INDIAN ECONOMY

Civil Services Examination
Indian Economy

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## Contents

### Indian Economy

#### Unit – I

<table>
<thead>
<tr>
<th>Chapter - 1</th>
<th>Introduction to Economics</th>
<th>2</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.1 Basics</td>
<td>..........................</td>
<td>2</td>
</tr>
<tr>
<td>1.2 Factors of Production</td>
<td>..........................</td>
<td>2</td>
</tr>
<tr>
<td>1.3 Types of Goods</td>
<td>..........................</td>
<td>3</td>
</tr>
<tr>
<td>1.4 Study of Economics</td>
<td>..........................</td>
<td>4</td>
</tr>
<tr>
<td>1.5 Schools of Economic Thought</td>
<td>..........................</td>
<td>4</td>
</tr>
<tr>
<td>1.6 Types of Economy</td>
<td>..........................</td>
<td>4</td>
</tr>
<tr>
<td>1.7 Structural Composition</td>
<td>..........................</td>
<td>7</td>
</tr>
<tr>
<td>1.8 Structural Transformation of Indian Economy</td>
<td>..........................</td>
<td>7</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter - 2</th>
<th>Microeconomics</th>
<th>10</th>
</tr>
</thead>
<tbody>
<tr>
<td>2.1 Basic Concepts</td>
<td>..........................</td>
<td>10</td>
</tr>
<tr>
<td>2.2 Demand Elasticity (DE)</td>
<td>..........................</td>
<td>12</td>
</tr>
<tr>
<td>2.3 Supply Curve and Law of Supply</td>
<td>..........................</td>
<td>14</td>
</tr>
<tr>
<td>2.4 Supply Elasticity</td>
<td>..........................</td>
<td>15</td>
</tr>
<tr>
<td>2.5 Market Equilibrium</td>
<td>..........................</td>
<td>16</td>
</tr>
<tr>
<td>2.6 Market Structure</td>
<td>..........................</td>
<td>16</td>
</tr>
<tr>
<td>Perfect Competition</td>
<td>..........................</td>
<td>16</td>
</tr>
<tr>
<td>Monopoly</td>
<td>..........................</td>
<td>17</td>
</tr>
<tr>
<td>Monopolistic Competition</td>
<td>..........................</td>
<td>17</td>
</tr>
<tr>
<td>Oligopoly</td>
<td>..........................</td>
<td>18</td>
</tr>
<tr>
<td>Monopsony</td>
<td>..........................</td>
<td>19</td>
</tr>
<tr>
<td>2.7 Cost of Production</td>
<td>..........................</td>
<td>19</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter - 3</th>
<th>National Income Accounting</th>
<th>21</th>
</tr>
</thead>
<tbody>
<tr>
<td>3.1 Introduction</td>
<td>..........................</td>
<td>21</td>
</tr>
<tr>
<td>3.2 Uses of NI Accounting</td>
<td>..........................</td>
<td>21</td>
</tr>
<tr>
<td>3.3 Circular Flow of Income</td>
<td>..........................</td>
<td>21</td>
</tr>
<tr>
<td>3.4 Basic Concepts</td>
<td>..........................</td>
<td>23</td>
</tr>
<tr>
<td>Gross Domestic Product (GDP)</td>
<td>..........................</td>
<td>23</td>
</tr>
<tr>
<td>Gross National Product (GNP)</td>
<td>..........................</td>
<td>23</td>
</tr>
<tr>
<td>Net Factor Income from Abroad</td>
<td>..........................</td>
<td>23</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter - 4</th>
<th>Poverty, Inequality and Inclusive Growth</th>
<th>34</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 Introduction</td>
<td>..........................</td>
<td>34</td>
</tr>
<tr>
<td>4.2 Types of Poverty</td>
<td>..........................</td>
<td>34</td>
</tr>
<tr>
<td>4.3 Poverty Estimation in India</td>
<td>..........................</td>
<td>36</td>
</tr>
<tr>
<td>4.4 Causes of Poverty in India</td>
<td>..........................</td>
<td>38</td>
</tr>
<tr>
<td>4.5 Poverty Alleviations in India Since Independence</td>
<td>..........................</td>
<td>39</td>
</tr>
<tr>
<td>4.6 Strategy for Combating Poverty</td>
<td>..........................</td>
<td>43</td>
</tr>
<tr>
<td>4.7 Inclusive Growth</td>
<td>..........................</td>
<td>44</td>
</tr>
<tr>
<td>4.8 Financial Inclusion</td>
<td>..........................</td>
<td>44</td>
</tr>
<tr>
<td>4.9 Microfinance</td>
<td>..........................</td>
<td>48</td>
</tr>
<tr>
<td>4.10 Universal Basic Income</td>
<td>..........................</td>
<td>50</td>
</tr>
<tr>
<td>4.11 Low Skill Manufacturing</td>
<td>..........................</td>
<td>51</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Chapter - 5</th>
<th>Socio-Economic Planning</th>
<th>53</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Introduction</td>
<td>..........................</td>
<td>53</td>
</tr>
<tr>
<td>5.2 Need for Planning</td>
<td>..........................</td>
<td>53</td>
</tr>
<tr>
<td>5.3 Constitutional Provisions</td>
<td>..........................</td>
<td>54</td>
</tr>
<tr>
<td>5.4 Objectives of Planning</td>
<td>..........................</td>
<td>54</td>
</tr>
<tr>
<td>5.5 Types of Planning</td>
<td>..........................</td>
<td>54</td>
</tr>
<tr>
<td>5.6 History of FYPs</td>
<td>..........................</td>
<td>56</td>
</tr>
<tr>
<td>5.7 Nature of Planning in India</td>
<td>..........................</td>
<td>59</td>
</tr>
</tbody>
</table>

