SRIRAM's IAS

GATT AND WTO

The General Agreement on Tariffs and Trade (GATT) is an agreement that was arrived at in 1947 by 23 countries to establish a free and fair international trading regime among member countries based on dismantling of trade barriers -tariffs or non-tariff restrictions like quotas. It came into existence in 1948. India was a founding member. GATT progressed- expanded its scope in terms of areas covered - by a series of "trade rounds"- negotiations centered around a specific set of issues over a period of a few years leading to agreement among members are called a round. GATT was headquartered in Geneva, Switzerland.

Eight rounds of such negotiations were held under GATT:

1. Havana Round (1947) with 23 countries brought into being the. GATT.
2. Annecy (France) Round (1949) (France)
3. Torquay Round(England) (1950) (England)
4. Geneva Fourth Round (1956)
5. Dillon Round (1960-1961) was held in Geneva and were named after Under Secretary of State, Douglas Dillon, who first proposed the talks
6. Kennedy Round (1962-1967) was also held in Geneva but was named after the US President John F Kennedy, in his memory.
7. Tokyo Round (1973-1979)
8. Uruguay Round (1986-94)

WTO was set up as a result of the Uruguay Round. WTO came into existence in 1995. Doha Round is the first round under the WTO (2001). It is yet to complete. It is the 9th round.

As can be seen from the above, the Uruguay round lasted the longest (Doha round-2001 onwards, is taking longer) as it took place in a radically different set of circumstances- communism was collapsing; the model of western industrial democracies was becoming more acceptable to the developing countries; USSR disintegrated leaving the third world so much weaker in world diplomacy. New areas were brought into the agenda- intellectual property rights; agriculture; services; foreign direct investment and so on. Initially, the developing countries were reluctant and resisted the expansion of the agenda. But partly due to western force; lack of unity among the developing countries; and partly due to seeing benefits for themselves, they agreed. There was no agreement after protracted negotiations. The Director General of the GATT was asked to draft an agreement for the consideration of the members. It was called Dunkel Draft, named after the Director General Arthur Dunkel. After attaining consensus, it was made into the Marrakesh Treaty and was signed in Marrakesh (Morocco) in 1994 and paved the way for the establishment of World Trade Organization (WTO) at the beginning of 1995.

GATT and WTO

GATT is different from WTO in two essential respects- GATT is a treaty while WTO is an organization. GATT had no dispute settlement process while WTO has. The GATT was essentially concerned with traditional trade issues such as tariffs and quotas in international trade. WTO encompasses many more areas. GATT had only a relatively small secretariat with no institutional foundation to implement these rules.

The World Trade Organization that came into existence at the beginning of 1995 replaces the General Agreement on Tariffs and Trade (GATT). Like its predecessor, it is headquartered in

Geneva, Switzerland. It has 164 members (2017). Afghanistan became the 164th WTO member early in 2016. Liberia was the 163rd member. Kazakhstan was the 162nd member.

In addition to states, the European Union is a member. WTO members do not have to be full sovereign nation-members. Instead, they must be a customs territory with full autonomy in the conduct of their external commercial relations. Thus Hong Kong and Taiwan became WTO members. Iran is the biggest economy outside the WTO.

Roberto Azevedo from Brazil is the current Director-General of the World Trade Organization. DG term is 4 years.

The WTO states that its aims are to increase international trade by slashing trade barriers and providing a platform for the negotiation of trade and related issues. Basically, it sets up a rule based multilateral trading system to liberalise the regime and boost world trade.

Principles guiding the WTO are:

- non-discriminatory and rule-based trading system where foreign goods and services should receive the same treatment as domestically sourced ones
- trade barriers (tariffs and non-tariff barriers) should be dismantled and international trade should be free
- less developed countries should receive preferential terms of trade

Unlike other organizations like World bank and the International Monetary Fund(IMF) where there is weighted voting- a country has as much voting power as it contributes financially-, WTO has a 'one country one vote' system making it relatively democratic. Decisions are taken by consensus.

WTO is not part of the United Nations and acts autonomously at the behest of its membership. A global arrangement exists between the two, based on the relationship that had existed between the UN and the WTO's predecessor, the General Agreement on Tariffs and Trade (GATT). This includes provision and exchange of information, representation at each other's meetings and cooperation between the secretariats.

Structure of WTO

Highest level decision-making body of the WTO is the Ministerial Conference, which usually meets once every two years with each member country represented by the commerce minister. Next in authority is the General Council which carries out the decisions of the Ministerial Conferences. It is seated in Geneva. It has representatives (usually ambassadors or equivalent) from all member governments and has the authority to act on behalf of the ministerial conference

There are two other bodies apart from the General Council. They are the Dispute Settlement Body composed of all members, usually represented by ambassadors or equivalent; and Trade Policy Review Body (TPRB) - the WTO General Council meets as the Trade Policy Review Body to undertake trade policy reviews of Members.

Below the above three bodies, at the third level, there are Councils for Trade. The Councils for Trade work under the General Council. There are three councils - Council for Trade in Goods, Council for Trade-Related Aspects of Intellectual Property Rights, and Council for Trade in Services. Apart from these three councils, six other bodies report to the General Council on issues such as trade and development, the environment, regional trading arrangements and administrative issues.

At the fourth level from the top, there are subsidiary bodies- various committees and working groups related to various fields.

Dispute Settlement

World Trade Organization (WTO) has a dispute settlement body (DSB) that settles trade disputes among members. Disputes can arise from trade policies of members that are violative of the WTO rules. WTO procedures require sixty days of 'consultations' among the disputants to resolve the dispute failing which a disputes panel is set up.

There is no separate DSB but the General Council which is the second highest body in the organization works as the DSB while giving verdict on the trade dispute. DSB conclusion can be challenged in an appellate body. After the ruling, the erring nation is directed to make changes in its laws to make them WTO-compliant within a reasonable time. If the `erring country' does not correct its laws, the complainant country is allowed to take cross retaliatory measures.

On the face of it, it gives all member countries a level playing field as the process is multilateral. But the fact is that there is no punishment for the erring country and; poor countries can not retaliate against rich countries.

Chronology

- 1986-1994 - Uruguay Round of GATT negotiations were deadlocked. Dunkel Draft was the basis for the resolution. It led to the Marrakesh Agreement (Morocco) that resulted in the WTO coming into force.
- January 1, 1995 - The WTO came into existence.
- 1996 - The first ministerial conference in Singapore. Birth of "Singapore issues".
- 1998 – Second ministerial conference in Geneva, Switzerland.
- 1999 – Third ministerial conference in Seattle, Washington, USA
- 2001 - Fourth ministerial conference in Doha, capital of Qatar. A new Round of trade talks begin called Doha Development Round.
- 2001 - The People's Republic of China joined the WTO after 15 years of negotiations 2002
- 2003 – Fifth ministerial conference in Cancún, Mexico. Formation of G20. Rejection of the 'overloading' of the Doha agenda with Singaporé issues though trade facilitation which is one of the Singapore issues was accepted by all
- 2005 – Sixth Ministerial at Hong Kong once again failed to deliver results
- Seventh Ministerial 2009 in Geneva
- 8th in 2011 in Geneva
- 9th Ministerial in Bali 2013 December
- 10th Ministerial in 2015 December in Nairobi
- 11th Ministerial Conference in Buenos Aires, Argentina in 2017 December

There are three basic principles built into the WTO:

1. National treatment
2. Most favoured nation(MFN)
3. Special and differential treatment

National Treatment

National treatment is a basic principle of GATT/WTO that prohibits discrimination between imported and domestically produced goods with respect to internal taxation or other government regulation. The example is solar panels case of India in 2016.

MFN

In international trade, MFN treatment means normal trading relations between two countries. All WTO members are statutorily obliged to grant one another the MFN status. Favour one, favour all. MFN means treating one's trading partners equally on the principle of non-discrimination.

MFN is so important that it is the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Some exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group — discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners — whether rich or poor, weak or strong.

