the Conference that India's main concern during Services Negotiations would be to have commitments from the developed countries under Mode 4 i.e. the movement of natural persons, especially, professionals. As regards the Agriculture negotiations, we would inter-alia like to ensure that our food security is not adversely affected due to excessive imports and we get meaningful market access opportunities for exporting our agricultural surpluses.

(ii) In pursuance of **Indo-US and Indo-EU MOU relating to Textiles and Clothing items**, India had separately notified the revised tariff bindings to the WTO. These could not be certified as some reservations were placed by some countries. Subsequent to consultations held by Ministry of Textiles, with EU and US officials, the binding notifications required some revision. Furthermore, it was considered appropriate to notify the combined tariff bindings to the WTO. The combined tariff binding notification received from Ministry of Textiles was scrutinised and omissions, errors got corrected and

notification communicated to PMI Geneva. Subsequently these were notified by PMI to WTO on 16 October 2000.

(iii) **Request for consultations with the US on imposition of anti-dumping duties on cut-to-length steel plate imports from India.** PMI Geneva has requested the US Mission for consultations in the case relating to imposition by the US of anti-dumping duties on cut-to-length steel plate imports from India. The US authorities have indicated their willingness for holding the consultations. Mutually convenient dates for holding the consultations are in the process of being finalised.

(iv) **SPS issues and India's preparedness:** A meeting was held by on Special Secretary Mr.Nripendra Misra on 15 September 2000 to discuss India's preparedness regarding SPS (Sanitary and phytosanitary) standards. As a follow up of the above meeting, a paper was prepared on important food products from the import angle, status of mandatory and voluntary standards for these items and the action required by different Ministers to put in place mandatory domestic standards and machinery to implement them at the ports of imports.

(Source : Trade Policy Division, Ministry of Commerce & Industry)



Update from PMI*/Geneva (15 September to 15 October 2000)

General Council

The General Council met on 10.10.2000. The draft decision on the accession of Oman to the WTO was adopted. Austrian Ambassador Mr. Harald Kreid was appointed as the Chairman of the Working Party for the accession of Bhutan.

On E-commerce, some countries led by the US and Japan favoured the establishment of an ad-hoc task force while some others led by India and Hong Kong China wanted further course of action including the setting up of a Working Group to be considered only after the reports of the subsidiary bodies are received and considered.

The General Council approved the cooperation agreement between the ITU and the WTO. It took note of the reports of the special sessions of the Committee of Agriculture and of the Council of Trade in Services.

A group of 11 countries led by Japan circulated a **paper proposing amendments to some provisions of the dispute settlement understanding.** The paper draws heavily from the draft text which was considered before the Seattle Ministerial Conference and which had broad support, but limits itself to the problem of sequencing, which Japan said, has a high possibility of commanding success. Many delegations including India welcomed the proposal, but pointed out that the proposal does not deal with all sequencing related issues and does not address other issues related to dispute settlement. The Chairman will undertake consultations on how to move forward on the subject.

The Chairman highlighted the need for an early decision on the date and venue of the Fourth Ministerial Conference. He informed the Members of Qatar's offer to host the next Ministerial meeting and requested other Members who may be interested in hosting the Ministerial meeting to indicate their interest soon. It was mentioned that Qatar does not have adequate accommodation for all the persons likely to come for the Ministerial meeting.

The European Communities introduced a discussion paper on the functioning of the WTO system. The paper focuses on external and internal transparency, relative roles of the Secretariat and the General Council, steps to improve the functioning of the Ministerial meeting and the General Council, need to foster flow of information and the possibility of enhancing the role of informal consultations.

The US introduced a **paper on external transparency** which it said is vital for WTO's future. The paper deals with issues such as access to documents, enhanced use of internet, sharing national experience on dialogue with public, opening up some of the forums of the WTO to the public and external transparency in dispute settlement proceedings.

