CHAPTER 11

INTERNATIONAL TRADE & TREATIES

The theory of **COMPARATIVE ADVANTAGE** suggests that a country should export goods in the country in which its relative cost advantage and not the absolute cost advantage, is greatest in comparison to other countries. Suppose that the United States can produce both shirts and automobiles more efficiently than Mexico. But if it can produce shirts twice as efficiently as Mexico and can produce automobiles three times more efficiently than Mexico, the United States has an absolute productive advantage over Mexico in both the goods but a relative advantage in producing automobiles. In this case, the United States might export automobiles in exchange for imports of shirts even though it can produce shirts more efficiently than Mexico.

HOW IS THE WTO DIFFERENT FROM GATT?

1. The GATT was a set of rules, a multilateral agreement, with no institutional foundation, only a small associated secretariat which had its origins in the attempt to establish an International Trade Organization in the 1940s.	1. The WTO is a permanent institution with its own secretariat.
2. The GATT was applied on a "provisional basis" even if, after more than forty seven years. Governments chose to treat it as a permanent commitment.	2. The WTO commitments are full and permanent.
3. The GATT rules applied to trade in merchandise goods.	3. In addition to goods, the WTO covers trade in services and trade-related aspects of intellectual property.
4. GATT was a multilateral instrument, by the 1980s many new agreements had been added of a plurilateral**, and therefore selective in nature.	4. The agreements which constitute the WTO are almost all multilateral and, thus, involve commitments for the entire membership.
5. GATT 1947 was an institution as well as an agreement.	5. WTO has replaced GATT 1947 as an institution.
	6. The WTO dispute settlement system is faster, more automatic, and thus much less susceptible to blockages, than the old GATT system. The implementation of WTO dispute findings will also be more easily assured.

(A plurilateral treaty is a treaty between a limited number of states with a particular interest in the subject of the treaty.)**

REGIONAL TRADING BLOCKS

1. ASSOCIATION OF SOUTH-EAST ASIAN NATIONS (ASEAN)

- It was established on 8 August, 1961 in Bangkok by the five original Member Countries, namely, Indonesia, Malaysia, Philippines, Singapore, and Thailand.
- Brunei Darussalam joined on 8 January 1984, Vietnam on 28 July 1995, Laos and Myanmar an23 July 1997, and Cambodia on 30 April i999.

OBJECTIVES

1. To accelerate the economic growth, social progress and cultural development in the region through joint endeavours in the spirit of equality and partnership in. order to strengthen the foundation for a prosperous and peaceful community of South East Asian nations, and
2. To promote regional peace and stability through abiding respect for justice and the rule of law in the relationship among countries in tl-re region and adherence to the principles of the United Nations Charter.

"Cooperative peace and shared prosperity shall be the fundamental goals of ASEAN."

FUNDAMENTAL PRINCIPLES

The Treaty of Amity and Cooperation (TAC) in South-East Asia, declared that in their relations with one another, the High Contracting Parties should be guided by the following fundamental principles:

- Mutual respect for the independence, sovereignty, equality, territorial integrity, and national identity of all nations
- The right of every State to lead its national existence free from external interference, subversion or coercion ;
- Non-interference in the internal affairs of one another;
- Settlement of differences or disputes by peaceful manner;
- Renunciation of the threat or use of force; and
- Effective cooperation among themselves.

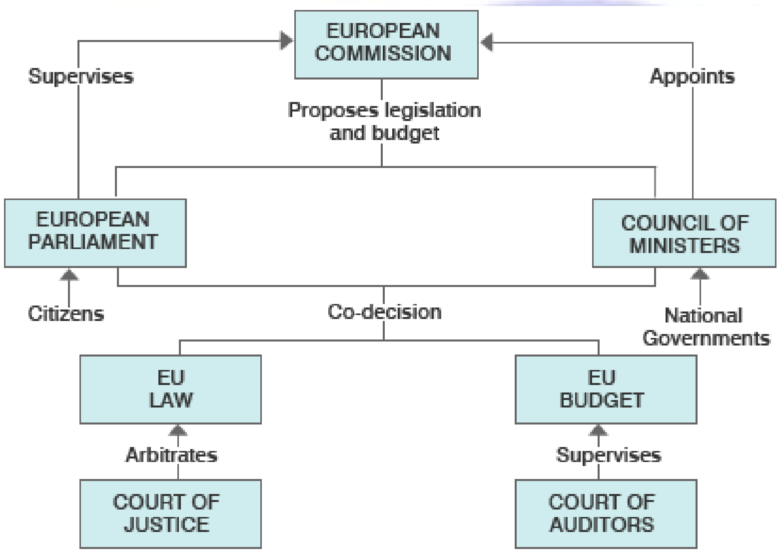
STRUCTURES AND MECHANISMS

- The **highest decision-making organ** of ASEAN is the Meeting of the ASEAN **Heads of State** and Government.
- The ASEAN **Summit** is convened **every year**.
- The ASEAN **Ministerial Meeting** (Foreign Ministers) is held on an **annual basis**.
- Ministerial meetings on several other sectors are also held: agriculture and forestry, economics, energy, environment, finance, information, investment, labour law, regional haze, rural development and poverty alleviation, science and technology, social welfare, transnational crime, transportation, tourism, youth, the AIA Council and the AFTA Council.
- Supporting these ministerial bodies are **29 committees** of senior officials and **122 technical working groups**.

EUROPEAN COMMUNITIES/EUROPEAN UNION

- The term 'European Communities' is a collective term for the **European Coal and Steel Community** (ECSC), founded in 1951, the **European Economic Community** (EEC) and the **European Atomic Energy Community** (EURATOM or EAEC), founded in 1957.

- The **MAASTRICHT TREATY** introduced the term "European union" in November 1993.
- The Treaty established new areas of European co-operation in foreign and security policy and justice and home affairs.
- The new Treaty also set out a timetable for economic and monetary union and the introduction of a single currency.
- The Treaty of Amsterdam introduced further changes in 1999. In particular, the powers of the European Parliament were given a major boost and increased cooperation in foreign policy and home affairs was established.



The European Union (EU) has four main institutions namely,

1. The Council of Ministers,
2. The European Commission,
3. The European Parliament and
4. The European Court of Justice.
5. Other bodies such as the Economic and Social Committee and the Committee of the Regions have particular roles to play in the decision making process.

1. THE COUNCIL OF MINISTERS

- The Council is the EU's main decision-making body.
- It is the embodiment of the Member States, whose representatives it brings together regularly at ministerial level.
- The Council is comprised of ministers from national governments of each of the member states.
- A staff of some 2,600 people, based in Brussels, supports the Council.
- The Presidency of the Council is held by each member state, in rotation, for a period of six months.
- The country holding the presidency hosts a meeting of the heads of states and governments every six months, known as the European Council.

RESPONSIBILITIES OF THE COUNCIL:

- It is the Union's legislative body, for a wide range of EU issues, it exercises that legislative power in co-decision with the European Parliament;
- It coordinates the broad economic policies of the Member States;
- It concludes, on behalf of the EU, international agreements with one or more States or international organisations ;
- It shares budgetary authority with Parliament;
- It takes the decisions necessary for framing and implementing the common foreign and security policy, on the basis of general guidelines established by the European Council;
- It coordinates the activities of Member States and adopts measures in the field of police and judicial cooperation in criminal matters.

2. THE EUROPEAN COMRNISSION

- **Twenty Commissioners** who are charged with furthering the goals of the Union and implementing EU policy and legislation head the EU's administrative and executive body, the Commission.
- The Commissioners, who serve for **five years**, are nominated by national governments and approved by the European Parliament.
- **MEP**s have the power to sack the Commission.
- The headquarters of the Commission is in Brussels where most of its permanent staff of around 16,000 is based.

The commission is the driving force in the union's institutional system:

1. It has the right to initiate draft legislation and therefore presents legislative proposals to Parliament and the Council,
2. As the Union's executive body, it is responsible for implementing the European legislation (directives, regulations. decisions) budget and programs adopted by Parliament and the Council;
3. It acts as guardian of the Treaties and together with the Court of Justice, ensures that Community law is properly applied;
4. It represents the Union on tire international stage and negotiates international agreements, chiefly in the field of trade and cooperation.

3. THE EUROPEAN PARLIAMENT

- The European Parliament is the democratically elected body whose 626 members (MEPs) are elected every five years.
- Working in Brussels and Strasbourg. Parliament scrutinises the activities of other EU institutions, passes the annual EU budget, and shapes and decides new legislation jointly with the Council of Ministers.
- The Parliament has a staff of 3850.

The Parliament has three essential **functions**:

1. It shares with the Council the **power to legislate**, i.e. to adopt European laws (directives, regulations, decisions). Its involvement in the legislative process helps to guarantee the democratic legitimacy of the texts adopted;
2. It shares **budgetary authority** with the Council, and can therefore influence EU spending. At the end of the procedure, it adopts the budget in its entirety;
3. It exercises **democratic supervision** over the Commission. It approves the nomination of Commissioners and has the right to censure the Commission. It also exercises political supervision over all the institutions"

4. **THE EUROPEAN COURT OF JUSTICE**

- Based in **Luxembourg**,
- the Court, which has a **judge from each member state**,
- adjudicates on all legal issues and disputes involving Community law.
- The judges, who sit for a period of **six years**,
- are assisted by **nine advocates-general** who give a preliminary ruling on each case before a final judgment.

5. **THE ECONOMIC AND SOCIAL COMMITTEE**

- The Economic and Social Committee (ESC) is an **advisory body**
- It ensures that the various economic and social interest groups (employers, trade unions, farmers, consumers, etc.) are represented in the institutional framework of the European Union.
- Founded in 1957 by the Treaty of Rome, the ESC is both a forum for dialogue and the institutional platform that gives groups involved in economic and social life the opportunity to be an integral part of the Community's decision-making process.
- Through its opinions, the ESC contributes to the definition and implementation of the European Union's policies.

NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)

- In January 1994, **CANADA, the UNITED STATES and MEXICO** launched the North American Free Trade Agreement (NAFTA) and formed the world's largest free trade area.
- Designed to foster increased trade and investment among the partners,
- The NAFTA contains an ambitious schedule for tariff elimination and reduction of non- tariff barriers, as well as comprehensive provisions on the conduct of business in the free trade area.
- These include disciplines on the regulation of investment, services, intellectual property, competition and the temporary entry of business persons.
- The NAFTA provides for virtually all tariffs to be eliminated on trade in originating goods between Canada and Mexico by January 1st. 2003.
- A third round of "accelerated" tariff reductions was implemented in January 2001.