MFN has benefits in line with the WTO aims increases trade. A country that grants MFN on imports will source from the best country-cost and quality. But if the most efficient producer is outside the group of MFN and is charged higher rates of tariffs, the importer loses. This leads to economic costs for the importing country, which can outweigh the gains from free trade.

- Small and developing countries benefit as they are automatically granted MFN status and gain thus – a privilege that they can not get otherwise due to their weak bargaining power in global trade. They gain in imports and exports.
- having one set of tariffs for all countries simplifies the rules and makes them more transparent
- MFN prevents domestic special interests from obtaining protectionist measures.
- MFN clauses uphold non-discrimination and thus free trade .

There are exceptions to MFN. Regional trade blocs such as the European Union and the North American Free Trade Agreement (NAFTA), which have lowered or eliminated tariffs among the members while maintaining tariff walls between member nations and the rest of the world. Trade agreements usually allow for exceptions to allow for regional economic integration.

WTO allows departures from the MFN principle.

- imports from poor countries are allowed at lower/zero tariffs (Generalised System of Preferences GSP- (Read ahead)
- preferential and free trade arrangement among countries of a region and others are allowed- at concessional and free rates respectively

- Article XXIV of the GATT allows Pakistan and India to depart from particular provisions of the Agreement in their bilateral relations pending the establishment of trade ties between them on a definitive basis. It is under this clause that Pakistan has not given MFN status to India, though the latter has extended such status to the former.

India granted MFN status to Pakistan in 1996. Pakistan has not granted India MFN status but offered Non-Discriminatory Market Access (NDMA) agreement.

India, Pakistan and GATT Rules

Paragraph 11 of GATT Article XXIV says:
"Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent States and recognizing the fact that they have long constituted an economic unit, the contracting parties agree that the provisions of this Agreement [i.e., GATT] shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.*

*Measures adopted by India and Pakistan in order to carry out definitive trade arrangements between them, once they have been agreed upon, might depart from particular provisions of this Agreement, but these measures would, in general, be consistent with the objectives of the Agreement."

Qatar

Qatar in 2017 has filed a legal complaint at the World Trade Organisation to challenge a trade boycott by Saudi Arabia and others but they cited national security as the reason which is allowed under WTO.

Russia, Ukraine and WTO

In 2017, Russia sent a request to the World Trade Organization seeking to hold consultations over Ukraine's sanctions against Moscow, in place since 2014. It was regarding restrictions on Russian goods, services, transit and other issues imposed by Ukraine in response to Russia's role in the Ukraine crisis. Ukraine justified them with reference to national security.

S&D Provisions

The WTO Agreements contain special provisions which give developing countries special rights and which give developed countries the possibility to treat developing countries more favourably than other WTO Members. These special provisions include, for example, longer time periods for implementing Agreements and commitments.They are referred to as "special and differential treatment" (S&D) provisions.

WTO Agreements

The WTO oversees about 60 different agreements which have the status of international legal texts. Member countries must sign and ratify all WTO agreements on accession. Important among the agreements are the following.

Agreement on Agriculture (AoA)

Its three pillars are:

- domestic support
- export subsidies
- market access

Domestic support refers to the subsidies that governments give to the farmers like food, fertilizer, power, water etc. The domestic subsidies are grouped into three classes called "boxes": Green Box, Amber Box and Blue Box- the first two being borrowed from the traffic light colours.

Green box includes subsidies on which there are no limits as they are not considered trade distorting.To qualify for the green box, WTO says a subsidy must not distort trade, or at most cause minimal distortion.These green box subsidies must be government-funded — not by charging consumers higher prices and they must not involve price support. They tend to be programs that are not directed at particular products, and they may include direct income supports for farmers that are decoupled from current production levels and/or prices. Examples: environmental and conservation programs, research funding, extension services, food stamps and disaster relief.

Amber box is used for all domestic support measures considered to distort production and trade.

WTO members are required to maintain their amber box supports to within five to 10 percent of their value of production- 5% for the developed countries and 10% for developing countries like India.Subsidies that are considered to be trade distorting and are subject to limitations and isciplines fall into the amber box.

Blue box subsidies are direct payments under a production limiting program. There is no limit on them.

India and the amber box

For some year now, India has been having difficulty at the WTO to continue to give agricultural subsidies. India has MSP, minimum support price, programme under which Government pays the farmer for the grain he sells to the Food Corporation of India which is used to run the Public Distribution System (PDS) under which low income and poor people are supplied grain at cheap rates. The subsidy involved thus is to make agriculture investment-worthy, food security, price stabilization and so on. But the WTO put a cap on the subsidy which India is accused of having exceeded. India questions the methodology of calculating the subsidy. But there is no permanent solution that WTO offered to India's challenge. At the 9th ministerial in Bali (2013), developed countries had agreed to a 'peace clause' for India's stockholding of grain under which even if we are not conforming to the rules, no member will challenge this until 2017.

India says export subsidies given by USA and Europe make their agricultural goods so cheap that their markets are virtually inaccessible to exports from developing countries. The earlier gains expected by the developing countries from a genuinely free international trade in agricultural goods have not come about as the advanced countries are least inclined to reduce the subsidies to the statutory levels. It is one of the 'implementational concerns' in WTO being discussed in the Doha round.

G33

The G33 ("Friends of Special Products" in agriculture) is a group of 48 developing countries including India and China. It came into existence before the 2003 Cancun ministerial conference.They have common concerns in agriculture.

- It has interests of farmers and food production interests- "defensive" interests regarding agriculture in relation to World Trade Organisation negotiations. Its demands are
  - limit the level of market opening to agri-imports of developing countries
  - creation of a "special products" exemption, which would allow developing countries to exempt certain products from tariff reductions
  - "special safeguard mechanism" which would permit tariff increases in response to import surges in agricultural goods

In 2017 the G-33 countries made two demands

a. MSP programmes to help farmers during times of distress should not be treated as trade-distorting

b. Calculation of the quantum of subsidies on the basis of market prices prevailing in 1986-1988 is flawed and does injustice and should be dropped.

However, countries like Australia, Pakistan, Peru, Thailand, Japan, Paraguay, Australia, Mexico and Russia said they could not accept unlimited market price support under the banner of 'public stockholding for food security'.

Export Subsidies

Agricultural export subsidies are to be limited by the developed countries either in value or volume terms so that international prices are not lowered below a point and exports and domestic markets of the developing countries are not priced out. Nairobi Ministerial in 2015 decided to phase them out.

Market Access

Market access means all member countries should throw open their domestic market to agricultural imports by reduction of tariffs and removal of or non-tariff barriers. Countries should undertake

- 'tariffication'- to convert non–tariff barriers(like quotas) to tariffs and
- "bind" their tariffs- to agree to a limit that is the 'bounded rate' and not increase the rates beyond them. The bounded rates are usually high

Special Products and Special Safeguard Mechanisms

Special Products (SP) and Special Safeguard Mechanisms (SSM) are key concerns of developing nations involved in WTO negotiations in agriculture. By using SP and SSM, these nations hope to ensure food security and protect small farmers and the rest of the poor from the vagaries and pressures of international trade in agriculture commodities.

Special Products (SPs)

Special Products (SPs) are agricultural products of particular importance to farming communities in developing countries for reasons of food security, livelihood security and rural development.

It was decided at the Doha Development Round of WTO negotiations that SPs would attract lower levels of tariff reduction commitment than other agricultural products. The rationale is that higher levels of protection on SP will allow developing countries to sustain and develop domestic production of these products, thereby allowing them to protect and enhance livelihoods and food security in their domestic agriculture.

SP is a component of the WTO's Special and Differential (S&D) provision and is available only to developing country members of the WTO.

The Doha Ministerial Declaration recognised the non-trade concerns of developing countries and explicitly mentioned that the Doha Development Round of trade talks would include concessions that will "enable developing countries to effectively take account of their development needs, including food security and rural development".

Since the introduction of the concept of SP, discussions are going on about their selection and treatment. Essentially, the discussion centres on two issues:

- The number of products to be given SP status.
- The modalities to select SPs.