Implementation

The Chairman of the General Council convened a number of informal meetings in preparation for the second **Special Session on Implementation scheduled to be held later in October 2000.** Though para 21 of the draft text prepared in the context of the Seattle Ministerial

* Permanent Mission of India

Conference was used as a basis for consultations, the Chairman confined his consultations to only a few of the proposals from a limited number of Agreements. The Chairman apparently selected these proposals on the basis of his assessment that there was a possibility of moving forward on these proposals in the October Special Session. Though India and other developing countries reiterated the importance that they attach to all the proposals in para 21 and 22 of the Draft Ministerial Text, they participated in these consultations in an endeavour to obtain positive decisions on at least some of the implementation concerns. A clear picture on the actual decisions which could be taken is likely to emerge during the Special Session of the Like-Minded Group met frequently to exchange views on the progress of work in the informals of the General Council on Implementation.

Dispute Settlement Body (DSB)

On 26 September 2000, a regular meeting of the DSB took place. India presented the second status report stating that India had complied with the DSB rulings [Quantitative Restrictions maintained on Balance of Payments grounds] as per the agreement with the USA. The USA acknowledged it. On Turkey's second status report on the textiles case with India, which was presented at this meeting, we requested Turkey to abide by the 7 January 2000 agreement on reasonable period of time (RPT) for complying with the DSB rulings. We conveyed that we were ready to discuss with them the issues relating to implementation of the DSB ruling in this dispute.

DSB approved the name of the former commerce secretary, Shri P.P. Prabhu for inclusion in the indicative list of Panelists, maintained by the WTO.

At its special meeting on 12 October 2000, DSB adopted

the panel and Appellate Body reports on dispute, *Canada-Term of Patent Protection*, brought by the US. In this meeting, DSB approved the US request for extension of RPT in the Foreign Sales Corporations case raised by the EC.

Agriculture

The third Special Session of the Committee on Agriculture was held on 28-29 September. The focus during this meeting were the four proposals submitted by the EC, namely, that on the Blue Box, Food Quality, Animal Welfare and on Export Commitments. The proposals made by the EC viz., for the continuation of the blue box provisions, for introducing the concept of food quality as a important part of the negotiations, the proposal to subsidise farmers for the costs incurred by them for animal welfare, and the proposal to broaden the scope of export commitments so that the focus does not remain only on disciplines on export subsidies, was supported by countries such as Switzerland, Japan, Norway, Hungary, Estonia, Latvia, etc. On the other hand, these proposals were opposed by the Cairns Group, most of the developing countries, including India were critical of the EC proposal, particularly those relating to the continuation of the 'blue box' provisions and on 'animal welfare'. Members were also critical of the fact that these provisions were likely to act as non-tariff barriers to exports from developing countries.

During this meeting the Cairns Group Proposal on Domestic Support and a proposal on Market Access, made by a group of 11 developing countries including India were also discussed. The Cairns Group proposal while accepting the need for special and differential treatment in Domestic Support, did not go far enough to propose a different set of rules and commitments for developing countries and was, therefore, to this extent commented upon by developing countries, including India.

TRIPS

The TRIPs Council met in formal session on 21 and 22 September, 2000. As is customary, the Council began by reviewing notifications of national laws and regulations as also reviewing national implementing legislation of WTO Members. On the issue of geographical indications, a paper was co-sponsored by Switzerland, India, Czech Republic, Bulgaria, Sri Lanka etc. These countries submitted that there is no justification for additional protection of geographical indications to be confined to just wines and spirits and formally proposed that such additional protection be made available to products other than wines and spirits. An interesting discussion ensued in which countries such as New Zealand, Argentina, Mexico and United States opposed above proposal to extend additional protection of geographical indications to products other than wines and spirits. The Council also looked at issues such as establishment of a multilateral register for wines and spirits as mandated under Article 23 and implementation of Article 66.2 which mandates the developed countries to grant positive incentives for transfer of technology in favour of least developed countries. **India submitted a non-paper listing its concerns on Article 27.3 (b) of the TRIPS Agreement; in addition we also submitted a paper outlining our experience in protecting traditional knowledge and bio-diversity. We also submitted a paper under Article 71.1 of the TRIPS Agreement suggesting, inter-alia, ways and means to operationalise Articles 7 and 8 (objectives and principles) of the TRIPS Agreement. All these papers were received well and generated considerable interest and discussion in the TRIPS Council.**

