

# INDIA & The WTO

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## Advisory Committee on International Trade Meets

The Seventh meeting of the Advisory Committee on International Trade was held under the chairmanship of Mr. Murasoli Maran, the Union Commerce & Industry Minister, in New Delhi on 12th June, 2001. The Advisory Committee, which was reconstituted by the government on 27 April, 2001, advises the Government on the formulation of international trade policy and its terms of reference include, inter-alia, discussing and giving inputs for the ongoing negotiations in the World Trade Organisation (WTO), recommending strategies for increasing market access for Indian goods and services and analysing the implications of various changes taking place in the global trade scenario with a view to recommending suitable policy changes.

The Minister informed the members that the purpose of the meeting was to initiate a process for the formulation of India's stand for the forthcoming Fourth Ministerial Conference of the WTO to be held in Doha, Qatar and briefed them about the present state of play.

On the ongoing mandated negotiations in agriculture and services, India has submitted its proposal for ongoing negotiations in agriculture in consultation with the various stakeholders, while in the services sector, India has given a proposal at the WTO on liberalisation of the movement of professionals. Under TRIPs, India has been demanding a higher level of protection of the geographical indications in other products as has been provided to wines and spirits. This would mean that our Basmati rice, Darjeeling Tea, Alphonso mangoes etc., would also enjoy the absolute level of geographical indications protection as presently enjoyed by Champagne or Scotch whisky. Under TRIMs, India has demanded a review of the clause relating to prohibition of indigenisation requirement in the case of developing countries.

As far as preparing of the agenda for the forthcoming Ministerial Conference of the WTO is concerned, Mr. Maran said that some industrialised countries were trying to push for the launch of a comprehensive round of negotiations at Doha. This is not acceptable. He reiterated India's position that mandated negotiations, mandated reviews and the ongoing work programme in the various Working Groups and the Subsidiary Bodies

of WTO including the work programme for the resolution of the "implementation issues" by themselves constitute a fairly large agenda for WTO and that we should not overload it as it may be unsustainable for WTO. He also stated that Ministerial Conference is supposed to be held every two years and unlike the old GATT, WTO agreements have provided for several mandated negotiations and mandated reviews, and it is thus not possible to launch comprehensive round of negotiations every two years whenever the Ministerial Conference is to be held.

He called upon the members to give their suggestions on how we should go about preparing for the Doha Conference. He referred to the Prime Minister's statement of December 1, 1999 in the Lok Sabha and added that it should guide us in formulating our stand on various issues as are likely to come up for discussions at the Ministerial Conference. He suggested that we must insist on the upfront redressal of implementation issues before the Doha Ministerial Conference in terms of May 2000 decision of the General Council of WTO. He also emphasised that the Ministerial Conference should give policy directions on the ongoing mandated negotiations and mandated reviews and should undertake stock-taking and review as contemplated under Article IV of Marrakesh Agreement establishing WTO.

The Committee made various suggestions which, inter-alia, included recommending a demand for substantive review of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) so as to give necessary flexibility and domestic policy options to the developing countries. The Committee also recommended pressing for the early upfront resolution of the implementation issues raised by the developing countries. The resolution of implementation issues is likely to lead to an increase in market access opportunities for Indian goods particularly in agriculture and textiles. The Committee also recommended that a study should be got done to assess the impact of the Uruguay Round agreements on Indian economy in general and on agriculture and small scale industry in particular.



## Maran writes to G-77 Trade Ministers



**MURASOLI MARAN**  
MINISTER OF COMMERCE & INDUSTRY

14TH JUNE 2001

### *Excellency,*

1. With the scheduling of the 4th WTO Ministerial Conference from November 9-13, 2001 at Doha, the developing countries as **“full stakeholders” in the multilateral trading system need to coordinate their positions on various WTO related subjects.** As the developing countries have a strong commonality of interests on major issues, we should strive to project our common concerns and also protect common interests and thus further the cause of the objectives enshrined in the Marrakesh Declaration.
2. Many factors contributed to the failure of the Seattle Conference. The lessons learnt from Seattle remain relevant for Doha. First, there is a need to demystify the emphasis on process instead of substance. The words like “launching of a New Round” could certainly be given a go-by in favour of meaningful work programme within the WTO framework. We believe that no amount of procedural emphasis will succeed in the inclusion of non-trade issues. Secondly, **the agreements could only be negotiated after the convergence of views of all the member countries. It is no longer the domain of few countries only.** The member countries have same of obligations and cannot be marginalised from the decision making process. **Thirdly, there is widely shared feeling of imbalance in the rights and obligations of WTO agreements.** A greater element of flexibility and operationalisation of special and differential provisions are needed for wider acceptance of the multilateral trading system in the constituencies of developing economies.
3. Some of the developed countries favour a New Round of Negotiations with certain priorities and objectives in sight. The European Union has been relentless in its efforts to launch a comprehensive New Round of trade negotiations in the WTO. It has been argued that the Round would be a development round promising welfare gains to all. However, this is not borne out by our experience of the Uruguay Round of Negotiations. There is widely shared view that Uruguay Round of Negotiations resulted in serious imbalance and asymmetry to the detriment of developing countries. The developing countries lack necessary resources to implement their obligations. In such a scenario, the constituency support for multilateral trading system is also getting thinner.
4. We are concerned with the advocacy of the developed countries that further liberalisation in the mandated negotiations in Agriculture and Services may not be forthcoming unless the New

Round of Negotiations is launched. It is also argued that the implementation related concerns of the developing countries could only be addressed in a comprehensive round of negotiations.

5. Despite the May 2000 decision of the General Council that "implementation issues" should be resolved before the 4th Ministerial Conference, many developed countries are now openly stating that these implementation issues can be resolved only as part of a new round of negotiations. **Most of the developing countries including India have been taking a stand that "implementation related concerns" are a legacy of the Uruguay Round of negotiations and the developing countries have already paid for them by way of taking onerous obligations though not to their liking, under TRIPs, TRIMs etc. and that these concerns should be resolved upfront without linking it to any new round of negotiations.** We would like to stress that the resolution of the implementation related concerns requires political will and good-faith efforts on the part of the developed countries. Once there is a consensus solution to an identified problem then modalities of formalizing the decision would not pose any problem.
6. We note with regret the reluctance to take account of the crisis on patents and drug prices in the WTO and lack of interest and attendance by developed countries of a WTO initiative on technology transfer to developing countries.
7. The proponents for launching a New Round argue that the momentum of trade liberalization and the possibility of trade offs that would facilitate concessions would not be feasible without a comprehensive agenda. However, it is disturbing to note that significant non-trade issues are being promised in the name of trade liberalization and constituency interests of developed countries. Developing countries are not in a position to take on more commitments that they cannot digest and, therefore, they are reluctant for inclusion of new issues. This raises new risks and the cost of failure at Doha would greatly hurt the multilateral trading system. **We remain unconvinced that issues such as investment, competition, labour and environment under WTO will facilitate any additional market access or open up newer development opportunities for the developing countries. Developing countries have long opposed this linkage of trade with labour and environmental standards on the ground that such linkages would be used as an excuse to distort competition, undermine comparative advantage and provide Trojan horses of protectionism.** Such measures would rather need more painful domestic adjustments and create intolerable hardships and for many developing countries it may mean years of lost opportunities and low growth with all their attendant problems. And naturally this type of agenda does not coincide with the basic concerns of the developing countries.
8. In our view, any new item if it has to be included into the WTO agenda, must satisfy the following criteria:-
  - (i) It should be directly trade related;
  - (ii) There should be a consensus to bring it into the WTO agenda;
  - (iii) It should have been thoroughly discussed; we should be able to evaluate its likely impact on their additional rights, responsibilities and obligations and be ripe for such an inclusion;

- (iv) The developing countries should get convinced as to how its inclusion is going to help – or in any way hinder the realization of their development objectives as enshrined in Marrakesh Agreement and it should not constrain their domestic policy options for taking up development activities.
9. **Only the proposals which satisfy the above criteria and have endorsement by member countries say be end of July 2001, could be considered for inclusion as otherwise the sovereign Governments would not get a chance to discuss and evolve stakeholder driven negotiating positions on such proposals if they are thrust on the membership without giving sufficient notice.**
10. **We are, therefore, of the view that the WTO work should concentrate on the full implementation of the Uruguay Round results and the “built-in agenda” which foresaw new negotiations on Agriculture and Trade in Services and reviews of several multilateral trade agreements. Other matters of priority are (a) the implementation of special and differential treatment as envisaged in various WTO agreements, and (b) correction of imbalances in several WTO agreements including Subsidies and Countervailing Measures, Anti-Dumping, TRIPs and TRIMs which have major implications for development policies and interests of developing countries.** We can ill afford the extension of the ‘frontiers’ of the system in the context of national governance. Implementation issues are our priority. Unless the present inequalities are removed, we do not believe in the success of any Round of Negotiations. It would be unsustainable, over-burden the system and upset the original mandate of Marrakesh Agreement.
11. I am also painfully aware of the veiled threat being given by some of the developed country friends that if the developing countries do not agree to the launch of a new round of negotiations, then WTO would lose its relevance and regionalism would get an upper hand. In this connection, I would like to once again reiterate that developing countries stands for the further strengthening of the multilateral trading system and that the regional/preferential trading arrangements as have been or as may be entered into by various developed and developing countries, are based on perception of their self-interests and may have nothing to do with the launch or otherwise of a new round.
12. Mandated negotiations and reviews and various Working Group discussions form a large agenda for the WTO system, which stands unfinished. We should use Doha to take stock of the situation on all these issues plus the implementation concerns. Bringing multiple issues on the table just to get substantial trade-offs and swap concessions advantageous for a few countries without any benefit to developing countries does not augur well for the success of the multilateral trading system. Therefore, it is not necessary that in every Ministerial, we should talk about or begin a new Round.
13. The developing countries must face the challenge for Doha Ministerial before it gets too late to turn back. I appeal to you for evolving a common position and strategy to strengthen the next Ministerial Conference.
- Please accept the assurances of my highest consideration.
- Yours sincerely  
Sd/-  
**(Murasoli Maran)**



## TEXT

## Consolidation and confidence building vital for Doha

**Statement by Mr. Prabir Sengupta, Commerce Secretary,  
Government of India, at the informal General Council  
meeting of the WTO held in Geneva on 25 June, 2001.**

*Mr. Chairman,*

I would like to begin by thanking you for convening this General Council Meeting at Senior Official level.