|                      | Imperative Planning | .......................... | 59 |

GDP Deflator .................................................. 23
GNP Deflator .................................................. 24
Difference between GDP and GNP .......................... 24
Gross Value Added (GVA) ........................................ 24
3.5 Methods of Estimating GDP/GNP .......................... 25
3.6 Difficulties in Estimating NI ............................ 27
3.7 GDP: A Measure of Welfare .................................. 27
3.8 Development .................................................. 28
3.9 Models of Development ....................................... 30
3.10 Development in India ....................................... 31
3.11 Development Indices ........................................ 31
3.12 Green GDP .................................................. 32
3.13 Poverty, Inequality and Inclusive Growth .................. 34
3.14 Poverty Alleviations in India Since Independence .......... 39
3.15 Strategy for Combating Poverty ............................ 43
3.16 Inclusive Growth ............................................. 44
3.17 Financial Inclusion .......................................... 44
3.18 Microfinance .................................................. 48
3.19 Universal Basic Income ...................................... 50
3.20 Low Skill Manufacturing ...................................... 51
Export Promotion Capital Goods (EPCG) Scheme ........................................... 166
Special Economic Zone (SEZ) ........................................... 166

13.4 Composition of Indian Foreign Trade .... 169
Import Items ........................................... 169
Export Basket ........................................... 170
Trade Balance with Trading Partners .... 171

13.5 Indian Foreign Trade: Agencies ............. 171
Ministry of Commerce and Industry ............. 171

13.6 Foreign Trade Policy (2015-20) ............. 172

13.7 Export Promotion Schemes ...................... 174
Merchandise Export of India Scheme .... 174
Service Export from India Scheme .......... 174
Duty Exemption and Remission Scheme 174

13.8 International Collaborations .................... 176
India and WTO ........................................... 176
India’s FTAs ........................................... 176

13.9 Regional Agreements .............................. 178
Regional Comprehensive Economic Partnership (RCEP) ...................... 178
Trans-Pacific Partnership (TPP) and Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) .... 179
Trans-Atlantic Trade and Investment Partnership (TTIP) ...................... 180

15.3 Objectives of WTO .............................. 195

15.4 Evolution of WTO .............................. 195

15.5 Organizational Structure .......................... 196

15.6 Principles of WTO .............................. 197

15.7 WTO Agreements .............................. 198
Agreement on Agriculture (AoA) .............. 198
Trade Related Intellectual Property Rights (TRIPS) ...................... 200
Sanitary and Phyto-Sanitary Measures ........ 201
European Union Ban on Imports of Indian Mangoes ...................... 202
General Agreement on Trade in Services (GATS) ...................... 202
Agreement on Trade Related Investment Measures (TRIMs) ...................... 203
Agreement on Subsidies and Countervailing Measures (SCM) ...................... 203