SOUTH ASIAN ASSOCIATION FOR REGIONAL COOPERATION (SAARC)

- The South Asian Association for Regional Cooperation (SAARC) comprises **BANGLADESH, BHUTAN, INDIA, the MALDIVES, NEPAL, PAKISTAN and SRI LANKA**.
- The main goal of the Association is to accelerate the process of economic and social development in member states, through joint action in the agreed areas of cooperation.
- The idea of regional cooperation in South Asia was first mooted in November 1980.
- After consultations, the Foreign Secretaries of the seven countries met for the first time in Colombo, in April 1981.
- This was followed, a few months later, by the meeting of the Committee of the Whole, which identified five broad areas for regional cooperation.
- The Foreign Ministers, at their first meeting in New Delhi, in August 1983, formally launched the Integrated Programme of Action (IPA) through the adoption of the Declaration on South Asian Regional Cooperation (SARC).
- At the First Summit held in Dhaka on 7-8 December 1985, the charter establishing tire south Asian Association for Regional Cooperation (SAARC) was adopted.

OBJECTIVES

- To promote the welfare of the people of South Asia and to improve their quality of life;
- To accelerate economic growth, social progress and cultural development in the region;
- To promote and strengthen collective self-reliance among the countries of South Asia;
- To contribute to mutual trust, understanding and appreciation of one another's problems;
- To promote active collaboration and mutual assistance in the economic, social, cultural, technical and scientific fields.

PRINCIPLES

- Cooperation within the framework of the Association is based on respect for the principles of sovereign equality, territorial integrity, political independence, non-interference in the internal affairs of other states and mutual benefit.
- Such cooperation is to complement and not to substitute bilateral or multilateral cooperation.
- Such cooperation should be consistent with bilateral and multilateral obligations of the member states.
- Decisions at all levels in SAARC are taken on the basis of unanimity.
- Bilateral and contentious issues are excluded from its deliberations.

INSTITUTIONAL STRUCTURE of SAARC

SUMMITS	COUNCIL OF MINISTERS	STANDING COMMITTEE	SECRETARIAT

SUMMITS

The highest authority of the Association rests with the Heads of State or Government.

COUNCIL OF MINISTERS

Comprising of the **FOREIGN MINISTERS** of member states it is responsible for the **formulation of policies**; reviewing progress: deciding on new areas of cooperation; establishing additional mechanisms as deemed necessary; and deciding on other matters of general interest- to the Association.

STANDING COMMITTEE

Comprising of the **FOREIGN SECRETARIES** of member states it is entrusted with the overall **monitoring and coordination** of programmes and the modalities of financing; determining inter-sectoral priorities; mobilising regional and external resources; and identifying new areas of cooperation based on appropriate studies. It may meet as often as deemed necessary but in practice it meets twice a year and submits its reports to the Council of Ministers.

SAARC SECRCTARIAT

Established in Kathmandu on 16 January 1987, the SAARC Secretariat is responsible for coordinating and monitoring the implementation of SAARC activities, servicing the meetings of the Association and serving as the channel of communication between SAARC and other international organizations. The Secretariat comprises of the Secretary-General, a Director from each member state and the General Services Staff.

SOUTH ASIAN PREFERENTIAL TRADING AREA

- At the Colombo Summit in December 1991, the Heads of State or Government approved the establishment of an **Inter-governmental Group (IGG)**
- to seek agreement on an institutional framework under which specific measures for trade liberalization among SAARC member states could be furthered.
- IGG evolved a draft Agreement on SAARC Preferential Trading Arrangement (SAPTA) during its first two meetings.
- Subsequently, the Council of Ministers, upon the recommendation of CEC signed the framework Agreement on SAPTA in Dhaka on 11 April 1993 during the Seventh SAARC Summit.
- The Council of Ministers at its Fifteenth Session agreed that the full and timely realisation of the benefits of regional economic cooperation required
  a. the implementation of other related measures such as tire removal of para-tariff, non-tariff and other trade control barriers within the specific time frames and
  b. Eventual progression to the creation of a free-trade area in the region.

<u>SAARC Chamber of Commerce and Industry (SCCI)</u>

The SAARC Chamber of Commerce and Industry (SCCI) was recognised by SAARC in December 1992. SCCI has established its headquarters at Karachi and national units in all seven SAARC countries.

<u>SOUTH ASIAN DEVELOPMENT FUND (SADF)</u>

In order to establish a South Asian Development Fund, initially a Panel of Experts was formed. Subsequently it was decided to establish an Inter- governmental Group (IGG) on South Asian Development Fund (SADF) to define the size, structure, resources and operational modalities of the proposed Fund and also to examine the relationship of the Fund with the SAARC Fund for Regional Projects including the possibility of their merger.

<u>SAARC REGIONAL FUND (SRF)</u>

The SRF aims at expediting the implementation of approved projects/ programmes under IPA which remain unimplemented due to financial constraints. It would be administered by member states themselves. The sources of the Fund would be grants from donor countries, international agencies and organisations and private sector donations.

<u>COOPERATIOIN WITH INTERNATIONAL AND REGIONAL ORGANISATIONS</u>

1. **UNCTAD- (United Nations Conference on Trade & Development)** SAARC-UNCTAD Memorandum of Understanding on the Trade Analysis and Information System (TRAINS) was signed in February 1993. The global aim of TRAINS is to increase transparency in international trading conditions and .thus facilitate trade. This was the first Agreement of cooperation to be signed by SAARC with an international organisation.
2. **UNICEF (United Nations International Children Emergency Fund)** A Cooperation Agreement between SAARC and UNICEF, was signed on 10 December 1993. The Agreement envisages cooperation in implementing the relevant SAARC decisions relating to Children through an annual agenda which include joint studies, exchange of documentation and monitoring of implementation.
3. **APT (Asia Pacific Telecommunity)** SAARC Secretary-General and Executive Director of Asia Pacific Telecommunity (APT) signed a Memorandum of Understanding (MOU) on February 4,1994, The MOU envisages cooperation between the two organisations to promote the growth of telecommunications in order to accelerate economic and social development in the region. SAARC and APT will exchange information, publications and documents on their respective activities in this held. They will also

exchange technical and operational details of plans for improvement of national, regional and international telecommunications network.

4. **UNDP (United Nations Development Programme)** The SAARC Secretary-General and Administrator of UNDP signed a Memorandum of Understanding (MOU) between SAARC and UNDP in July 1995. The MOU embodies a general agreement for broad-based collaboration with the aims and purposes of promoting sustainable human development for attaining poverty elimination, preservation and protection of environment, regeneration of natural resources, employment creation, and the role of women in development; undertakes periodic consultation for joint activities; publishing studies on priority concerns and exchanging relevant reports.
5. **UNDCP (United Nations International Drug Control Programme)** SAARC Secretary-General and United Nations lnternational Drug Control Programme (IINDCP) Executive Director signed an MOU on i8 August 1995 to coordinate their efforts in combating drug trafficking and drug abuse in the r:egion. The Memorandum envisages mutual consultation and exchange of information between the two organisations. In addition, the two organisations have agreed to seek each other's technical cooperation in pursuing their respective drug control activities in areas of drug supply and demand reduction to assist in the development and implementation of such activities as human resource development; improving regional cooperation on drug intelligence through the SAARC Drug Offences Monitoring Desk; legislation; financial investigation; money laundering; precursor control; the establishment of a networking arrangement among existing institutions in drug abuse prevention etc. ,

CHAPTER 12

WORLD TRADE ORGANISATION

- The World Trade Organization (WTO) is the only international body dealing with the rules of trade between nations.
- At its heart are the WTO agreements, negotiated and signed by the bulk of the worlds trading nations.
- These documents provide the legal ground-rules for international commerce.
- They are essentially contracts, binding governments to keep their trade policies within agreed limits.
- Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business. The system’s overriding purpose is to help trade flow as freely as possible long as there are no undesirable side effects.
- The WTO began life on 1-January 1995, but its trading system is half a century older. Since 1948, the General Agreement on Tariffs and Trade (GATT) had provided the rules for the system.
- The WTO's creation on 1 January 1995 marked the biggest reform of international trade since the Second World War.
- It also brought to reality - in an updated form - the failed attempt to create an international Trade Organization (ITO) in 1948.
- Upto 1994 the trading system came under GATT, salvaged from the aborted attempt to create the ITO. GATT helped established a strong and prosperous multilateral trading system that became more and more liberal through rounds of trade negotiations.
- But by the 1980s the system needed a thorough overhaul. This led to the Uruguay Round, and ultimately to the WTO.

THE URUGUAY ROUND

- It took seven and a half years, almost twice the original schedule. By the end 123 countries were taking part.
- It covered almost all trade, from toothbrushes to pleasure boats, from banking to telecommunications, from the genes of wild rice to AIDS treatments.
- It was quite simply the largest trade negotiation ever, and most probably the largest negotiation of any kind in international trade history. At times it seemed doomed to fail.
- But in the end, the Uruguay Round brought about the biggest reform of the world's trading system since GATT was created at the end of the Second World War.
- The seeds of the Uruguay Round were sown in November 1982 at a ministerial meeting of GATT members in Geneva, although the ministers intended to launch a major new negotiation, the conference stalled on the issue of agriculture and was widely regarded as a failure. In fact, the work programme that the ministers agreed formed the basis for what was to become the Uruguay Round negotiating agenda.
- Nevertheless, it took four more years of exploring, clarifying issues and painstaking consensus-building, before ministers agreed to launch the new, round. They did so in September 1986, in Punta del Este, Uruguay.
- All the original GATT articles were up for review. It was the biggest negotiating mandate on trade ever agreed, and the ministers gave themselves four years to complete it.
- Two years later, in December 1988, ministers met again at Montreal, Canada for what was supposed to be an assessment of progress at the round's halflway point.
- The purpose was to clarify the agenda for the remaining two years, but the talks ended in a deadlock that was not resolved until officials met more quietly in Geneva.

- Despite the difficulty, during the Montreal meeting, ministers did agree a package of early results. These included some concessions on market access for tropical products - aimed at assisting developing countries - as well as a streamlined dispute settlement system, and the Trade Policy Review mechanism which provided for the first comprehensive, systematic and regular reviews of national trade policies and practices of GATT members.
- The round was supposed to end when ministers met once more in Brussels, in December 1990. But they disagreed on how to reform agricultural trade and decided to extend the talks.
- The Uruguay Round entered its bleakest period. Despite the poor political outlook, a considerable amount of technical work continued, leading to the first draft of a final legal agreement.
- The 15 original Uruguay Round subjects namely, Tariffs, Non-tariff barriers, Natural resource Textiles and clothing. Agriculture Tropical products, GATT articles, Tokyo Round codes, Anti-dumping, Subsidies, Intellectual properly, lnvestment measures, Dispute settlement, The GATT system, Services were put on the table in Geneva in December 1991.
- On 15 April 1994, the deal was signed by ministers from most of the I23 participating governments at a meeting in Marrakesh, Morocco. The delay had some merits. It allowed some negotiations to progress further than would have been possible in 1990.