Mr. Chairman, I find that you have posed some specific questions as a backdrop for today's discussions. However, in order to give reasoned replies to those questions, it is necessary for me to outline in brief, our appreciation of different subjects currently engaging the attention of the WTO Membership as well as our attitude towards the suggestions of some delegations to enlarge the agenda of the WTO by negotiating multilateral rules in a number of different areas.

**If we look into our experience during the last six years in implementing Uruguay Round commitments, we see that many concerns and difficulties are plaguing countries like ours. These concerns are of three types, namely, non-realisation of anticipated benefits like in the case of Agreement on Textiles and Clothing and Agreement on Agriculture; inequities and imbalances in some of the agreements like TRIPs, Subsidies, Anti-dumping etc; non-operational and non binding nature of special and differential provisions.**

**After the Seattle failure, there was all round recognition about the need to build the confidence of the developing countries in the multilateral trading system and through a consensus-based**

**General Council decision, a special implementation review mechanism was set up. However, regrettably, the achievement so far in this area has been very modest and below our lowest expectations.** I understand that some new initiatives have been taken recently on the subject of implementation. I also understand that the Chairman General Council is commencing shortly an intensive phase of consultations for arriving at appropriate decisions in respect of implementation issues and concerns so that the objective set by the May 2000 General Council decision may be met within the time limit prescribed. We, like many other delegations, attach the highest priority to meaningful resolution of implementation issues and concerns, through appropriate decisions.

**Mr. Chairman, the WTO has already embarked upon the mandated negotiations in areas like agriculture and services and also mandated reviews of Agreements like TRIPs, TRIMS etc. The agriculture negotiations are bound to be complex in as much as most of the distortions in international trade in agriculture are caused by major developed countries and many developing countries are victims of these distortions.** At the same time, many developing countries like India have to take care of their food security and livelihood concerns. As far as Services are concerned, this is an area, especially in modes 1-3, where admittedly

developed countries have an enormous competitive edge over developing countries. **Unlike in the Uruguay Round, we hope that developed countries will respond positively to the request of developing countries with regard to mode 4.** If this does not happen, services negotiations will prove to be extremely difficult. Agriculture and services account for about 70% of international trade. Moreover, a number of countries including India view negotiations towards providing additional protection of geographical indications to products other than wines and spirits as part of mandated negotiations. Reviews of agreements like TRIPs and TRIMs will not be an easy exercise. I am given to understand that in the TRIPs Council meeting held on 20 June, a number of issues relating to public health have been identified. Obviously there are other aspects of TRIPs agreement which will come up for discussion during the review. In the case of TRIMS agreement it is clear that many developing countries have started experiencing the adverse impact of the TRIMs agreement on their developmental objectives. **Therefore, it is obvious that mandated negotiations in agriculture, services and geographical indications protection to products other than wines and spirits coupled with mandated review of agreements like TRIPs, TRIMs, etc., by themselves constitute a very big and complex agenda. Going beyond mandated negotiations and mandated reviews will place an undue burden on developing countries.**

I have been told about the proposal to include fresh negotiations on non-agricultural market access in the agenda. I recognise that industrial tariffs is not a subject which is alien to the WTO. However, we are reluctant to go along with this proposal when there is such a noticeable reluctance to deal with implementational issues and concerns seriously and sincerely. Moreover, our Seattle experience shows that

some developed country trading partners would like to launch tariff negotiations without a commitment to address issues like peak tariffs and tariff escalation.

Next, I would like to deal with the Singapore issues. It would be recalled that we agreed for a study programme in respect of four subjects at Singapore on the basis of an explicit understanding that this is only a study programme and that negotiations can be launched in these areas only if there is explicit consensus. Our delegation has explained our position in respect of each one of these issues on a number of occasions. As far as the proposal to negotiate rules on foreign direct investment is concerned, I would at the outset like to request everybody not to mix up two different issues namely, willingness of a country to receive foreign direct investment and willingness of a country to accept binding multilateral rules on foreign direct investment in the WTO. I would also like to point out that **India has a fairly open and liberal foreign investment regime but does not believe that there is need for negotiating rules on this subject in the WTO. In our assessment, the only purpose of such an exercise would be to protect the interests of foreign investors and to take away the policy flexibility available to the developing countries.** Besides, it is well known that a WTO agreement on investment will not significantly change the current pattern of investment flows.

**As far as competition policy is concerned, many developing countries are yet to gain the experience of developing and implementing a national competition legislation. They will be at a disadvantage if they have to straightaway negotiate rules in the multilateral forum** without any experience of dealing with the subject nationally. It is also found that the competition rules which some of our major trading partners are looking forward to are

not likely to be in the interest of developing countries. Moreover, the Singapore Ministerial declaration clearly foresees parity of treatment between the subjects of trade and investment and trade and competition and India cannot agree to a situation where the two subjects are treated differently. **India's reservations with regard to negotiating rules on these two subjects is well-known.**

We all recognize the gains that could be derived from trade facilitation. However, WTO will not be credible if it talks about negotiating new rules about trade facilitation when one important trade facilitation agreement viz. the Agreement on Rules of Origin is languishing for want of implementation.

**As far as transparency in government procurement is concerned, it is obvious that the proponents foresee this as a prelude to a full-fledged agreement on government procurement. For valid policy reasons, my Government is not in a position to go along with the idea of mandatory opening of government procurement to foreign suppliers.** Even an agreement on transparency in government procurement is likely to place undue burden on our procurement entities. There are procurement entities below the sub-federal level also and even the burden of translation of procurement documents will be quite heavy.

**As regards e-commerce, India can go along with a meaningful work programme so that all delegations** may get exposed to the complexities of this new technology from the point of view of trade.

**Regarding environment, India's firm belief is that existing WTO rules are sufficient to protect all legitimate concerns relating to environment. India also feels that the committee on trade and environment which has a balanced agenda should**

**deal with all the** items included in the agenda and that there should not be any selective approach.

As regards non-trade issues like labour standards, consistent with our well-known approach, I will avoid talking about them in the WTO building.

Mr. Chairman, having set out our position with regard to different subjects, I would make an attempt to respond to the best of my ability the questions posed by you. We have consistently supported the Director General's idea of a reality check in July. By July end, we should have a clear idea of the subjects in respect of which there is consensus and the subject in respect of which there is no consensus. You have asked as to what would be a satisfactory level of progress to have achieved by the end of July reality check. We strongly feel the reality check will really be a reality check only if it checks as to whether there is consensus or not. This means that there should be finality in respect of Doha agenda by the end of July. The period from September onwards has to be utilised to draft the declaration on the basis of the agenda arrived at by the end of July. We do not see any major obstacle in going through the reality check by the end of July. The discussions so far in the preparatory process have clearly brought out the position of various delegations. There could be attempts by interested Members to build consensus in some areas from now to July but July should be the absolute deadline for this process.

**We have already shown enough flexibility by engaging ourselves in substantive discussions on other issues in the WTO even without there having been satisfactory progress on the resolution of the implementation issues in terms of the May 2000 Resolution of the General Council.** I feel that all of us will be taking a risk if we do not finalise the elements of the Doha agenda by the end of July. **Regarding flexibility expected from others, we would request good faith efforts so as to facilitate**

**a meaningful and early resolution of implementation issues.** We would also request our trading partners to show flexibility and not to try to impose an agenda on us, the burden of which we cannot bear.

Mr. Chairman, you have also invited initial comments on organisation and management of the work programme. In this context, you have also referred to the level of details in the declaration, especially with regard to any mandate which may be included in the declaration. Our primary concern is not about the length or about the level of details. Our concern is about clarity and specificity. We have pointed out on a number of occasions that **we do not want ministerial declarations and mandates to have ambiguities. It is our experience that wherever there are ambiguities, described as constructive or otherwise, whether in the ministerial declarations, mandates or agreements, it is the developing countries who suffer. We are absolutely clear that we will not accept any language which is not supposed to mean what it says and which is not supposed to say what it means.**

WTO Agreement provides for a Ministerial conference once in two years. Unlike GATT, WTO is designed to be a permanent forum for negotiations. The Ministerial conferences should be primarily designed to provide an opportunity to Ministers to look at the multilateral trading system in a holistic way and give guidance to their officials. I have explained my position with regard to individual subjects and made the point that finding solution to implementation issues is our highest priority and that mandated negotiations and mandated reviews themselves constitute a big agenda. I find that some delegations are taking the position that only when the agenda has a wide range of subjects, there will be possibility of trade off and appropriate balance. We all have the Uruguay round experience before us. If the number of subjects alone can determine the

outcome and balance, the Uruguay Round should have produced the best possible results for developing countries. Admittedly this has not happened. **In short, India does not find any merit in the arguments being put forward for overloading the agenda of the WTO. Therefore, the Doha Conference should basically review as to whether the implementation concerns have been resolved in terms of May 2000 resolution of the General Council, give policy directions for the ongoing negotiations and reviews, and deal with major current issues like TRIPS and Public Health, regionalism, least developed countries etc. This conference should be devoted to confidence building and consolidation.**

I find that the term 'round' is being used by trade negotiators in Geneva to denote a comprehensive or a broad based round. Public opinion in many countries including my country is getting restless in the absence of meaningful benefits accruing from the WTO regime. Any open-ended fresh round of negotiations will only further compound the problems of the developing countries as they would once again be expected, and probably forced, to undertake broader and deeper commitments, not commensurate with their level of development. I trust that no Member will make launching of a comprehensive round of negotiations at Doha, a precondition for participating in the mandated agriculture negotiations seriously and in good faith.

