obtain unilateral remedies, he reiterated EU's commitment to adhere to the WTO's procedures for dispute settlement.

Prof. (Ms.) S.K. Verma, in her presentation drew attention to various instance of such unilateral actions:-

(i) Under Sec. 301 of US Omnibus Act, the US has been in the practice of naming certain countries on its priority watch list. It may be recalled that the Trade Representative of US had in 1994 observed that measures not covered by the WTO Agreements will continue to be attracted by Section 301. This procedure involves a time-bound series of measures - within a six month period after naming the concerned country is required to enter into negotiations; within a one year period the negotiations shall end; and a three year period is stipulated for the country named to either withdraw or alter its impugned practices. Failing this, the US could impose sanctions on the recalcitrant State. While the *per se* naming of a country in the US watch list, does not amount to any violation of law, the imposition of sanctions that follows is questionable. Similarly Section 337 of the US Tariff Act usually employed to stop imports at the borders without affording exporters a reasonable opportunity of being heard would be violative of Art. III of GATT '(national treatment requirement).

(ii) As regards the Helms-Burton Act of US, she charged the legislation as a tool of economic coercion whose potential as a threat to the existence of a country in the economic sense was very real.

(iii) Recourse to implementing environmental objectives and labour standards serve as measures of disguised protectionism.

(iv) In 1994 the Dole Bill presented before the US Congress proposed a Commission of Federal Judges to review the panel reports as adopted by the WTO's Dispute Settlement Body. Where the Commission finds a panel recommendation to be inappropriate with the US laws, it could send a report to the US Congress. Any member of the Congress can thereafter

introduce a resolution seeking authorization for the President to re-negotiate with the DSB. Where three such findings by the Commission are recorded in a five year period, the Congress could introduce a resolution that the US withdraw from the WTO.

The WTO Agreements, postulate a negation-cum-adjudicative framework for resolution of trade disputes. The existence of such a self-contained regime, in her view, precluded States from resorting to unilateral acts as a means of seeking resolution of their disputes. At a more general level, she said that the special and differential treatment envisaged for developing countries were, inadequate and vague. The developed countries after having induced the developing countries to submit to substantive commitments, were seemingly more reluctant in reciprocating this gesture.

Dr. P.S.Rao, in his presentation examined the status of unilateral sanctions under international law. Sanctions by States are usually employed in response to a wrongful action by another State, resulting in injury to the sanction-enforcing State. though sanctions may take many forms, they generally have a coercive character and in extreme situations could involve use of force. In the decentralized state of the international legal order, exemplified by the period proceeding the establishment of the United Nations, States resorted either to unilateral measures or used coercion in a co-ordinated manner as against the wrong-doer State. These were largely measures of 'self-help' whose legitimacy, he said, was highly questionable for the following reasons: (i) The injury allegedly giving raise to an unilateral act is not based on an impartial determination of the wrongful act and its attribution to the wrong -doer State; (ii) Auto-interpretation of perceived injury and reliance of power coupled with lack of accountability as to exercise of sanctions make unilateral actions highly suspect. With the establishment of the United Nations, the role of unilateral acts/sanctions involving use of force is prohibited, barring the valid exception for purposes of self-defence. In this context he drew attention to Articles 2(4) and 33 of the UN Charter. Though there were differing views on whether the

prohibition as embodied in the UN Charter extended to coercion not involving the use of force, Dr. Rao said, sanctions even if justified should confirm to dictates of international law and other higher consideration of public policy of world order.

He questioned the validity of unilateral acts in the light of the legality of actions taken beyond the scope of a self-contained regime. Self-contained regimes, he stated, were characterized by the fact that the substantive obligations they set forth are accompanied by special rules concerning the consequences of their violation. International practice reveals the existence of such rules, more particularly in constitutive instruments of international organizations. Citing the views of ICJ as regards the role of self-contained regimes in the field of human rights (Nicaragua case) and diplomatic law (Hostages case), he observed that the question whether the WTO regime was a self-contained regime and if so, any action that impinges upon trade relations should be subjected to the regime or alternatively, whether Parties could profess to undertake an independent use of extra-legal measures outside the scope of such a regime, is an issue for examination.