15.8 Important Ministerial Meets ..................... 203
Doha Ministerial Meet and Doha Development Agenda (DDA)-2001 ............. 203
Bali Ministerial Conference and Bali Package ...................... 205
Nairobi Ministerial Conference ...................... 205
Buenos Aires Ministerial Conference ............. 205

15.9 India and WTO .............................. 206
India’s Food Security Program and WTO-206
H-1B Visa Issue and GATS ...................... 207
India-US Poultry Dispute ...................... 208
India and TRIPS .............................. 208

Unit – IV

Chapter - 16

Capital Market and Share Market .... 214

16.1 Market .............................. 214

16.2 Types of Markets .............................. 214
Financial Market .............................. 214
Money Market .............................. 214

16.3 Capital Market .............................. 215
Need for Capital Market .............................. 215
Evolution of Capital Market in India ............. 216
Components of Capital Market ...................... 218
Types of the Capital Market ...................... 218
Secondary Market/Stock Market ...................... 221
Chapter - 17
Agriculture in India .................. 246
17.1 Introduction ...................... 246
17.2 Importance/Role of Agriculture ............. 246
17.3 Evolution of Agriculture in India .......... 247
17.4 Trends in Indian Agriculture ............ 248
17.5 Determinants of Agricultural Growth ......... 250
17.6 Land Reforms Since Independence ...... 250
    Zamindari Abolition ...................... 250
    Tenancy Reforms ......................... 251
    Land Ceiling Laws ....................... 252
    Consolidation of Landholdings .......... 252
    Co-operative Farming ..................... 252
National Land Record Modernisation Programme (NLRMP) ......................... 253
17.7 Irrigation ................................ 254
17.8 Seeds ................................ 256
    Seed Village Programme ................. 256
    Seeds Bill, 2004 .......................... 256
    Genetically Modified (GM) Crops ...... 257
17.9 Fertilisers ............................ 258
17.10 Farm Mechanisation .................... 259
17.11 Insurance ............................. 260
    Issues with Earlier Schemes .......... 260
    Pradhan Mantri Fasal Bima Yojana.... 261
17.12 Agricultural Credit .................... 262
    Importance ................................ 262
    Sources of Agricultural Credit in India ... 262
    Problems/Issues in Agricultural Credit ... 263
    Other Measures Taken to promote Agricultural Credit ......................... 264
    Suggestions ............................... 264
17.13 Research and Extension Services ........ 265
17.14 Food Management ..................... 265
    Minimum Support Price (MSP) .......... 265
    Price Support Scheme (PSS) for Oil Seeds, Pulses and Cotton .............. 266
    Market Intervention Scheme (MIS) ...... 266
    Price Stabilization Fund ................. 266
    Procurement and Storage ................. 267
    Targeted Public Distribution System ... 267
    Shanta Kumar Committee ................. 268
17.15 Direct and Indirect Subsidies .......... 269
17.16 Marketing of Agricultural Produce ....... 270
    Need ..................................... 270
    APMC Act ................................ 270
    Model APMC Act, 2003 .................. 271
    Agricultural Produce and Livestock Marketing Act, 2017 ............... 271
17.17 Agrarian Crisis: Farmers’ Suicide ......... 272
17.18 Farm Loan Waiver ..................... 274
17.19 Land Leasing and Model Land Leasing Act ......................... 275
17.20 Taxing Agricultural Income .............. 276
17.21 Climate Change and Agriculture ......... 276
17.22 Contract Farming ...................... 277