Mr. Chairman, **India like all of you present here, is strongly committed to the Multilateral Trading System. It is clear that all the WTO Members want the Doha Ministerial Conference to be a successful one.** I trust that today's meeting will help us all to appreciate the risks involved in prescribing arbitrary yardsticks for measuring the outcome of the Ministerial Conference at Doha. Let us all work together for a successful Doha Ministerial Conference.



## Built-in Agenda of WTO: The Important Items

### I. Mandated Negotiations

#### 1. Under Agreement of Agriculture (AoA)

- Ongoing mandated negotiations under Art 20 of Agreement on Agriculture in the Special sessions of the WTO Committee on Agriculture (COA).
- Formulation of rules / disciplines governing export credits, export credit guarantees and insurance programmes as per Art 10.2 of AoA.

#### 2. Under GATS\*

- Ongoing mandated negotiations under Art XIX of GATS in the Council on Trade in Services (CTS).
- Art X of GATS provides for negotiations on the formulation of disciplines on Emergency Safeguard Measures (ESM) by Working Party on GATS Rules (WPGR). NGP has set up the deadline for the completion of negotiations on ESM as 15.3.2002.
- Art XIII of GATS provides for negotiations on the formulation of disciplines on Government Procurement of Services by Working Party on GATS Rules (WPGR).
- Art XV of GATS provides for negotiations on the formulation of disciplines on Subsidies by Working Party on GATS Rules (WPGR).
- The Working Party on Domestic Regulation (WPDR) has been entrusted with the formulation of multilateral, horizontal disciplines in respect of domestic regulations including for all professional services sectors except the accountancy sector for which the disciplines have already been finalised by the Working Party on professionals services.

#### 3. TRIPS

- Art 24.1 of TRIPS Agreement mandates negotiations aimed at increasing protection of

geographical indications under Art 23 (for wines and spirits).

### II. Mandated Reviews

#### 1. TRIPS

- Art 24.2 mandates review of TRIPS provisions on geographical indications.
- Art 27.3(b) mandates the review of TRIPS provisions relating to patentability of plants and animals and also the protection to plant varieties.
- Art 64.2 mandates the review of provision relating to non-application of Art XXIII: 1 (b) & (c) of GATT to the settlement of disputes relating to TRIPS.
- Under Art 71.1, Council on TRIPS is required to review the implementation of the TRIPS agreement after the expiration of transition period (i.e. 1.1.2000) (which has not yet been done). The TRIPS Council is also required to review the implementation of TRIPS agreement two years after the date and at identical intervals thereafter.

#### 2. TRIMS

- Art 9 of TRIMS agreement provides for review so as to see whether the agreement should be amended or complemented with provisions on investment and competition policy.

#### 3. Services

- Para 2 of Annex on Art II exemptions (MFN exemptions) mandates the review of all MFN exemptions granted for a period of more than 5 years. As per the Negotiating Guidelines and Procedures (NGP), MFN exemptions shall be subject to negotiations.
- Para 5 of Annex on Air Transport Services requires review to consider possible further application of GATS in this sector.

\*General Agreement on Trade in Services

#### 4. Agreement on Subsidies and Countervailing Measures (ASCM)

- Art 8.2 (a) (footnote 25) provides for review on non-actionable research and development subsidies by the Committee on Subsidies and Countervailing Measures.
- Art 27.6 of ASCM mandates the review of operation of export competitiveness provision for developing countries.
- Art 31 of ASCM mandates the review of Art 6.1 on actionable subsidies and Art 8 and 9 on non-actionable subsidies.

#### 5. Other Reviews

- Understanding on interpretation of Art XXXVIII of GATT mandates the review by the Council for Trade in Goods (CTG) to decide whether the criteria for determination of “additional negotiating rights” has worked successfully.
- Marrakesh Ministerial Declaration had mandated a review of dispute settlement rules and procedures.
- Section F of Trade Policy Review Mechanism (TPRM) requires the WTO to undertake the review of the operation of TPRM.
- Marrakesh Ministerial Declaration had mandated the review of standard of review for anti-dumping disputes provided in Art 17.6 of anti-dumping agreement.
- Para 3 of GATT 1994 mandates the review of the only “grandfather” rights i.e. US Jones Act.
- Mandated triennial review of TBT Agreement.
- Review of SPS Agreement at such intervals as decided by the Membership.
- Annual Review of the implementation and operation of the agreement on Anti-Dumping as per its Art 18.6.
- Trade Policy Reviews of countries as per the schedule.
- Review of the various legislations of the member countries for conforming to TRIPS agreement.
- Review of various waivers under Art IX of the Marrakesh Agreement.

- Review of Notification obligations under various Agreements.
- Examination of notifications made under para 7 (a) of GATT Art XXIV by Working Party on RTAs.

### III. Working Groups

1. Trade and Investment - Established by Singapore Ministerial Declaration.
2. Trade and Competition Policy - Established by Singapore Ministerial Declaration.
3. Transparency in Govt. Procurement - Established by Singapore Ministerial Declaration.

### IV. Other Studies

- Work programme on Electronic Commerce - By Council for Trade in Goods, Council for Trade in Services, TRIPS Council and Committee for Trade and Development.
- Study on Trade Facilitation by Council for Trade in Goods - Established by Singapore Ministerial Declaration.
- Study of Trade and Environment linkage by Committee on Trade and Environment (CTE).
- Studying the problem of circumvention of anti-dumping rules by Committee on Anti-Dumping practices - Mandated by MMD.
- Work programme on harmonization of Rules of Origin by the Committee on Rules of Origin and the Technical Committee on Rules of Origin - Mandated by Art 9 of Agreement on Rules of Origin. As per General Council Decision, work relating to harmonization of non-preferential rules of origin should be completed by the 4th Ministerial or at least by the end of 2001.

#### V. Work relating to accession of over 30 countries.

#### VI. Resolution of several pending disputes.

#### VII. Resolution of various Implementation-related concerns of the developing countries in terms of May 2000 decision of General Council.



## India Seeks Flexibility in TRIPs Agreement to Ensure Affordable Access to medicines

### (India's Joint Paper on TRIPs and Public Health)

The WTO Council for Trade-Related Aspects for Intellectual Property Rights (TRIPs) held a Special Session in Geneva on 20 June, 2001 to discuss the issue of affordable access to medicines in the context of the WTO Agreement on TRIPs. In the Special Session, **India along with 46 other developing countries has submitted a joint paper on "TRIPs and Public Health" demanding that the WTO should ensure that the TRIPs Agreement does not undermine the right of the WTO Members to formulate their own public health policies and adopt measures for providing affordable access to medicines.**

Greater flexibility and clarity has been sought in the interpretation of the TRIPs Agreement so as to enable the developing countries to take care of their main public health concern of providing affordable access to essential medicines and life saving drugs to their people. In the Special Session, it was decided that the issue of the "TRIPs Agreement and access to medicines" would be further discussed in the next meeting of the WTO Council for TRIPs scheduled to be held in September, 2001. Given below is the text (including summary) of the joint paper submitted by India along with 46 other developing countries on "TRIPs & Public Health":

## TRIPs and Public Health

**Submission by Brazil, Dominican Republic, Ecuador, India, Nigeria, Paraguay, Philippines, Peru, South Africa, Sri Lanka, Venezuela.**

### Summary

- The special discussion on TRIPs and Public Health at the TRIPs Council is not a one-off event. It should be part of a process to ensure that the TRIPs Agreement does not in any way undermine the legitimate right of WTO Members to formulate their own public health policies and implement them by adopting measures to protect public health.
- The TRIPs Agreement allows for implementation of public health policy measures. Nevertheless, where the provisions of the Agreement may be considered insufficient to protect public health, Members may wish to bring further proposals for modifications in the Agreement, with a view to increase its flexibility.
- **Nothing in the TRIPs Agreement should prevent Members from taking measures to protect public health.**
- Each provision of the TRIPs Agreement should be read in light of the objectives and principles set forth in Articles 7 and 8. The protection of intellectual property rights, in particular patent protection, should encourage the development of new medicines and the international transfer of technology to promote the development of manufacturing capacities of pharmaceuticals, without restraining policies on access to medications.