As regards the justifiability of the 'national security exception clause' (Art. XXI), Dr. Rao sought to distinguish the following two aspects:

(i) the legality of certain actions/measures deemed 'necessary' by a State;

(ii) the nexus of such measures to an 'essential security interest'.

In his view, the first issue (i) was a difficult proposition as all States were endowed with requisite freedom to determine what measures matched the threshold of 'necessity' under Article XXI, thus restricting the scope for a judicial determination. As regards the second issue (ii) the requirement of a nexus for such measures to relate to an 'essential security interest' was mandatory, and hence could be reviewed by a WTO panel.

Mr. William Davey responding to a query from the representative of Jordan as to the mandate of a WTO panel and whether a panel could recommend 'compensation' for the failure of a party to adhere to its WTO commitments, made the following observation. The mandate of the panel is determined by the 'terms of reference' to panels, as agreed by the disputing parties. The panel usually makes recommendations to the effect that the defaulting State undertake certain measures or alter its laws so as to be in conformity with WTO obligations. The WTO Agreements do not contain any provision for 'compensation' at the panel stage. The failure to implement the recommendations of the panel, brings into play the remedy of - compensation or retaliation. Mr. Davey viewed 'retaliation' as not the desired outcome in WTO disputes. In fact, retaliation was invoked only once in the long history of GATT and as of now, there had been no occasion for the compensation-retaliation remedies in WTO, as all DSB reports have been implemented by the defaulting States. Commenting on the criticism against use of Sec. 301 by the United States, he said mere naming of a country did not violate any WTO provision. He informed that such a procedure exists even in EU, Canada and Japan-all indicting the United States.

Reacting to the political settlement between US and EU on the Helms-Burton Act, *Prof. (Ms.) S.K. Verma* said that the economically strong position of EU was a crucial factor in reaching an understanding. In a similar situation, she said the economically weak developing countries would not be able to do so. With reference to 'retaliation' as an option in case of non-implementation by a defaulting State, she said this was not a viable alternative for developing countries. Retaliation by developing countries would be prejudicial to their own economic interests, restricting the scope for their exports.

A view was expressed by one of the participants, that the opposition to unilateral acts has already been raised in many regional and international forums, viz., UN, EU, G-77, OIC and AALCC. It was argued that this political consensus requires to be translated into legal prescriptions, and AALCC could seek to mobilize opinion towards this end. As part of this exercise, it was suggested that the UN General Assembly could

request an advisory opinion on the issue of unilateral measures/sanctions.

F. Session V- Relevance of National Legislations in the Implementation of Obligations Arising under WTO Agreements.

The session was chaired by Dr. Hossein Ghazizadeh, Head of the Department of International Trade Law, Islamic Republic of Iran.

A presentation on the implementation efforts within India as concerns its commitments under the Agreement on TRIPS was provided by *Mr. Akash Chitranshi*, Advocate, Supreme Court of India. He informed that India had signed the following four Conventions relating to intellectual property rights - the Berne Convention, the Washington Convention on Integrated Circuits, Universal Copy Rights Convention and the Paris Convention. National Legislations are already in force as regards patents, copy rights, industrial designs and trade marks. Though the standards of protection as guaranteed by the national law is on par with international standards, he identified three areas wherein the Indian position has come under criticism in recent years:-

(i) Lack of product patentability of pharmaceuticals and food production

(ii) Shorter duration of patents; and

(iii) Dissatisfaction over the functioning of the Patent Registry.

Mr. Chitranshi analyzed the pronouncements by Indian judiciary to demonstrate the role of judge-made laws in affording protection to IPRs and thus bridging the hiatus between international obligations and national implementation measures. Attention was drawn to the rulings of the Indian courts, which adopted a progressive stance in recognizing and protecting well known trade marks. In doing so, the courts have displayed a more liberal disposition, which travels beyond

