

the Agreement builds upon the existing international conventions and specifies a number of higher and additional safeguards of protection. (The Paris Convention on the Protection of Industrial Property (revised in 1967 and amended in 1979); the Berne Convention for the Protection of Literary and Artistic Works, 1896 (revised in 1971 and amended in 1979); the Universal Copyright Convention (revised in 1971 and 1974); the Washington Treaty on Intellectual Property Rights in respect of Integrated Circuits, 1989; and the International Convention for the Protection of new Plant Varieties, 1993 (UPOV Convention). Countries may, however, adopt measures to protect public health and nutrition and to promote public interest in sectors of vital importance to their socio-economic and technological development. It is also envisaged that appropriate measures may be needed to prevent the abuse of intellectual property rights or practices that unreasonably restrain trade or adversely affect the international transfer of technology in accordance with certain established criteria. The Agreement provides, for the first time, in an internationally binding instrument, a number of rules on restrictive practices in licensing contracts. Countries are thus free to specify in their legislation, licensing practices or conditions that may constitute an abuse of intellectual property rights and have an adverse effect on competition in the market concerned.

One of the controversial issues which the Agreement provides for is compulsory licensing under the patent system, which requires a patent to be worked in the territory where the patent has been granted, within a specified period of grant. The Agreement sets forth conditions under which compulsory licensing may be granted, such as public health, nutrition, national emergency and extreme urgency, public noncommercial use, anti-competitive practices such as monopolistic pricing and the exploitation of a dependent patent.

As to actual implementation, there are various transitional arrangements, including a one year transition period for developed countries whilst developing countries and countries in transition would have a five-year transition period during which to bring their laws and practices in conformity with the Agreement. However, LDCs will have 11 years in which to do so. Developing countries which do not at present provide product patent protection in any area of technology would have upto 10 years to introduce such protection, although in the case of pharmaceutical,

agricultural and chemical products, they must accept the filing of patent applications from the beginning of the transitional period although the patent need not be granted until the end of the period.

Annex - 2: Understanding on Rules and Procedures Governing the Settlement of Disputes:

A major innovation introduced in the WTO is the inclusion of Annex 2 which is the Understanding on Rules and Procedures Governing the Settlement of Disputes which provides for an integrated dispute settlement mechanism linking goods, services and intellectual property. This Understanding was negotiated to give confidence to all participants that they would have the means to assure the proper fulfillment by other WTO members of the obligations contained in the Final Act and to provide a solid safeguard against unilateral action by any member. The Dispute Settlement Body, which is entrusted with the administration of the Understanding and with consultation and dispute settlement provisions of the covered agreements, has the authority to establish panels, adopt panel and appellate body reports, maintain surveillance of implementation of rules and recommendations and authorize suspension of concessions and other obligations under the "covered agreements". The "covered agreements" include the WTO Agreement itself, the Multilateral Agreements on Trade in Goods, the General Agreement on Trade in Services and the Agreement on Trade-Related Aspects of Intellectual Property Rights. The PTAs are also included, subject to the adoption of the appropriate decision by the signatories of each of those Agreements. Its decisions will be taken by consensus, which should facilitate the adoption of panel reports. Moreover, the Understanding provides for a time-frame for the entire dispute settlement procedure, which establishes the automatic nature of the Understanding, and would ensure permanent monitoring of the implementation of adopted recommendations or rulings. There is also provision for particular attention to be paid to matters affecting the interests of developing country members with respect to measures that have been subject to dispute settlement. The commitment exists to provide developing countries with the means both to press for the early removal of third-country measures

that are harmful to their export trade, and to claim leeway in terms of their own import measures that have been found to be inconsistent with their obligations.

Annex - 3: Trade Policy Review Mechanism (TPRM)

The Trade Policy Review Mechanism (TPRM) set out in Annex 3 to the WTO Agreement is intended to provide a mechanism for multilateral review of the WTO members' trade policies or practices through a non-legally binding reporting and discussion process. The prime purpose of this mechanism "is to contribute to improved adherence by all Members to rules, disciplines and commitments made under the Multilateral Trade Agreements and, where applicable, the Plurilateral Trade Agreements, and hence to the smoother functioning of the multilateral trading system, by achieving greater transparency in, and understanding of the trade policies and practices of Members". It establishes a Trade Policy Review Body to periodically carry out Members' trade policy and practices.