Special Safeguard Mechanisms (SSMs)

Special Safeguard Mechanisms or SSMs are a set of provisions through which a WTO member country can temporarily impose higher than bound tariff rates on the import of a particular agricultural product if there is a sudden surge in imports of that product into the country. The SSM provisions will be available to all developing and least developed country members of the WTO.

SSM is a trade defence mechanism to essentially counter the volatility of international commodity prices. Sudden and sharp declines in the international price of an agricultural commodity could lead to an import surge which, in turn, could damage the viability of domestic production. Countries may find it difficult to check these surges. In these cases, a temporary measure like SSM will allow developing countries to tide over crises. SSM will allow countries to raise tariffs above their bound levels for a limited duration.

A Ministerial Decision on a Special Safeguard Mechanism (SSM) for Developing Countries during the Nairobi ministerial in 2015 recognizes that developing members will have the right to temporarily increase tariffs in face of import surges by using an SSM.

To conclude, Special Products and Special Safeguards Mechanisms together can provide a reasonable level of protection to the agriculture sector of developing countries.

TRIPS

Intellectual property (IP) is the work of intellect or mind to create products that have commercial uses- products like drugs, literature, paintings etc. It is protected like the physical property with trademarks, patents etc. Holders of the patents etc are entitled to the commercial proceeds for a specified time period, exclusively

Types of intellectual property rights:

- A patent may be granted for a new, useful, and non-obvious invention, and gives the patent holder an exclusive right to commercially exploit the invention for a certain period of time (typically 20 years from the filing date of a patent application).

- Copyright is given for creative and artistic works (e.g. books, movies, music, paintings, photographs, and software) and give a copyright holder the exclusive right to control reproduction or adaptation of such works for a certain period of time.
- A trademark is a distinctive sign which is used to distinguish the products or services of different businesses.
- An industrial design right protects the form of appearance, style or design of an industrial object (e.g. spare parts, furniture, or textiles).

The need for agreement on TRIPS arises from the fact that IP generation takes substantial investment and should be incentivised; and the commercial proceeds from international trade in intellectual property are growing in worth.

Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)

Agreement on TRIPS lays down legal standards for the member countries to protect intellectual property by way of copyright rights; geographical indications, industrial designs; integrated circuit layout-designs; patents; monopolies for the developers of new plant varieties; trademarks. It regulates dispute resolution procedures and enforcement procedures.

TRIPS and patents

A patent is an exclusionary right. It grants the right to exclude others from making use of the patented invention for the given period- 20 years from the filing date under TRIPS. In return for the patent, the inventor offers the knowledge with commercial use to be put in public domain after the expiry of the patent. Patent is an incentive to innovate and invent. It sustains research and development (R and D)

Product and process patents

Under WTO, patents can be granted for the process or product. Product patents provide for absolute protection of the product exhausting all the processes that may lead to the product, whereas process patents provide protection in respect of a specific process or method of manufacture. Protection for process patents would not prevent the manufacture of patented products by a process of reverse engineering, where a different process or method from that which has been invented (and patented) is used. For example, national legislation requiring only process patent protection has enabled manufacturers in certain countries to make generic versions of patented medicines. RE (Reverse engineering) made it possible in developing countries to sell medicines cheap. India is a prime example.

TRIPS agreement allows both process and product patents, though only product patents must be awarded for food, pharmaceuticals and chemicals. Patents should be valid for 20 years. Developing countries had 10 years to adopt the TRIPS agreement standards(by 2005) while the advanced countries adopted them by 1995 itself.

Developing countries that had apprehensions about the product patents agreed to it because they benefited under other agreements- for example, services etc. They agreed also because they received concessional terms under TRIPS- grace period of 10 years to adopt product patents in food, pharmaceutical and chemical fields.

Patents (Amendment) Act 2005

As mandated by the TRIPS, it introduced product patent regime for food, chemicals and pharmaceuticals.

Highlights of the Act

- Product patent protection to drugs, foods and chemicals
- availability of Pre-grant and Post-grant challenge
- Incremental innovation involving small scale improvements do ot qualify for new patents
- Introduction of a provision for enabling grant of compulsory license and parallel imports to meet public health crises as provided for in TRIPS

Prior to 1970, 85 per cent of medicines available in India were produced and distributed by multinational corporations (MNCs) and the prices of drugs in the country were among the highest in the world. The 1970 Patents Act of India provided for process patents for pharmaceuticals and agro-chemical products. This enabled the growth of a strong local generic drug industry, which produced the same drugs as the MNCs at relatively low prices. When Indian generic manufacturers such as Cipla, Ranbaxy etc began manufacturing drugs, especially for Human Immunodeficiency Virus/Acquired Immune Deficiency Syndrome (HIV/AIDS), at much lower prices, it served a public health cause .The demand for these drugs grew in countries that could not afford to buy these drugs from MNCs.

Indian government accepted TRIPS and product patents because Indian pharma industry is going global and TRIPS helps R and D to capture global pharma market. It attracts MNC investment also. TRIPS is a part of the larger WTO package.

There was a fear that prices of medicines would spiral due to product patents as it can lead to monopoly pricing. But on balance it was felt that because 97 per cent of all drugs manufactured in India are off-patent, prices would be protected. Add to that the fact that Government could control the prices of essential medicines, and the fears of price rise were seen to be largely unfounded.

The other criticism is that patents being given for 20 years will stunt technological development in India.

On the positive side, the Act modernizes the law. It helps Indian pharma companies to grow into MNCs. Indian companies can take up contract research. FDI will flow in with all the technological benefits. Safeguard provisions help meet public health concerns. Drug price Control order (DPCO) gives government the power to regulate the prices and make them affordable. Generic manufacturers can continue in India for product patented drugs by paying a reasonable fee. (Generic medicines are unbranded drugs. They have the same active chemical content as the patented drug. They can be produced for drugs for which either there is a process patent or the product patent expired.)

Public Health Concerns: TRIPS Agreement and Safeguards

In view of the fact that the above mentioned provisions for product patents have the potential to raise prices, safeguards have been built in the TRIPS Agreement called :"parallel imports" and "compulsory licensing."

Parallel importation is the importation of drugs from another country where they are sold at a lower price to meet a public health crisis. It can take place if there are no manufacturers in the country facing the public health crisis and the pharma company that holds the patent for the drug is unwilling to price it affordably for the sake of the ailing public.

Compulsory licensing means Government of the country facing public health crisis can ask for production and sale of the drugs in the country at concessional price based on a compulsory license that it issues. If the patent holder is ready, it gets the license. If not, it allows a government to temporarily override a patent. Government may issue a compulsory license to any other company .This allows generic copies of a patented product to be produced domestically, with compensation paid to the patent holder. Generic copies of patented drugs are much cheaper than the branded drugs. By introducing generics, governments can bring down the price of a certain medicine, thereby ensuring an adequate, affordable stock of the essential drugs.

The compulsory licensing provision arms the government with the power to ensure that medicines are available to patients at affordable rates.

It gives the government the right to allow a generic drug maker to sell cheap but safe versions of patented drugs under certain conditions, without the consent of the patent owner.

Multinational drug companies had demanded strong safeguards against the liberal use of the provision when India's patent law was being framed, but the final legislation had kept the grounds for invoking this provision open-ended.

India's first ever compulsory license was granted by the Intellectual Property Appellate Board (IPAB) in 2012, to Natco Pharma for the production of generic version of Bayer's Nexavar, an anti-cancer agent used in the treatment of liver and kidney cancer. It was established in the Bayer vs Natco case that only 2% of the cancer patient population had an easy access to the drug and that the drug was being sold by Bayer at an exorbitant price of 2.8 lakh INR for a month's treatment. Nexavar was being imported into territory of India. IPAB issued a compulsory license to Natco Pharma, which assured that the tablets would be sold for Rs. 8,880/- per month. 6% of the net sales of the drug would be paid to Bayer by Natco Pharma as royalty.

Health experts and NGOs have welcomed the order saying it would deter innovator companies from selling their drugs at exorbitant prices.

It was the only case when compulsory licensing was invoked.