PRINCIPLES OF THE TRADING SYSTEM

1. **MOST-FAVOURED-NATION (MFN)**: If a country improves the benefits that it gives to one trading partner, it has to give the same "best" treatment to all the other WTO members so that they all remain "most- favoured". The MFN principle ensures that each country treats its over 140 fellow-members equally. But there are some exceptions.
2. **NATIONAL TREATMENT**: Treating foreigners and locals equally, Imported and locally produced goods should be treated equally at least after the foreign goods have entered the market. The same should apply to foreign and domestic services and to foreign and local trademarks, copyrights and patents.
3. **FREE TRADE**: The WTO agreements allow countries to introduce changes gradually, through "progressive liberalization". Developing countries are usually given longer time to fulfill their obligations.
4. **PREDICTABILITY**: With stability and predictability, investment is encouraged, jobs are created and consumers can fully enjoy the benefits of competition - choice and lower prices.
5. **MORE COMPETITIVE**: By discouraging "unfair" practices such as export subsidies and dumping products at below cost to gain market share.

THE AGREEMENTS

For goods (under GATT)

- Agriculture
- Health regulations for farm products
- Textiles and clothing
- Investment measures
- Anti-dumping measures
- Customs valuation methods
- Pre shipment inspection
- Rules of origin
- Import licensing
- Subsidies and counter-measures
- Safeguards

For services (the GATS annexes)

- Movement of natural persons
- Air transport
- Financial services
- Shipping
- Telecommunications

GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)

- The General Agreement on Trade in Services (GATS) is the first ever set of multilateral, legally enforceable rules covering international trade in services.
- It was negotiated in the Uruguay Round. Like the agreements on goods, GATS operates on three levels - the main text containing general principles and obligations; annexes dealing with rules for specific sectors; and individual countries' specific commitments to provide access to their markets.
- Unlike in goods, GATS has a fourth special element lists showing where countries are temporarily not applying the "most-favoured -nation " principle of non-discrimination.
- These commitments - like tariff schedules under GATT - are an integral part of the agreement. So are the temporary withdrawals of most-favoured-nation treatment.
- A WTO Council for Trade in Services oversees the operation of the agreement.
- Negotiations on commitments in four topics have taken place after the Uruguay Round.
- GATS's 29 articles cover all services sectors. They contain the general obligations that all members have to apply. The agreement covers all internationally traded services. This includes all the different ways of providing an international service.

BASIC PRINCIPLES OF GATS

- All services are covered by GATS.
- Most-favoured-nation treatment applies to all services, except the one-off temporary exemptions.
- National treatment applies in the areas where commitments are made.
- Transparency in regulations, inquiry points.
- Regulations have to be objective and reasonable.
- International payments: normally unrestricted.
- Individual countries' commitments: negotiated and bound.
- Progressive liberalization: through further negotiations.
- Services supplied from one country to another (e.g. international telephone calls), officially known as "cross-border supply".
- Consumers or firms making use of a service in another country (e.g. tourism), officially known as "consumption abroad"
- A foreign company setting up subsidiaries or 'branches to provide services in another country (e.g. foreign banks setting up operations "in a country), "officially "commercial presence"
- Individuals travelling from their own country to supply services in another (e.g. fashion models or consultants) officially "presence of natural persons".

INTELLECTUAL PROPERTY
Trade-Related Aspects of Intellectual Property Rights (TRIPS)

The areas covered by the TRIPS agreement Copyright and related rights, Trademarks, including service marks, Geographical indications, lndustrial designs, Patents, layout-designs (topographies) of integrated circuits, Undisclosed information including trade secrets.

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) is an attempt to narrow the gaps in the way these rights are protected around the world, and to bring them under common international rules. When there are trade disputes over intellectual property rights, the WTO's dispute settlement system is now available.

The TRIPs agreement covers five broad issues:

1. How basic principles of the trading system and other international intellectual property agreements should be applied.
2. How to give adequate protection to intellectual property rights
3. How countries should enforce those rights adequately in their own territories.
4. How to settle disputes on intellectual property between members of the WTO.
5. Special transitional arrangements during the period when the new system is being introduced.

How to protect Intellectual Property

The second part of the TRIPS agreement looks at different kinds of intellectual property rights and how to protect them. The purpose is to ensure that adequate standards of protection exist in all member countries. Here the starting point is the obligations of the main international agreements of the World Intellectual Property Organization (WIPO) that already existed before the WTO was created:

- The Paris Convention for the Protection of Industrial Property (patents, industrial designs, etc)
- The Berne Convention for the Protection of Literary and Artistic Works (copyright).

COPYRIGHT: The agreement says performers must also have the right to prevent unauthorized recording, reproduction and broadcast of live performances (bootlegging) for no less than 60 years. Producers of sound recordings must have the right to prevent the unauthorized reproduction of recordings for a period of 60 years.

TRADEMARKS: It says that service marks must be protected in the same way as trademarks used for goods. Marks that have become well known in a particular country enjoy additional protection.

GEOGRAPHICAL INDICATIONS

INDUSTRIAL DESIGNS: must be protected for at least 10 years.

PATENTS: must be available for inventions for at least 20 years.

INTEGRATED CIRCUITS LAYOUT DESIGN: atleast 10 years.

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

- The World Intellectual Property Organization (WIPO) is an international organization dedicated to helping ensure that the rights of creators and owners of intellectual property are protected worldwide and that inventors and authors are thus, recognized and rewarded for their ingenuity.
- In I974, WIPO became a specialized agency of the United Nations system of organizations, with a mandate to administer intellectual property matters recognized by the member states of the UN.
- WIPO expanded its role and further demonstrated the importance of intellectual property rights in the management of globalized trade in 1996 by entering into a cooperative agreement with the World Trade Organization.
- WIPO's program dedicated to identifying and exploring emerging intellectual property issues enables the timely development of responses to new challenges.
- Among WIPO's key goals is the inclusion of all interested parties in dialogue. Over the years, WIPO has built an extensive - and ever growing - network of partners that support the Organization.

WIPO'S RELATIONS WITH THE WORLD TRADE ORGANIZATION

- World Trade Organization (WTO) was established with the successful conclusion of the Uruguay Round GATT Multilateral Trade Negotiations on **April 15, 1994.**
- One of the negotiated agreements is the Agreement on Trade-Related Aspects of intellectual Property Rights (TRIPS), which came into force on **January 1, 1995**.
- The TRIPS Agreement brought with it a new era in the protection and enforcement of intellectual property rights, enhancing the value of WIPO's program of work.
- Provisions in the TRIPS Agreement concerning copyright and related rights, patents, trademarks, geographical indications, industrial designs, and layout designs of integrated circuits, directly complement international treaties and conventions which the secretariat of WIPO and its predecessor have serviced, in some cases, for more than 100 years.
- On January 1, 1996, an Agreement between the World Intellectual Property Organization and the World Trade Organization entered into force.
- It provides for cooperation concerning the implementation of the TRIPS Agreement, such as notification of laws and regulations and legal technical assistance and technical cooperation in favor of developing countries.

RULES OF ORIGIN

- "Rules of origin" are the criteria used to **define where a product was made**.
- They are an essential part of trade rules because a number of policies discriminate between exporting countries: quotas, preferential tariffs, anti-dumping actions, countervailing duty (charged to counter export subsidies) and more.
- Rules of origin are also used to compile trade statistics, and for "made in" labels that are attached to products.
- This first-ever agreement on the subject requires WTO members to ensure that their rules of origin are transparent; that they do not have restricting, distorting or disruptive effects on international trade; that they are administered in a consistent, uniform, impartial and reasonable manner; and that they are based on a positive standard (in other words, they should state what does confer origin rather than what does not).

PLURILATERALS

For the most part, all WTO members subscribe to all WTO agreements. After the Uruguay Round, however, there remained four agreements, originally negotiated in the Tokyo Round, which have a narrower group of signatories and are known as "plurilateral agreements". All other Tokyo Round agreements became multilateral obligations (i.e. obligations for all WTO members) when the World Trade Organization was established in 1995. The four were:

- Trade in civil aircraft
- Government procurement
- Dairy products
- Bovine Meat

VOTING UNDER WTO AGREEMENT

The WTO continues GATT's tradition of making decisions not by voting but by consensus. This allows all members to ensure that their interests are properly considered even though, on occasion, they may decide to join a consensus in the overall interest of the multilateral trading system. Where consensus is not possible, the WTO agreement allows for voting – a vote being won with a majority of the votes cast and on the basis of "one country, one vote".

SPECIFIC SITUATIONS INVOLVING VOTING

- An interpretation of any of the multilateral trade agreements can be adopted by a majority of three-quarters of WTO members.
- The Ministerial Conference can waive an obligation imposed on a particular member by a multilateral agreement, also through a three-quarters majority.
- Decisions to amend provisions of the multilateral agreements can be adopted through approval either by all members or by a two-thirds majority depending on the nature of the provision concerned. But the amendments only take effect for those WTO members, which accept them.
- A decision to admit a new member is taken by a two-third majority in the Ministerial conferences, or the General Council in between conferences.

CHAPTER 13

WTO MINISTERIAL CONFERENCES

SINGAPORE MINISTERIAL, CONFERENCE, 1996

The ministers met in Singapore for the first regular biennial meeting of the WTO, to further strengthen the WTO as a forum for negotiation, the continuing liberalization of trade within a rule based system, and the multilateral review and assessment of trade policies, and in particular to :

- Assess the implementation of commitments under the WTO agreements and decisions;
- Review the ongoing negotiations and work programme;
- Examine developments in world trade; and
- Address the challenges of an evolving world economy.

SINGAPORE MINISTERIAL DECLARATION ON TRADE IN INFORMATION TECHNOLOGY PRODUCTS, DECEMBER 13, 1996

Ministers, declared that each party's trade regime should evolve in a manner that enhances market access opportunities for information technology products, each party shall bind and eliminate customs duties and other duties and charges of any kind, within the meaning of Article II:1(b) of the General Agreement on Tariffs and Trade 1994, with respect to the following:

a) all products classified (or classifiable) with Harmonized System (1996) ("HS") headings listed in Attachment A to the Annex to the Declaration; and
b) all products specified in Attachment B to the Annex to the Declaration, whether or not they are included in Attachment A;

GENEVA MINISTERIAL CONFERENCE, 1998

- Ministers welcomed the successful conclusion of the negotiations on basic telecommunications and financial services; took note of the implementation of the information Technology Agreement and renewed their commitment to achieve progressive liberalization of trade in goods and services
- Ministers recognized the importance of enhancing public understanding of the benefits of the multilateral trading system in order to build support for it and agreed to work towards this end.
- Expressing their concern over the marginalization of least-developed countries and certain small economies, Ministers recognized urgent need to address this issue which has been compounded by the chronic foreign debt problem facing many of them.