Annex - 4: Plurilateral Trade Agreements (PTAs)

The PTAs referred to in Annex 4 are the Agreement on Trade in Civil Aircraft, Agreement on Government Procurement, International Dairy Agreement, and International Bovine Meat Agreement. These are among the nine Agreements which had been negotiated during the Tokyo Round. Five of these Agreements were renegotiated during the Uruguay Round and are included in Annex 1A of the WTO Agreement while the remaining four have been included in Annex 4. Since these agreements are not part of the Uruguay Round, they are binding only on those WTO Members which have accepted them.⁹

⁹ The Agreement on Government Procurement was renegotiated in the GATT Committee on Government during 1984-85; the final text of this Agreement was opened for signature at Marrakesh on 15 April 1994. The International Dairy Agreement and the International Bovine Meat Agreement were also opened for signature at Marrakesh. The Agreement on Civil Aircraft was not revised prior to Marrakesh and therefore the reference in Annex 4 provides for incorporation of the 1979 text as subsequently modified, rectified or amended.

III. SINGAPORE MINISTERIAL CONFERENCE

The first biennial Ministerial Conference of the WTO, as envisaged in Article VI of the Agreement Establishing the World Trade Organization (WTO) was held at Singapore from December 9 to 13, 1996. More than 120 WTO Members¹⁰ and observers were represented at the Conference which assessed the operation and functioning of the multilateral trading system. The primary objective of the meeting was to assess the implementation of the commitments of Members to the WTO Agreements, examine and review the on going negotiations and Work Programme. A Declaration, adopted at Singapore took note of the

¹⁰ As of 12 December 1996 128 States and international institutions including 26 AALCC Member States are members of WTO: Angola, Antigua and Barbuda, Argentina, Australia, Austria, Bahrain, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Brunei Darussalam, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Czech Republic, Denmark, Djibouti, Dominica, Dominican Republic, European Community, Ecuador, Egypt, El Salvador, Fiji, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Grenada, Guatemala, Guinea Bissau, Guyana, Haiti, Honduras, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Korea, Kiribati, Lesotho, Liechtenstein, Luxembourg, Macau, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Qatar, Romania, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent & Grenada, Senegal, Sierra Leone, Singapore, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, Suriname, Swaziland, Sweden, Switzerland, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, Zambia and Zimbabwe.

Twenty eight accession working parties have been constituted to deal with the application of:

Albania, Algeria, Armenia, Belarus, Cambodia, China, Croatia, Estonia, Former Yugoslav Rep. of Macedonia, Georgia, Jordan, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Nepal, Panama, Oman, Russian Federation, Saudi Arabia, Seychelles, Sudan, Chinese Tonga, Taipei, Ukraine, Uzbekistan, Vanuatu and Viet Nam.

achievements of the WTO during the first two years of its existence and addressed the challenges of an evolving global economy. The Declaration then went on to address some specific issues some of which are dealt with herein

(i) Role of WTO:

In pursuit of the goal of sustainable growth and development for the common good, the Singapore Declaration renewed its commitment to a fair, equitable and more open rule-based system, rejection of all forms of protectionism, elimination of discriminatory treatment in international trade relations and integration of developing and least-developed countries and economies of transition into the multilateral system.

Though the phrase 'rule-based system' is not defined in WTO literature, it may be stated that it is commonly understood to include the following four components viz. non-discrimination, reciprocity, market access and fair competition.

(ii) Regional Agreements

The General Council in February 1996, established the Committee on Regional Trade Agreement to carry out the examination of regional trade agreements in accordance with the procedures and terms of reference adopted by the Council for Trade in Goods, the Council for Trade in Services or the Committee on Trade and Development. The Committee met for the first time in May 1996 and undertook the examination of 21 regional trade agreements. The Committee provided a forum for consideration of a variety of issues related to regional trade agreements under the WTO and developed the "Standard Format for Information of Regional Trade Agreements," which is expected to accelerate the provision for information on agreements notified by the WTO.

The Singapore Declaration affirmed the primacy of the multilateral trading system, which includes a framework for the development of regional trade agreements. It noted that the trade relations

of WTO Members are being increasingly influenced by regional trade agreements, which have expanded vastly in number, scope and coverage. The expansion of regional trade agreements, made it important to analyse whether the system of WTO rights and obligations as it relates to regional trade agreements needs to be further clarified.

Acknowledging the complementarity of the multilateral and regional trading arrangements, the Ministerial Conference renewed its commitments to work through progressive liberalization in the WTO, and in so doing facilitate mutually supportive processes of global and regional trade liberalization.