Chapter - 18
Food Processing Industry ............ 280
18.1 Introduction ......................... 280
18.2 History of Food Processing .......... 281
18.3 Significance of Food Processing Industries 281
18.4 Statistics ............................. 282
18.5 Advantage India: Potential of Food Processing Industry ......................... 282
18.6 Locational Factors for Food Processing Industry ......................... 283
18.7 Stages and Processes Involved in Food Processing ......................... 283
    Food Processing Includes .......... 284
18.8 Upstream and Downstream Requirements of Food Processing Industry .......... 284
    Upstream Requirement .......... 284
    Raw Materials .......................... 284
    Finance and Capital ................. 285
    Information and Training .......... 285
    Technology Transfer ................. 285
    Downstream Requirement .......... 286
18.9 Challenges/Issues to Food Processing Industry ......................... 286
18.10 Government Schemes .............................................. 290
Pradhan Mantri Kisan SAMPADA Yojana .............................................. 290
Mega Food Parks (MFP) ................................................................. 291
Integrated Cold Chain, Value Addition and Preservation Infrastructure .............................................. 291
Scheme for Creation/Expansion of Food Processing and Preservation Capacities .............................................. 292
Scheme for Infrastructure of Agro-Processing Clusters ................................................................. 292
Scheme for Creation of Backward and Forward Linkages ................................................................. 292
Scheme for Food Safety and Quality Assurance Infrastructure ......................................................... 293
Scheme for Human Resources and Institutions ................................................................. 293
Modernization of Abattoirs ................................................................. 294
National Mission on Food Processing ................................................................. 294
Vision 2015 ................................................................................. 294
Agri Export Zone in India ................................................................................. 294
Other Government Initiatives to boost Food Processing Industry ......................................................... 295

18.11 Food Standards ................................................................. 295
Bureau of Indian Standards (BIS) ................................................................. 295
Codex ......................................................................................... 296
Hazard Analysis Critical Control Point ................................................................. 296
AGMARK ......................................................................................... 296

18.12 Regulatory Authorities ................................................................. 297
Ministry of Food Processing Industries ................................................................. 297
Agricultural and Processed Food Products Export Development Authority (APEDA) ................................................................. 297
Food Safety and Standard Authority of India ................................................................. 297
National Institute of Food Technology Entrepreneurship and Management (NIFTEM) ................................................................. 298

18.13 Revolution ................................................................. 298
White Revolution ................................................................................. 298
Blue Revolution ................................................................................. 300
Pink Revolution ................................................................................. 302
Silver Revolution ................................................................................. 303
Yellow Revolution ................................................................................. 303
Golden Revolution ................................................................................. 304
Evergreen Revolution ................................................................................. 305

Chapter - 19

Industry ................................................................. 308
19.1 Introduction ................................................................. 308
19.2 Evolution of Industries ................................................................. 308
19.3 Industrial Development ................................................................. 313
Introduction ......................................................................................... 313
Reasons for India becoming an Industrial Hub ................................................................. 313
Impediments to India Becoming an Industrial Hub ................................................................. 313
Measures to Make India a Manufacturing Hub ................................................................................. 314
Tools to Measure Industrial Performance ................................................................................. 315
19.4 Micro, Small and Medium Enterprises ................................................................. 316
19.5 Government Initiatives for Promoting MSMEs ................................................................. 318
Credit Guarantee Scheme for Micro and Small Enterprises ......................................................... 318
Micro Unit Development Refinance Agency Limited (MUDRA) ................................................................. 318
Zero Defect Zero Effect Certification ................................................................................. 318
Credit Linked Capital Subsidy Scheme ................................................................................. 318
Providing Market Through Preferential Procurement ................................................................................. 318
Revised Marketing Assistance and Technology Upgradation Scheme ......................................................... 319
International Cooperation Scheme ................................................................................. 319
Scheme for Upgradation Rural and Traditional Clusters (SFURTI) ................................................................. 319
Performance and Credit Rating Scheme ................................................................................. 319
Conclusion ......................................................................................... 319
19.6 Unemployment ................................................................................. 319
19.7 Labour Reforms ................................................................................. 323
19.8 Service Sector of India ................................................................................. 325
19.9 Conclusion ......................................................................................... 326

Chapter - 20

Infrastructure ................................................................. 328
20.1 Introduction ......................................................................................... 328
20.2 Definition ......................................................................................... 328
20.3 Investment Model ......................................................................................... 329
Understanding Investment in Detail ......................................................................................... 329
<table>
<thead>
<tr>
<th>Chapter - 21</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public Sector</strong></td>
<td>345</td>
</tr>
<tr>
<td>21.1 Introduction</td>
<td>345</td>
</tr>
<tr>
<td>21.2 Need for Public Sector Undertakings</td>
<td>345</td>
</tr>
<tr>
<td>21.3 Objectives of PSUs</td>
<td>345</td>
</tr>
<tr>
<td>21.4 Evolution of Public Sector Undertakings</td>
<td>345</td>
</tr>
<tr>
<td>21.5 New Economic Policy (1991) and PSUs</td>
<td>346</td>
</tr>
<tr>
<td>21.6 Performance of CPSEs</td>
<td>348</td>
</tr>
<tr>
<td>21.9 National Investment and Infrastructure</td>
<td>349</td>
</tr>
<tr>
<td>Fund (NIIF)</td>
<td></td>
</tr>
</tbody>
</table>