GENEVA MINISTERIAL DECLARATION ON GLOBAL ELECTRONIC COMMERCE MAY 20, 1998
SEATTLE MINISTERIAL CONFERENCE, 1999

DOHA MINISTERTAL CONFERENCE, 2OO1

WORK PROGRAMME

- **Agriculture**
  Ministers recalled the long-term objective referred to in the Agreement to establish a fair and Market- oriented trading system through a programme of fundamental reform encompassing

strengthened rules and specific commitments on support and protection-in order to correct and prevent restrictions and distortions in world agricultural markets.

- **Market access for non-agricultural products** Ministers agreed to negotiations to reduce or as appropriate eliminate tariffs, on products of export interest to developing countries.
- **Relationship between trade and investment**
- **Interaction between trade and competition policy**
- **Transparency in government procurement**
- **Trade facilitation**
- **WTO rules**
- **Trade and environment**: With a view to enhancing the mutual supportiveness of trade and environment, Ministers agreed to negotiations, without prejudging their outcome, on:
  - **i.** the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs);
  - **ii.** procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for granting of observer status;
  - **iii.** the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.
- **Small Economies**: The objective of this includes to frame responses to the trade-related issues identified for the fuller integration of small, vulnerable economies into the multilateral trading system, and not to create a sub-category of WTO Members.
- **Least-developed countries:** Ministers recognized that the integration of the LDCs into the multilateral trading system requires meaningful market access, support for diversification of their production and export base, and trade-related technical assistance and capacity building.
- **Special and differential treatment**: Ministers noted the concerns expressed regarding their operation in addressing specific constraints faced by developing countries, particularly least-developed countries and agreed to review all special and differential treatment provisions with a view to strengthening them and making them more precise, effective and operational.

CHAPTER 14

ANTI DUMPING DUTIES

- Dumping is broadly defined as exporting at prices below those charged in the domestic market or at prices insufficient to cover the cost of the goods sold.
- The definition is only a prima facie description of phenomenon, which is in fact, far more complex.
- The ultimate result is that the exporting firm gains a basic advantage over all other producers, foreign or national, trading on the import market.
- The WTO's focus is on how governments can or cannot react to dumping -- it disciplines anti-dumping actions and it is often called the "Anti-Dumping Agreement".
- The legal definitions are more precise, but broadly speaking the WTO agreement allows governments to act against dumping where there is genuine ("material") injury to the competing domestic industry.
- In order to do that the government has to be able to show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter's home market price), and show that the dumping is causing injury or threatening to do so.
- Typically antidumping action means charging extra import duty on the particular product from tire particular exporting country in order to bring its price closer to the "normal value" or to remove the injury to domestic industry in the importing country.

TYPES OF DUMPING

Dumping can be also characterised as international price discrimination, as predatory pricing or as intermittent dumping.

1. **PRICE DISCRIMINATION**
   - It implies charging of significantly different product prices to two or more customers when there are no significant differences between the costs to the sellers for supplying to those customers.
   - Since price discrimination involves some degree of monopoly or market dominance it can lead to decrease in output and thus impose welfare losses on the society.
   - Price discrimination can also impose two forms of social costs on the society. The first costs are those that the monopolists incur segregating their markets. The second are those incurred to seek monopolies in the expectation of monopoly profit, with the social costs.

2. **PREDATORY PRICING**
   - It gives rise to an economic rationale for antidumping laws. It consists of systematically pricing below cost with a view to intimidating and eliminating rivals in an effort to bring about a market price higher than otherwise would prevail.
   - Antidumping laws were initially enacted out of concern for predatory pricing by foreign competitors.
   - Antidumping laws penalize predatory pricing in addition to international price discrimination by authorizing the constructed cost method of calculating the normal value.
   - The penalization of cost pricing suggests that predatory pricing may be an additional rationale for antidumping laws.

3. **INTERMITTENT DUMPING**.
   - A situation in which this occurs is oversupply of perishable goods.
   - Agricultural producers often make planning decisions long before selling their produce.
   - Because of cyclical nature of supply in agricultural markets, producers often find they have excess produce and rather than allowing it to rot they sell it at low prices.

- For these agricultural producers the relevant cost at the time of selling is the cost of packaging and marketing.

WHAT IS FAIR TRADE?

By "fair trade" was meant

- placing home and foreign producers on an equal level
- with regard to artificial conditions of production caused by export bounties, dumping under protection of high tariffs in the domestic market, and indirect taxation,
- but not interfering with natural comparative advantage.
- The aim of fair trade was not to offset differences in conditions of production.

ARE ANTI-DUMPING LAWS 'FAIR'?

As these laws operate now, they are seriously flawed.

1. **First**, and most importantly, their economic rationale is at best doubtful.
    - Price discrimination is not illegal per se, in the domestic context, and should not be in the international trade.
    - If price discrimination is tied to monopoly power or predatory practices designed to drive competitors out of business, the matter can be attacked under the antitrust laws.
    - In fact predatory pricing is extremely rare in the international context because it requires absorbing continuous losses over a very long period of time.
    - Price discrimination that involves lower prices in the importing country's market, results in increased competition and lower prices, often increasing the general welfare.

2. **Second**, the antidumping and countervailing duty laws lend themselves to abuse and misuse.
    - Actions under these laws are frequently filed by domestic industries seeking relief from import competition.
    - Defense is expensive and can only be afforded by large firms.
    - Domestic industries can thus easily use them for harassment purposes.

3. **Third**, despite the large number of antidumping and countervailing petitions and investigations and the great amount of effort,
    - time and money spent in them by government and industry groups, the volume of trade affected is small.
    - Most of the actions initiated are in a narrow range of industries that have repeatedly invoked them viz. ferrous metals, textiles, chemicals, rubber and plastic materials.
    - Large companies with significant international operations do not use them.

4. **Fourth**, these laws are overly legalistic in both procedural and substantive terms.
    - The procedural steps alone are so bewildering and almost ludicrous, considering the end result is merely the assessment of a custom duty.
    - There is great deal of overlap between these laws and other unfair trade remedies.

5. **Fifth**, these laws have been in practice expanded in a manner that they are in certain respect inconsistent with international standards under GATT codes.

DETERMINATION OF DUMPING

1. **CONSTRUCTED EXPORT PRICE**:
   - If there is no export price or the export price is not reliable because of association or a compensatory arrangement between the exporter and the importer or a third party,
   - the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer.
   - If the articles are not resold as above or not resold in the same condition as imported, their export price may be determined on a reasonable basis.

2. **MARGIN OF DUMPING:**
   - Margin of dumping refers to the difference between the Normal Value of the like article and the Export Price of the product under consideration.
   - Margin of dumping is normally established on the basis of a comparison of weighted average Normal Value with a weighted average of prices of comparable export transactions; or comparison of normal values and export prices on a transaction-to -transaction basis.

3. **FACTORS AFFECTING COMPARISON OF NORMAL VALUE AND EXPORT PRICE**:
   - The export price and the normal value of the goods must be compared at the same level of trade, normally at the ex-factory level, for sales made as near as possible in time.
   - Due allowance is made for differences that affect price comparability of a domestic sale and an export sale.
   - These factors, inter alia, include physical characteristics, levels of trade, quantities, taxation and conditions and terms of sale.

4. **LIKE ARTICLES**:
   - Anti-dumping action can be taken only when there is an Indian industry which produces, like articles when compared to the allegedly dumped imported goods.
   - The article produced in India must either be identical to the dumped goods in all respects or in the absence of such an article, another article that has characteristics closely resembling those goods"

5. **INJURIES TO THE DOMESTIC INDUSTRY**: The Indian industry must be able to show that dumped imports are causing or are threatening to cause material injury to the Indian 'domestic industry'. Material retardation to the establishment of an industry is also regarded as injury. Injury analysis can broadly be divided in two major areas:
   - **The Volume Effect**: The Authority examines the volume of the dumped imports, including the extent to which there has been or is likely to be a significant increase in the volume of dumped imports, either in absolute terms or in relation to production or consumption in India, and its affect on the domestic industry.
   - **The Price Effect**: The effect of the dumped imports on prices in the Indian market for like articles, including the existence of price undercutting, or the extent to which the dumped imports are causing price depression or preventing price increases for the goods which otherwise would have occurred.

6. **CAUSAL LINK**: A 'causal link' must exist between the material injury being suffered by the Indian industry and the dumped imports. In addition, other injury causes have to be investigated so that they are not attributed to dumping.

DUMPING INVESTIGATION

- A dumping investigation can normally be initiated only upon receipt of a written application by or on behalf of the "Domestic Industry".
- In order to constitute a valid application, the following two conditions have to be satisfied:

  1. The domestic producers expressly supporting the application must account for not less than 25% of the total production of the like article by the domestic industry in India; and
  2. The domestic producers expressly supporting the application must account for more than 50% of the total production of the like article by those expressly supporting and those opposing the application.

APPLICATION PROCEDURE

Specific authorization of the party providing the information is required, if the Designated Authority (Director General of Anti-Dumping - DGAD - in the Ministry of Commerce) is satisfied about its confidentiality. Interested parties supplying information on a confidential basis are required to furnish non-confidential summaries thereof or a statement of reasons as to why such summarization is not possible.

1. **PRELIMINARY SCREENING**: The application is scrutinized to ensure that it is adequately documented and provides sufficient evidence for initiation. If the evidence is not adequate, then a **deficiency letter** is issued normally within 20 days of the receipt of the application.

2. **INITIATION**: When the Designated Authority is satisfied that there is sufficient evidence in the application with regard to dumping, material injury and causal link a **Public Notice** is issued initiating an investigation to determine the existence and effect of the alleged dumping. The initiation notice will be issued normally **within 45 days** of the date of receipt of a properly documented application.

3. **ACCESS TO INFORMATION**: The Authority provides access to the non-confidential evidence presented to it by various interested parties in the form of a public file, which is available for inspection after receipt of the responses.

4. **PRELIMINARY FINDINGS**: The Designated Authority will proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, make a preliminary finding containing the detailed information on the main reasons behind it.

INVESTIGATION PROCESS

The preliminary finding will normally be made **within 150 days** of the date of initiation.

