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1. Learning Outcomes

After studying this module, you shall be able to

- Familiar with the agreement on investment and agriculture;
- Understand different modes of trade in services;
- Identify coverage of intellectual property rights;
- Know brief summary of WTO agreement &;
- Assess the impact of WTO agreements on Indian Economy.

2. Introduction

Introduction

The formation of WTO as an institution to maximize & promote welfare through trade liberalisation realized the dream seen two and half century ago. WTO is a legal body comprising of 148 member countries for multilateral trade agreements on products and services which includes intellectual property rights dealing with the trade rules between member countries at an international level. It appreciates immunities & privileges similar to IMF, UNO and World Bank. This organization came into being as a result of negotiations, and all the decisions in WTO is the result of negotiations.

The large chunk of discussions is a result of the Uruguay Round and the Doha Development Agenda.

3. WTO Agreements

Replacement of its predecessor GATT by a new multilateral trade institution paved the way for the establishment of World Trade Organisation on 15 April 1994 was signed by participants in the Uruguay Round (1986-1993) during the Ministerial Conference in Marrakesh. The emergence of WTO is based on several rounds of trade negotiations and different agreement agreed upon by member nations during decades of multilateral trade negotiations.

All the WTO Agreements, including the GATS, TRIPs, TRIMs, AoA, MFA and DSU, are integral parts of the Marrakesh Agreement.

Agreements for Trade in Goods

The Agreements in Trade in Goods are regulated by the following 13 specific agreements as under:

- General Agreement on Tariff and Trade 1994
- Agreement on Agriculture
- Agreement on Sanitary and Phyto Sanitary Measures
- Agreement on Textiles and Clothings
- Agreement on Technical Barriers to Trade
- Trade Related Investment Measures
- Anti-dumping Measures
- Customs Valuation Methods
- Pre-shipment Inspection
- Rules of Origin
- Import Licensing
- Subsidies and Countervailing-measures

- Agreement on Safeguards

Although, WTO agreement coverage is comprehensive but we shall confine our study to select agreement (GATS, TRIPs, TRIMs, AoA) of multilateral trade negotiations.

3.1 WTO Agreements:- Trade Related Intellectual Property Rights (TRIPs)

Trade-Related Aspects of Intellectual Property Rights (TRIPS)

TRIPS deal with intellectual property rights (IPRs). It covers all types of IPRs including copyright, trademark, patents etc. The main features of TRIPs agreement include uniformity in Patent and other IPR regulation by all member countries. The distinguishing features of the TRIPS agreement is that it provides for granting protection for intellectual property rights. Especially it gives recognition to product patent also. The deadline for product patenting for all member countries is 1.1.2005 but for LDCs it is 1-1-2016.

Intellectual Property Rights

Intellectual property rights refer to the rights given to people over the creations of their minds. They usually give the creator an exclusive right over the use for a certain period of time.

Patents

Patent is one of the most important IPR under which protection is granted for an exclusive right to exploit an invention. The invention must be a product or a process that provides a novelty and must have commercial application. The owner of a patent is usually granted 20 years of patent protection.

Product Patent

Article 28 of TRIPS confers on the owner of a product patent an exclusive right to prevent third parties without his consent, from the acts of making, using, offering for sale, selling or importing that product. It authorizes the owner of a Process patent to prevent third parties without his consent, from the acts of using; offering for sale, selling or importing a product obtained directly by that process.

Process Patent

The TRIPs regulation provides for registration of both the product patent as well as a process patent under the new patent regime. Prior to this, product patent was not recognized and therefore the same product could be registered under different brand names with minor difference in the process of manufacturing the product. Section 5 of Indian Patent Act, 1970 did not allow product patent for food medicines or drug or chemical substances and only methods or process of manufacture was patentable. However from 1.1.2005, product patent has been allowed for pharmaceuticals, food items and Agro-chemicals by deletion of Section 5 of the Patent Act, 1970 through the Third Patents (Amendment) Act, 2005.

Copyrights

The Berne Convention 1971 deals in details about the copyrights and Article 9 to 14 of TRIPS Agreement deal with member's obligation in relation thereto. Copyrights include the right of the author of computer programs and cinematographic works apart from the general work of art and literature. Article 12 provides for protection of copyrights for at least **fifty years**.

Trade marks

Trade Mark has been defined under Article 15 of TRIPS. It means any sign or any combination of signs capable of distinguishing the goods or services from those of other undertakings. The term of protection is for **seven years** and is renewable indefinitely.