Incremental Innovations

The Intellectual Property Appellate Board (IPAB) in 2013 revoked GlaxoSmithKline's patent in India for its breast cancer drug Tykerb. IPAB ordered that the claimed invention, the salt version of the original drug, is "obvious" and, therefore, has been revoked.

Earlier in 2013, the Supreme Court in a landmark ruling rejected Swiss drug-maker Novartis' plea for a patent for its anti-cancer drug Glivec — beta crystalline of a known molecule called imatinib mesylate — saying it lacked novelty and failed to meet the country's patenting standards.Novartis enjoyed the patent for Glivec for 20 years and later without adequate value addition, it applied for a new patent for the same drug with mere incremental innovation.

This upholds India's policy stance that incremental innovations lacking "enhanced therapeutic efficacy" as assessed by the patenting authorities will not qualify for patents.

Voluntary Licensing

Gilead Sciences entered into licensing agreements with seven Indian generic manufacturers for its 'Sovaldi' (anti-Hepatitis C drug). This license allows the companies to manufacture and sell the drug in any of the 91 voluntary licence (VL) countries at their own price but at a 7% royalty rate on sales sales. The pool of 91 countries included in the deal comprise of 54 middle income countries and 37 low-middle income countries. It also includes complete technology transfer of Gilead's manufacturing process. A further term is that manufacture of the active pharmaceutical ingredients (APIs) must be in India. Criticism is that the license restricts export to only the 91 listed countries. This excludes many important middle income countries, including China and Brazil which is a serious concern as over 70% of HCV patients are in middle income countries

However, the consensus opinion is that Gilead's licences are an important victory for public health. Gilead leads the way for the rest of Big Pharma who sell life saving drugs and who may follow suit and ethically balance business with public health.

Anti-Counterfeiting Trade Agreement (ACTA)

It is a multinational treaty for the purpose of establishing international standards for intellectual property rights enforcement. The agreement aims to establish an international legal framework for targeting counterfeit goods, generic medicines and copyright infringement on the Internet, and would create a new governing body outside existing forums, such as the World Trade Organization, the World Intellectual Property Organization, or the United Nations.

The agreement was signed in 2011 EU, Australia, Canada, Japan, South Korea, United States and few of their friends.

Supporters have described the agreement as a response to "the increase in global trade of counterfeit goods and pirated copyright protected worksACTA has also been criticised by Doctors without Borders for endangering access to medicines in developing countries. European Union (EU) parliament in 2012 rejected ACTA.

It was a response to India asserting its rights like invocation of compulsory licensing and rejection of incremental innovations for new patents. India termed it piracy when India generics being sent to other developing countries were sought to be confiscated under ACTA.

Sui Generis System

TRIPS agreement provides sui generis option regarding patent laws. Sui generis means generating by itself or of itself. It is a choice given to members in the place of TRIPS norms. That is, they can protect inventions either on the basis of TRIPS pattern of patents or any other indigenous system (sui generis).

Geographical Indications

There are some goods that owe their properties to the region in which they originate and are nurtured. The climate, soil and the native efforts of the region account for their fame, utility and qualities. Some Indian examples are: Basmati Rice, Darjeeling Tea, Kanchipuram Silk Saree, Alphanso Mango, Nagpur Orange, Kolhapuri Chappal, Bikaneri Bhujia, Agra Petha, Mysore silk, Nilgiri tea, Coorg coffee, Mysore sandal products, Malabar pepper etc.Such products are given Geographical Indications. GI means any indications which identify the goods as originating in the territory of a country or a region or locality in that territory. It is used to identify agricultural, natural or manufactured goods.The manufactured goods should be produced or processed or prepared in that territory. It should have a special quality or reputation or other characteristics

There are many benefits when a product or process is given a GI.

- It confers legal protection to Geographical Indications in India
- Prevents unauthorised use of a Registered Geographical Indication by others
- It provides legal protection to Indian Geographical Indications which in turn boost exports.
- Protects the consumers
- It promotes economic prosperity of producers of goods produced in a geographical territory.

There are rules as to who can apply for a GI. Any association of persons, producers, organisation or authority established by or under the law can apply but the applicant must represent the interest of the producers.It is generally not granted to an individual. It is given to a product for a specific period of time (10 years in India). It can be renewed from time to time for further period of 10 years each.

GIs prevent spurious goods from entering the market. It helps maintain quality. There is greater accountability, too. It boosts exports.

GI is different from a trade mark. A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises.Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

In 1999, the Parliament passed the Geographical Indications of Goods (Registration and Protection) Act, 1999. This Act seeks to provide for the registration and protection of geographical indications relating to goods in India. The Act is administered by the Controller General of Patents, Designs and Trade Marks- who is the Registrar of Geographical Indications. The Geographical Indications Registry is located at Chennai. The Geographical Indications of Goods (Registration and Protection) Act, 1999 came into force in 2003. This is a sui generic legislation intended to give better protection to GIs of India.
Hundreds of items items including Kancheepuram silk and Darjeeling tea from various states enjoy the protection.Some such products are: Nagpur orange, Kangra painting, Moradabad Metal Craft, Firozabad Glass, Kannauj Perfume, Kanpur saddlery, Saharanpur wood craft, Dharmavaram handloom pattu sarees and paavadas, Warli painting, Kolhapur jaggery, Thewa art work and three Manipur-based knit works Moirang phee, Wangkhei phee and Shaphee lanphee.

Himachal Pradesh's Kangra Arts Promotion Society sought GI saying the art form was invogue in the foothills of western Himalayas and pigments used in Kangra paintings are derived from organic and inorganic sources. The central theme of Kangra paintings is love and the recurring themes are six seasons or music or Krishna-Radha or Shiva-Parvati.

Manipur government's department of commerce has sought GI for Moirang phee, Wangkhei phee and Shaphee lanphee, which are shawls/fabric with unique needle work, to be worn as special recognition of honour.

Kolhapur jaggery seeks unique recognition for its white and golden chemical-free product having no added colour, chemicals, additives and flavours. Its application said the jiggery had natural sweetener and contained glucose, vitamins, calcium and minerals.

India has more than 300 GI products registered so far. Also known as the Bird's Eye Chilli, Mizo Chilli is given GI. The Hyderabad Haleem is one of the few Indian dish to have got a GI status. So is the famous traditional craft of Rajasthan: Blue Pottery made in Jaipur. Also, Pattachitra is a form of art that originated in Odisha. It is a pictorial narrative painted on a cloth-based scroll. Generally, the scrolls depict the tales of Hindu gods and goddesses.

Famous Banganapalle mangoes of Andhra Pradesh and Tulapanji rice of West Bengal are among the seven commodities that have been granted Geographical Indications 2017-18.The other five products which have received this tag this year include Pochampally Ikat of Telangana; Gobindobhog Rice of West Bengal; Durgi Stone Carvings and Etikoppaka Toys of Andhra Pradesh; and Chakshesang Shawl of Nagaland.In 2016-17, as many as 33 items got GI registration.

Karnataka with 32 GI products topped the national list followed by Tamil Nadu (24), Andhra Pradesh (22) and Kerala (20).

French champagne and cognac, the USA's Napa Valley, the UK's Scotch whisky and Mexican Tequila are among foreign products that have acquired GI tag in India.

Joynagarer moa is a seasonal Bengali sweetmeat delicacy made of puffed rice and palm jaggery which got a ***Geographical Indication*** tag in 2015.

Rasgolla

There was a legal issue over the origins of rasgolla between Odisha and West Bengal. Odisha has staked claim associating it with a centuries old ritual of Lord Jagannath. West Bengal always thought of rasagolla as its own.

Geographical Indications (GI) registry announced in November 2017 that the rosogolla originated in West Bengal.

Apeda

APEDA is a non-trading, statutory body created under the Agricultural and Processed Food Products Export Development Authority Act, 1985 ("the APEDA Act"), which provides for the development and promotion of export of certain agricultural and processed food products from India, including Basmati rice. The APEDA Act was amended in 2008 to confer it powers to protect intellectual property in special products such as Basmati rice. As such, APEDA is qualified to be an applicant under the Geographical Indications of Goods (Registration& Protection) Act, 1999 ("GI Act").