the stipulation of Article 6 of the Paris Convention a treaty to which India was then not a signatory party. Similarly the Courts have issued guidelines on licensing procedures as regards matters related to trade marks. In the domain of copyrights, Mr. Chitranshi asserted that India had one of the strong and comprehensive frameworks to afford protection for software and entertainment industries. The guarantee of protection afforded by Indian courts to copyrights is testified by the fact that a host of multinational corporations originating in developed countries compete to invest in India, rather than their home State. In the realm of broadcasting, the Indian government has submitted a legislative draft in the form of Information Technology Bill, 1998 for consideration. Thus, for various reasons India may not have in place a legislation governing every conceivable situation, yet the openness and protection for IPRs afforded under Indian legal system is universally recognized. Against this backdrop, Mr. Chitranshi contended that the lack of national Legislations could not be used as a pretext by developed countries for imposing sanctions.

Mr. William Davey stated that the TRIPS Agreement lays down the minimum standards of protection for IPRs. The content and interpretation of these standards are issues within the realm of national governments. He was of the view that the courts alone would not be a sufficient means for harmonizing the standards of protection. In this context, he recalled that a similar practice of relying on courts to implement TRIPs obligations was evidenced among EU members with the US being critical about it.

Dr. P.S. Rao in his intervention, said that decisions by national courts could not be a substitute for implementing international obligations. Recounting experience of India, he said that a UN body while reviewing the periodic reports submitted by India on human rights, had stated that the right to compensation for violation of human rights as enforced by judicial pronouncements would not be an effective substitute, unless such right is incorporated in national legislation.

Dr. V.G.Hegde, was of the view that Indian judicial rulings are confined to procedural aspects and do not refer to definitional or protection standards for IPRs. Speaking on the formulation of national Legislations on IPRs, he cited the experience of Latin American countries and said that efforts to explore special and differential treatment and other exceptions for developing countries (Article 8 of the TRIPs) need to be undertaken. This would help developing countries enact a balanced national legislation that accommodates the conflicting developmental priorities in these economies.

Prof. (Ms.) S.K. Verma observed that courts may at best derive persuasive strength from international Conventions, and therefore the need for comprehensive national Legislations are a *sine qua non* for greater predictability.

Mr. Chitranshi clarified that though the requirement for national Legislations could not be wished away, the role of judicial pronouncements in supplying the deficiency of inadequate laws or lack of national legislation are equally important. Stating that legislating within a democratic policy is a time consuming process, he argued that he courts could take the lead in filling up the gaps.

G. Session VI: Trade and Environment

The session was chaired by H.E. Mr. Gehrad R. Madi, Ambassador of the Arab Republic of Egypt in India. Presentations were made by Dr. (Ms.) Veena Jha, Consultant, UNCTAD; Dr. M. Gandhi, Legal Officer, Ministry of External Affairs, Government of India and Prof. B. Bhattacharya, Dean, Indian Institute of Foreign Trade.

Ambassador Madi in his opening statement identified the references to environmental issues in the preamble of the Marrakesh Agreements establishing the WTO; the Ministerial Decision in Marrakesh; and the Report of the Committee on Trade and Environment (CTE) to the Singapore WTO Ministerial Conference (1996) - as fundamental to the ongoing debating on the relationship between trade and environment

within WTO. Amb. Madi articulated the available options on shaping a consensual framework on this issue.

(i) Whether the Committee on Trade and Environment should continue its work as a debating forum, as opposed to a negotiating forum, with a view to arrive at a consensus for future negotiations.

(ii) To situate the environment debate outside the WTO framework

(iii) Conclude a comprehensive and balanced side agreement within WTO.

While recognizing that these options require and in-depth examination of their relative merits, he underscored the reality that WTO as a trade agreement primarily needs to address only trade issues. Pretensions of addressing wider issues not directly related to trade on the ground that WTO does not operate in a vacuum could be risky venture. Seeking to regulate trade measures for reasons of environmental concern, may in the future be replaced by concerns of social obligations or a policy of good governance. Ultimately this process could end up introducing more contentious issues, thus undermining the multilateral trade framework of WTO.

Mr. (Ms.) Veena Jha in her presentation succinctly captured the emerging trends on the debate relating to trade-environment interlinkages within WTO.