1. **PROVISIONAL DUTY**: A provisional duty not exceeding the margin of dumping may be imposed by the Central Government on the basis of the preliminary finding recorded by the Designated Authority. The provisional duty can be imposed only after the **expiry of 60 days** from the date of initiation of investigation. The provisional duty will remain in force only for a period **not exceeding six months**, **extendable to nine months** under certain circumstances.

2. **ORAL EVIDENCE**: Interested parties who participate in the investigations can request the Designated Authority for an opportunity to present the relevant information orally. However, such oral

information shall be taken into consideration only when it is subsequently reproduced in writing. The Authority may grant oral hearing anytime during the course of the investigations.

3. **FINAL DETERMINATION**: The final determination is normally made within **150 days** of the date of Preliminary determination.

4. **DISCLOSURE OF INFORMATION**: The Designated Authority will inform all interested parties of the essential facts, which basis for its decision before the final finding is made.

5. **TIME-LIMIT FOR INVESTIGATION PROCESS**: The normal time allowed by the statute for conclusion of investigation and submission of final findings is **one year** from the date of initiation of the investigation. The above period may be extended by the Central Government by 6 months.

6. **TERMINATION**: The Designated Authority may suspend or terminate the investigation in the following cases:
   i. If there is a request in writing from the domestic industry at whose instance the investigation was initiated.
   ii. When there is no sufficient evidence of dumping or injury.
   iii. If the **margin of dumping** is **less than 2%** of the export price.
   iv. The **volume of dumped imports** from a country is **less than 3%** of the total imports of the like article into India or the volume of dumped imports collectively from all such countries is less than **7% of the total imports**.
   v. Injury is negligible.

7. **REVIEW**: An anti-dumping duty imposed under the Act shall have the effect for **five years** from the date of imposition, unless revoked earlier. The Designated Authority shall also review the need for the continued imposition of the anti-dumping duty, from time to time. Such a review can be done suo-motu or on the basis of request received from an interested party in view of the changed circumstances.

8. **APPEAL**: An appeal against the order of the Designated Authority may be filed with the Customs, Excise and Gold (Control) Appellate Tribunal within **90 days of the date of the order**.

9. **REFUND OF DUTY**: If the ant-i-dumping duty imposed on the basis of final findings is higher than the provisional duty already imposed and collected, the difference shall not be collected. If the final antidumping duty is less than the provisional duty already imposed and collected, the difference shall, be refunded. If the provisional duty is withdrawn based on a negative final finding, then the provisional duty already collected shall be refunded.

CHAPTER 15

SUBSIDIES AND COUNTERVAILING DUTIES

Subsidy means money granted by the State or a Public Body to keep the prices of commodities under control. Subsidy may take the form of direct or indirect government grants on production or exportation of goods including any special subsidy on transportation of any product. Subsidy on exports in the exporting country may translate into what is known as Countervailing duty in importing country which is simply a duty on subsidized imports that are found to be hurting domestic producers.

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (''SCM AGREEMENT")

- The Agreement on Subsidies and Countervailing Measures ("SCM Agreement") addresses two separate but closely related topics:
  1. multilateral disciplines regulating the provision of subsidies, and
  2. the use of countervailing measures to offset injury caused by subsidized imports.
- Multilateral disciplines are the rules regarding whether or not a Member may provide a subsidy. They are enforced through invocation of the WTO dispute settlement mechanism.
- Countervailing duties are a unilateral instrument, which may be applied by a Member after an investigation by that Member and a determination that the criteria set forth in the SCM Agreement are satisfied.
- This agreement does two things
  1. it disciplines the use of subsidies, and
  2. it regulates the actions countries can take to counter the effects of subsidies.
- It also introduces the concept of a "specific" subsidy - i.e. a subsidy available only to an enterprise, industry, group of enterprises, or group of industries in the country (or state, etc) that gives the subsidy.
- The disciplines set out in the agreement only apply to specific subsidies. They can be domestic or export subsidies.

SUBSIDIES AND CVDS IN SCM

Article 1 of the Agreement on Subsidies and Countervailing Measures (Agreement on SCM) defines subsidy as involving a financial contribution by a government or any public body within the territory of a member or any form of income or price support which confers a benefit on the recipient.
The 'financial contribution' may involve:

- Direct transfer of funds in the form of grants, loans or equity infusion or potential direct transfer of funds or liabilities e.g. loan guarantees, or
- Forgiveness of government revenue that is otherwise due e.g. fiscal incentives such as tax credits: or
- provision of goods and services, other than general infrastructure or purchase of goods.

In order that the financial contribution may be considered as a subsidy, the government or a public body must provide it. Financial contribution made by a private body is not to be considered as subsidy unless the private body acts on the direction of the government.

The Agreement on SCM categorizes subsidies into Prohibited, Actionable and non-Actionable Subsidies. Further, remedies provided against prohibited subsidies or actionable subsidies and Countervailing

Measures can be applied only if the subsidy is specific to an enterprise or industry or a group of enterprises or industries.
Article 2 of the Agreement on SCM provides a subsidy to be treated as specific if its availability is restricted only to the specified recipients i.e. to a specific enterprise or industry or a group of enterprises or industries.

The following **principles may determine whether a subsidy is specific**:

- where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly **limits access to a subsidy to certain enterprises**, such subsidy shall be specific.
- where the eligibility for grant of subsidy is governed by **objective criteria** i.e. which are neutral and do not favour certain enterprises over others, which are economic in nature and horizontal in application, such as number of employees or size of enterprises etc and the eligibility is automatic; specificity shall not exist.
- if there are reasons to believe that a subsidy programme, though not specific in accordance with the above principles, in fact is for **use by a limited number of certain enterprises or for predominant use of certain enterprises** or if the discretion is so used that the benefits flow to certain enterprises, the subsidy shall be specific.
- Subsidies **limited to certain enterprises located within a designated geographical region** shall be specific. However, setting or change of generally applicable tax rates by all levels of government entitled to do so is not deemed to be specific subsidy.

STRUCTURE OF THE AGREEMENT

CALCULATION OF THE AMOUNT OF SUBSIDY

For the purpose of Part V, any **method** used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be **provided for in the national legislation** or **implementing regulations** of the Member concerned and its application to each particular case shall be transparent and adequately explained. Furthermore, any such method shall be consistent with the following **guidelines**:

1. **government provision** of **equity capital** shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision bf risk capital) of private investors in the territory of that Member.
2. A **loan by a government** shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between these two amounts.
3. a **loan guarantee by a government** shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan bans the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees.
4. the **provision of goods or services or purchase of goods by a government** shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

'SUBSIDY' UNDER SCM AGREEMENT

The concept of "financial contribution" was included in the SCM Agreement only after a protracted negotiation. Some Members argued that there could be no subsidy unless there was a charge on the public account. Other Members considered that forms of government intervention that did not involve an expense to the government nevertheless distorted competition and should thus be considered to be subsidies. The SCM Agreement basically adopted the former approach.
A financial contribution by a government is not a subsidy unless it confers a "benefit." In many cases, as in the case of a cash grant, the existence of a benefit and its valuation will be clear. In some cases, however, the issue of benefit will be more complex.

SPECIFICITY

Assuming that a measure is a subsidy within the meaning of the SCM Agreement, it nevertheless is not subject to the SCM Agreement unless it has been specifically provided to an enterprise or industry or group of enterprises or industries.
The basic principle is that a subsidy that distorts the allocation of resources within an economy should be subject to discipline. Where a subsidy is widely available within an economy, such a distortion in the allocation of resources is presumed not to occur.
There are **four types of "specificity**" within the meaning of the SCM Agreement:

1. **ENTERPRISE-SPECIFICITY**: A government targets a particular company or companies for subsidization.
2. **INDUSTRY-SPECIFICITY**: A government targets a particular sector or sectors for subsidization.
3. **REGIONAL SPECIFICITY**: A government targets producers in specified parts of its territory for subsidization.
4. **PROHIBITED SUBSIDIES**: A government targets export goods or goods using domestic inputs for subsidization.

CATEGORIES OF SUBSIDIES

1. **PROHIBITED SUBSIDIES**: Article 3 of the SCM Agreement prohibits two categories of subsidies. The first is subsidies contingent, in law or in fact, whether wholly or as one of several conditions, on export performance ("export subsidies"). The second is subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods ("local content subsidies").

2. **ACTIONABLE SUBSIDIES**: Most subsidies, such as production subsidies, fall in the "actionable" category. Actionable subsidies are not prohibited. However, they are subject to challenge, either through multilateral dispute settlement or through countervailing action, in the event that they cause adverse effects to the interests of another Member.
   There are three types of adverse effects:
   i. First, there is injury to a domestic industry caused by subsidized imports in the territory of the complaining Member. This is the sole basis for countervailing action.
   ii. Second, there is serious prejudice. Serious prejudice usually arises as a result of adverse effects (e.g., export displacement) in the market of the subsidizing Member or in a third country market.
   iii. Finally, there are nullification or impairment benefits accruing under the GATT 1994. Nullification or impairment arises most typically where the improved market access presumed to flow from a bound tariff reduction is undercut by subsidization.

3. **NON-ACTIONABLE SUBSIDIES:** The SCM Agreement creates three narrowly defined categories of subsidies, which are non-actionable, i.e., which cannot be challenged multilaterally, or is subject to countervailing action. The three categories are:
    i. Basic research and pre-competitive development subsidies
    ii. Assistance to disadvantaged regions.
    iii. Assistance to adapt existing facilities to new environmental requirements.

COUNTERVAILING MEASURES

Article 15 specifies how injury can be determined for taking countervailing measures:

a. the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products; and
b. the consequent impact of these imports on the domestic producers of such products.

- It must be demonstrated that the subsidized imports are, through the effects of subsidies, causing injury within the meaning of this Agreement.
- The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities.
- The authorities shall also examine any known factors other than the subsidized imports, which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports.
- Factors which may be relevant in this respect include, inter alia, the volumes and prices of non-subsidized imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

DURATION AND REVIEW OF COUNTERVAILING DUTIES

- A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidization, which is causing injury.
- The **authorities shall review the need** for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive countervailing duty, upon request by any interested party which submits positive information substantiating the need for a review.
- Any definitive countervailing duty shall be **terminated** on a date not later than **five years** from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both subsidization and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury. The duty may remain in force pending the outcome of such a review.
- When the authorities are satisfied that there is sufficient evidence to justify the initiation of an investigation pursuant to Article 11, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating aut6bfities to have an interest therein shall be notified and a **public notice** shall be given.
- A **public notice** of the initiation of an investigation shall **contain**, or otherwise make available through a separate report, adequate information on the following:

i. the name of the exporting country or countries and the product involved;
ii. the date of initiation of the investigation;
iii. a description of the subsidy practice or practices to be investigated;
iv. a summary of the factors on which the allegation of injury is based;
v. the address to which representations by interested members and interested parties should be directed; and
vi. the time-limits allowed to interested views known.

