

Agreement on Trade in Services (GATTS) has raised conceptual uncertainties exacerbated by the inherent differences between trade in goods and trade in services. Against this background, he called for formulating substantive rules so as to render the dispute settlement system more predictable, transparent and reliable.

The *Delegate of Pakistan* complimented the Secretariat for the excellent report on the New Delhi seminar, which highlighted the issues of concern for Member States. Urging the Secretariat to monitor further development on the subject, he extended support to the suggestion of the Deputy Secretary General on publishing panel reports of the WTO Dispute Settlement Body.

The *President* in his closing remarks declared that the Secretariat: (i) monitor and report on the outcome of the Third WTO Ministerial Conference, to the next session; and (ii) explore the possibility of convening a Seminar/Workshop on the topic of intellectual property rights.

B. "Progress Report covering the Legislative Activities of the United Nations and other international organizations concerned with International Trade Law".

The *Assistant Secretary General* Dr. Ahmad J. Al-Gaatri invited attention to the brief of documents prepared by the Secretariat that provided a broad overview of the activities within the institutional framework of UNCITRAL, UNCTAD, UNIDO and UNDROIT. Stating that the work of the UNCTAD and UNCITRAL span a wide spectrum of trade issues, the *Assistant Secretary General* opined that it would be beneficial for the Committee to identify a host of issues that could be studied within a time-bound framework. Accordingly, he invited attention to the growing importance of global electronic commerce in contemporary trade transaction and its relevance for developing countries. While referring to the ongoing work in some countries to suitably accommodate electronic commerce within their domestic legal framework, he recommended that the Committee could consider the convening of a

seminar/workshop, with the co-operation the UNCTAD and other interested organization with the twin objectives of promoting the understanding of the role of global electronic commerce and assist AALCC Member States in drafting domestic legislation on the subject.

The *Delegate of the Arab Republic of Egypt* acknowledging the significance of global electronic commerce for the Asian African States, stressed the need for countries in the region to equip themselves to meet the rapid changes resulting from the use of technological innovations to trade transactions. He extended his full support for holding of training courses and seminar/workshops with the co-operation of competent bodies in the field.

The *Delegate of the Islamic Republic of Iran* stressing the need to harmonize and update national legislation on trade aspects, said that such measures would help induce foreign investments into the host country. He informed that the 1998 UNCITRAL session was primarily devoted to drafting a Legislative guide on Privately Finance Infrastructure Projects. The objective of such projects, he said, was to strike a balance between the interest of the host government and those of private investors. The draft chapters for legislative guide is scheduled to be finalized at the 1999 session of the Commission. He also drew attention to the commemoration of the 40th Anniversary of the 1958 New York Convention on Recognition and Enforcement of Foreign Arbitral Awards and accomplishment within the Working Groups on: (i) Assignment in Receivable Financing and (ii) Uniform Rules on Electronic Signatures and Certification Authorities.

The *Delegate of Sri Lanka* in his presentation recognized the relevance of formulating more legal principles to govern transactions through electronic means, as an alternative to paper-based transactions. Complimenting the AALCC for its proposal to convene a seminar/workshop to discuss the legal aspect of global electronic commerce, he suggested that if feasible, the proposed seminar could be held in two parts - one for Asian and the other for the African region.

The *President* in his summation, stated that the Secretariat would continue to monitor the legislative activities in the field of trade. He also directed the Secretariat to explore the possibilities, subject to availability of funds, of convening a seminar/workshop on global electronic commerce.

(ii) **Decision on the "Progress Report Covering the Legislative Activities of the United Nations and other International Organizations concerned with International Trade Law"**

(Adopted on 23.04.1999)

The Asian-African Legal Consultative Committee at its Thirty-eighth Session

Having taken note of the Report concerning the Legislative Activities of the United Nations and other International Organizations concerned with International Trade Law contained in Doc.No. AALCC/XXXVIII/Accra/ 99/S.10;

Having heard the comprehensive statement of the Assistant Secretary General;

Acknowledging the growing importance of global electronic commerce in contemporary international trade and the expertise developed within UNCITRAL and UNCTAD on this subject;

1. *Expresses* its appreciation for the brief of documents prepared by the Secretariat on the recent developments in the field of international trade law;
2. *Expresses* its appreciation for the continued co-operation with the various international organizations competent in the field of international trade law and hopes that this co-operation will be intensified in future;
3. *Expresses appreciation* on the substantial progress achieved in the Working Group on Assignments in Receivable Financing and hopes that the UNCITRAL would be in a position to adopt the same by the year 2000;

4. Urges Member States to consider adopting, ratifying or acceding to the instruments prepared by the United Nations Commission on International Trade Law (UNCITRAL);
5. Requests the Secretary-General to explore the possibilities of convening a seminar or workshop in 1999, with the co-operation of UNCITRAL and UNCTAD, and such other relevant organizations, with a view to promoting the understanding of specific legal issues in global electronic commerce among AALCC Member States;
6. Directs the Secretariat to continue to monitor the developments in the area of international trade law and present a report thereon at its Thirty-ninth session.
7. Decides to place the item on the agenda of its Thirty-ninth Session.