Services

The Council for Trade in Services (CTS) met in Special Session on 5 October 2000. A major part of the discussion in the Council was devoted to the question of negotiating guidelines and procedures mandated under Article XIX of the GATS (General Agreement on Trade in Services) of the WTO. The developed countries led by the USA, the EC, Japan etc. argued that enough discussion on this question had already taken place in the Council and that the Secretariat could produce a first draft for consideration of the Members at the Council meeting in December 2000. On the other hand a group of developing countries, led by India, such as Argentina, Brazil, Uruguay, Malaysia, Philippines etc. expressed the view that a thorough discussion was yet to take place and that they were themselves planning submission on the subject either collectively or separately. Hence, they urged the Chair to wait until all submissions have been received and considered by the Council and then ask the Secretariat to produce the first draft sometime early next year. **After much debate and discussion, it was agreed by the Council that more time would be given for these developing country delegations to make their submissions. The Secretariat will thereafter be asked to produce a first draft for a meeting of the Council in January or February next year.**

The Council also considered the subject of Assessment of Trade in Services; in this context, a seminar on services statistics organised by the WTO Secretariat was held on 3 October 2000. It was also agreed by the Council that there would be a symposium on Tourism Services in January or February next year.

Trade Policy Review Body (TPRB)

The third Trade Policy Review of the Republic of Korea was held on 26/28 September 2000. The Members complimented Korea for its strong and swift recovery from the Asian financial crisis and for its prudent macroeconomic policies and far-reaching structural reforms in dealing with the crisis. Many Members were critical of Korea's agricultural policy.

Another meeting of the TPRB was held on 11/13 October 2000 to conduct the first Trade Policy Review of Bahrain. The Members noted that generally Bahrain's liberal policies had played a positive role in helping it to maintain stable economic growth despite the fluctuations in petroleum prices. Bahrain's NTB's (Non-tariff barriers) came in for criticism.

The difficulties faced by exporters of pharmaceutical products from India in getting themselves registered in Bahrain was highlighted in India's statement. Registration is essential for exporting pharmaceutical products to Bahrain. Bahrain has conveyed that it will ask its concerned health authorities to look into the matter.

Working Group on the Interaction between Trade and Competition Policy

The twelfth meeting of the Working Group was held on 2-3 October 2000. The discussion centred around the various issues being considered in the Working Group, viz., necessity or otherwise of having a multilateral framework on this issue, the core elements of such a framework, its linkage with the Dispute Settlement Understanding, whether the WTO is the appropriate forum or not, the form and nature of cooperation, the question of equitable competition versus real competition, the role of competition policy in the economic development of the developing countries and

transition economies, the lack of competition laws in the various developing countries and consequently lack of their experience in dealing with the subject, etc. **India made a detailed intervention on the various issues involved stressing our view that there is scope for a great deal of work to be done in the current educational phase without getting into detailed discussion on the need/necessity for multilateral rules in this area.**

Under the second item, "Contribution of competition policy to achieving the objectives of the WTO, including the promotion of international trade", the Working Group considered a new written submission by the United States, on the subject of competition advocacy. The Chairman informed the Members that a short meeting of the Working Group would be held on 21 November to consider the issue of adoption of the Annual Report for the year 2000 to the General Council and to finalise the scheduling of meetings in 2001.

Committee on Technical Barriers to Trade (TBT)

A meeting of the Committee was held on 6 October 2000. Certain issues of concern with regard to the implementation and administration of the Agreement on TBT were raised by Members.

The Committee considered the issue of preparation of a report to the Council for Trade in Goods on the completion of the second triennial review of the operation and implementation of the Agreement under article 15.4.