The owner of a registered trademark has the right to assign his trademark with or without the transfer of his business.

Geographical Indications

'Geographical Indications' mean any indication that explains the goods having origin in country's territory or a region in the territory or say locality in territory, given a qualitative reputation or other goods features is in essence attributed to its geographical root. This means that the geographical indication has to indicate that a good of a particular origin has a stated quality or reputation or some other characteristics, which in essence attributed to its geographical root.

Industrial Designs

Design broadly implies to the characteristics of shape, pattern, configuration, or composition of lines or colours which is tested to any commodity by any industrial process or means, which is judged by eyes.

The provisions governing the rights are dealt in Article 25 and 26 of TRIPS Agreement. The holder of the industrial design which is protected have the right to forbid third party people from copying it in the sale or import of their articles. The duration of the protection is **ten years**.

Trade Secret

Article 39 of the TRIPS Agreement provides for the protection of undisclosed information of a commercially sensitive nature. Trade secrets with commercial value must be protected against breach of confidence, breach of contract, inducements and other acts contrary to "honest commercial practices". Furthermore, reasonable steps must be taken to keep the information secret. Governments must protect against unfair commercial use test data submitted to obtain marketing approval for new pharmaceutical or agricultural chemicals.

Disclosure of Information

The WTO Disclosure requirement is a particular relevance to patents. Although patent owners have exclusive property rights over their inventions, they cannot withhold technical Legislations of most countries require applicants for patents to disclose such information on the products or processes to be patented, enabling technically qualified persons to understand and use it for further research or for industrial application after the expiry of the terms of the patents.

Compulsory Licensing

Article 31 of TRIPS Agreement displays mandatory licensing It implies a special right or licence acknowledged by the Govt. Authorities to individuals or companies apart from patent holder to use patent rights — to use, create, sell or import a good under patent (i.e. a patented good) — without the permit of the patent holder allowed under the WTO's TRIPS (intellectual property) Agreement provided certain procedures and conditions are satisfied. For instance: (except in case of an emergency) the individual or company appealing for a licence must have initially tried, not successful, to get a voluntary licence from the right owner on rational terms which are commercial, and required remuneration must be compensated to the right owner.

The authorization granted under compulsory licensing must also meet certain requirements. In particular, it cannot be exclusive, and it must as a general rule be granted predominantly to supply the domestic market.

Protection of Traditional Knowledge

Traditional knowledge means a body of knowledge, practice technology and belief evolved over a period through adoptive processes and handed down through generations. It is done through cultural transmission within a community. It includes knowledge and belief associated with a biological resource. TRIPs Agreement does not provide any protection for traditional knowledge. However a Bill, namely, "Biological Resources, Traditional Knowledge and Expressions of Folklore (Protection & Regulation) Bill 2003 is under consideration by Govt. of India.

Exclusive Marketing Right

India's Patents Act, 1970 exempted "food or medicine or drug" from product patenting (Section 5). The concept of EMR was introduced through Patent (Amendment) Act, 1999 by insertion of Section 24(A) to 24(F) under which the right holder would have the exclusive right to market the products in India for a certain period solely on the basis of a patent granted in any other country and without any investigation by any Indian Authority into the patentability of such product.

3.2 WTO Agreements:-

Trade Related investment Measures

Trade Related Investment Measures (TRIMs) agreement is one of Agreements which comes under Annex IA to the Agreement of Marrakech, witnessed at the extreme of the Uruguay Round (UR) discussions. This Agreement serves measures in investment that are linked to commerce & violates Article III on National treatment or Article XI that is related to general elimination of restrictions which are quantitative of the GATT. The restrictions on investment measures relate in a broad manner to local content requirements, trade balancing requirements and export restrictions, attached to investment decision making.

According to Article 5.1 of the Trade Related Investment Measures Agreement India had taken recognition of 3 TRIMs as inconsistent with the Agreement provisions :

- Local content requirements in the News Print production,
- Local content need in the Rifampicin and Penicillin – G production, and
- Balancing Dividend need in the case of investment in twenty two categories consumer goods.
- Such notified TRIMs were due to be eliminated by 31st December, 1999. None of these measures is in force at present. Therefore, India doesn’t have any due responsibilities under this agreement as far as notified TRIMs are concerned.

The holistic approach adopted in TRIMs agreement has led to the liberalisation of global capital flows & led to massive inward and outward flow of investment across countries providing new avenue for global investment.