Decision on the "World Trade Organization"

(Adopted on 23.04.1999)

The Asian-African Legal Consultative Committee at its Thirty-eighth Session

Having taken note of the Secretariat Report on the "Seminar relating to Certain Aspects of the Functioning of the WTO Dispute Settlement Mechanisms and other Allied Matters" contained in Doc. No. AALCC/XXXVIII/Accra/99/S 11;

Having heard the comprehensive statement of the Deputy Secretary-General;

Having taken note with interest the Joint Initiative launched by the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO), to assist developing country members of WTO meet their TRIPS commitments:

1. Expresses its appreciation to the Government of India for co-sponsoring the seminar relating to Certain Aspects of the Functioning of the WTO Dispute Settlement Mechanisms and other Allied Matters;
2. Welcomes the participation of the WTO in the New Delhi seminar and expresses hope that the co-operation between AALCC and WTO would be intensified in the future;
3. Directs the Secretariat to continue to monitor the developments related to the working of the WTO dispute settlement mechanisms, with particular attention to the special requirements of developing countries and report to the Thirty-ninth session on the outcome of the review process concerning the WTO Dispute Settlement Understanding;
4. Directs the Secretariat to monitor the developments relating to the Third WTO Ministerial Conference, scheduled to be held in November - December 1999 and report on the outcome at the Thirty-eighth Session of the Committee;
5. Requests the Secretary -General, within the limits of financial resources and logistics available, to explore the prospects of convening a seminar on intellectual property rights, with the co-operation of the WTO and WIPO, and other relevant organizations; and
6. Decides to place the item on the agenda of its thirty-ninth session.

(ii) **Secretariat Studies:**

A. Seminar Relating to Certain Aspects of the Functioning of the WTO Dispute Settlement Mechanism and other Allied Matters 17-18 November 1998, New Delhi: An Overview

The two-day seminar convened by the AALCC in collaboration with the Ministries of Commerce and External Affairs of the Government of India, at New Delhi in November 1998 was attended by senior government officials, academics and international lawyers from 28 Member States of the AALCC;¹ 19 Observer States;² and representatives of three international organizations viz.: The World Trade Organization (WTO), the European Commission, and the United Nations Conference on Trade and Development (UNCTAD). The AALCC Regional Centre for Arbitration, Kuala Lumpur was also represented.

The discussion during the six substantive Sessions of the Seminar revolved largely around the presentations made by a group of experts. These had included Mr. K.M. Chandrashekar, Joint Secretary, Ministry of Commerce, Government of India; Dr. P.S. Rao, Joint Secretary, Ministry of External Affairs, Government of India; Dr. M. Gandhi, Legal Officer, Ministry of External Affairs, Government of India; Professor Bhattacharya, Dean, Indian Institute of Foreign Trade; Dr. B.S. Chimni, Associate Professor, Jawaharlal Nehru University, New Delhi; Dr. V.G. Hegde, Legal Officer, Ministry of External Affairs of the Government of India; Professor (Ms.) S.K. Verma, Director, Indian Law Institute; Mr. D. William

¹ Arab Republic of Egypt, Bangladesh, China, Cyprus, Ghana, India, Indonesia, Islamic Republic of Iran, Japan, Jordan, Kenya, Kuwait, Malaysia, Mongolia, Myanmar, Oman, Palestine, Philippines, Qatar, Saudi Arabia, Senegal, Singapore, Sudan, Syria, Thailand, Turkey, Uganda and the United Arab Emirates.

² Angola, Australia, Brazil, Cambodia, Canada, Chile, Germany, Malta, Morocco, New Zealand, Panama, Russia, South Africa, Sweden, Switzerland, Ukraine, United Kingdom, United States of America and Venezuela.

Davey, Director, Legal Affairs, WTO; Dr. (Ms) Veena Jha, Consultant, UNCTAD; Mr. Hervey Jouan Jean, Director, European Commission; Dr. Phillip Cullet, Research Fellow, Swiss Agency for Development and Cooperation; Mr. Krishnan Venugopal and Mr. Akash Chitranshi, Advocates at the Supreme Court of India.