The European Communities introduced its paper on the precautionary principle under the TBT Agreement. India expressed its strong opposition to a discussion on this issue in the Committee stating that this issue was outside the scope of the Committee and was being considered in the Committee on Trade and

Environment. India was strongly supported by the United States, Mexico and Egypt.

Committee on Import Licensing

At its meeting on 11 October 2000, the Committee conducted the third biennial review of the implementation and operation of the Agreement on Import Licensing Procedures. Concern was expressed by Members on the lack of fulfilment of notification obligations by nearly half of the total membership of the WTO. It was agreed to discuss ways and means of addressing this question at the next meeting, which would be held sometime in March/April next year.

Working Party on Accession of the People's Republic of China to the WTO

The Working Party met during the period 13-29, September 2000 to consider in detail the draft Protocol of Accession of China, the draft Working Party Report and the associated Annexes, which set out the terms and conditions of China's accession to the WTO. The negotiations were primarily organised in issue-wise plurilateral meetings attended by interested Members followed by informal and formal sessions of the Working Party itself. Gaps in positions were narrowed significantly on some issues, such as the price comparability clause for anti-dumping duties and countervailing measures, textiles safeguard and product-specific safeguards clauses, and domestic support in agriculture. There was much less progress in other protocol and Working Party Report issues such as uniform administration and judicial review, transitional review mechanism, services, tariff rate quota administration, and technical barriers to trade. China concluded its bilateral market access negotiations with

Switzerland. Thus Mexico is the only Member with whom China is still engaged in bilateral market access negotiations.

The September session has thus concluded with the assessment of the Chairman that compared to the target set for the September session, the progress made, though positive, fell short, and that the limited nature of the progress achieved in these vital issues puts into question the target of concluding this accession process this year. The Chairman had thus suggested that the next session will be convened, perhaps starting 30 October or later in November, but only after there is evidence that a fundamental re-examination of negotiating positions has been done in the Capitals and necessary political guidance has been given to Geneva negotiators to move the process of accession forward. The meeting is now widely expected to be convened during 2-8, November 2000.

Committee on Rules of Origin

The Committee met on 18-19 September 2000 in order to continue its deliberations on product-specific issues relating to textiles and clothing products, which were chaired by India (for fibres, yarns and fabrics), by Singapore (for carpets and made-ups) and by Switzerland (for apparel), and for footwear and headgear by Canada. There was some narrowing of differences and the meeting helped to generate a better understanding of the concerns of various Members on the underlying issues. The EC facilitated the continuing discussions on overall architecture issues. The Committee also made some advances on the consideration of the deadline for completion of the ongoing work programme on harmonisation of non-preferential rules of origin. On the basis of emerging consensus, the Chairman has proposed that the harmonisation work programme should conclude by the Fourth Ministerial Meeting and not later

than 31 December 2001. Discussions on this deadline are still underway in the General Council and also the Committee.

Committee of Participants on Trade in Information Technology Products

The Committee met informally on 29 September and on 13 October 2000, and formally on 3 October 2000, to consider two subjects. First, in respect of the ongoing discussions on classification divergences among Participants, the Committee welcomed the detailed work that had been done by customs experts at their meeting held in June 2000. In order to build on this technical work and to reach agreement on the classification issues, it has been agreed to hold another meeting at the technical level. This meeting is expected to be scheduled on 7-9 December 2000. Second, in respect of the Australian proposal for a Work Programme on Non-Tariff Measures on ITA products, there was agreement that the committee should launch a Work Programme. The detailed format and elements of the Work Programme are under discussion, and a meeting of the ITA Committee has been scheduled on 26 October 2000 to finalise and adopt this Work Programme.

Committee on Market Access

The Committee held its meeting on 2 October 2000 to consider the review of the modalities of the Integrated Database (IDB) and to consider the draft waiver for incorporating changes arising from the transposition of Members' Schedules of Concessions to HS 96. There was extensive debate on the possible solutions to improving participation of Members in the IDB and to accelerate submissions to the IDB. However, no conclusions were drawn and it was agreed that the Chairman would continue

his consultations on the subject. The Chairman would also include in these consultations the modalities and preparations for effecting changes in the Schedules of Members arising from the transposition to HS 2002, which comes into effect on 1 January 2002. The Committee agreed at this meeting to forward its draft waiver to the Council for Trade in Goods covering 22 Members that have still not concluded their negotiations with Members in respect of the HS 96 transpositions. The draft waiver extends the time period from 31 October 2000 to 30 April 2001.