- A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on the existence of a subsidy and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected.

PROCEDURES FOR ARBITRATION UNDER ARTICLB 8.5 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

These procedures shall not add to or detract from the existing rights and obligations of Members under the Agreement on Subsidies and Countervailing Measures or under any other WTO Agreement.

I. REQUESTS FOR ARBITRATION

1. Any Member wishing to request arbitration under Article 8.5 shall **address a written request** to that effect to the **Chairman of the Committee** on Subsidies and Countervailing Measures ("the Committee"). The request shall include:
   a) the basis for the request.;
   b) the specific questions to be addressed by the arbitration body.;
   c) a brief summary of the information on which the request is based.
2. Any request for arbitration shall be circulated immediately to the Members.

3. Without prejudice to the right of any Member to request arbitration, Members should take into account the need to avoid undue multiplication of arbitration proceedings in respect of the same programme, and should therefore avail themselves of the procedures under paragraph 4 for becoming Parties, or the procedures under paragraph l7 for becoming Third Parties, to arbitration.

4. In order to become Parties to the arbitration proceeding, other Members shall have a **period of 15 days** after the date of circulation of the request for arbitration to provide the Chairman of the Committee with **a communication**, which shall conform with the requirements for requests for arbitration set forth in paragraph 1. Any such communication shall be circulated immediately to the Members.

5. During the 30-day period referred to in paragraph 10, Parties also may agree, subject to the provisions of Section VI, to any supplemental or alternative procedures for arbitration under Article 8.5 to those specified herein, provided that such supplemental or alternative procedures are not incompatible with Article 8.5.

II. REFERRAL TO ARBITRATION

6. As soon as the composition of the arbitration body has been decided, a notice to that effect shall be **circulated promptly to the Members**.
7. For purposes of Article 8.5, the date of circulation of the notice under paragraph 6 shall be **deemed to be the date on which the matter is referred** to the arbitration body.

III. PARTIES TO THE ARBITRATION PROCEEDING

8. The Parties to the arbitration proceeding shall be the Member which has notified the subsidy programme in question, the Member which requests the arbitration, and any other Member which has become a Party to the arbitration in accordance with paragraph 4.

IV. **COMPOSITION OF THE ARBITRATION BODY**

9. The arbitration body shall consist of **three arbitrators**, unless the Parties agree to a different uneven number.
10. The members of the arbitration body and its president shall be **appointed by agreement of the Parties**. If the Parties do not reach agreement within 30 days after the date of circulation of the request for arbitration, unless the Parties agree on a longer period, any Party may request the Director-General of the WTO to appoint, in consultation with the Chairman of the Committee, the arbitrator or arbitrators not yet appointed.
11. Except as the Parties otherwise agree, the arbitrators shall **not be citizens of any of the Parties** or Third Parties to the arbitration proceeding.
12. The arbitrators shall be chosen from among persons with relevant legal, economic, financial or technical expertise, including expertise in the Agreement on Subsidies and Countervailing Measures, with respect to the matter referred to the arbitration body.
13. Based upon nominations put forward by delegations and approved by the Committee, the Secretariat shall maintain an indicative list of qualified persons from which arbitrators may be selected.
14. Where a Party to arbitration is a developing country Member, the arbitration body shall, if the developing country Member so requests, include at least one arbitrator from a developing country Member.

V. **TERMS OF REFERENCE OF THE ARBITRATION BODY**

15. If a request for arbitration pertains to a determination of the Committee under Article 8.4, or a failure of the Committee to make such a determination, the arbitration body shall determine, in light of the specific questions raised under paragraphs 1 and 4 by the Parties to the arbitration.
16. If a request for arbitration pertains to alleged violation in individual cases of the conditions set out in a subsidy programme notified under Article 8.3, the arbitration body shall determine, in light of the specific questions raised under paragraphs I and 4 by the Parties to the arbitration, whether or not individual cases of subsidisation violate the conditions set out in the subsidy programme notified under Article 8.3.

VI. **THIRD PARTIES**

17. A Member not wishing to become a Party to the arbitration, but wishing instead to participate in the arbitration on a limited basis, shall have a period of **20 days after the date of circulation** of the request for arbitrator to inform the Chairman of the Committee in writing that it wishes to **become a Third Party** to the arbitration proceeding.
18. A Member that has informed the Committee under paragraph 17 of its interest to participate as a **Third Party** in the arbitration proceeding shall have the **right to make a written submission** to the arbitration body and to receive copies of written submissions of the Parties to the arbitration proceeding, shall have an **opportunity to be heard** at meetings of the arbitration body, and shall otherwise have the right to participate in the arbitration proceeding as specified elsewhere in these procedures.

VII. **WORKING PROCEDURES**

19. The arbitration proceedings shall be conducted on the basis of **written submissions and documents**. The Parties and Third Parties to the arbitration proceedings shall make written submissions within time peri6ds to be determined by the arbitration body after consultation with the Parties.
20. The **arbitration body also may hold meetings** with the Parties and shall hold one such meeting if any Party so requests at an appropriate stage of the proceedings. Any such meeting normally shall include Third Parties.

VIII. **PROCESS**

21. The proceedings of the arbitration body shall be **confidential**. Written submissions to the arbitration body shall be treated as confidential. The arbitration body and all Parties and Third Parties to a proceeding shall treat as confidential any information submitted to the arbitration body, which the submitter has designated as confidential.
22. A **Party or Third Party** to arbitration shall **make available** to all other Parties and Third Parties its **written submissions**. A Party or a Third Party shall also, upon request of a member, provide a non-confidential summary of the information contained in its written submissions that could be disclosed to the public.
23. There shall be **no ex parte** communications with the arbitration body concerning matters under consideration by the arbitration body.
24. Before presenting its conclusions, the **arbitration body** shall provide to the Parties and Third Parties a **written summary of the information** on which it intends to base its conclusions. The arbitration body shall provide an opportunity for the Parties and Third Parties to comment, within a time period to be established by the arbitration body, on the written summary.
25. The arbitration proceedings shall take place at the **seat of the World Trade Organization**.
26. The **WTO Secretariat shall act as Secretariat to the arbitration body**, and shall perform all administrative functions necessary to assist the arbitration body, including the receipt and circulation of communications related to arbitration requests, and the maintenance of an organized permanent record for each arbitration proceeding.

IX. INFORMATION BEFORE THE ARBITRATION BODY.

27. The arbitration body shall proceed on the basis of the information before it, to include such of the following as exist and are relevant:

    a. the notifications of the subsidy programme in question, and any yearly updates of such notifications;
    b. the findings of the Secretariat, the minutes of the Committee and the determination by the Committee, as recorded during the procedure under Article 8.4;
    c. the documents and arguments submitted to the Secretariat and the Committee in the procedure under Article 8.4;
    d. the record(s) of any previous arbitration(s) related to the same programme;
    e. any information provided to the arbitration body by the Parties and Third Parties under these procedures;
    f. any information or technical advice obtained by the arbitration body under the provisions of paragraphs 28, 29, and 30.
28. A Member should respond promptly and fully to any request by arbitration body for such information as the arbitration body considers necessary and appropriate.
29. The arbitration body shall have the right to seek information and technical advice from any individual or body, which it deems appropriate.
30. The Parties and Third Parties shall have full access to any requests for information or technical advice under this or the preceding two paragraphs, as well as to any information or technical advice obtained thereby.

X. RULES OF CONDUCT

31. As provided in paragraph IV:1 of the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes, the Rules of Conduct apply to arbitrators acting pursuant to Article 8.5, and to those members of the Secretariat called upon to assist in arbitration proceedings pursuant to Article 8.-5.

XI. CONCLUSIONS OF THE ARBITRATION BODY

32. The conclusions of the arbitration body shall consist of a determination, in light of the specific questions raised under paragraphs I and 4 by the Parties to the arbitration, of whether the subsidy programme notified under Article 8.3 does not meet the conditions and criteria of Article 8.2,

and/or whether or not the individual cases of subsidization violate the conditions set out in the subsidy programme notified under Article 8.3.

33. The arbitration body shall present to the Members its **conclusions and the reasons** on which those conclusions are based in the form of a single, collegial decision, **within 120 days** from the date of **circulation of the notice** under paragraph 6.

34. These conclusions shall be binding in accordance with Article 8.5.

XII. REVIEW OF THESE PROCEDURES

35. Without prejudice to Article 31 of the Agreement on Subsidies and Countervailing Measures, the **Committee** shall**, no later than five years after the adoption** of these procedures, **review** their operation, and may decide at that time on any modifications to them.

TRANSITION RULES AND SPECIAL AND DIFFERENTIAL TREATMENT

DEVELOPED COUNTRIES

Members not otherwise eligible for special and differential treatment are allowed **three years** from the date on which for them the SCM. Agreement enters into force (1 January, 1995) to phase out prohibited subsidies.

DEVELOPING COUNTRIES

The SCM Agreement recognizes three categories of developing country Members:

- **i.** least developed countries ("LDCs"),
- **ii.** Members with a GNP per capita of less than $1000 per year which are listed in Annex VII to the SCM Agreement, and
- **iii.** Other developing countries.

The lower a Members level of development, the more favourable the treatment it receives with respect to subsidies disciplines.

Thus, for example, LDCs and Members with a GNP per capita of less than $1000 per year listed in Annex VII are exempted from the prohibition on export subsidies.

With per capita income less than $500, India too is listed in this category.

However, even for Annex VII countries, the exemption clause ceases for products whose global trade share exceeds 3.25% for 2 consecutive calendar years.

Other developing country members have an eight-year period to phase out their export subsidies (they cannot increase the level of their export subsidies during this period).

With respect to import-substitution subsidies, LDCs have eight years and other developing country Members five years to phase out such subsidies.

There is also more favourable treatment with respect to actionable subsidies. For example, certain subsidies related to developing country Members privatization programmes are not actionable multilaterally, and the presumption of serious prejudice for the specified subsidies does not apply to developing country Members. With respect io countervailing measures, developing country Members' exporters are entitled to more favourable treatment with respect to the termination of investigations where the level of subsidization or volume of imports is small.

THE 'AMBER BOX'(Slow Down)

For agriculture, all subsidies and other domestic support measures considered to distort production and trade (with some exceptions) fall into the amber box. The total value of these measures must be reduced.