CSE (Prelims): Previous Year Questions.....352
15 World Trade Organization

15.1 Introduction

World Trade Organization (WTO) is a global multilateral organization established in 1995 for the rules based trading between the nations of the world. It is a global membership group that promotes and manages free trade. It is a forum for governments to negotiate trade agreements. It is a place for them to settle trade disputes. It operates a system of trade rules. Essentially, the WTO is a place where member governments try to sort out the trade problems they face with each other. The goal is to help producers of goods and services, exporters, and importers conduct their international businesses.

15.2 Need for WTO

Almost all the nations of the world do not produce all the materials required for smooth running of the country. Therefore, they indulge in trade among each other, so as to acquire the necessary materials and also to earn profit. The concept of trade between nations was well established by Adam Smith in his book ‘An Inquiry into the Nature and Causes of the Wealth of Nations’.

Though free international trade is considered advantageous for all the countries of the world. But, it is necessary, to have a multilateral global organization to regulate the international trade between the nations. This is to ensure that the international trade is bound by mutually agreed upon rules and there exists an institutional mechanism to settle dispute between the trading nations.

15.3 Objectives of WTO

The World Trade Organization (WTO) has 6 key objectives:

1. To set and enforce rules for international trade.
2. To provide a forum for negotiating and monitoring further trade liberalization.
3. To resolve trade disputes.
4. To increase the transparency of decision-making processes.
5. To cooperate with other major international economic institutions involved in global economic management.
6. To help developing countries benefit fully from the global trading system.

15.4 Evolution of WTO

The WTO came into existence on 1st January 1995. But there is a long history attached to the establishment of this organization dating back to 1945.

- After World War II, Western Countries came out with an idea to create an International Trade Organization (ITO) to handle the trade side of the international economic cooperation. It was conceived as the third international institution along with two “Bretton woods” institutions (the International Monetary Fund and the World Bank). Over 50 countries participated in the negotiations to create an International Trade Organization (ITO) as a specialized agency of the UN. However, United States along with many other major countries failed to get this treaty ratified in their respective legislatures and hence it became a dead letter.

- Era of General Agreements on Trade and Tariff (GATT): From 1948 to 1994, the General Agreement on Tariffs and Trade (GATT) provided the rules for much of world trade and presided over periods that saw some of the highest growth rates in international commerce.

In the early years, the GATT trade rounds concentrated on further reducing tariffs. Much of this was achieved through a series of multilateral
negotiations known as “trade rounds” — the biggest leaps forward in international trade liberalization have come through these rounds which were held under GATT’s auspices.

- **Uruguay Round of 1986-94**: All was not going well under the GATT and with the world trade becoming more and more complex, GATT was not able to deal with it. The final chapter of the trade negotiations under GATT was the Uruguay Round which was most extensive of all. It led to the formation of WTO and a new set of agreements.

- **World Trade Organization (1994 onwards)**: The WTO regime was signed during the April 1994 ministerial meeting at Marrakesh, Morocco, and hence is known as the Marrakesh Agreement. The contracting parties of GATT 1947 automatically became the members of WTO (Article IX: Original membership) and then the agreement was opened to be accession by other countries (Article X: Accession). The WTO framework ensures a “single undertaking approach” to the results of the Uruguay Round – thus, membership in the WTO entails accepting all the results of the Round without exception.

<table>
<thead>
<tr>
<th>GATT and WTO: A Comparison</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>GATT</td>
<td>WTO</td>
</tr>
<tr>
<td>A series of rules, a multilateral agreement without an institutional foundation and with just an ad hoc secretariat, originating from the attempt to establish an International Trade Organization in the 1940s</td>
<td>A permanent institution with its own secretariat.</td>
</tr>
<tr>
<td>GATT rules applied to trade in goods</td>
<td>The WTO covers not just goods, but also trade in services and trade-related aspects of intellectual property rights.</td>
</tr>
<tr>
<td>GATT has less powerful dispute settlement system which is also slow and less efficient, and its ruling could be easily blocked</td>
<td>The WTO dispute settlement system is based not on dilatory but automatic mechanism. It is also quicker and binding on the members</td>
</tr>
</tbody>
</table>

The WTO is not simply a continuation of the GATT. It has a completely different character. WTO was created with the purpose of being a stronger and having a more permanent framework compared to the previous GATT.