3.3 WTO Agreements: - Agreement on Agriculture (AoA)

Salient features under Agreement on Agriculture

There are three pillars to the Agreement on Agriculture (AOA), namely, Domestic Support, Export competitiveness and Market Access. There are other issues of multi-functionalities or non-trade concern or development issues.

Domestic Support

Domestic support implies various kinds of direct or indirect supports provided by the government to agriculture in their home country. This involves subsidies on input in the form of energy, irrigation, fertilizer, seeds or pesticides or it may involve indirect support in the form of research and development work for agriculture in general. These domestic supports are subject to certain restrictions and commitments for reduction or elimination of these subsidies and particularly those, which are of the nature of trade distortion. These subsidies are exposed to limit called as aggregate measures of support.

AMBER BOX

All types of domestically given support allotments recognized for production & commerce distortion incorporating some exceptions comes under this category of box. It is included in Article six of the Agreement on agriculture as all domestically given aids excluding those which are explained in the blue & green boxes. These have inclusion of allotment to aid prices, or subsidies intended for quantities of production.

BLUE BOX

These are furnished to farmers usually in developed nations to restrict production as the domestic market is not large and is furnished as a type of allowance to the unemployed. If we speak in a technical manner this is the "amber box with conditions" — conditions designed to reduce distortion. Any aid that comes under amber box is kept in blue box if the aid needs farmers to restrict their production. These are dealt in Paragraph five of Article six of the Agreement on agriculture.

GREEN BOX

The green box is explained in Annex two of the Agreement on agriculture. For qualification, green box subsidies mustn't do trade distortion, or at the most be the reason behind even a minimum distortion. They have to receive funds from government (not by hiking prices) and not indulge in price-support.

These are the type of programmes which are not focused on products particularly, and may have inclusion of direct revenue aids for farmers, not linked to production at current prices or levels. They also have inclusion of environment safeguarding and development programmes targeted at particular regions. Subsidies under "Green box" are permitted without restrictions, and are furnished they agree to criteria which is policy-specific set out in Annex two.

Aggregate Measure of Support

The trade distorting domestic support is measured in terms of what is called the "Total Aggregate Measurement of Support" (Total AMS), which is expressed as a percentage of the total value of agricultural output and includes both product specific and non-product specific support. The Agreement on Agriculture stipulates a reduction commitment of total AMS by 20 per cent for developed countries in 6 years (1995-2000) and by 13-1/3 per cent by developing countries in 10 years (1995-2004), taking 1986-88 as the base period. However, domestic support given to the agricultural sector upto 10% of the total value of agricultural produce in developing countries and 5% in developed countries is allowed. In other words, AMS within this limit is not subject to any reduction commitment. AMS deals only with trade distorting support i.e., Amber Box and does not apply to Green box and Blue box subsidies.

Development box

It is a proposed addition to the three categories of domestic support as already contained in the WTO Agreement on Agriculture and as stated above. Some developing countries have argued for flexibilities that would apply only to developing countries, to promote rural development and food security. These would include protection of staple products through exemptions from commitments, higher tariffs, and safeguards, in addition to a prohibition of the dumping of farm products by developed countries and the establishment of a food security fund. Similar to green box, “development box” would not be subject to reduction commitments.

Export subsidies

Export competitiveness implies that no export subsidies should be allowed on farm exports by the government of the exporting countries. Generally only developed countries especially EU provide this type of subsidies for which commitments had been made by them in Doha declaration for phasing out but no progress has been made on this account and this was also one of the measure point of dispute in Cancun ministerial. The current negotiations are on the basis of July 2004 Framework. The developed countries are asking for a trade-off with more concessions in tariff for more market access in the developing countries.

Peace clause

Provisions in Article 13 of the Agriculture Agreement deal with restrictions and or restrains in relation to agricultural subsidies committed under the agreement that cannot be challenged before Dispute Settlement Body. The sole idea of peace provisions was to reduce the likelihood of disputes on agricultural subsidies over a period of nine years from the date of creation of WTO. The deadline for the same has expired at the end of December 2003 paving the way for filing of cases with the Dispute Settlement Body against illegal agricultural subsidies.

Multi-functionality

This concept recognises the multitude of functions served by a sector, particularly agriculture and the rural community. This is again attributed to in the agriculture Agreement as “non-trade concerns”. Developing nations has done the sponsorship of this proposition with agriculture which is highly costed or with goals of special rural development. They point to environmental protection, landscape preservation, animal rights, rural development and employment, food security, traditional habits, etc., as reasons for taking a conservative view of trade liberalisation commitments.