Basmati 2016

GI tag was given to APEDA.National Agricultural Research System, under the ministry of agriculture and cooperation has recognised only the states of Punjab, Haryana, Himachal Pradesh, Delhi and Uttarakhand, the western part of Uttar Pradesh and two districts of Jammu and Kashmir (namely, Jammu and Kathua) as the traditional geographical indication for Basmati rice cultivation.

This means that the basmati rice produced in these regions are considered an intellectual property and will be acknowledged as Basmati rice, while the Basmati rice produced in other places will not be considered Basmati rice, as APEDA does not consider areas other than those with the GI tag for Basmati rice production. Madhya Pradesh contested the fact that it was excluded even as 13-14 districts in MP grow it.

IPR Policy 2016

GOI recently approved the National Intellectual Property Rights (IPR) Policy which lays down an institutional mechanism for implementation, monitoring and review. It aims to incorporate and adapt global best practices to the Indian scenario. This aims to bring together the strengths of the Government, research and development organizations, educational institutions, corporate entities including MSMEs, start-ups and other stakeholders in the creation of an innovation-conducive environment, which stimulates creativity and innovation across sectors, as also facilitates a stable, transparent and service-oriented IPR administration in the country.The National Intellectual Property Rights (IPR) Policy endeavors for a "Creative India; Innovative India

Objectives:

The Policy lays down the following seven objectives:

- IPR Awareness: Outreach and Promotion - To create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.
- Generation of IPRs - To stimulate the generation of IPRs.
- Legal and Legislative Framework - To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.
- Administration and Management - To modernize and strengthen service-oriented IPR administration.
- Commercialization of IPRs - Get value for IPRs through commercialization.
- Enforcement and Adjudication - To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.
- Human Capital Development - To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

The action by different Ministries/ Departments shall be monitored by DIPP which shall be the nodal department to coordinate, guide and oversee implementation and future development of IPRs in India.

The Policy recognizes that India has a well-established TRIPS-compliant legislative, administrative and judicial framework to safeguard IPRs, which meets its international obligations while utilizing the flexibilities provided in the international regime to address its developmental concerns. It reiterates India's commitment to the Doha Development Agenda and the TRIPS agreement.

While IPRs are becoming increasingly important in the global arena, there is a need to increase awareness on IPRs in India, be it regarding the IPRs owned by oneself or respect for others' IPRs. The importance of IPRs as a marketable financial asset and economic tool also needs to be recognised. For this, domestic IP filings, as also commercialization of patents granted, need to increase. Innovation and sub-optimal spending on R&D too are issues to be addressed.

The broad contours of the National IPR Policy are as follows:

Vision is to create an India where creativity and innovation are stimulated by Intellectual Property for the benefit of all; where intellectual property promotes advancement in science and technology, arts and culture, traditional knowledge and biodiversity resources; where knowledge is the main driver of development, and knowledge owned is transformed into knowledge shared.

Mission is to stimulate a dynamic, vibrant and balanced intellectual property rights system in India to:

- foster creativity and innovation and thereby, promote entrepreneurship and enhance socio-economic and cultural development, and
- focus on enhancing access to healthcare, food security and environmental protection, among other sectors of vital social, economic and technological importance.

PPVFR Act

The Protection of Plant Variety and Farmers Right Act, 2001 (PPVFR Act) was made to set up an effective system for protection of plant varieties, the rights of farmers and plant breeders, and to encourage the development and cultivation of new varieties of plants. The Act was enacted to grant intellectual property rights to plant breeders, researchers and farmers who have developed any new or extant plant varieties. The rights granted under this Act are heritable and assignable and only registration of a plant variety confers the right. Essentially Derived Varieties (EDV) can also be registered under this Act and it may be new or extant. Farmers are entitled to save, use, sow, re-sow, exchange or sell their farm produce including seed of a registered variety in an unbranded manner. Farmers' varieties are eligible for registration and farmers are totally exempted from payment of any fee in any proceedings under this Act. The period of protection for field crops is 15 years and for trees and vines is 18 years and for notified varieties it is 15 years . he rights granted under this Act are exclusive right to produce, sell, market, distribute, import and export the variety. Civil and criminal remedies are provided for enforcement of breeders' rights and provisions relating to benefit sharing and compulsory licence in case registered variety is not made available to the public at reasonable price are provided. Compensation is also provided for village or rural communities if any registered variety has been developed using any variety in whose evolution such village or local community has contributed significantly.

GATS

The General Agreement on Trade in Services (GATS) is the set of regulations that governs trade in services among the WTO countries. GATS, which is one of the three agreements along with AoA and agreement on TRIPS has rules that cover a broad range of economic activity such as health care, education, telecommunications, banking, insurance, business process offshoring (BPO), tourism and so on. India is interested in these fields due to its core competence.

With GATS, multilateral trading system extends to services for the first time. GATT, its predecessor did not cover services.

In services, members of the WTO offer one another most favoured nation (MFN) status as they do for physical goods. MFN means grant of non-discriminatory trade- normal trade.

GATS negotiations are conducted among members bilaterally on the basis of requests and offers.Requests can be made by any WTO member in any service sector to any member. Each member makes bilateral requests to its major trading. These requests ask for full market access and national treatment commitments.

The GATS agreement covers four modes of supply for the delivery of services in international trade:

	Criteria	Supplier Presence
Mode 1: Cross-border supply	Service delivered within the territory of the Member, from the territory of another Member	Service supplier not present within the territory of the member
Mode 2: Consumption abroad	Service delivered outside the territory of the Member, in the territory of another Member, to a service consumer of the Member	
Mode 3: Commercial presence	Service delivered within the territory of the Member, through the commercial presence of the supplier	Service supplier present within the territory of the Member
Mode 4: Presence of a natural person	Service delivered within the territory of the Member, with supplier present as a natural person	

Trade Negotiations

While WB and IMF operate on weighted voting basis, WTO decisions, such as adopting agreements (and revisions to them) are officially determined by consensus of all members. The advantage of consensus decision-making is that it encourages efforts to find the most widely acceptable decision. Small countries and low income countries also weigh for as much as rich countries.

In reality, WTO negotiations proceed not by consensus of all members, but by a process of informal negotiations between small groups of countries. Such negotiations are often called "Green Room" negotiations (after the colour of the WTO Director-General's Office in Geneva), or "Mini-Ministerials", when they occur in other countries.

WTO and safeguard duty

In the technical language of the World Trade Organization (WTO) system, a safeguard is used to restrain international trade in order to protect a certain home industry from foreign competition. A member may take a "safeguard" action (restrict import of a product temporarily) to protect a specific domestic industry from an increase in imports of any product which is causing, or which is threatening to cause, serious injury to the domestic industry that produces like or directlycompetitive products.Safeguards are usually seen as responses to fair trade behaviour, as opposed to unfair trade practices such as

- Dumping
- Subsidy that attracts countervailing duty

As such they are used only in very specific circumstances, with compensation, and on a universal basis, i.e., a member restricting imports for safeguard purposes will have to restrict imports from all other countries.

Safeguard duty in India

India imposed safeguard duty on steel imports as the country faced cheap steel imports flooding its market and thus protect the domestic steel sector in 2015. It aims to deter countries such as China, South Korea and Japan from undercutting local mills, the first such move in more than 15 years. The safeguard duty expires in 200 days from the day it comes into effect. Critics say that it is counter productive as it promotes inefficiency but the answer is that it is temporary.

Countervailing duties (CVDs)

Some countries subsidies their products and make them cheap to be exported. The importing country then takes recourse to CVDs. Thus, CVDs are known as anti-subsidy duties. CVDs are trade import duties imposed to neutralize the negative effects of subsidies. They are imposed after a domestic investigation finds that a foreign country subsidizes its exports, injuring domestic producers in the importing country. According to World Trade Organization rules, a country can launch its own investigation and decide to charge extra duties, provided such additional duties are in accordance with the GATT Article VI and the GATT Agreement on Subsidies and Countervailing Measures.