- Compulsory licences are an essential tool for Governments to carry out public health policies, as they may facilitate access to medicines through prevention of abuses of rights, encouragement of domestic capacities for manufacturing pharmaceuticals and in cases of national emergency or other circumstances of extreme urgency, or of public non-commercial use. Nothing in the TRIPs Agreement limits the grounds for Governments to issue compulsory licences.
- Parallel imports can also be an important tool to ensure adequate access to medications. In light of TRIPs Article 6, the TRIPs Council should confirm the unconditional right of Members to determine the way in which exhaustion of rights regimes are applied in their jurisdiction.
- While we favor discussions on differential pricing arrangements, they are only part of a broader set of initiatives to improve access to medications. Differential pricing should in no way be used to limit the flexibility of the TRIPs Agreement in any of its provisions. Given that the issue is not within the sphere of discussions on intellectual property rights, it should not be covered by the TRIPs Council, but rather by other intergovernmental international organisations, such as the World Health Organisation.
- Other issues related to the provisions of the TRIPs Agreement also deserve further discussion by Members, such as the extension of transitional arrangements.
- Finally, the **Ministerial Conference in Qatar in November 2001 will be the best opportunity to take such action as will ensure that the TRIPs Agreement does not in any way undermine the legitimate right of WTO Members to formulate their own public health policies and implement them by adopting measures to protect public health.**

## I. Introduction

1. At the TRIPs Council meeting held on 2 to 6 April 2001, Members agreed to hold a special session of the TRIPs Council in June 2001 to initiate discussions on the interpretation and application of the relevant provisions of the TRIPs Agreement with a view to clarifying the flexibilities to which Members are entitled to and, in particular, to establish the relation between intellectual property rights and access to medicines. The decision to hold such discussion was based on a proposal by the African Group, which was supported by virtually all Members.
2. The main purpose of this paper is to address the relationship between the TRIPs Agreement and public health. Clearly, the World Trade Organization has no mandate to establish public health policies, which should remain within the mandate of other international bodies, such as the World Health Organization. In this sense, we believe that the purpose of the discussions on TRIPs and public health at the TRIPs Council should be to ensure that the TRIPs Agreement does not undermine the implementation of public health policies by Members.
3. The special discussion on TRIPs and public health at the TRIPs Council is not a one-off event. It should be part of a process to ensure that the TRIPs Agreement does not in any way undermine the legitimate right of WTO Members to formulate their own public health policies and implement them by adopting measures to protect public health.
4. Our commitment to the TRIPs Agreement stems from our expectation that the protection and enforcement of intellectual property rights, accordingly with the objectives of the Agreement (Article 7), "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". With a view to fulfill these objectives, we remain committed to implementation of the TRIPs Agreement based on its proper and flexible interpretation and in accordance with the objectives and principles contained in Articles 7 and 8 of the Agreement.

5. Some provisions of the TRIPs Agreement may elicit different interpretations. Such ambiguities serve the purpose of accommodating different positions held by Members at the time of negotiations of the Agreement. **We strongly believe, notwithstanding the above, that nothing in the TRIPs Agreement reduces the range of options available to Governments to promote and protect public health, as well as other overarching public policy objectives. The TRIPs Council must confirm this understanding as early as possible.**
6. The issues raised in this paper are not exhaustive. According to the developments in this exercise of interpreting the TRIPs Agreement, we may wish to bring (collectively or individually) further clarifications and complements to this document. All elements and views presented in the document are without prejudice to individual positions that Members may take in further discussions in the TRIPs Council or in other WTO bodies, including dispute settlement procedures.

## II. Context of the discussions on TRIPs and public health

7. Although the TRIPs Council has only recently begun to discuss the implications of TRIPs to public health, other intergovernmental organizations and civil society have already been paying careful attention to such implications for some time.
8. A number of recent events have illustrated the effects of the TRIPs Agreement on public health policies. In this respect, one landmark case was

the lawsuit brought by a Pharmaceutical Industry Association and 39 of its affiliate pharmaceutical companies against the Government of South Africa regarding provisions of its Medicines and Related Substances Control Amendment Act. The South Africa Government's resolve on the correctness of its policy, serious weakness in the technical arguments of the plaintiffs together with strong pressure from domestic and international public opinion resulted in the withdrawal of these companies from the case. The case also signaled that public opinion is seriously concerned that intellectual property rights may be interpreted and implemented in a manner that runs counter to the promotion of public health policies by Governments.

9. Further, in April 2001, the 57th World Human Rights Conference adopted **Resolution 2001/33, on "Access to Medication in the Context of Pandemics such as HIV/AIDS"**, which was approved by the overwhelming majority of its Members. The Resolution recognizes access to medicines in the context of pandemics as an essential human right. The United Nations Commission on Human Rights, in this Resolution, "calls upon States, at the national level, on a non discriminatory basis for all, to: (i) refrain from taking measures which would deny or limit equal access for all persons to preventive, curative or palliative pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them; (ii) adopt legislation or other measures, in accordance with applicable international law, including international agreements acceded to, to safeguard access to such preventive, curative or palliative pharmaceuticals or medical technologies from any limitations by third parties; adopt all appropriate positive measures to the maximum of the resources allocated for this purpose so as to promote effective access to such preventive,

curative or palliative pharmaceuticals or medical technologies”. Among other actions, the Human Rights Commission “also calls upon States, at the international level, to take steps individually and/or through international co-operation, in accordance with applicable international law, including international agreements acceded to, such as: (i) to facilitate access in other countries to essential preventive, curative or palliative pharmaceuticals or medical technologies used to treat pandemics such as HIV/AIDS or the most common opportunistic infections that accompany them wherever possible as well as to extend the necessary cooperation wherever possible, especially in times of emergency; and (ii) to ensure that their actions as members of international organizations take due account of the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and that the application of international agreements is supportive of public health policies which promote broad access to safe, efficient and affordable preventive, curative or palliative pharmaceuticals and medical technologies”.

10. In 21 May 2001, the 54th World Health Assembly also approved two Resolutions that are relevant for the discussions at the TRIPs Council: the Resolution “Scaling Up the Response to HIV/AIDS” and the Resolution “WHO Medicines Strategy”. In the Resolution “Scaling Up the Response to HIV/AIDS” (WHA 54.10), the World Health Assembly recalls “efforts to make drugs available at lower prices for those in need” and urges Member States “in order to increase access to medicines, to cooperate constructively in strengthening pharmaceutical policies and practices, including those applicable to generic drugs and intellectual property regimes, in order further to promote innovation and the development of domestic industries consistent with national law”.
11. The Resolution “WHO Medicines Strategy” (WHA 54.11) also contains several important elements

for discussion at the TRIPs Council. The World Health Assembly notes that “the impact of international trade agreements on access to, or local manufacturing of, essential drugs and on the development of new drugs needs to be further evaluated”. Further, the Resolution urges Members to “cooperate with respect to resolution 2001/33 of the United Nations Commission on Human Rights” and “in order to increase access to medicines, and in accordance with the health needs of people, especially those who can least afford the costs, and recognizing the efforts of Member States to expand access to drugs and promote domestic industry, cooperate constructively in strengthening pharmaceutical policies and practices, including those applicable to generic drugs and intellectual property regimes in order further to promote innovation and the development of domestic industries, consistent with applicable international law”. The WHA also requests the Director-General “to continue and to enhance efforts to study and report on existing and future health implications of international trade agreements in close cooperation with relevant intergovernmental organizations”.

12. In June 2001, the General Assembly of the United Nations will hold a Special Session on HIV/AIDS. The TRIPs Council could take into consideration some of the important conclusions of the Report of the Secretary General to this meeting (document A/55/779, issued on 16 February 2001). In paragraph 48, for instance, the UN Secretary General notes that “[g]lobally trade policy provisions need to be used more effectively to increase access to care. The availability of low-cost generic drugs needs to be expanded, in accordance with national laws and international trade agreements and with a guarantee of their quality. The relevance of compulsory licensing and the development of national manufacturing capacities need further expansion”. In paragraph 101, the Report also remarks that “[w]e need to find ways of more effectively using trade policy

provisions, such as compulsory licensing or parallel importation, to increase access to care. The availability of low-cost generic drugs needs to be expanded, in accordance with national laws and international trade agreements and with guarantees of their quality”.

13. At the **XI Summit of the Heads of State and Government of the Group of Fifteen (G-15)**, in Jakarta (30-31 May 2001), the Heads of State and Government stressed the “urgent need to address pandemic and endemic diseases such as HIV/AIDS, Tuberculosis and Malaria” and stated that “the implementation of the Trade-Related Intellectual Property Rights (TRIPs) Agreement should in no way prevent developing countries from taking measures, such as compulsory licensing and parallel imports to ensure access to life-saving drugs at affordable prices to overcome hazards to public health and nutrition caused by HIV/AIDS and other diseases”. They also considered “the forthcoming Special Discussion in the Council for TRIPs of the WTO as an opportunity for promoting a convergence of views in this regard”.
14. Finally, in civil society, a number of important non-government organisations, such as “Medecins Sans Frontiers”, Oxfam and Consumers International also have emphasised their concern that the TRIPs Agreement may be applied in detriment to health policies.

### III. TRIPs and Public Health

15. There are different elements that relate the TRIPs Agreement to public health issues. In particular, provisions related to patents on pharmaceutical products have an obvious effect on national policy on access to medications. In the Preamble of the TRIPs Agreement, Members recognise “the underlying public policy objectives of national systems for the protection of intellectual property, including developmental and technological objectives”. They also recognise “the special

needs of the least-developed country Members in respect of maximum flexibility in the domestic implementation of laws and regulations in order to enable them to create a sound and viable technological base. In this context, patent rights cannot be paramount to overarching public policies, in particular health policies”. Whenever Governments deem it appropriate, a number of the provisions of the TRIPs Agreement can be applied in order to ensure access to medications.

16. Adequate access to medications at affordable prices is recognized as one of the most effective elements of public health policies to reduce mortality and infection rates. In the case of HIV/AIDS, for instance, some of the most successful policies have been possible through provision of increased access to generic and patented medicines to those in need. Access can be limited by a number of factors, such as financial hurdles; physical and infrastructure barriers; and information gaps, among others. When intellectual property rights are properly exercised, they may meet their objective of contributing to the development of new medicines. However, there should be a common understanding that confirms the right of Governments to ensure access to medications at affordable prices and to make use of the provisions in the Agreement whenever the exercise of such rights result in barriers to access to medicines.