(iii) Least developed countries and developing countries

The Declaration recognized the need to pay special attention to the interests of the least-developed countries. The Singapore Conference agreed on a Plan of Action for providing predictable and favourable market access conditions for products of the least developed countries and, to foster expansion and diversification of their exports to the markets of all developed countries. Similar measures for ensuring framework market access conditions to products of LDC's in developing countries were also recognized, in the context of the Global System of Trade Preferences. It was agreed to organize a meeting, with UNCTAD and the International Trade Centre in 1997, to foster an integrated approach to assisting these countries in enhancing their trading opportunities.

The Declaration affirmed that the developing States have undertaken significant new commitments, both substantive and procedural, under the WTO Agreement. Acknowledging the range and the complexity of the efforts made by the developing States to comply with their commitments the Declaration, it pledged to assist them in their efforts, by improving upon the availability of technical assistance.

(iv) Trade and Environment

The Committee on Trade and Environment (CTE) had submitted work programme for the WTO on the trade-environment-sustainable

development interface for action by the Ministerial Conference. This report of the CTE among other things highlight the following aspects: (i) the Commitment not to undertake trade action to offset, any competitive disadvantage resulting from other countries' environmental policies; (ii) the need to preserve the existing scope, under the WTO provisions, for the use of trade-related measures needed for environmental purposes, including those taken pursuant to multilateral environmental agreements (MEA); (iii) the encouragement of greater cooperation between the WTO and relevant MEA institutions; (iv) the importance of market access opportunities in assisting developing countries obtain the resources for implementation of their national developmental and environmental policies; and (v) encouraging members to provide technical assistance and transfer technology to help strengthen the technical capacity of developing countries in monitoring and controlling imports of domestically prohibited goods.

The CTE report called for further work on many complex issues on trade and environment. One such issue is whether any modification to the WTO provisions are required in respect of trade measures taken under MEAs. The relationship between the WTO and product environmental requirements such as packaging, labelling and recycling also need to be addressed. On the issue of environmental benefits that could arise from trade liberalization, the CTE has proposed that future analysis be extended from agriculture and energy to other sectors such as tropical and natural resource based products, textiles and clothing, fisheries, forest products, environmental services and non-ferrous metals. The environmental provisions of the TRIPS and Service Agreements will continue to be studied by the CTE. As to TRIPS, it has already considered a wide variety of issues relating to the generation, access to and transfer of environmentally sound technology and products.

The Singapore Declaration recognized that full implementation of the WTO Agreements, would make an significant contribution to achieving the objectives of sustainable development. Taking note of the CTE's work which underlined the importance of policy co-ordination at the national level in the area of trade and environment, the Ministerial Conference declared its intention to build on the work accomplished thus far. It directed to report to the General Council, on its progress.

(v) Investments and Competition Policy

In light of the existing WTO provisions on matters related to investment and competition policy and the built-in agenda in these areas as well as on the understanding that the Work undertaken shall not prejudice whether negotiations would be initiated in the future, the Ministerial Conference agreed to

- (a) establish a working group to examine the relationship between trade and investment; and
- (b) establish a working group to study issues relating to the interaction between trade and competition policy to identify areas that may merit future consideration in the WTO framework.

Future negotiations, regarding multilateral disciplines in this area, will however take place only after consensus decision is taken by the WTO Members

The two working groups shall draw upon each others work and if necessary upon the work of the UNCTAD and other intergovernmental fora. The General Council will continue to review the work of each body and determine their future work after two years.

(vi) Services Negotiations

Reviewing the progress made in services negotiations, the Declaration acknowledged the difficulties faced in negotiations on the improvement of market access in services - in particular financial services, movement of natural persons, maritime transport services and telecommunications. The Declaration, aims at a progressively higher level of liberalization in services on mutually advantageous basis with appropriate flexibility for individual developing States. It envisaged the conclusion of the negotiations on basic telecommunications in February 1997 and the resumption of negotiations on financial services in April 1997. In professional services, it was aimed to complete the work on the accountancy sector by the end of 1997.

(vii) Dispute Settlement

The work of the Dispute Settlement Body (DSB) during the first two years of its existence and the growing list of members resorting to the dispute mechanism bears testimony to the effectiveness and creditability of the dispute settlement system of the WTO. The DSB has already adopted two appellate reports.