Food Security

Food Security as defined by FAO is the physical and economic access for all people at all times to enough food for an active, healthy life with no risk of losing such access and as such is directly connected with livelihood in the developing countries. Basically it envisages national policy objective to ensure secure food supplies under all circumstances. Some WTO members believe that food security, at least in some basic products, must be assured through production in the domestic farm sector. Others consider that a flexible mix of domestic and foreign suppliers provides greater assurance. The difference of view affects attitudes to agricultural liberalisation in trade agreements.

Common Agriculture Policy

CAP is the common strategy of European Union for the common interest of all its members. There is one trade commissioner on behalf of EU to take part in WTO negotiations although the vote of the EU is equivalent to the number it's of members.

3.4 WTO Agreements: - General Agreement on Trade in Services (GATS)

Salient features of General Agreement on Trade in Services (GATS)

GATS deal with agreement on trade in services i.e., services relating to banking, insurance, information technology, telecom, health, education etc. There are 12 sectors and 161 sub-sectors of services covered under GATS. The agreement dealing with services provide four different modes of services across the borders from one country to another amongst member countries under Article 1 of GATS Agreement.

Mode-1 Cross Border supply of services: Under this mode the service provider and the service consumer stay in their respective countries and the services move from one country to another country through information technology or through the telecom services and they are popularly known as e-commerce or business process outsourcing (BPO).

Mode-2 Consumption abroad: Under this mode the services are provided in the home country of the service provider and the service consumer has to move from his home country to the country of the service provider and therefore this is known as consumption abroad. These types of services generally include tourism, health, education etc.

Mode-3 Commercial presence: Under this mode the service provider moves into the country of the service consumer through commercial presence by opening a branch office or through business collaboration in the form of joint venture abroad or by setting up a subsidiary company. The examples under this category are Citi bank operating in India through its various branch offices or various insurance companies operating in India or Infosys operating in USA through its branch offices.

Mode-4 Movement of natural persons: Under this mode the service provider is not a company but the individual himself moves from his home country to the country of the service consumer and therefore this mode is described as movement of natural persons. This involve issue of visa for temporary stay of the person and the member countries of WTO are thinking of issuance of GATS visa for specific types of services for which commitments are being made by them for free movement of natural persons on fulfillment of educational and other technical qualifications.

Most-Favored-Nation Treatment (Article II)

With measures under this agreement, each and every member is to accord services and suppliers of service of any other; treatment no less favorable than it accords to like services and service suppliers of any other country.

There is a provision for exemptions to above provisions and a member can maintain MFN exemptions normally for 10 years.

Transparency (Article III)

GATS provide for publication of all relevant measures and their intimation to Council for Trade in Services. It also provides that request for specific relevant information from any member shall be promptly responded.

However, no member is required to provide confidential information, which impede law enforcement or is contrary to the public interest or which prejudice legitimate commercial interest of any enterprise, public or private.

Domestic Regulations

Article VI of GATS Agreement provide for harmonisation of domestic rules of member countries with regard to the following three aspects:-

i) Qualification requirements and procedures,

ii) Technical standards,

iii) Licensing requirements

The above regulations should have the following objectives:

(a) Based on objective and transparent criteria, such as competence and the ability to supply the service;

(b) Not more burdensome than necessary to ensure the quality of the service;

(c) In the case of licensing procedures, not in themselves a restriction on the supply of the service.

4. WTO Agreements & Its Impact on Indian Economy

The implementation of WTO agreements will have far reaching effects & consequences not only on India's foreign trade but also on its internal economy. The impact of WTO on India's economy is staged as follows:-

The progressive impact of WTO on India's economy can be perceived from the following points:-

- Increase in Export Incomes:-

  Income effects of the implementation of Uruguay Round package will be an increase in traded merchandise goods as estimated by World Bank, Organisation for Economic Co-operation and Development (OECD) and the WTO. It is expected that India's share in world exports would improve gradually over time depending upon the degree of openness & integration of the domestic economy with global economy.

- Trade in Agricultural Goods :-

  Reduction of quantitative trade barriers and domestic subsidies in agriculture is likely to raise international prices of agricultural products. India is likely to benefit from this in form of higher export earnings from agriculture sector. Although it may affect food prices globally but this will benefit agriculture sector because all major agriculture development programmes in India will be exempted from the provisions of WTO Agreement.