#### (a) Objectives and Principles of the TRIPs Agreement

17. **Each provision of the TRIPs Agreement should be read in light of the objectives and principles set forth in Articles 7 and 8.** Such an interpretation finds support in the Vienna Convention on the Law of Treaties (concluded in Vienna in 23, May 1969), which establishes, in Article 31, that “[a] treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.

18. **Article 7** is a key provision that defines the objectives of the TRIPs Agreement. It clearly establishes that **the protection and enforcement of intellectual property rights do not exist in a vacuum**. They are supposed to benefit society as a whole and do not aim at the mere protection of private rights. Some of the elements in Article 7 are particularly relevant, in order to ensure that the provisions of TRIPs do not conflict with health policies: the promotion of technological innovation and the transfer and dissemination of technology; the mutual advantage of producers and users of technological knowledge; social and economic welfare; and the balance of rights and obligations.
19. Article 7 states that the protection and enforcement of intellectual property rights **“should”** contribute to the aforementioned objectives. **Such language stems from a recognition by Members that the mere existence and the exercise of IPRs, such as patents, do not necessarily result in the fulfilment of the objectives of the Agreement.** In the context of health policies, for instance, patent rights should be exercised coherently with the objectives of mutual advantage of patent holders and the users of patented medicines, in a manner conducive to social and economic welfare and to a balance of rights and obligations. **Where confronted with specific situations where the patent rights over medicines are not exercised in a way that meets the objectives of Article 7, Members may take measures to ensure that they will be achieved - such as the granting of compulsory licenses.**
20. The objective of the **promotion of technological innovation and the transfer and dissemination of technology** places the protection and enforcement of IPRs in the context of the interests of society. Such an objective is essential for the promotion of health policies, as it **encourages the development of domestic production of pharmaceutical products**. Whenever

economically feasible, local production of pharmaceutical products is extremely important to ensure that medications are more readily available in the market, and at more affordable prices. Local manufacturing of pharmaceutical products also encourages sustainable access to medications by insulating the price of patented medicines against currency devaluations, as well as supporting the development of local expertise, which is vital in addressing local needs. As mentioned above, these objectives can be obtained by the normal exercise of patent rights. **Where the patent holder fails to meet the objectives of the TRIPs Agreement and of public health policies, however, Members may take measures to ensure transfer and dissemination of technology to provide better access to pharmaceuticals.**

21. Also regarding patent protection of pharmaceutical products, the concept of “balance of rights and obligations” and of “mutual advantage of producers and users of technological knowledge” are relevant to ensure that the exercise of the exclusive rights provided by patent rights is subject to limitations, which are expressed in different provisions of TRIPs, such as those relating to compulsory licences and parallel imports.
22. In **Article 8**, the TRIPs Agreement affirms that Members may adopt measures to protect public health, among other overarching public policy objectives, such as nutrition and socio-economic and technological development. Any interpretation of the provisions of the Agreement should take into account the principles set forth in Article 8. The reading of such provision should confirm that **nothing in the TRIPs Agreement will prevent Members from adopting measures to protect public health, as well as from pursuing the overarching policies defined in Article 8.**
23. Article 8.2 allows Members to take measures 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. In the implementation of public health objectives, one situation of abuse of rights could be, for instance, the practice of excessively high prices of patented pharmaceutical products. Under normal circumstances, the exercise of patent rights can encourage the creation of new drugs and promote sustainable availability to society, as part of the “balance of interests” foreseen in the objectives of Article 7. Nevertheless, in many instances, the owners of patented pharmaceutical products may abuse their exclusive rights, by selling or offering for sale drugs at prices beyond reasonable margins of profit, which prevents adequate access to medications by the general public. Another situation of abuse of rights could occur when the owners of patented pharmaceutical products do not offer their products in sufficient amounts to meet the demands of the market. In such non-exhaustive situations, patent rights are exercised in a way that conflicts with public health policies as they prevent adequate access to medicines.

#### (b) Parallel Imports

24. Article 6 of the TRIPs Agreement is extremely relevant for Members, especially developing countries, and particularly the least developed and smaller economies among them. **Article 6 provides that Members are free to incorporate the principle of international exhaustion of rights in national legislation.** Consequently, any Member can determine the extent to which the principle of exhaustion of rights is applied in its own jurisdiction, without breaching any obligation under the TRIPs Agreement.
25. Whenever Governments deem it appropriate, adoption of the principle of international exhaustion of rights can be a useful tool for health policies. Where the prices of pharmaceutical

products are lower in a foreign market, for instance, a Government may decide to allow importation of such products into the national market, so as to allow offer of drugs at more affordable prices. Such measures may be beneficial to prevent anti-competitive practices on behalf of patent owners who offer their patented products at unreasonably high prices in the domestic market. In this case, patent owners would compete with their own products: given that their exclusive rights would be exhausted, the interests of the patent owner would not be damaged.

26. **For developing countries, in particular, least-developed countries and smaller economies, “parallel importation” can be a significant way of increasing access to medications, where the prices charged by patent holders for their products are unaffordable. Moreover, in situations where the local manufacture of the product is not feasible, and therefore compulsory licenses may be ineffective, parallel importation may be a relevant tool to ensure access to drugs.**
27. In light of the importance of Article 6 as an instrument for health policies, we consider that Article 6 should be implemented in such a way as to ensure the broadest flexibility for members to resort to parallel imports. **Members should therefore confirm their right of applying regimes of exhaustion of rights in their jurisdiction.**

#### (c) Compulsory Licences

28. Compulsory licences are important instruments to protect public health. Obviously, compulsory licenses alone will not address all the problems related to public health, as other structural factors can also contribute to limiting access to pharmaceuticals. The TRIPs Council, however, is called to consider the extent to which intellectual

property rights, on particular patents, may impose a barrier to access to medicines. We believe that **Members should take the view that the TRIPs Agreement in no way stands in the way of public health protection, and therefore that it should provide the broadest flexibility for the use of compulsory licences.**

29. Empirical evidence demonstrates that many Members have extensive experience in resorting to compulsory licences, without damaging the patent protection system. Some developed countries, for instance, are not only among of the main users of the patent system, but also seem to be great users of compulsory licence<sup>1</sup>. The National legislation of several Members also provides for compulsory licences on different grounds, such as refusal to deal, failure to work, public interest, inadequate supply and health.
30. Compulsory licences can represent a significant tool for Governments to ensure access to pharmaceuticals. Normally, patent owners are expected to provide access of their patented medicines to the market. In specific circumstances, however, Governments may deem it necessary to grant compulsory licences to allow interested third persons to produce the medicine, in order to ensure that it will be more readily available, or more affordable to the general public.
31. Some of the most relevant provisions of the TRIPs Agreement with respect to compulsory licenses are Articles 31, 7, 8 and 40 of TRIPs and Article 5 of the Paris Convention. If read together, such provisions allow scope for Members to ensure that regulatory policies can be exercised by governments to promote public health policies. Patent holders may, for instance, fail to provide enough medicines in the domestic market and refuse to voluntarily license the production of their patent to interested third persons. Such a situation

obviously poses a threat to public health policy, as the patent owner would be free to set abusive prices for their drugs. Based on Articles 5A of the Paris Convention and 31 of TRIPs, Governments may issue compulsory licences as a way of ensuring that medicines will be available at more affordable prices.

32. Clearly, Article 31 of TRIPs does not define the grounds upon which to issue compulsory licenses, but merely establishes procedural requirements to be followed by Members. **Therefore, Members are free to determine the grounds upon which to issue compulsory licences.**
33. As regards the relationship of the provisions related to compulsory licences with Articles 27.1 and 28 of TRIPs, we believe that both set of provisions address different matters and circumstances. In no way Articles 27.1 and 28 limit the right of Members to issue compulsory licences.
34. In many cases, developing countries - particularly least developed countries and smaller economies - have limited industrial capacities and very small domestic market to manufacture medicines locally in order to ensure adequate access to drugs. In this regard, it should be noted that nothing in the TRIPs Agreement prevents Members from granting compulsory licences for foreign suppliers to provide medicines in the domestic market. In addition, Members may adopt regimes of international exhaustion of rights in national legislation to allow parallel imports into the domestic market. In this respect, the reading of Article 31(f) should confirm that **nothing in the TRIPs Agreement will prevent Members to grant compulsory licences to supply foreign markets.**

**(d) Differential pricing**

35. Given that differential pricing (or tiered pricing) is

<sup>1</sup>"In the United States under anti-trust laws, from August 1941 to January 1959 there were 107 judgements (13 in litigated cases and 94 by consent) in which patent rights were restricted. The use of compulsory licences continued after that date: 'literally tens of thousands of patents' have been compulsorily licensed in the United States (Scherer, 1998, p. 106), in more than a hundred cases. In one single case (U.S. Manufacturers Aircraft Associations Inc.) about 1,500 patents were compulsorily licensed (Finnegan 1997, p. 139; Goldstein, 1977, p. 123)" - in Intellectual Property Rights and the Use of Compulsory Licenses: Options for Developing Countries, by Carlos Correa (Geneva: South Center, October 1999).

not an intellectual property issue, we believe that it should not be covered by TRIPs, although Members might be interested in following the development of discussions in other competent international fora, such as the World Health Organisation.