It also monitors trade in services and trade-related aspects of intellectual property rights, in addition to trade in goods. After the conclusion of the Uruguay round in 1994, WTO has clearly replaced GATT and is now globally accepted multi-lateral framework for International Trade.

India has been member of GATT since 1948, hence it was party to Uruguay Round and a founding member of WTO. China joined WTO only in 2001 and Russia had to wait till 2012.

### 15.5 Organizational Structure

#### Ministerial Conference (MC): The Ministerial Conference (MC) is at the top of the structural organisation of the WTO. It is the supreme governing body which takes ultimate decisions on all matters. It is constituted by representatives of (usually, Ministers of Trade) all the member countries.

![Ministerial Conference (MC)](image)

#### General Council (GC): The General Council (GC) is composed of the representatives of all the members. It is the real engine of the WTO which acts on behalf of the MC. It also acts as the Dispute Settlement Body as well as the Trade Policy Review Body.
Three Councils: There are three councils, viz.: the Council for Trade in Services and the Council for Trade-Related Aspects of Intellectual Property Rights (TRIPS) operating under the GC. These councils with their subsidiary bodies carry out their specific responsibilities.

Director General (DG): The administration of the WTO is conducted by the Secretariat which is headed by the Director General (DG) appointed by the MC for the tenure of four years. He is assisted by the four Deputy Directors from different member countries.

15.6 Principles of WTO

Some of the important principles of World Trade Organization are as follows:

- Non-Discrimination
  Non-discrimination is a fundamental principle of the multilateral trading system and is recognized, in the Preamble of the WTO Agreement, as a key instrument to achieve the objectives of the WTO. In the Preamble, WTO members express their desire to eliminate discriminatory treatment in international trade relations.
  Non-discrimination in the WTO is embodied by two principles, the Most Favored Nation (MFN) treatment obligation and the National Treatment Obligation. These principles are described as below:

(A) Most Favored Nation (MFN)

Members of the WTO can be seen as members of a club. One of the fundamental rules of the club is that each member will grant any other member the best possible treatment it grants to anyone else. Hence, each member of the club is guaranteed to receive the best possible treatment from each of its fellow-members.

In other words, Pursuant to the WTO agreements countries cannot normally discriminate between their trading partners. If a Member grants to a country a special favour (such as a lower customs duty on any of its products) it must grant the same favour immediately and unconditionally to all WTO members. The MFN principle applies to trade in goods, trade in services, and trade related aspects of intellectual property.

So, India granting MFN status to Pakistan does not give any special privilege to Pakistan in trade with India. This is more of Psychological rather than of any real issue between India & Pakistan. 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.
- They can give developing countries and LDCs special access to their markets.
- A country can raise barriers against products that are considered to be traded unfairly from specific countries.
- In services, countries are allowed (in limited circumstances) to discriminate.

(B) National Treatment Obligation

It states that, Imported and locally-produced goods in a country should be treated equally once the foreign goods have entered the domestic market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements.

It should be noted that National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment (As import duty on an item is levied before entry into domestic market) even if locally-produced products are not charged an equivalent tax.

- Free Trade and Market Access

Lowering trade barriers is one of the most obvious means of encouraging trade. There are many possible impediments to market access for goods, services and intellectual property. The two main categories of barriers to market access for goods are:

1. Tariff
2. Non-Tariff barriers

From time to time other issues such as red tape and exchange rate policies have also been discussed. The reduction of tariff and non-tariff
barriers to market access is, together with the elimination of discrimination, a key instrument to achieve the objectives of the WTO.

- **Reducing Tariff Barriers:** One result of the Uruguay Round was countries’ commitments to cut tariffs and to “bind” their customs duty rates to levels, which are difficult to increase. Countries made commitments on specific categories of goods. In the Uruguay Round, there was also a significant increase in the number of “bound” tariffs, or duty rates. A “bound tariff” is a tariff for which there is a legal commitment not to raise it above the bound level. The bound level of the tariff is the maximum level of customs duty to be levied on products imported into a Member. Each Member is responsible for negotiating its “bound levels”.