India resorted to CVDs on import of certain Chinese flat steel products for a period of five years in 2017. The Commerce Ministry's investigation arm - Directorate General of Anti-Dumping and Allied Duties (DGAD) - in its probe had concluded that the domestic steel industry has lost sales opportunities which is a direct consequence of subsidised imports from China.The decision to impose CVD was taken by the Finance Ministry after the DGAD's recommendation.

It is a country specific duty which is imposed to safeguard domestic industry against unfair trade subsidies provided by the local governments of the exporting nations. While DGAD recommends the duty, Finance Ministry imposes it.

Anti-Dumping Duty

Dumping refers to pricing a export. It is the act of charging a lower price in a foreign market for a product than the price of the same product in a domestic market or in a third country market. It is selling at less than "fair value". Under the World Trade Organization (WTO) Antidumping Agreement, dumping is prohibited if it causes or threatens to cause material injury to a domestic industry in the importing country. Otherwise it is not prohibited.

Dumping is a kind of predatory pricing in international trade. The objective of dumping may be to use the full capacity of the industry; get relieved of the extra stock; or to increase market share in a foreign market by driving out competition and thereby create a monopoly situation where the exporter will be able to unilaterally dictate price and quality of the product.

The anti-dumping laws in India in the Customs and Tariffs Act, 1975 (Amended 1995) and The Anti-dumping rules state that "If any article is exported from any country or territory to India at less than its normal value, then, upon the importation of such article into India, the central government may by notification in the official gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article." As of 2017, 353 anti-dumping cases had been initiated by Directorate General of Anti-Dumping and Allied Duties (DGAD) out of which in one hundred and thirty cases, anti-dumping measures are in force.

In October 2017, India imposed anti-dumping duty on stainless steel from US, EU and China. Although antidumping measure has been provided as a vital rule to promote free trade, some instances of antidumping practices suggest that antidumping measures have been used as a tool of protectionism, as "safety valves" – to ease competitive pressure in domestic market.

Doha Round

Doha Round of Trade talks under the WTO began in 2001 in Doha, the capital of Qatar. Doha was the fourth ministerial after the WTO came into force- Singapore, Geneva, Seattle and Doha being the earlier three. It is called Doha Round because the talks were started in Doha. It is called Doha Development Round as it promised to address the issues that were important to the developing countries like India. It has lasted the longest and is yet to complete (2014).

Developing countries believed that they received a raw deal under the Marrakesh Treaty in matters related to agriculture, patents and so on. So they needed additional inducements to agree to the new round of talks. Thus, naming the Round as a Development Round was to pacify the developing countries.

Doha Round aims at further liberalizing international trade for agriculture, industry and services. The need for expeditious completion of the round is because trade as an engine of growth is needed ever more in the present world when global recession has reduced incomes of hundreds of millions of people due to collapse of demand. Also, protectionism is being chosen as a politically convenient strategy by countries including USA. It is a threat to globalization of trade and hurts all members.

Bali Package 2013

The Bali Package is a trade agreement resulting from the Ninth Ministerial Conference of the World Trade Organization in Bali, Indonesia, 2013. It is aimed at lowering global trade barriers. The package includes provisions for lowering import tariffs and agricultural subsidies, with the intention of making it easier for developing countries to trade with the developed world in global markets. Another important target is reforming customs bureaucracies and formalities to facilitate trade. The package covers the following:

Trade facilitation: Agreement on Trade Facilitation will reduce red-tape and streamline customs. It will be legally binding, require some expense and a certain level of technology. LDCs will be supported in building capacities to implement the changes. Although, some critics worry governments may have to prioritize funds for trade facilitation over other important areas such as public health or education.

Agriculture: Covers food security in developing countries.

India and the Bali Package
India had not yielded on the food security issue in the WTO Bali ministerial and, in fact, secured some concessions on the trade facilitation agreement (TFA).

The Bali draft says that till a permanent solution is reached (on the question of issues of asymmetry in the Agreement on Agriculture), members would refrain from approaching the dispute-settlement body against breach of the 10% cap on price-support based food subsidy. This is the peace clause discussed above.

Nairobi 2015

At the Nairobi Ministerial, fissures emerged between the developed and developing countries.

Nairobi declaration: 'We recognise that many members reaffirm the Doha Development Agenda... Other members do not reaffirm the Doha mandates, as they believe new approaches are necessary to achieve meaningful outcomes in multilateral negotiations. Members have different views on how to address the negotiations.'

The outcome of WTO's ministerial conference at Nairobi was mixed. On a positive note, all members agreed for the first time to a legally binding deal to promote agricultural trade by removing subsidies for farm exports. As a net exporter of agricultural products, the deal on agriculture holds potential for India.

The Nairobi ministerial came at a turning point for global trade: Three major stakeholders among developed countries, the US, EU and Japan, have begun to stitch together far reaching regional trade deals. Consequently, their need for WTO and the extent of concessions they are willing to offer there is declining. This did not bode well for many developing countries such as India as WTO provides a better platform to secure a fair trade deal. Even if multilateral trade deals in WTO have been limited, the dispute settlement mechanism of the organisation has worked to the advantage of developing countries. WTO does indeed remain relevant.

The threat to WTO in 2017 is different: deglobalisation due to Donald Trump's isolationism, Brexit and nationalism rising in Europe are rolling back the progress.

Trade Facilitation

Trade facilitation looks at how procedures and controls governing the movement of goods across national borders can be improved to reduce associated cost burdens and maximise efficiency while safeguarding legitimate regulatory objectives. Trade facilitation is "the simplification, standardization and harmonisation of procedures and associated information flows required to move goods from seller to buyer and to make payment".Occasionally, the term trade facilitation is extended to address a wider agenda in economic development and trade to include: the improvement of transport infrastructure, the modernization of customs administration etc.

Some examples:
Fiscal: Collection of customs duties, excise duties and other indirect taxes; payment mechanisms.

Safety and security: Vehicle checks; immigration and visa formalities.

Environment and health: Phytosanitary, veterinary and hygiene controls; health and safety measures; **Consumer protection:** Product testing; labelling; conformity checks with marketing standards (e.g. fruit and vegetables)

Trade policy: Some organisations promoting trade facilitation emphasis the cutting of red tape in international trade as their main objective. Propagated ideas and concepts to reforming trade and customs procedures generally resonate around the following themes:

- Simple rules and procedures
- Avoidance of duplication
- Alignment of procedures and adherence to international conventions
- Transparent rules and procedures
- Mechanisms for corrections and appeals
- Fair and consistent enforcement
- Time-release measures
- Standardisation of documents and electronic data requirements
- Automation
- International electronic exchange of trade data
- Single Window System

A major milestone for the global trading system was reached on 22 February *2017* when the first multilateral deal concluded in the 21 year history of the ***World Trade Organization entered into force*** following its ratification by two-thirds of the ***WTO*** membership, including India.

West and the Doha Round

Developed countries wanted to walk away from the multilateral trading system for many reasons. It served their purpose and there was no point in keeping faith in it and it was time to scale up. Developing countries became assertive. They were insisting that the West should their side of the pact- scrapping of export subsidies on agricultural goods etc. Also, the public health concerns of the TRIPS were being invoked and that was hurting the commercial interests of their pharma giants. Developments in the WTO, especially in the Doha Round negotiations, were forcing the big powers to share the economic pie with the emerging economies.

Mega regionals like TPP and the Transatlantic Trade and Investment Partnership (TTIP) between the US and the EU held hope for them.

India and other developing countries argued for freer mobility of labour in global services trade and to therefore provide an opportunity to their workforce to benefit from trade.

World Trade Organization (WTO) and e-commerce

Advanced countries at WTO want negotiations for "e-commerce," but developing countries oppose it. Proponents say small- and medium-sized enterprises (SMEs) will benefit using e-commerce. But SMEs are the least likely to be able to compete with giant transnational corporations, which enjoy the benefits of scale, historic subsidies, technological advances, strong state-sponsored infrastructure.