36. We believe that differential pricing arrangements can play a relevant role in providing better access to affordable medicines. Governments should also consider the establishment of global data bases on drug prices, which would facilitate decisions by Governments related to the establishment of price controls, authorisation of parallel imports and granting of compulsory licences.
37. **In no way should discussions on differential pricing be prejudicial to the right of Members to make use of the provisions of the TRIPs Agreement, such as parallel imports and compulsory licences.**

**(e) Other issues**

38. **Nature and scope of obligations in the TRIPs Agreement (Article 1.1):** Article 1.1 is important to ensure the freedom of Governments on the means of implementation of the minimum standards of the TRIPs Agreement in national legislation. In many cases, more extensive protection in national legislation than is required by the TRIPs Agreement may result in limitations for the implementation of health policies. **We consider that Members should be free to implement the TRIPs Agreement in ways that best accommodate the protection of health policies in national legislation.**
39. **Protection of Test Data** (TRIPs Article 39.3): Article 39.3 establishes that governments may disclose the data “where necessary to protect the public, or unless steps are taken to ensure that the data are protected against unfair commercial use.” Protection of test data does not apply where the registered original product is covered by a patent

and the patent has been subject to a compulsory licence. In such an event, the licensee will not be manufacturing a generic product, but rather the same product, as described and claimed in the patent specifications. Furthermore, the manufacturer will be a licensee, not an unfair competitor. Therefore, compulsory licenses will have the effect of exempting the licensee from the obligation of developing test data anew. As regards parallel imports covering an entity which is exactly identical to the one which has been registered, there is no need for the importer or the generic manufacturer to develop test data anew. Article 39.3 in no way affects negatively research and development of new pharmaceutical drugs. Finally, the provision does not prevent third parties to obtain authorisation for commercialisation of products identical or similar to previously approved ones. The request of commercialisation based on a product initially approved by an authority does not constitute in any case illegal use of the data or a practice of unfair competition.

40. **Transitional Arrangements** (TRIPs Article 65.4): **The TRIPs Council could consider extending the transitional periods foreseen in TRIPs Article 65.4.**
41. **[Non-violation** (TRIPs Article 64.3) Article 64.3 mandates the TRIPs Council to examine the scope and modalities and application of non-violation complaints made pursuant to TRIPs and submit its recommendations in the Ministerial Conference for approval. The scope of non-violation complaints made pursuant to TRIPs is unclear to the Membership and the application of these complaints could have serious, negative implications on measures taken by Governments to achieve public policy objectives, such as the protection of public health. Members shall resolve not to apply non-violation provisions on measures to pursue public health objectives, in particular those providing access to essential medicines.]



## India submits paper on Foreign Direct Investment and Technology Transfer

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An Indian paper on “Foreign Direct Investment and Technology Transfer”, which was presented in the meeting of the WTO working Group on Trade and Investment held in Geneva on 13-14 June, 2001 was welcomed by several members as a useful substantive contribution to the Working Group's study process. The WTO Working Group on Trade and Investment was established by the Singapore Ministerial Conference of WTO (1996) to study the relationship between trade and investment. Some of the members of WTO have been pushing for multilateral rules in the area of investment under the auspices of WTO.

India's paper highlights the fact that the issue of technology transfer is at the core of development debate. Development on a self-sustaining basis has as its essential pre-condition development of technological capabilities. Transformation of developing countries from a stage of low technological development to this stage would not be possible except through transfer of technology. However, documented evidence suggest that market forces do not ensure technology transfer to, and absorption by, developing countries. The paper, therefore, concludes that multilateral rules aimed at curtailing the rights and ability of developing countries to influence the entry and establishment of foreign investment are not desirable.

While the last decade witnessed a veritable explosion in cross border FDI flows, the lion's share of such flows was accounted for by Mergers and Acquisitions (M&As) as compared to the green field route. The major reason why countries, especially developing countries, seek FDI is the expectation of getting the much needed state-of-the-art technology. M&As do not always augment the stock of productive physical capital in the host country. At the same time, while greenfield investment, by virtue of new entry, increases competition, M&As most often lead to increases in economic concentration by reducing number of active players in the market. The effects of M&As, either directly or through linkages and spill-overs, also depend on whether the investment is natural-resource seeking, market-seeking, efficiency-seeking or created asset seeking. The motive of MNCs behind M&A investment would have an important bearing on the type and quality of the technology transferred. The paper, therefore, urges that it is important for

developing countries to not only ensure “whether” technology is being transferred, but also the ‘nature’ of such transfer.

The Indian paper underlines the fact that the growth rates recorded by FDI flows in the past few years have been more impressive than those by technology transfer payments, which tends to indicate that the recent spurt in FDI flows may not have been accompanied by technology transfer. More particularly as the share of developing countries in FDI flows has started moving up, their share in technology transfers has come down.

The Indian paper refers to the distinction drawn by economists between the ‘know how’ and ‘know-why’ of technology transfer and certain findings that technology transfer within MNCs are very efficient for transferring know-how, but less so for transferring know-why. Evidence indicated in the literature, especially with reference to the experience of Korea, shows that M&A type of FDI accompanying MNCs has transferred a high level of ‘operating and organisational’ technology, which is very different from a high level of ‘production technology’. Referring to the experience of South East Asian countries, the paper states that low technological capability might co-exist with the capability to successfully use new technologies. The simple act of high technology production in any country does not ensure that efficient learning has occurred, and the latter depends on a host of factors other than technology transfer per se. Quoting the World Investment Report, the paper underlines the fact that developing countries attract only marginal shares of foreign affiliate research, and much of what they get relates to production, adaptation and technical support (which is in the form of know-how) rather than relating to innovation (know-why).

**In the run up to the WTO Ministerial conference at Doha scheduled in November, 2001, a group of WTO Members are pushing for multilateral rules on investment in WTO. India has been taking the position that while its own FDI policies are most open, any move for multilateral rules could curtail domestic policy options for host countries that would not be in the interest of developing countries.**



## Inputs Sought from States on WTO Issues

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At the second one-day Workshop on “WTO Issues for Chief Secretaries and other officials of State and Central Government” organised by the Department of Commerce, Ministry of Commerce & Industry at Indian Institute of Foreign Trade (IIFT), in New Delhi on 26th July 2001, Shri Prabir Sengupta, Commerce Secretary indicated that the Workshop had been convened as an ongoing interactive process of discussion between the Central and State Government/UT officials on all WTO issues. He also emphasised the need for each of the State Governments and Union Territories to create a WTO Cell in their States/UTs and solicited their feedback and inputs for the ongoing mandated negotiations in agriculture and services as well as their views on the various issues as are likely to come up at Doha Ministerial Conference. Resource persons, would be sent from the Department of Commerce for any workshop or seminar as may be organised by the states/UT .

Presentations were made on the following : preparation for the Doha Ministerial Conference; State of Play on agricultural negotiations; Impact of removal of QRs and details of import of sensitive items; GATS (General Agreement on Trade in Services) negotiations, and Anti-dumping Agreement. Each presentation was followed by detailed discussions in which the queries of the participants were answered. The participants were also invited to regularly visit the website of Department of Commerce (address <http://commin.nic.in>) for getting the latest Indian position and other relevant details on WTO issues. Earlier, a Workshop for Chief Secretaries on WTO issues was organised on 19.3.2001.

## Major efforts made to consult State Government and other stakeholders on WTO

Sl.	Date	Subject
1.	29th January, 30th March, 2nd June, 17th November and 24th November, 1999	Meetings of the Advisory Committee on International Trade consisting of Industrialists, NGOs, journalists of repute and experts on trade matters were held to discuss various WTO issues prior to the Seattle conference.
2.	24th June, 1999	The Commerce Minister wrote to Chief Minister and political parties regarding inputs for mandated negotiations in agriculture & services and inputs for other WTO matters coming up at Seattle.
3.	15th November, 1999	Commerce & Industry Minister had discussions with all the national level trade union leaders on WTO issues.
4.	16, 17 & 24th November, 1999	Commerce & Industry Minister had consultations with all national level political parties on WTO issues.
5.	January, March, April, June, 2000	Regional consultations with State Governments, farmers' representatives, NGOs' etc. on agriculture and other WTO issues conducted jointly by Agriculture & Commerce Ministries.
6.	3rd February, 2000	A meeting of the Advisory Committee on International Trade was held after the Seattle Conference to discuss various WTO issues in the post-Seattle scenario.
7.	5th July, 8th Aug. & 27th March, 2000	Meetings under the chairmanship of Special Secretary, Department of Commerce were organised with various Industry Associations namely CII, FICCI, Assocham & FIEO to discuss WTO related issues.
8.	11th July, 2000	Special Secretary wrote to all Chief Secretaries regarding agriculture negotiations. He also wrote to Vice Chancellors of all agricultural universities for their inputs on the negotiations.
9.	30th August, 2000	National Conference on Small Scale Industries discussed impact of WTO where Commerce Ministry, jointly with Ministry of SSI, addressed State level officials on WTO matters. This was a culmination of about 28 workshops all over the country on impact of WTO on SSIs where Commerce Ministry officials had also participated.
11.	13-14th September, 2000	The Minister of Agriculture held national level consultations with the representatives of all political parties, farmers organisations and NGOs on 13.9.2000. Further national level consultations were held by the Agriculture Minister with the State Food and Agriculture Ministers on 14.9.2000. Commerce Ministry officials actively participated in the consultations.
12.	17th October, 2000	Letter by Commerce & Industry Minister to Chief Ministers and political parties seeking inputs for agriculture negotiations.
13.	18th October, 2000	The Commerce & Industry Minister addressed WTO issues at Economic Editors' Conference.
14.	16th November, 2000	A meeting of the Sub Group of the Advisory Committee on International Trade comprising of experts on agriculture was held.
14.	17th November, 2000	Presentations and oral evidences were made by the Department of Commerce before the Core Group on WTO of the Department related Parliamentary Standing Committee.