In May 1996, the DSB adopted the first panel report, concerning the complaint by Venezuela and Brazil against USA, on its standards for reformulated and conventional gasoline. The panel found the US regulation to be inconsistent with GATT Article III : 4 (on National Treatment) and recommended the DSB to request the US to amend its regulation in conformity with its obligations under the GATT.

In November 1996, the DSB adopted the Appellate Body Report, which sustained complaints by the EC, Canada and USA against Japan's taxes on alcoholic beverages.

In January 1997, the WTO Panel ruled, on India's complaint against United States over US restrictions on imports of woven wool shirts and blouses from India, that "such measures violated the provisions of the Agreement on Textiles and Clothings, as the US had not proved any damage or an actual threat of damage to US industries, to justify its imports restrictions". An encouraging feature of the DSB is that a significant number of cases brought before the WTO have been resolved at the consultation stage, which is an essential part of dispute settlement procedure.

The Singapore Declaration recognized that the Dispute Settlement Understanding (DSU) offered a means for the settlement of disputes among members that is unique in international agreements. It expressed satisfaction that the DSU had worked effectively first two years. The Declaration renewed its determination of members of the WTO to abide by the rules and procedures of the DSU and other WTO agreements in the conduct of trade relations and the settlement of disputes.

During the period under review the WTO mechanism for settling disputes between exporters and preshipment inspection companies - the Independent Entity (IE) - became operational on 1 May 1996. The IE was established in December 1995 by the General Council pursuant to Article 4 of the WTO Agreement on Preshipment Inspection. The IE constituted jointly by the WTO, the International Chamber of Commerce (ICC) and the International Federation of Inspection Agencies (IFIA) is administered by the WTO.

A party lodging a complaint in the IE would need to complete an official form requesting an independent review, and both parties would be required to make initial financial deposits. The IE would either appoint an independent trade expert or a three member panel, depending on the preference of the parties, to review the case. The procedures shall be expeditious with opportunity for both parties to present their views in person or writing. Decisions by the panel would be rendered within eight working days of the request for independent review, and be binding on the parties.

(viii) Miscellaneous

Finally, the Declaration recognized the ILO to be the competent body to set and deal with labour standards and rejected the use of labour standards for protectionist purposes. It called for continued collaboration with ILO, thus ensuring respect for the respective and separate mandates of the two organizations i.e. the WTO and ILO.

(iv). The Declaration on Trade in Information Technology Products

The Singapore Declaration took note of the Declaration on Trade in Information Technology Products, whereby a number of WTO Members and other States or separate customs territories which have applied to accede to the WTO, agreed to tariff elimination for trade in information technology products on an MFN basis.

Considering the key note of trade in information technology products in the development of information industries and the dynamic expansion of the world economy and desiring to achieve maximum

freedom of world trade in information technology products, the parties to this declaration reiterate that each party's trade regime should evolve in a manner that enhances market access opportunities for information technology products.

The Declaration on Trade in Information Technology Products, envisages that each party shall bind and eliminate customs duties and other duties, within the meaning of Article II : 1 (b) of GATT - 1994, as regards

- (i) all products classified with Harmonized System headings listed in Attachment A to the Annex; and
- (ii) all products specified in Attachment B to the Annex, whether or not they are included in Attachment A.

The elimination of customs duties is to take place through rate reductions in equal steps except as may be otherwise agreed by the participants. Each participant is to bind all tariffs on items listed in the Attachments no later than 1 July 1997, and shall make the first such rate deduction effective no later than 1 July 1997, and to make completely effective the elimination of customs duties no later than 1 January 2000.

Towards this end, the Declaration aims to finalize plurilateral technical discussions in Geneva so as to ensure the implementation of this Declaration by the largest number of participants. Each participant shall provide all other participants a document containing the details as to how the appropriate duty treatment will be provided in its WTO schedule of concessions, no later than 1 March 1997. These documents shall be reviewed and approved on a consensus basis, no later than 1 April 1997. As soon as the review process is completed the document shall be submitted as a modification to the Schedule of the participant concerned.

(V). Impact on Developing Countries

The establishment of the WTO is most likely to result in an overall increase in the scope of obligations for all its members, but developing country

members, in particular, will be faced with a dramatic increase in the level of their obligations. This is because they are required to accept all MTAs incorporated in Annexes 1, 2 and 3 of the WTO Agreement without any exceptions or reservations, as well as to submit their schedules of concessions on goods and concessions with respect to market access and national treatment for trade in services. They are also required to accept new obligations in the area of trade in services, and, in particular, intellectual property rights. Prior to WTO, few developing countries were parties to the Tokyo Round Codes,¹¹ but under the revised codes they are required to assume new obligations flowing from them. The very strict conditions for accession to the WTO thus pose a serious challenge to the developing countries.