(a) Proposal for amendment to Art. XX of GATT:- One of the suggestions, strongly backed by the EU, relates to amending both the chapeau and the exceptions to Art. XX of the GATT so as to render trade measures pursuant to an multilateral environmental agreement (MEA), consistent with WTO rules. Secondly, another proposal to invoke the 'side agreements mechanism' using the waiver provisions in WTO has also been considered. But these proposals are still at the level of general discussion in the CTE with no immediate prospects of a consensus on this issue. Interestingly, the progressive trends

discernible within the WTO's dispute settlement body in dealing with trade-environment interface reveals the possibility of the DSB emerging more successful than the CTE, in articulating the mutual competencies of trade and environment.

(b) Resort to process and production Methods (PPM) to distinguish Products: In addition to placing environmental trade measures on products, State may also concern themselves with how a product is produced, manufactured, or obtained - commonly referred to as process and production methods (PPMs). Some PPMs are directly related to the characteristics of the products concerned e.g. pesticides used on food crops produce residues in food products. Such PPMs are covered by the Agreement on Technical Barriers to Trade and the Sanitary and Phyto Sanitary Agreement. Other PPMs, that generally do not affect the product produced, fall outside the existing trade agreements, e.g.: practice of catching tuna by setting fishing nets on schools of dolphins without requiring precautions to spare the dolphins. When the US banned the import of tuna caught with nets unfriendly to dolphins, two GATT panels declared this action inconsistent with GATT norms, since it discriminated between "like" products. Thus a State cannot adopt different treatment for two products with the same physical characteristics on the basis of how the products were produced. Environmentalists regard this as a setback and argue for using 'non-product characteristics as a criteria for distinguishing products. Obviously, there has been no progress on the issue as it is enmeshed with other sensitive matters like labour standards and human rights.

(c) Domestically Prohibited Goods: - Domestically prohibited goods (DPG) are products whose sale and use are restricted in a national's domestic market on the ground that they present a danger to human, animal or plant life, health, or the environment. Clearly, a nation may bar imports of a product that is banned for domestic sale or consumption. Can exports of such products also be restricted? Within the CTE the only aspect considered on this issue is that of 'transparency'. Transparency requirements include notification by States to the WTO and publication of all laws, regulation and decisions relating to the product concerned. There have been suggestions to the effect that a Prior Informed Consent PIC) regime be established, so that States could consult among themselves before exporting such goods. Meanwhile the UNEP

and FAO have issued a draft treaty that would establish a PIC regime for banned chemical products that may cause health or environmental problems. Under this proposal, the international shipment of these products would be barred without the prior notice and explicit consent of a designated national authority in the country of destination. The 1989 Basel Convention on the Control of Transboundary movements of Hazardous Wastes and Their Disposal also provides for PICs. Though the possibility of overlapping between WTO and MEA cannot be overruled, the PIC regime seems to hold the key for future developments in this field.

Other proposals at the CTE include elimination of certain trade distortive measures, viz. agricultural, energy and product subsidies; tariff peaks; and providing increased market access facilities, with a view to benefit the environment of both exporting and importing parties. Suggestions calling for an amendment or innovative interpretations of TRPS Agreement to encourage flow of environmentally sound technologies have also been made, but has not received enthusiastic support. Though many considered the TRIPs Agreement to be adequate for meeting these concerns, there is a distinct possibility that the review process forming part of the built-in-agenda could address this issue.

Dr. M. Gandhi examined the evolving jurisprudence on trade-environment interface within the WTO's dispute settlement mechanism. While reference to environment is conspicuously absent in GATT, the WTO group of Agreements (more particularly, the agreements on Agriculture, Services, TRIPS, TBT and SPSM) contain provisions, with varied degree of explicitness, relating to environmental objectives. In his view, these WTO related environmental provisions reflect the underlying policy objective enshrined in Principle 12 of the 1992 Rio Declaration on Environment and Development.[6]

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[6] Principle 12: - States should cooperate to promote a supportive and open international economic system that lead to economic growth and sustainable development in all counties, to better address the problems of environmental degradation. Trade policy measures for environmental proposes should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade. Unilateral actions to deal with environmental challenges outside the jurisdiction of the importing country should be avoided. Environmental measures addressing