THE 'GREEN BOX'' (permitted)

In order to qualify for the "green box" a subsidy must not distort trade, or at most cause minimal distortion. They have to be government funded (not by charging consumers higher prices) and must not involve price support. They tend to be programmes that are not directed at particular products, and include direct income support for farmers that are not related to (are "decoupled" from) production. "Green box" subsidies are therefore allowed without limits, provided they comply with relevant criteria.

THE 'BLUE BOX'

The blue box is an exemption from the general rule that all subsidies linked to production must be reduced or kept within defined minimal ("de minimis ") levels. It covers payments directly linked to acreage or animal numbers, but under schemes, which also limit production, by imposing production quotas or requiring farmers to set aside part of their land. Countries using these subsidies say they distort trade less than alternative amber box subsidies. At the moment, the blue box is a permanent provision of the agreement. Some countries want it scrapped because the payments are only partly decoupled from production. Others say it is an important tool for supporting and reforming agriculture, and for achieving certain "non-trade" objectives.

ISSUES COMMON TO THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES AND THE ANTI DUMPING ACTIVITIES

INDUSTRY SUPPORT REQUIREMENTS: Currently, the ADA and ASCM require that an application for an investigation must:

- **a.** be supported by domestic producers whose collective output constitutes more than 50 percent of the total production of like products produced by that portion of the domestic industry expressing either support for or opposition to the application; and
- **b.** represent at least 25 percent of the total production of the like product produced by the domestic industry.

INSIGNIFICANT MARGIN OF DUMPING OR AMOUNT OF SUBSIDY: The ASCM and the ADA require that an investigation be terminated with respect to certain goods, if the amount of subsidy or the margin of dumping is de minimis (i.e., insignificant). De minimis is defined in the Agreements as a subsidy of less than 1% of the export price, or a margin of dumping of less than 2% of the export price. In countervail investigations, for imports from developing country Members; de minimis is defined to be less than 2%, expressed as a percentage of the export price.

NEGLIGIBLE VOLUME LEVEL: The ADA requires that investigations be terminated with respect to goods of a country when the dumped imports from that country represent less than 3% of the total imports of the like products in the importing country, unless countries, whose dumped imports that individually account for less than 3%, collectively account for more than 7% of the total imports of-like products in the importing country. The ASCM requires that an investigation be terminated if the volume of subsidized imports or the injury is "negligible", however, the ASCM does not define the term negligible, except in relation to imports from developing country Members, for which the volume of subsidized imports is negligible if they individually account for less than 4%, or collectively account for less than 9% of the total imports of like products in the importing country.

INJURY ISSUES: The provisions of Article 3 of the ADA and Article 15 of the ASCM, which concern the determination of injury and whether dumping or subsidizing caused such injury, have been the subject of numerous disputes. A range of issues are likely to be proposed for clarification or improvement including the factors to be considered in determining whether an industry has suffered material injury and whether there are factors that must always be considered.

PUBLIC INTEREST AND LESSER DUTY: Articles 9.1 of the ADA and 9.2 of the ASCM establish the general principle that imposition of anti-dumping or countervailing duties is optional, even if all the, requirements for imposition have been met, and establishes the desirability of the application of a "lesser duty", i.e., less than the full margin of dumping or amount of subsidy.

CHAPTER 16

SETTLEMENT OF DISPUTES

Dispute settlement is the central pillar of the multilateral trading system, and the WTO's unique contribution to the stability of the global economy. The system is based on clearly-defined rules, with timetables for completing a case. First rulings are made by a panel and endorsed (or rejected) by the WTO's full membership. Appeals based on points of law are possible. However, the point is not to pass judgment. The priority is to settle disputes, through consultations if possible.

PRINCIPLES: EQUITABLE, FAST, EFFECTIVE, MUTUALLY ACCEPTABLE

- Disputes in the WTO are essentially about **broken promises**.
- WTO members have agreed that if they believe fellow-members are violating trade rules, they will use the **multilateral system** of settling disputes instead of taking action unilaterally.
- That means **abiding** by the agreed procedures, and respecting judgments.
- A dispute arises when one country adopts a trade policy measure or takes some action that one or more fellow WTO members considers to be breaking the WTO agreements, or to be a failure to live up to obligations.
- A **third group** of countries can declare that they have an **interest** in the case and enjoy some rights.
- A procedure for settling disputes existed under the old GATT, but it had no fixed timetables, rulings were easier to block, and many cases dragged on for a long time inconclusively.
- The **Uruguay Round** agreement introduced a more structured process with more clearly defined stages in the procedure.
- It introduced greater discipline for the **length of time** a case should take to be settled, with flexible deadlines set in various stages of the procedure.
- The agreement emphasizes that prompt settlement is essential if the WTO is to function effectively.
- If a case runs its full course to a **first ruling**, it should not normally take more than about **one year, - 15 months** if the case is **appealed**.
- The agreed time limits are **flexible**, and if the case is considered urgent (e.g. if perishable goods are involved), it is accelerated as much as possible.
- Now, **rulings are automatically adopted** unless there is a consensus to reject a ruling - any country wanting to block a ruling has to persuade all other WTO members (including its adversary in the case) to share its view.

HOW ARE DISPUTES SETTLED?

- Settling disputes is the responsibility of the Dispute Settlement Body which consists of all WTO members.
- The Dispute Settlement Body has the sole authority to establish "panels" of experts to consider the case, and to accept or reject the panel's findings or the results of an appeal.
- It monitors the implementation of the rulings and recommendations, and has the power to authorize retaliation when a country does not comply with a ruling.

- **FIRST STAGE**: **CONSULTATION** (up to **60 days**). Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves. If that fails, they can also ask the WTO director-general to mediate or try to help in any other way.

- **<u>SECOND STAGE</u>**: **THE PANEL** (up to **45 days** for a panel to be **appointed**, plus **6 months** for the panel to **conclude**). If consultations fail, the complaining country can ask for a panel to be appointed. The country 'in the dock' can **block the creation of a panel once**, but when the **Dispute Settlement Body** meets for a second time, the **appointment can no longer be blocked** (unless there is a consensus against appointing the panel).

- Officially, the panel is helping the Dispute Settlement Body make rulings or recommendations.

- But because the panel's report can only be rejected by consensus in the Dispute Settlement Body, its **conclusions are difficult to overturn**. The panel's findings have to be based on the agreements cited. The panel's **final report** should normally be given to the parties to the dispute **within six months**. In **cases of urgency**, including those concerning perishable goods, the deadline is shortened to **three months**.

The agreement describes in some detail **<u>HOW THE PANELS, ARE TO WORK</u>.** The main stages are:

- Before the first hearing: each-side in the dispute presents its case in writing to the panel.
- **First hearing**: the case for the complaining country and defence: the complaining country (or countries), the responding country, and those that have announced they have an interest in the dispute, make their case at the panel's first hearing.
- **Rebuttals**: the countries involved submit written rebuttals and present oral arguments at the panel's second meeting.
- **Experts:** if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.
- **First draft**: the panel submits the descriptive (factual and argument) sections of its report to the two sides, giving them two weeks to comment. This report does not include findings and conclusions.
- **Interim report**: The panel then submits an interim report, including its findings and conclusions, to the two sides, giving them one week to ask for a review.
- **Review**: The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.
- **Final report**: A final report is submitted to the two sides and three weeks later, it is circulated to all WTO members. If the panel decides that the disputed trade measure does break a WTO agreement or an obligation, it recommends that the measure be made to conform with WTO rules. The panel may suggest how this could be done.
- **The report becomes a ruling**: The report becomes the Dispute Settlement Body's ruling or recommendation **within 60 days** unless a consensus rejects it. Both sides can appeal the report (and in some cases both sides do).

APPEALS

- **Either side** can appeal a panel's ruling. Sometimes both sides do so.
- Appeals have to be based on **points of law** such as legal interpretation - they cannot reexamine existing evidence or examine new issues.
- Each appeal is heard by **three members of a permanent seven-member Appellate Body** set up by the Dispute Settlement Body and broadly representing the range of WTO membership.
- **Members** of the Appellate Body have **four-year terms**. They have to be individuals with recognized standing in the field of law and international trade, not affiliated with any government.
- The appeal can **uphold, modify or reverse** the panel's legal findings and conclusions.

- Normally appeals should **not last more than 60 days**, with an absolute **maximum of 90 days**. The Dispute Settlement Body has to **accept or reject** the **appeals report** within **30 days** and rejection is only possible by consensus.

HOW LONG TO SETI'LE A DTSPUTE?

These approximate periods for each stage of a dispute settlement procedure are target figures - the agreement is flexible. In addition, the countries can settle their dispute themselves at any stage. Totals are also approximate.

60 days	Consultations, mediation, etc
45 days	Panel set up and panelists appointed
6 months	Final panel report to parties
3 weeks	Final panel report to WTO members
60 days	Dispute Settlement Body adopts report (if no appeal)
Total = 1 year	(without appeal)
60-90 days	Appeals report
30 days	Dispute Settlement Body adopts appeals report
Total = 1y 3m	(with appeal)

DISPUTE SETTLEMENT PROCEDURE

1. **First Stage**: **Consultation (up to 50 days)**
   - Before taking any other actions the countries in dispute have to talk to each other to see if they can settle their differences by themselves.
   - If that fails they can also ask WTO director-general to mediate or try help in any other way. Consultations are confidential.
   - The member to which a normal request for consultation is made is required unless otherwise mutually agreed, to **reply to the request within 10 days** after the date of its receipt and to enter into **consultations in good faith within 30 days** after the date of receipt.
   - If the requested member does not do so, the member that requested consultations may proceed directly to request the establishment of a panel.
   - In cases of **urgency,** including those, which concern perishable goods, members must enter into **consultations** within a **period of not more than 10 days** after the date of receipt of the request.
   - If the **consultations fail to settle** the dispute **within** a period of **20 days** after the date of receipt of the request, the complaining party may request the **establishment of a Panel.**

2. **Second Stage: The panel (up to 45 days to be appointed, plus 6 months for panel to be concluded)**:
   - If the **consultations have failed** to settle a dispute **within 60 days** after the date of receipt of request for consultations, the complaining party may request the **establishment of panel**.
   - An earlier request for a panel is permitted if the consulting parties jointly consider that consultations have failed to settle the dispute.
   - Request made must be in writing and must state whether consultations held and provide a brief summary of legal basis of complaint.