The process of accession will also be much more difficult, for those developing countries and economies in transition that now negotiating their terms of accession to GATT, as they will need to adopt the new agreements negotiated in the Uruguay Round. For example they will have to negotiate an 'entry fee' on both goods and services, accept a variety of Agreements that until now had been optional (i.e. most Tokyo Round Codes as revised), and commit themselves to a set of new multilateral rules and disciplines in the areas of agriculture, subsidies and intellectual property rights, among others.

The setting up of the WTO, represents a significant step towards the full integration of all countries irrespective of their levels of economic development into a global trading system of shared commitments, shared rules and shared opportunities. Unlike the case of the two Bretton Woods institutions, viz. the World Bank and the IMF, in the case of the WTO, developing countries have had a role in its evolution and establishment. More than two-thirds of its over 100 members are developing or transition economies, as are the great majority of those in

¹¹ As of May 1994, 13 developing countries were parties to the Agreement on Technical Barriers to Trade; 2 to the Agreement on Government Procurement; 13 to the Subsidies Code; 11 to the Anti-Dumping Code; 12 to the Customs Valuation Code; 12 to the Agreement on Import Licensing.

the process of becoming its members,¹² whose inclusion in the multilateral system and its rules is vital not only to the completion of the global market but to global stability.

However, membership of the WTO system requires unequivocal commitment to, and enforcement of, the multilateral rules; no country can be exempt therefrom. The WTO Agreement itself imposes a general obligation on each of its Members to ensure the conformity of its laws, regulations and administrative procedures with the obligations as provided in the annexed Agreements. Many countries, including the developing countries in Asia and Africa and elsewhere, have already brought their domestic legislation into line with the aforesaid general obligation, or are in the process of doing so before the expiry of the relevant transition periods.

Compliance with this general obligation is particularly emergent in the case of the Agreements on Services, TRIPs and TRIMs as they call for not only restructuring of existing legislation, but also the building up of requisite infrastructure and operative mechanisms in the national domain. The Agreement on Services obligates the Members of the WTO to enact domestic regulations for the administration of services in a reasonable and objective manner (MFN, transparency). The Agreement on TRIPs obligates the Members of the WTO to establish procedures and remedies in their domestic laws to ensure effective enforcement of IPRs through civil and administrative procedures which include provisions on evidence of proof, injunction, damages and other remedies, including the right of the judicial authorities to order the disposal or destruction of infringing goods. The developing countries and countries

¹² Twenty-one governments are now negotiating accession to GATT on resumption of contracting party status: Albania, Algeria, Armenia, Belarus, Bulgaria, China, Croatia, Ecuador, Estonia, Jordan, Latvia, Lithuania, Moldova, Mongolia, Nepal, Panama, Russian Federation, Saudi Arabia, Slovenia, Taiwan, and Ukraine. Fourteen governments can succeed to contracting party status under Article XXVI: 5(c) (GATT 1947) upon request: Angola, Bahamas, Cambodia, Cape Verde, Equatorial Guinea, Kiribati, Papua New Guinea, Qatar, Sao Tome and Principe, Seychelles, Solomon Islands, Tonga, Tuvalu, and Yemen.

in transition have been given a five-year transition period, and the LDCs 11 years, during which they have to bring their laws and practices into conformity with the Agreement. Further, developing countries which do not presently provide product patent protection have been given 10 years to introduce such protection, although in case of pharmaceutical, agricultural and chemical products, the patent need not be granted until the end of the 10 year period. The TRIMs Agreement has prohibited investment measures which cause trade restrictions and distorting effects and requires mandatory notification of such measures and their disposal within two years. Thus, the existing legislation would need to be brought into line with the stipulations contained in the aforesaid Agreements.

(vi). Conclusion

Notwithstanding the transitional arrangements provided in the various WTO Agreements, some of the issues involved definitely need further substantive and specific elaboration from the standpoint of developing countries. In the opinion of the Secretariat of the AALCC, it would be useful to have a general discussion in the AALCC focussing on the problems and difficulties being faced by them in enacting and/or enforcing the WTO obligations in the national domain.