14.	25th January, 2001	Letter by Commerce & Industry Minister to Chief Ministers and political parties enclosing India's proposals on agriculture submitted in the WTO.
16.	10th February, 2001	Seminar by Mahratta Chambers of Commerce, Industries and Agriculture, Pune on impact of WTO on Indian industry addressed by Special Secretary, in which State Government officials also participated.
17.	19th March 2001	"Workshop on WTO issues" with State/UT Chief Secretaries.
18.	27th March, 2001	The Special Secretary, Department of Commerce had a meeting with the Industry Associations (CII, FICCI, FIEO and ASSOCHAM) to discuss various WTO issues.
19.	11th May, 2001	Joint Secretary of the Department of Commerce made a presentation at Hyderabad on "WTO related issues" in which CM, AP and various officials of Government of Andhra Pradesh had participated.
20.	18th May, 2001	Joint Secretary of Department of Commerce made a presentation on WTO related issues and Agreements on Agriculture to the Chief Minister and officials and various stakeholders at Jammu.
21.	21st May, 2001	Conference of the Chief Ministers on "WTO Agreement on Agriculture and Food Management"
22.	15th February, 2001	WTO issues were discussed among other issues in the meeting of Parliamentary Consultative Committee of the the Department of Commerce.
23.	12th June, 2001	Meeting of Advisory Committee on International Trade held to discuss issues related to the 4th Ministerial Conference at Doha.
24.	9th July, 2001	A meeting of Industry Associations (FICCI/CII/ASSOCHAM/FIEW) was held under the Chairmanship of Commerce Secretary to discuss issues relating to Trade Facilitation and Industrial Tariffs in the context of 4th Ministerial Conference.
25.	4th July, 2001	The Department of Commerce officials alongwith Ministry of Agriculture officials attended a sensitisation workshop on WTO issues including on Agreement on Agriculture organised by Government of Punjab at Chandigarh.
26.	26th July, 2001	"Workshop on WTO issues" with State/UT Chief Secretaries.

**To analyse issues in depth, premier research institutions including NCAER (National Council for Applied Economic Research), RIS (Research & Information System), ICRIER (Indian Council for Research on International Economic Relations), RGCIS (Rajiv Gandhi Institute for Contemporary Studies), NIPFP (National Institute of Public Finance & Policy), IIM (Indian Institute of Management) Ahmedabad, CMIE (Centre for Monitoring Indian Economy), IIFT (Indian Institute of Foreign Trade) etc., have been assigned time-bound studies on issues which are likely to come up for negotiations.** The National Law School of India University, Bangalore, where a Chair for WTO Studies had been endowed, has also been actively associated in the consultative process. Studies assigned to premier institutions cover subjects like: Global electronic commerce (RGCIS, New Delhi); Industrial tariff analysis for WTO negotiations (RIS, New Delhi); Implications of further tariff liberalisation for Indian industry (RIS, New Delhi); A database on tariff bindings & customs tariff for 1999-2000 (NIPFP); Uruguay Round Agreement on Agriculture & Indian agriculture: Strategic issues (NCAER, New Delhi); Technical Barriers to Trade and Sanitary, Phytosanitary Measures under the WTO: A survey of implications and implementation in India (RGCIS, New Delhi) and study on OECD-MAI & WTO Working Group on Trade & Investment (Consumer Unity and Trust Society - CUTS).

## Monthly Report (I) on Important events For the Month of May, 2001

### **HIGHLIGHTS**

- In an informal meeting of the WTO General Council in Geneva on 3rd May, 2001, the Chairman came out with a 'checklist' of possible issues for the preparatory consultations for the Doha Ministerial. The 6 items on the checklist are (i) Minister's views/statements on current issues, (ii) implementation issues, (iii) ongoing negotiations/reviews, (agriculture, services, mandated reviews), (iv) other elements of the work programme (Singapore subjects and other possible subjects), (v) organisation and management of the work programme and (vi) technical cooperation and capacity building.
- In the informal meeting of General Council, **Item 1** on the Doha Checklist, viz., **Ministers' views/statements** on current issues was taken up for discussion, as part of the preparatory process for Doha. **Among the issues identified by members for being focussed on by Ministers in Doha were: TRIPS and public health, Multilateralism Vs. Unilateralism, development dimension, protectionism in developed countries, sustainable development, operationalising S&D provisions, regionalism, problems of LDCs, etc.**
- In the informal meeting of the General Council, the **item 2 in the Doha checklist on implementation issues was discussed**. There was active participation by many members. **The importance of resolving these issues and the likely impact on the Doha Conference, in case the issues are not resolved satisfactorily was recognised by many delegations. Developing countries insisted on the need to resolve them by Doha in line with the General Council (GC) decision of 3rd May, 2000. Developed countries** stressed the need for pragmatism and said that some issues can be resolved only in the larger context. **Though the atmosphere in the meeting was positive, there was little by way of concrete progress.**
- In the informal meeting of the General Council, **there was a discussion on Doha checklist item 3, i.e., mandated negotiations and reviews. Members were of the view that Ministers should take note of progress and give fresh impetus.** The Cairns Group argued that in case a new round is launched, the mandate for negotiation in Agriculture should go beyond Article 20. India and many other wanted Ministers to give directives on mandated negotiations in GIs. The reviews identified by members to be brought to the attention of members, were **RoO, DSU, TRIPS, TRIMS, Textiles and Clothing.**
- PMI\*/Geneva addressed a letter to the Argentinean side requesting for consultations under the DSU regarding Argentinean Statute which constitutes an unnecessary obstacles to international trade and prevents Indian medicines and other pharmaceuticals from entering into the Argentinean market, thus discriminating against Indian drugs vis-a-vis like products of other countries and of Argentina. The Argentinean side has in turn accepted the consultation request.
- Next phase of the negotiations on the Agreement on Agriculture have begun with the Special Session of the Committee on Agriculture held from 21st to 23rd May, 2001. In this phase, all the issues involved are being taken up for a thorough examination. The agenda items for this session were: Tariff Rate Quotas; Tariffs; and Amber Box.

\* Permanent Mission of India

*(Source : Trade Policy Division/Department of Commerce incorporating inputs from PMI/Geneva)*

## Monthly Report (II) on Important events for the Month of June, 2001

### *HIGHLIGHTS*

- An informal meeting of senior capital based officials was convened by the Chairman, (GC) on 25-26 June, 2001 to take stock of the progress in the preparatory process for Doha. The EC and US informed that they will be working together on the common strategic objective of launching a new round at Doha. EC took a strident position and said that they cannot imagine a round without Investment, Competition and market access in Government Procurement in the agenda. The US indicated flexibility on issues of interest to the EC. **Many saw this as closing of the gap between the EC and US.**
- A Group of 7 countries (submarine group) took initiative to study the implementation proposals and submitted a non-paper with their suggestions on how these are to be addressed in coming months. They have categorised proposal in the 4 sections: 1) issues that could be addressed before or at Doha; 2) issues that may not be relevant any longer; 3) issues referred to subsidiary bodies; and 4) issues that are required to be negotiated. In an informal meeting of GC, progress of work on implementation issues was reviewed. Many saw the non-paper as a good basis for further work. The LMG welcomed the paper and said that it could be a starting point and that the proposals have to be seen in the framework of the GC decision of 3rd May, 2000.
- During the (DSB) meeting held on **20th June, 2001, India requested the DSB to establish a Panel to examine imposition by US of anti-dumping duties on imports of CTL-Carbon quality Steel Plates from India.** As this was the first time that request for establishment of Panel had been made in this dispute, US opposed the establishment of a Panel. However, as per WTO rules the Panel would get established automatically once a request in made again to this effect by India.
- **A Special Session on 'TRIPS and Access to medicines' was held as part of the TRIPS Council meeting on 20th June, 2001. India, Brazil, Africa group and a number of other developing countries submitted a joint paper in the TRIPS Council. The Joint paper demanded that (a) the objectives and principles of the TRIPS Agreement as given in the Articles 7 and 8 should be operationalised, (b) nothing in the TRIPS Agreement should prevent the developing countries from taking measures for public health, (c) Compulsory license could be issued on any grounds, (d) flexibility for exports under compulsory licenses, etc. All the developing countries supported the joint paper. US and other developed countries in their statements mentioned that there is no need for change in status - quo in TRIPS. EC in their paper appeared more accommodative of the concerns of the developing countries as compared to US.**
- As part of the preparations for the Ministerial Conference, the Chairman, **GC held informal consultations on environment.** EC said that this was a 'must issue' for them and reiterated its agenda comprising MEAs, eco-labeling and precaution. Hungary, Norway, Czech Republic, Switzerland and Iceland supported EC fully. Japan, Chile and Australia, while not very enthusiastic about EC's agenda, nevertheless, said they had no problem with sustainable development being taken into account in future negotiations. US said that they were not convinced about the need to clarify, redraft or reinterpret existing WTO rules. US said that the Ministerial Declaration should clearly recognise the right of countries to set whatever environmental standards they want. Malaysia, Thailand, Argentina, Korea, Brazil, Indonesia, India, Pakistan, Mexico, Venezuela, Hong Kong China, Uganda, Cuba, Egypt and Bolivia opposed EC's agenda and rejected any negotiations in this matter.