The Seminar took note of the two discussion papers on the Review of the Dispute Settlement Understanding submitted by the Government of India and the European Communities. The Commonwealth Secretariat had also submitted a paper on "The World Trade Organization: Dispute Settlement Mechanism". The debate in the course of the Seminar was informal in nature, wherein all the participants spoke in their individual capacities, and no formal conclusions or resolutions were adopted.

A. Inaugural Session

The *President* of the Committee, *Dr. P.S. Rao*, in his opening statement, recalled the significant role played by the AALCC in the fields of the Law of the Sea and Law of Treaties and expressed the hope that the AALCC could serve as a forum for Member States to forge common positions on matters relating to international trade law. He said that the objective of the Seminar was to promote a free and frank exchange of views on the subject.

The *Secretary General*, *Mr. Tang Chengyuan*, while recalling the pioneering work done by the Committee in the field of formulating Model Investment Agreements and establishing Regional Arbitration Centres in the Asian-African region for settlement of disputes relating to commercial transactions, underscored the involvement of the AALCC on matters relating to international trade law. Consistent with the mandate of the 37th session of AALCC, he said that this seminar would besides considering matters relating to trade and environment; and the legality of unilateral trade sanctions would primarily aim at addressing issues relating to the functioning of the WTO's dispute settlement process. It was his

view that the discussions at the seminar acquire significance, both in its timing and content, as it coincides with the review process of the dispute settlement system, currently underway within the framework of the World Trade Organization.

The Seminar was inaugurated by *Dr. Mrs. Najma Heptullah*, the Deputy Chairperson of the Rajya Sabha. In her inaugural address, *Dr. Heptullah* while referring to the valuable contribution made by the AALCC since its inception, said India was proud to host the headquarters of the Committee at New Delhi. She characterized the AALCC as a shining example of South-South co-operation. Articulating the expectations of the developing countries, she said that the WTO regime should take into account the historical deficit they have suffered due to prolonged colonization and stunted economy. In this context, the importance of incorporating the prevailing socio-economic realities in the developing countries while formulating the provision for settlement of disputes was emphasized.

Terming the initial indications of the functioning of the WTO's dispute settlement process as 'encouraging', she drew attention to the increasing use of the dispute settlement process by developing countries. Elaborating on the experience of the developing countries, she said that the process of dispute settlement was prohibitively expensive. To allay any apprehensions that the process may be used by the rich countries to coerce the smaller countries she suggested that a levy may be imposed on the country using this mechanism. In case the final settlement goes against the concerned developed country, the legal cost should be charged on that country. Besides this, she called for reflecting the spirit of differential treatment for developing countries in the dispute settlement process and special endeavours to organize training schedules for imparting requisite expertise in developing countries.

Ambassador Dr. W.Z. Kamil, Deputy Secretary General (AALCC) provided a broad overview of the issues that were proposed to be addressed by the Seminar. He characterized the conclusion of the Uruguay Round of Multilateral Trade

Negotiations and the establishment of the world Trade Organization as a defining moment in the field of consensual policy making. The fact that both developed and developing countries could shed the hostile prejudices of a North-South divide and jointly work towards the creation of a rule-based multilateral trading system was, in his view, reflective of the shifting priorities and changing dynamics of the post-cold war scenario. The primary focus of this Seminar, he said, was to study the functioning of the WTO's dispute settlement mechanism. Outlining the merits of the WTO dispute settlement procedures over GATT practice, he said that the first session of this seminar on the overview of the WTO system could provide the setting for AALCC Member States to present their country positions and acquaint oneself with the common problems that arise in the functioning of the WTO's dispute settlement mechanism.

The second and third sessions focusing on the "Relevance of National Legislations in the Implementation of Obligations arising under WTO Agreements" involves important questions about the relationship of international rules and institutions to national governments, and about the appropriate roles of each in such matters as regulating economic behaviour that transcends national borders. In his view the seminar could consider addressing the issue of formulating mediating principles on the standard of review, with a view to ensuring the credible functioning of the WTO adjudicatory system and also preserve the autonomy of domestic institutions for good governance.

The fourth session pertaining to the legality of unilateral sanctions affecting international trade acquires significance as 'unilateral sanctions' have a potential bearing on the efficient functioning of the multilateral trading system. Recalling the suggestions made at the AALCC Seminar on "Extra-Territorial Application of National Legislation: Sanctions imposed against Third Parties", held at Tehran in January 1998, which called for a study on the impact of unilateral sanctions on trade relations between States and the procedures offered by the WTO group of agreements in this regard, he felt that this

seminar could address the scope of GATT exceptions which are usually invoked by States to defend such unilateral acts.