The contentious issues are

- requirements to hold data locally
- taxation for digitally traded goods to pay tax

Data is now the most valuable resource. WTO will allow corporations to transfer data around the world without restrictions would deny the right of countries to benefit from their own data and intelligence in the future. It also has serious implications for both data privacy and consumer protection. What WTO proponents call "localization barriers" are actually the tools that countries use to ensure that they benefit from the presence of transnational corporations to advance their own development.

WTO members do not currently have a mandate to write new global rules on "e-commerce."
India has been opposing attempts, mainly by the rich nations, to incorporate e-commerce in the ongoing Doha Round talks of the WTO on the grounds that it would lead to the 'dilution' of the 'development agenda' (that is to improve the trading prospects of developing countries) of the negotiations.While it is not against informal and non-binding discussions on issues like e-commerce, India has said these topics cannot be made part of the formal agenda of WTO negotiations without consensus among all the WTO member nations.

Indian companies have reservations regarding a global, regional or bilateral pact on e-commerce fearing it would favour multinational firms. It involves policies on cybersecurity and hacking, fake goods and piracy, net-neutrality as well as safeguards to protect consumer data and ensure privacy. Fear is that it could result in significant opening of markets for goods and services and curtail the policy space of governments to regulate and nurture its domestic producers.

In the context of discussions on ecommerce, small and medium enterprises (SMEs) have come into focus. Some are saying that it will lead to gains for the MSMEs. But critics warn that MSMEs in India and in other developing countries face insurmountable problems in embracing e-commerce especially for international trade due to lack of e-commerce readiness.

India faces serious challenges in four areas in facilitating e-commerce especially international/ cross border: hard and soft infrastructure, legal framework, taxes and administration. For enabling e-commerce the entire logistics handling at ports/ airports has to be strengthened.

TBT and SPS

The Agreement on Technical Barriers to Trade is an international treaty administered by the World Trade Organization.

TBT exists to ensure that technical regulations, standards, testing, and certification procedures do not create unnecessary obstacles to trade. The agreement prohibits technical requirements created in order to limit trade, as opposed to technical requirements created for legitimate purposes such as consumer or environmental protection. The TBT agreement is closely linked to the Agreement on the Application of Sanitary and Phytosanitary Measures.

The Agreement on the Application of Sanitary and Phytosanitary Measures - also known as the SPS Agreement is an international treaty of the World Trade Organization. Under the SPS agreement, the WTO sets constraints on member-states' policies relating to food safety (bacterial contaminants, pesticides, inspection and labelling) as well as animal and plant health (phytosanitary) about imported pests and diseases.

For example, Indian measures against imports of toys from China on safety considerations.

Singapore Issues

The first ministerial conference was held in Singapore in 1996. Rich countries introduced four issues that came to be known as the "Singapore issues"

- Investment by foreign companies on same terms as national companies
- Competition laws that deal with monopolies and cartels, price fixing, mergers etc
- Transparency in government procurement and creating a level playing field for all players- domestic and foreign
- trade facilitation: standardization and simplification of customs procedures

The last one came into force in 2017 but the other three continue to be opposed. Poor countries do not allow them to be brought into the agendas they feel that they might damage their economic interests.The opposition of the poor countries rests on the following grounds.

- Doha agenda should not be overloaded and the existing issues need to be implemented first like cutting agricultural subsidies.
- large, multinational corporations dominate and threaten the young and growing domestic firms
- they are too intrusive
- policy should be the prerogative of the government. It should be made at its own discretion because such policy depends on a country's unique market conditions

The common theme of three of the issues (investment, competition, government procurement) is to maximise the rights of foreign enterprises to have market access to developing countries through their products and investment; to reduce to a minimum the rights of the host government to regulate foreign investors; and to prohibit government from measures that support or encourage local enterprises.

U.S. and the E.U support the introduction of the Singapore issues arguing that unfair competition/investment and procurement policies distort trade as much as tariffs do, and therefore should be regulated by the WTO rather than left up to individual country governments. However, the US and other developed nations should first implement their commitments in agriculture before expanding the agenda.

India and BITs

A bilateral investment treaty (BIT) is an agreement establishing the terms and conditions for private investment by nationals and companies of one country in another. BITs are signed as part of trade pacts. Its terms include fair and equitable treatment, protection from expropriation and full protection and security. They document a country's obligations on the protection of foreign investment under international law. The distinctive feature of many BITs is that they allow for an alternative dispute resolution mechanism, whereby an investor whose rights under the BIT have been violated could have recourse to international arbitration, often under the auspices of the ICSID (International Center for the Settlement of Investment Disputes of World Bank Group), rather than suing the host State in its own courts.This process is called investor-state dispute settlement.

India terminated the bilateral investment treaties (BITs) it had signed with 58 countries-they were allowed to expire on April 1, 2017. The reason behind the termination is that India wants to renegotiate its investment treaties based on India's new model BIT. The ministry of finance is the nodal body dealing with BITs.

The recently adopted Indian model BIT tilts the balance towards the host state's regulatory power by severely limiting the substantive and procedural protection to foreign investment. Even if there is no BIT in place, the country's laws will continue to protect all the investments.

The new model BIT has clauses that are progressive for out sovereignty and policy space: reducing the extent of most-favoured nation status and national treatment clauses. The contentious change is India's insistence that foreign firms can turn to investor-State dispute settlement mechanisms — in other words, outside arbitration — only after exhausting local judicial remedies. GOI says this is necessary to stop the hundreds of arbitration cases filed against the government by foreign firms. Foreign firms say the cases are filed because the government is filing taxation and retrospective taxation and other cases against them.

As per Indian BIT's, investors can access ICSID (International Centre for Settlement of Investment Disputes) or can approach for arbitration under UNCITRAL (United Nations Commission on International Trade Law) rules. As India is not a party to ICSID convention, the Foreign investors can access Additional Facility Rules of ICSID for dispute resolution.

GOI set up a High Level Committee (HLC) in the Ministry of Law and Justice under **Mr. Justice B N Srikrishna, Retired Judge, Supreme Court in 2016** based on the Government's commitment to speedy resolution of commercial disputes and to make India an international hub of arbitration. The terms of reference of the Committee required it to examine the effectiveness of existing arbitration mechanisms, studying the functioning and performance of arbitral institutions in India and identifying gaps regarding manpower, skills, infrastructure, and funding in such institutions. Report was submitted in 2017.

Solar Panels

National Solar Mission is one of the several initiatives that are part of the National Action Plan on Climate Change with a solar power capacity target of 100 GW by 2022.

Guidelines for solar thermal mandated 30% project to have domestic content. A controversy emerged between power project developers and solar PV equipment manufacturers. The former camp prefers to source modules by accessing highly competitive global market to attain flexible pricing, better quality, predictable delivery and use of latest technologies.The latter camp prefers a controlled/planned environment to force developers to purchase modules from a small, albeit growing, group of module manufacturers in India. Manufacturers want to avoid competition with global players at this nascent stage of development and the government is convinced that to incentivise growth of local industry.

US Trade Representative has filed a complaint at World Trade Organization challenging India's domestic content requirements, citing discrimination against US exports and that industry in US which has invested hugely will be at loss. US insists that such restrictions are prohibited by WTO.

India however claims that it is only an attempt to grow local potential and to ensure self sustenance and reduce dependence. In 2016, WTO rejected India's case thus upholding national treatment clause of its charter.

H1B Visa Fee Hike and WTO-Compatibility

India launched a complaint against the US at the World Trade Organisation over changes to visas for skilled workers. USA changed rules to raise fees for L1 and H1B working visas and also placed more restrictions on the number of those visas awarded. The move is the first step in initiating a dispute at the WTO.

India's complaint centres on a doubling in the fees for H1B and L1 visas that was passed by Congress in 2015 as well as a congressionally mandated cap that limits the number of visas awarded to 65,000 each year.