- **An informal GC meeting on Competition Policy was held on 5th June, 2001. Canada and EC sought mandate for negotiations on Competition Policy at Doha on the ground that it would help promote level playing field in international trade.** Philippines, Dominican Republic, Thailand, Malaysia, Trinidad & Tobago, Indonesia, Cuba, Egypt and Pakistan joined with India in opposing the proposal. However, countries like Turkey, Colombia, Czech Republic, Korea, Hungary, Romania, Chile, Morocco, Poland, Switzerland and Norway supported the proposal. While Thailand and South Africa were opposing the proposal, their concern appeared to be more related to flexibility. Both Hong Kong China and Singapore opposed moves for multilateral rules. The US, while stressing the relevance of Competition Policy to the trading system, shared the skepticism on the need to begin negotiations in this area. US stated that Anti Trust Laws and Competition Policy were two different things and they needed more time to understand those differences.
- **In an informal meeting held by the Chairman, GC on investment, as part of preparatory process for Doha, Japan stated that their objective is to initiate discussion aimed at multilateral rules on Investment for a stable, transparent and predicable framework. They offered to discuss 'legitimate policy flexibility' and said that investment was already in WTO and a GATS type approach would be suitable. EC, Hungary, Chile, Costa Rica, Czech Republic, Latvia, Slovenia, Lithuania, Slovak, Poland, Paraguay, Columbia, Korea, Switzerland and Norway favoured the Japanese view. Canada, Australia and Argentina, while not being demandeurs, were not averse to the idea. Our detailed statement arguing against the need for enlisting investment in WTO was supported by Indonesia, Philippines, Pakistan, Cuba, Malaysia, Thailand, Egypt, Lesotho and Morocco. We stated the practical and other difficulties in case investment is put on the agenda. The US made it clear that they were on a 'listening mode' and remained skeptical about the need for multilateral rules.**
- **A meeting of the WTO Coordinating Group of Secretaries was held under the Chairmanship of Commerce Secretary on 11th June 2001, where the Members were appraised of the scenario evolving in WTO, in view of the fourth Ministerial Conference of WTO scheduled to be held at Doha, during 9-13 November, 2001 and their views were sought on the strategy.**
- **The Advisory Committee on International Trade held its 7th meeting on 12th June, 2001 under the Chairmanship of Commerce & Industry Minister.** The Committee considered the stand taken by India at the WTO negotiations in connection with the forthcoming Ministerial Conference at Doha. The Committee endorsed the Indian stand against the launch of a new round of negotiations at the 4th Ministerial Conference and called for the resolution of implementation concerns of developing countries and meaningful negotiations mandated in agriculture and services and reviews mandated in TRIPS, TRIMS, Subsidies, etc. Among other recommendations, the Committee recommended that an assessment of the positive and negative outcomes of the Uruguay Round Agreements should be undertaken.
- The Commerce & Industry Minister wrote a letter to the G-77 countries, who are also Members of the WTO in an effort to garner support against the launch of a new round at Doha and impressed for the resolution of implementation issues upfront. He cautioned the developing country members against the inclusion of new issues, like investment and competition policy and social issues like labour and environment, in the agenda of the WTO.

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*(Source : Trade Policy Division/Department of Commerce, Incorporating inputs from PMI/Geneva)*

## PARLIAMENT BRIEFS

**\* Issues to be raised  
at Doha**

The Fourth Ministerial Conference of the WTO is scheduled to be held from 9th - 13th November, 2001 at Doha (Qatar). The main issue which Government propose to raise relates to the difficulties experienced by developing countries in implementing the Uruguay Round of agreements. **These concerns, which have come to be known as "Implementation Issues", fall broadly into three categories. The first category is the imbalances and asymmetries inherent in some of the Uruguay Round Agreements. The second category is the non realisation of meaningful market access by the developing countries through the implementation of various provisions of the WTO agreements. The third category relates to the non-implementation of special and differential clauses contained in various agreements in favour of developing countries.** As a result of these difficulties, the market access gains expected by developing countries from the Uruguay Round of Agreements have not materialised.

India along with some like minded group of countries had submitted proposals for the upfront redressal of the various "Implementation Related Concerns" of the developing countries without linking them to any fresh round of negotiations. India, along with other like minded group of countries, proposes to press for the Ministerial Conference at Doha to take all decisions as may be necessary for the resolution of the "Implementation Related Concerns" of the developing countries.

**\* Impact of QRs Removal on :  
No surge in imports**

As part of the continuing economic liberalisation programme being followed since 1991, **import restrictions on 715 items were removed on 31.03.2001. These items include 147 agricultural products, 330 textile products and 238 other manufactured products. Import restrictions on 714 items were removed on 31.3.2000. The import data of these items for the year 2000-01 have now been compiled and the data indicate a growth rate of less than 3% for these items during this period.** The growth rate of exports during this period was more than 19%. The import restrictions on 715 items have been removed on 31.3.2001. As per the provisional data available with the Government, **the import of 300 sensitive items, have declined by 11% during the period April - May, 2001, compared to the same period last year.** The total imports of the country during this period have declined by 3.74% and the total non- petroleum oil imports during this period have declined by 6.01%. The overall picture that emerges from these quick estimates is one of normal trading activity in response to demand and supply factors. The figures reveal that the removal of quantitative restrictions has not lead to any surge in imports.

*(Replies in Rajya Sabha, 24/07/2001)*

## WTO Briefs

### • Moore appoints advisory panel on WTO affairs

WTO Director-General Mike Moore announced on 5th July, 2001 the appointment of a panel of experts which will advise him on the challenges and opportunities confronting the organisation and the global trading system. The panel will be charged with examining how the WTO should respond to the needs of member governments and their citizens at a time when an increasingly integrated global economy has brought about profound economic and political change. The panelists will examine, as well, how the organisation can ensure the fullest possible participation of each member government as the WTO expands to near universal membership and examine ways of creating a more effective partnership between the WTO and civil society. "I have asked this remarkable collection of talented individuals to join me in finding solutions to the problems that face us today. I have done so because I have a responsibility to consult as widely as I possibly can be look for these solutions. You can never have enough sound advice. Each of these people hold great experience in trade and economic policy-making and I'm sure that they will draw on their extensive knowledge to provide me with some fresh insights on how we can move forward in a manner which provides benefits for all," Mr. Moore said. The panel will be continuously available to advise the Director-General, individually and as a group, both before and after the 4th Ministerial Conference in Doha, Qatar. The members of the advisory group are: (i) **Professor Robert Baldwin**, Hilldale Professor of Economics, Emeritus, University of Wisconsin; (ii) **Professor Jagdish N. Bhagwati**, University Professor, Columbia University, New York, Special Adviser to the UN on Globalisation; (iii) **Dr. Peter Eigen**, Chairman Transparency International Berlin; (iv) **Professor Victor Halberstadt**, Professor of Public Economics, Leiden University; (v) **Professor Koichi Hamada**, Professor of Economics, Yale University and President, Economics and Social Research Institute (Cabinet Office), Tokyo; (vi) **Professor Patrick Messerlin**, Professor, Institute of Political Studies, Paris; (vii) **Dr. Konrad Von Moltke**, Senior Fellow, International Institute for Sustainable Development, Winnipeg; (viii) **Dr. Sylvia Ostry**, Distinguished Research Fellow, Munk Centre for International Studies, University of Toronto; (ix) **Professor Ademola Oyejide**, University of Ibadan; (x) **Professor Manmohan**

**Singh**, Leader of the Opposition, Formerly Finance Minister, and Governor of the Reserve Bank of India; (xi) **Senator LeRoy Trotman**, Former President, International Confederation of Free Trade Unions, General Secretary, Barbados Workers' Union and (xii) **Dr. Ernesto Zedillo**, Former President of Mexico.

### • WTO Expands to 142 members

Moldova officially became the 142nd member of the WTO on 26 July, 2001-30 days after it notified the organisation that it had completed domestic ratification procedures. The WTO General Council approved the country's accession package last May

### • India Joins Countries Seeking WTO Action on US Legislation (Byrd Amendment)

On 12th July, 2001, India alongwith the European Union, Japan and certain other member countries of the WTO including Brazil, Chile, Indonesia, Korea and Thailand decided to request the establishment of a WTO panel against a US legislation titled "Continued Dumping and Subsidy Offset Act of 2000."

**This legislation, popularly called the Byrd Amendment, proposes to distribute to the affected domestic producers of the US, the anti-dumping and countervailing duties imposed and collected on imports from other countries. This legislation would result in the US domestic industry getting a second layer of protection from the effects of dumped/ subsidised imports over and above those provided for in WTO agreements.**

The Dispute Settlement Body (DSB) of the WTO would meet on 24th July, 2001 to consider the request for establishment of a panel to examine the concerned US legislation. WTO rules on disputes provide for automatic establishment of a panel at the latest the second time the request for establishment of a Panel comes before the DSB.

Earlier, in February 2001 as required by the WTO rules on disputes, India alongwith other co-complainant countries had held consultations with the United States on this legislation. However, these consultations failed to resolve the dispute. **This joint action is a clear indication of the important systemic concerns that the legislation raises among the WTO members.**



## Schedule of Meetings at the WTO Geneva\* July/August, 2001

### JULY

9	Council for Trade in Service
9-11	Council for Trade in Services - Special Session
10 & 11	Committee on Sanitary and Phytosanitary Measures
12	Council for Trade in Services - Special Session - Treatment of Autonomous Liberalisation
12 & 13	Working Party on the Accession of Kazakhstan
13	Council for Trade in Services
16	Committee on Budget, Finance and Administration
16-20	Textiles Monitoring Body
18	GENERAL COUNCIL
18 & 20	Trade Policy Review Body - Cameroon
20	Sub-Committee on Least-Developed Countries
23	Committee on Rules of Origin
24	DISPUTE SETTLEMENT BODY
24	Committee on Balance-of-Payments Restrictions- Bangladesh

### AUGUST

23	Trade Policy Review Meeting
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(\*Source: WTO / Geneva as on June-July 31, 2001)

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