Stating that the fifth session intended to consider measures to effectively implement the special and differential treatment for developing countries he pointed out that of a total of 27 articles, the WTO Dispute Settlement Understanding contains 7 articles according special treatment to developing and least developed countries. The concern of developing countries has basically centered on the high costs involved in the participation of panel proceedings and the increasing need for legal and technical assistance for developing countries to effectively prepare and present their case. In his view, the Seminar could study the utility and application of the special and differential procedures for developing countries and identify means for improving their efficiency.

Finally, the sixth session of the seminar concerned an important and newly emerging conception of the interlinkages between trade and environment. In view of the concerns expressed by developing countries that the use of trade measures to promote environmental objectives could lead to re-introducing protectionist measures and damaging the autonomy of existing multilateral environmental agreements, he stated that the Seminar could address the broader question of the role of trade policies in enforcing environmental objectives. Towards this end, he suggested that the ongoing work in the WTO Committee on Trade and Environment may also be taken into account.

Mr. William Davey, Director of Legal Affairs, WTO in his statement outlined the working of the WTO's dispute settlement body over the past three-and-a-half years. About 150 requests for consultations had been received by the DSB and nearly one-fourth of such cases have been resolved at the consultation stage itself. The DSB had so far established 40 panels to adjudicate on the disputes, of which 6 cases have been already settled. As regards implementation of panel

decisions, he said all 3 instances which required implementation were complied with by the concerned parties.

Yet another remarkable feature of the WTO's dispute settlement process, in his view, was the increased and active participation of developing countries. Of the first 8 panels constituted, 6 were the result of complaints brought by developing countries (3 against US and 2 against EU). Besides US and the EU, he identified Brazil, Canada, Japan and India as active users of the dispute settlement mechanism. Referring to the ongoing review process of the WTO's dispute settlement procedures, he said the developing countries have articulated their concerns as regards the high costs of litigation and the need for legal and technical assistance in presenting their case before the DSB.

Mr. M. Moosavi, Ambassador of the Islamic Republic of Iran to India proposed a vote of thanks. Recalling the suggestion made at the AALCC Seminar on Extra-territorial Application of National Legislation held at Tehran in January 1998, he said that this Seminar provided the opportunity to study the impact of unilateral sanctions on trade relations between States and the procedures offered by the WTO agreements in this regard.

B. Session I - WTO Dispute Settlement Mechanism: Issues for Consideration

The session was chaired by *Mr. N.N. Khanna*, Special Secretary, Ministry of Commerce, Govt. of India. Mr. Khanna, in his opening statement, made a reference to the increasing number of disputes placed before the DSB and said that the practice of the past four years was indicative of:- (i) the perceived necessity of States to have recourse to the WTO's dispute settlement process and (ii) the nature and subject matter of the dispute, are often, sensitive and contentious. Acknowledging the importance of a focused discussion of the legal aspects pertaining to the DSB, he said that the seminar could consider whether the DSB could discharge the functions of an advisory body to the WTO. Alluding to the practice of

advisory opinions rendered by the International Court of Justice (ICJ) he said that such an advisory role for the DSB could give more flexibility to WTO Members in fulfilling their obligations under various WTO Agreements.

Presentations were made by Mr. K.M.Chandrashekar, Joint Secretary, Ministry of Commerce, Govt. of India and Dr. B.S. Chimni, School of International Studies, Jawaharlal Nehru University, New Delhi.

Mr. K.M. Chandrashekar, in his presentation identified certain aspects of the WTO's dispute settlement process which could be considered at the on-going DSU review process. though he extensively cited the different positions adopted by some other countries, the thrust of the presentation was in spelling out the position of India on these issues. Following are, briefly the salient points of the presentation:-

(i) Consultation Process:- While all countries recognize that consultation is an integral part of the WTO's dispute settlement process, the EU was of the view that the correspondence and country positions of the disputing parties during the consultations should be formally made a part of the record. As regards participation of third parties, many countries feel that efforts should be made to allow a greater role for third parties, both at the informal and formal levels of consultation.

(ii) Establishment of Panel Proceedings:-

(a) India had been consistently arguing that all legal claims including the specific provisions which are alleged to have been violated should be clearly set out by the complainant party even at the time of requesting the establishment of a panel. Japan goes a step ahead and calls for the complainant party to provide a detailed set of arguments as regards specific violations of WTO Agreements.

(b) As regards selection of panelists, the need for transparency was emphasized. Both EC and Pakistan stressed