- Multilateral Rules And Disciplines :-

  The Uruguay Round Agreement has strengthened Multi-lateral rules and disciplines. The most important of these relate to anti - dumping, subsidies and countervailing measures, safeguards and disputes settlement. This is likely to ensure greater security and certainty of the international trading system.

- Growth in the exports of invisibles :-

  Under the provisions of GATS agreement, member nations have liberalized service sector & thus promoting trade in invisibles. India as a hub of effective cost of services would like to benefit from this agreement.

- Global movement of capital flows:-

  India has increased the upper cap of foreign investment in various sectors & liberalise the foreign investment policy as per the commitments made to WTO. As a result of this, foreign investment and FDI has increased manifold compared to pre-reform period. A number of initiatives have been taken to attract FDI in India between 2000 and 2014. According to Department of Industrial Policy and Promotion (DIPP), the total FDI inflows soared by 24.5 per cent to US$ 44.9 billion during FY2015, as compared to US$ 36.0 billion in FY2014.

Damaging Impact Of WTO Agreements on Indian Economy:-

- TRIPs:-The Agreement on TRIPs at Uruguay Round weighs heavily in favour of Multinational Corporations and developed countries as they hold a very large number of patents. Agreement on TRIPs will work against India in several ways and will lead to monopoly of patent holding MNCs. As a member of WTO, India has to comply with standards of TRIPs.

  The negative impact of agreement on TRIPs on Indian economy can be stated as follows

- Pharmaceutical Sector:-Under the Patents Act, 1970, only process patents were granted to chemicals, drugs and medicines. This means an Indian pharmaceutical company only needed to develop and patent a process to produce and sell that drug. This proved beneficial to Indian pharmaceutical companies as they were in a position to sell quality medicines at low prices both in domestic as well as in international markets. However, under the agreement on TRIPs, product patents needs to be granted. This will benefit the MNCs and it is feared that they will increase the prices of medicines heavily, keeping them out of reach of poor. Again many Indian pharmaceutical companies may be closed down or taken over by large MNCs.
- Agriculture:-The Agreement on TRIPs extends to agriculture through the patenting of plant varieties. This may have serious implications for Indian agriculture. Patenting of plant varieties may transfer all gains in the hands of MNCs who will be in a position to develop almost all new varieties with the help of their huge financial resources and expertise.
- Microorganisms :-

  The Agreement on TRIPs also extends to Microorganisms as well. Research in micro - organisms is closely linked with the development of agriculture, pharmaceuticals and industrial biotechnology. Patenting of micro - organisms will again benefit large MNCs as they already have patents in several areas and will acquire more at a much faster rate.

- TRIMs:-Agreement on TRIMs provide for treatment of foreign investment on par with domestic investment. This Agreement too weights in favour of developed countries. There are no provisions in Agreement to formulate international rules for controlling restrictive business practices of foreign investors. Jn case of developing countries like India, complying with Agreement on TRIMs would mean giving up any plan or strategy of self - reliant growth based on locally available technology and resources.
- GATS:-One of the main features of Uruguay Round was the inclusion of trade in services in negotiations. This too will go in favour of developed countries. Under GATS agreements, the member nations have to open up services sector for foreign companies. The developing countries including India have opened up services sector in respect of banking, insurance, communication, telecom, transport etc. to foreign firms. The domestic firms of developing countries may find it difficult to compete with giant foreign firms due to lack of resources & professional skills.
- Non - Tariff Barriers :-

  Several countries have put up trade barriers and non - tariff barriers following the formation of WTO. This has affected the exports from developing countries. The Union Commerce Ministry has identified 13 different non - tariff barriers put up by 16 countries against India. For eg. MFA (Multi - fiber arrangements) put by USA and European Union is a major barrier for Indian textile exports.
- Agreement On Agriculture (AOA)

  The AOA is biased in favour of developed countries. The issue of food security to developing countries is not addressed adequately in AOA. The existence of global surpluses of food grains does not imply that the poor countries can afford to buy. The dependence on necessary item like food-grains would adversely affect the Balance of Payment position.

India will face several problems in the process of complying with WTO agreements, but it can also reap benefits by taking advantage of changing international business environment.

5. Summary

- The provision of different agreements of WTO further extends the trade liberalisation regime through trade in goods, services, intellectual property rights and investment.
- GATS provisions are complementary to the provision of TRIPs, TRIMs, AoA and various other agreement of WTO to encourage integration of global economy.
- Although overall impact of new multilateral regime is yet to be quantify but its effect on developing country like India is varied.