Working Group on the relationship between Trade and Investment

The Working Group met on 11 October 2000 to discuss the implications of the relationship between trade and investment for development and economic growth, the economic relationship between trade and investment, transparency issues, and to conduct a stocktaking exercise and analysis of existing international instruments and activities regarding trade and investment. There were divergent views among Members on all issues, including in respect of the definition of trade and investment and the likely benefits that could accrue to developing country Members through the establishment of a basic framework on conditions for foreign direct investment in domestic law. The Working Group also briefly discussed India's proposal for future direction of work of the Group that had been made at the last session. However, the discussions were fairly lack-lustre on all issues and the wider perception was that the opportunity to revisit issues and papers presented by Members should be provided at the next session.

Schedule of Meetings at the WTO Geneva, November 2000*

1-3/11/2000	:	Committee on Anti-Dumping Practices Ad Hoc Group on Implementation
3/11/2000	:	Committee on Rules of Origin
6-8/11/2000	:	Committee on Subsidies and Countervailing Measures
7/11/2000	:	Committee on Customs Valuation
8-9/11/2000	:	Committee on Sanitary and Phytosanitary Measures
9-10/11/2000	:	Committee on Safeguards
13-15/11/2000	:	Textiles Monitoring Body
14/11/2000	:	Technical Sub-Committee of the Committee on Trade in Civil Aircraft
14-16/11/2000	:	Trade Policy Review Body-Japan
15/11/2000	:	Committee on Agriculture
15/11/2000	:	Committee on Trade in Civil Aircraft
15/11/2000	:	COUNCIL FOR TRADE IN GOODS
16-17/11/2000	:	Committee on Agriculture -Special Session
17/11/2000	:	Committee on Technical Barriers to Trade
23/11/2000	:	Dispute Settlement Body
27-30/11/2000	:	COUNCIL FOR TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS
29/11/2000	:	Committee on Financial Services
30/11/2000	:	Committee of Participants on the Expansion of Trade in Information Technology Products
30/11/2000	:	Working Party on Domestic Regulation

*Source : WTO / Geneva as on October 31, 2000

Schedule of Meetings at the WTO Geneva, December 2000*

1/12/2000	:	Committee on Rules of Origin
1/12/2000	:	Committee on Specific Commitments
1/12/2000	:	Council for Trade-Related Aspects of Intellectual Property Rights
4-5/12/2000	:	Council for Trade in Services (Aviation)
4-6/12/2000	:	Trade Policy Review Body— Liechtenstein and Switzerland
6/12/2000	:	Council for Trade in Services
7&8/12/2000	:	Committee on Rules of Origin
11-13/12/2000	:	Textiles Monitoring Body
12/12/2000	:	Dispute Settlement Body
13-15/12/2000	:	Trade Policy Review Body-Canada
15/12/2000	:	Committee on Balance of Payments Restrictions-Bangladesh
15/12/2000	:	GENERAL COUNCIL (resumed)
15/12/2000	:	GENERAL COUNCIL (Special Session on Implementation)
15/12/2000	:	TRADE POLICY REVIEW BODY - CANADA
18/12/2000	:	Committee on Market Access
18-19/12/2000	:	Working Party on the Accession of Russia
20/12/2000	:	Committee on Customs Valuation
20/12/2000	:	Dispute Settlement Body
20/12/2000	:	Working Party on the Accession of Moldova
25/12/2000	:	CHRISTMAS DAY (WTO non-working day)
31/12/2000	:	NEW YEAR'S EVE (WTO non-working day)

*Source : WTO / Geneva as on November 30, 2000

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