India alleged that the U.S. is violating its obligations under General Agreement on Trade in Services (GATS), a binding agreement for all WTO member countries, as well as the GATS Annex on Movement of Natural Persons Supplying Services, to not discriminate against or between non-U.S. service providers. India contends that the 2010 and 2015 fee increases do not comply with "most-favoured-nation (MFN) treatment" under the GATS, which generally prohibits a WTO member from treating the services and service suppliers of one WTO member less favorably than it treats comparable services and suppliers of another. While the fee hike does not specifically mention Indian companies, such a provision has been tailored in such a manner that it impacts only Indian IT companies, India alleged.

The H-1B is a visa in the United States under the Immigration and Nationality Act which allows U.S. employers to employ foreign workers in specialty occupations like biotechnology, physical sciences, social sciences, medicine and health, etc in which foreign worker must possess at least a bachelor's degree .H-1B work-authorization is strictly limited to employment by the sponsoring employer.

An L-1 visa is a visa document used to enter the United States for the purpose of work.

L-1 visas are available to employees of an international company with offices in both the United States and abroad. The visa allows such foreign workers to relocate to the corporation's US office after having worked abroad for the company.

Generalized System of Preferences (GSP) and India

Generalized System of Preferences (GSP) is a preferential tariff system extended by developed countries to developing countries. It involves reduced MFN Tariffs or duty-free entry of eligible products exported by beneficiary countries to the markets of donor countries.

Indian exporters benefit by way of reduced tariff or duty free entry of eligible Indian products

Reduction or removal of import duty on an Indian product makes it more competitive to the importer - other things (e.g. quality) being equal.

This tariff preference helps new exporters to penetrate a market and established exporters to increase their market share and to improve upon the profit margins, in the donor country.

Rules of Origin

A. Rules of origin comprise a set of requirements laid down by the importing country, which must be fulfilled by a product to be eligible for preferential tariff treatment upon import in that country. In sum, they are a set of criteria that define nationality of traded products.

The rules of origin are aimed at reserving, as far as possible, the benefit of the preferential system to the country for which it is intended, and to prevent third countries' goods from unduly exploiting the system.

For example, each SAFTA country retains its external tariffs vis-à-vis non-members' goods and levies a lower tariff on the goods "originating" from the other SAFTA members. Rules of origin provide the basis for customs officials to make determinations about which goods are entitled preferential tariff treatment under the SAFTA.

Unless certain value addition is made in the member countries, FTAs and PTAs do not accord tariff concession.

Regional Trading Arrangements (RTA) and Multilateralism under WTO
PTA/FTAs should be understood in the context of economic integration among countries- usually in a geographical region like EU, Asean, NAFTA, SAFTA etc.

Preferential Trade Arrangement is the first step towards integration wherein the members agree to trade with one another at a concessional tariff. The same concessional tariff is denied to non-members.

The next step is duty-free trade and elimination of quotas. It is called FTA.

The customs union is a form of economic integration involving two or more sovereign states that stipulates that there be free trade between the member states and a common tariff policy on trade with non-member states.

Later comes common market where there is a free movement of labour, capital, goods and services.

If the common market has the same currency, it is called a monetary union.

The last stage is the economic union in which members have a common currency and fiscal and monetary policies. Presently, the EU is the only example of a monetary and economic union.

RTAs are allowed under the WTO. Most of the main RTAs today were there when WTO was born in 1995. The reason is that the aims of the two are the same: economic integration on a wider and deeper scale.Tariffs being a barrier to trade, reducing and removing them boosts trade

- complementarities are established among the regional members
- trade creation is another argument- that is, due to free trade among members more trade is created
- higher production and greater efficiency due to enhanced competition

- free trade within a region is a beginning towards globalization as it prepares the countries to face global competition and secure benefits
- in fact, FTAs catalyse globalization as the benefits at the regional level will accelerate the pace towards a larger scale
- non-economic factors are another major incentive as more peaceful relations among the regional countries will have a a virtuous effect.

The following are the problems

- Trade diversion takes place. It means trade is not created but is merely diverted. Imports are made from the FTA member due to price advantage ,even if a non-member is more efficient
- Also, these arrangements have other undesirable fallout like loss of revenue due to tariff reduction or removal and

Regional economic integration without prejudicing globalization and multilateralism is carried forward with 'open regionalism'. "Open regionalism" is defined as external liberalization by trade blocs (PTAs and FTAs) that is, the reduction in barriers on imports from non-member countries that is undertaken when member countries liberalize the trade among themselves. Even as tariffs are reduced for the non-member countries, the level of reduction need not be the same as it is among the member countries.

While the regional trade blocs erode the MFN principle, the following arguments are advanced to show that they promote globalization

- regional free trade is easier to implement in comparison to globalization as the latter is difficult to accept by the people of the country
- domestic lobbies for protectionism can be resisted more successfully by the government at the regional level initially and later at the global level
- scope for deeper integration at the regional level- not only trade but also comprehensive economic cooperation(investment, collaborations etc)
- open regionalism is a step towards making regional trade blocs global.

Some regional trading arrangements in force and in negotiations:

- The **Transatlantic Trade and Investment Partnership** (also known as the Transatlantic Free Trade Area) is a proposed free-trade agreement between the European Union and the United States. The deal is estimated to boost the EU's economy by €120 billion, the US economy by €90 billion and the rest of the world by €100 billion. Talks began in July 2013 and may be finalized by the end of 2014.
- **Regional Comprehensive Economic Partnership** (RCEP) is a Free Trade Agreement (FTA) scheme of the 10 ASEAN Member States and its FTA Partners (Australia, China, India, Japan, Korea and New Zealand).
- **Trans-Pacific Partnership (TPP)** is a trade agreement under negotiation Australia, Brunei, Chile, Canada, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States, and Vietnam. The TPP is intended to be a "high-standard" agreement aimed at emerging trade issues in the 21st century. Trump pulled USA out of it.

- ASEAN Free Trade Area (AFTA) with Brunei, Indonesia, Malaysia, Philippines, Singapore, Thailand, Cambodia, Laos, Myanmar, Vietnam.
- European Free Trade Association (EFTA) between Iceland, Norway, Switzerland and Liechtenstein
- North American Free Trade Agreement (NAFTA) between Canada, U.S. and Mexico
- South Asia Free Trade Agreement (SAFTA) between India, Pakistan, Nepal, Sri Lanka, Bangladesh, Bhutan and the Maldives
- Mercosur is a Regional Trade Agreement (RTA) between Brazil, Argentina, Uruguay and Paraguay, founded in 1991 by the Treaty of Asunción, which was later amended and updated by the 1994 Treaty of Ouro Preto. Its purpose is to promote free trade and the fluid movement of goods, peoples, and currency
- The Andean Community of Nations (CAN) is a trade bloc comprising the South American countries like of Bolivia, Colombia, Ecuador and Peru. Its headquarters are located in Lima, Peru.
- The Economic Community of West African States (ECOWAS) is a regional group initially of sixteen countries, founded in 1975 on the basis of Treaty of Lagos.
- The Southern African Development Community (SADC) seeks to further socio-economic cooperation and integration as well as political and security cooperation among 14 southern African countries.

Groups

G-10 are major food-importing economies like Japan, South Korea, Taiwan, Norway, Switzerland Israel etc. It has rich and poor representatives (Bulgaria etc)

Group of 20 (also called **G20+**) is a bloc of developing nations established in the 5th Ministerial WTO conference, held in Cancun in 2013. It stands for drastic reduction in agricultural subsidies by industrialized nations and opposed further liberalization.

G-33 comprises developing countries like India, Indonesia etc with defensive farm interests that involves protecting farmers from imports. It is an alliance of developing countries on Special Products (SP) and Special Safeguard Mechanism (SSM) in the ongoing agriculture negotiations. It has 42 members including India, Indonesia etc .They are net-food importing developing countries.

While G-20 consists of developing countries with exporting interests as well as defensive interests, the G-33 includes only those developing countries with defensive interest in agriculture.

G-90 is the group of Least developed countries (LDCs) along with other countries from Africa, the Caribbean and Pacific formed G-90 during the Cancun conference in 2003.

What has India gained from the WTO?

- MFN status in the 164 member body
- Rule based trading system
- Impartial trade dispute settlement process unlike earlier when there was bilateral pressures and threats to fall in line(Super and Special 301 of the USA)