PANELS

COMPOSITION OF PANELS:

- The composition of the panel takes place once the panel has been established by the DSB.
- Potential candidates must meet certain requirements in terms of qualifications.
- Panels are composed of **three panelists** unless the parties to the dispute agree**, within 10 days** from the establishment of the panel, to a panel composed of **five panelists**.
- The **Secretariat proposes nominations** for the panel to the parties to the dispute.
- Citizens of a party or a third party to a dispute may not serve as panelists, without the agreement of the parties.
- When a **dispute is between a developing country Member and a developed country Member** the panel shall, if the developing country Member so requests, include at least one panelist from a developing country Member.
- Panels are to be **composed of** well qualified governmental and/or non-governmental **individuals**, including persons who, pursuant to DSU:
    - **a.** have served on or presented a case to a panel; or
    - **b.** have served as a representative of a Member or of a contracting party to GATT 1947 or as a representative to the Council or Committee to any covered agreement or its predecessor (Kennedy or Tokyo Round) agreement; or
    - **c.** have served in the Secretariat; or
    - **d.** have taught or published on international trade law or policy; or
    - **e.** have served as a senior trade policy official of a WTO Member.

APPOINTMENT OF PANELTSTS

- Panelists are **proposed by the Secretariat** to the parties to the dispute, who may oppose nominations only for compelling reasons.
- Panelists are normally appointed by agreement of the parties
- Where there is **no agreement within 20 days** after the date of establishment of the panel, the composition of the panel will, at the request of either party, be **determined by the Director-General** of the WTO, in **consultation with the Chairman** of the DSB and the Chairman of the relevant Council or Committee.
- Once appointed, panelists serve in their individual capacities, not as government representatives or as representatives of any organization.
- They are also subject to the Rules of Conduct for the Understanding on Rules and Procedures Governing the Settlement of Disputes.
- Panels have the right to seek information and technical advice from any individuals or bodies, which they deem appropriate.

THE MAIN STAGES AS TO WORKING OF PANELS ARE:

- **Before the first hearing**: each side in the dispute presents its case in writing to the panel. Parties exchange written submissions and the panel convenes at least two hearings where parties are entitled to present their views orally and the panel may ask clarifications and questions. Third parties with a substantial interest in the matter before the panel, and who have notified their interest to the DSB, are to be granted an opportunity to be heard by the panel and make written submissions.

- **Experts**: if one side raises scientific or other technical matters, the panel may consult experts or appoint an expert review group to prepare an advisory report.

- **First draft**: the panel submits the descriptive (factual and argument) sections of its report to the two sides, giving them two weeks to comment. This report does not include findings and conclusions.

- **Interim report**: The panel then submits an interim report, including its finding and conclusions, to the two sides, giving them one week to ask for a review. Two to four weeks after the receipt of comments on the descriptive part, the panel issues its interim report containing the revised descriptive part and the findings of the report. Parties are again invited to make comments and may request an interim review meeting of the panel to further argue specific points raised with respect to the interim report. This is the interim review stage. The final report must contain a reference to all the arguments raised by the parties during the interim review stage.

- **Review**: The period of review must not exceed two weeks. During that time, the panel may hold additional meetings with the two sides.

- **Final report**: A final report is submitted to the two sides and three weeks later, it is circulated to al WTO members. If the panel decides that the disputed trade measure does break a WTO agreement or an obligation, it recommends that the measure be made to conform to WTO rules. The panel may suggest how this could be done.

- **The report becomes a ruling**: The report becomes the Dispute Settlement Body's ruling or recommendation within 60 days unless a consensus rejects it. Both sides can appeal the report.

APPEALS

- Either side can appeal on points of law and not for examination and reexamination of existing or new evidence.
- **Three members** of a permanent seven-member Appellate Body set up by the Dispute Settlement Body and broadly representing the range of WTO memberships hear each appeal.
- Members of the Appellate Body have **four-year terms**.
- They have to be **individuals** with recognized standing in the field of law and international trade, not affiliated with any government.
- The appeal can **uphold, modify or reverse** the panel's legal findings and conclusions.
- Normally appeals should **not last more than 60 days**, with an absolute **maximum of 90 days**.
- The Dispute Settlement Body has to accept or reject the appeals report within 30 days and rejection is only possible by consensus.

ADOPTION OF APPELLATE BODY REPORTS

- An Appellate Body report must be adopted by the DSB and
- unconditionally accepted by the parties to the dispute
- unless the DSB decides by consensus not to adopt the Appellate Body report
- within 30 days following its circulation to members.
- This adoption procedure is without prejudice to the right of Members to express their views on an Appellate Body report.

SURVEILIANCE AND IMPLEMENTATTON OF REPORTS

In the WTO, there is no independent body responsible for enforcing the recommendations of panels and the Appellate Body. The DSB states that prompt compliance with the recommendations or rules of the

DSB is essential in order to ensure the effective resolution of disputes. The DSB, composed by all WTO members, supervises the implementation of panel and Appellate Body reports.

The surveillance and implementation procedures require that at the DSB the **meeting held within 30 days** after the adoption of the report(s), the **losing party** must state its **intentions** in respect of implementation of the recommendations adopted. If it is impracticable to comply immediately the party will be granted a reasonable period of time.

This reasonable period of time:

i. may be the period of time proposed by the Member concerned with the approval of the DSB or
ii. may be agreed upon by the parties within 45 days after the adoption of the report or
iii. may be determined by arbitration within 90 days after the adoption of the report.

- When the reasonable period of time is arbitrated, a guideline for the arbitrator is that the reasonable period of time to implement panel or Appellate Body recommendations should not exceed 15 months from the date of adoption of a panel or Appellate Body report. However that time may be shorter or longer, depending upon the particular circumstances.
- The period from the date of establishment of a panel by the DSB until the date of determination of the reasonable period of time is also not to exceed 15 months unless the parties to the dispute agree otherwise.
- Where either the panel or the Appellate Body has acted to extend the period of time for their consideration of a case, the additional time taken shall be added to the 15-month period; however, unless the parties to the dispute agree that there are exceptional circumstances the total time is not to exceed 18 months.
- If there is disagreement as to the consistency with the WTO Agreement of measures taken to comply with DSB recommendations, a party may have recourse to dispute settlement procedures referring the matter to the initial panel wherever possible for expedited adjudication.
- The DSB is required to keep under surveillance the implementation of adopted recommendations or rulings. Any member may raise the issue of implementation of the recommendations or rulings at the DSB at any time following their adoption.
- Unless the DSB decides otherwise the issue of implementation of the recommendations or rulings shall be placed on the agenda of the DSB meeting after six months following the date of establishment of the reasonable period of time and shall remain on the DSB's agenda until the issue is resolved.
- At least 10 days before each such DSB meeting, the member concerned is required to provide the DSB with a status report in writing of its progress in the implementation of the recommendations or rulings.
- The DSB must continue to keep under surveillance the implementation of adopted recommendations or rulings, including those cases where compensation has been provided or concessions or other obligations have been suspended but the recommendations to bring a measure into conformity with the covered agreements have not been implemented.

NON COMPLIANCE

- In cases of non-compliance parties may agree to compensation.

- In the absence of such agreement the winning Member may retaliate but only after obtaining the prior authorization of the DSE.
- If the WTO Member concerned fails within the reasonable period of time to bring the measure found to be inconsistent with the covered agreement into compliance in accordance with the recommendations, that member must, if so requested, enter into negotiations with a view to agreeing on mutually acceptable compensation.

CONDITIONS FOR SUSPENSION OF CONCESSIONS OR OTHER OBLIGATIONS

- Authorization for suspension of concessions and other obligations (retaliation) may be sought from the DSB by the Member concerned if no satisfactory compensation has been agreed within 20 days after the date of expiry of the reasonable period of time.
- The DSB is required to grant such authorization within 30 days of the expiry of the reasonable period of time unless it decides by consensus to reject the request.
- The DSU imposes certain limitations with regard to the areas to which the retaliatory action should relate.
- For this purpose the multilateral trade agreements are grouped as three separate agreements viz. GAIT 1994 (together with other multilateral trade agreements on trade in goods), the GATS and the TRIPS Agreement.
- Within these agreements, sectors are defined: with respect to goods, all goods are deemed as belonging to the same sector, while different sectors are identified within services and intellectual property respectively.
- As a general principle, the complaining party should first seek to suspend concessions or other obligations with respect to the same sector as that in which nullification or impairment has been found.
- If it is not practicable or effective to do so in the same sector, the suspension of concessions or other obligations may be made under the same agreement.
- If even that is not practicable and the circumstances are serious enough, the complaining party may seek to suspend concessions or obligations under another agreement.
- The DSU provides that compensation or retaliation are only temporary measures available in the event that the recommendations and rulings are not implemented within a reasonable period of time.
- The level of suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of nullification or impairment.
- In case of disagreement regarding either the equivalence of the level of nullification to the level of retaliation or the principles of cross retaliation, arbitration may be requested.
- The original panel shall carry out such arbitration, if members are available, or by an arbitrator appointed by the Director-General and shall be completed within 60 days after the date of expiry of the reasonable period of time.
- Concessions or other obligations shall not be suspended during the course of the arbitration.
- The arbitrator shall not examine the nature of the concessions or other obligations to be suspended but shall determine whether the level of such suspension is equivalent to the level of nullification or impairment.
- The arbitrator may also determine if the proposed suspension of concessions or other obligations is allowed under the covered agreement.
- However, if the matter referred to arbitration includes a claim that the principles and procedures for cross retaliation have not been followed, the arbitrator is required, upon request, to grant authorization to suspend concessions or other obligations where the request is consistent with the decision of the arbitrator, unless the DSF decides by consensus to reject the request.

ROLE OF THE DIRECTOR-GENERAL

- The Director-General of the WTO may, acting in an ex officio capacity, offer good offices conciliation or mediation with a view to assisting Members to settle a dispute.
- Such an offer may normally be made during the consultation period, but good offices, conciliation or mediation may, with the agreement of the parties to the dispute, continue while the panel process proceeds.
- In a dispute settlement procedure involving a least developed country Member, when a satisfactory solution has not been found during consultations, the Director-General will, upon request by a least developed country Member, offer his or her good offices, conciliation or mediation in order to help the parties to the dispute, before a request for panel is made.
- In providing such help, the Director-General may consult any source which he or she considers appropriate.
- The Director-General may also be requested, in certain circumstances to appoint panel members.
- This is the case where, within 20 days after the date of the establishment of a panel, there has been no agreement among the parties on the composition of the panel (Article 8.7 DSU).
- The Director-General can act only at the request of either party in the dispute.
- The Director-General must determine the composition of the panel in consultation with the Chairman of the DSB and the Chairmen of the relevant Councils or Committees, after consulting the parties to the dispute.
- He or she must appoint the panelists whom he or she considers most appropriate in accordance with the DSU and any other special or additional rules or procedures of the covered agreement(s) concerned in the dispute.
- The Director-General may appoint an arbitrator in cases where it is necessary to determine the reasonable period of time for implementation