- **Reducing Non-Tariff Barriers:** Non-tariff barriers include quantitative restrictions (such as quotas) and other barriers (for example, lack of transparency in trade regulation, unfair and arbitrary application of trade regulations, customs formalities, technical barriers to trade and government procurement practices).

WTO rules prohibit the introduction or maintenance of quantitative restrictions. The only restrictions on free trade that the WTO permits are duties, taxes or other charges, and safeguards or emergency actions in limited circumstances.

- **Promoting Fair Competition**

WTO system of multilateral trading system provides for transparent, fair and undistorted competition among the various countries. Rules such as Most Favored Nation (MFN) treatment to all trading parties, equal treatment to foreign goods, patents and copyrights as with nationals ensure fair competition among trading countries. Besides, WTO agreement provides for discouraging unfair competitive practices such as export subsidies and dumping.

- **Special Concern for Developing Countries**

The WTO agreements include numerous provisions giving developing and LDCs special rights or extra leniency – “special and differential treatment”. Among these are provisions that allow developed countries to treat developing countries more favourably than other WTO members. Other measures include:

- Extra time given to developing countries for fulfilling their commitments in respect of various WTO agreements.
- Provisions designed to increase developing countries’ trading opportunities through greater market access.
- Provisions requiring WTO members to safeguard the interests of developing countries when adopting some domestic or international measures (e.g., in anti-dumping, safeguards, technical barriers to trade).

### 15.7 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. Some of the most important agreements are as follows:

#### Agreement on Agriculture (AoA)

The Agreement on Agriculture (AoA) was negotiated during the Uruguay Round of the General Agreement on Tariffs and Trade, and entered into force with the establishment of the WTO on January 1, 1995. It aims at reforming trade in agriculture, envisaging a fair and market-oriented system, which improves predictability and stability for both importing and exporting countries.

The Agreement on Agriculture applies not only basic agricultural products (such as wheat and live animals), but also the products derived from them (such as flour and meat), as well as most processed agricultural products (e.g. chocolate and sausages). The coverage of the Agreement also includes wines, spirits and tobacco products, as well as fibers (such as cotton). Agreement on Agriculture has three pillars:

- **Market Access:** Market access for goods in the WTO is related to the conditions, tariff and non-tariff measures, agreed by members for the entry of specific goods into their markets. The market access requires that tariffs fixed (like
custom duties) by individual countries be cut progressively to allow free trade. It also required countries to remove non-tariff barriers and convert them to Tariff duties.

- **Export Competition:** Export subsidies are presumed to have trade-distorting effects. They allow exporters, benefited with such subsidies, to sell below the cost of production. In that way, export subsidies reduce world prices undercutting exporters in other countries. Each Member undertakes not to provide export subsidies otherwise than in conformity with this Agreement and with the commitments as specified in that Member's Schedule.

- **Domestic Support:** This pillar is based upon the assumption that not all subsidies distort trade to the same extent. The main conceptual consideration is that there are basically two categories of domestic support—support with no, or minimal distortive effect on trade on one hand (often referred to as “Green Box” measures) and trade-distorting support on the other hand (often referred to as “Amber Box” measures). For example, government provided agricultural research or training is considered to be of the former type, while government buying-in at a guaranteed price (“market price support”) falls into the latter category.

### WTO Boxes

In WTO terminology, subsidies in general are identified by “boxes” which are given the colours of traffic lights: green (permitted), amber (slow down – i.e., need to be reduced), red (forbidden). The Agriculture Agreement has no red box, although domestic support exceeding the reduction commitment levels in the amber box is prohibited; and there is a blue box for subsidies that are tied to programmes that limit production. There are also exemptions for developing countries (sometimes called an ‘S&D box’ or “development box”, including provisions in Article 6.2 of the Agreement).

**Amber box:** Domestic support measures considered to distort production and trade fall into the amber box (except for those contained in the blue and green boxes). These include measures to support prices, or subsidies directly related to production quantities.

**De Minimis:** Under this provision developed countries are allowed to maintain trade distorting subsidies or ‘Amber box’ subsidies to level of 5% of total value of agricultural output. For developing countries this figure was 10%.

**Blue box:** This is the “amber box with conditions” – conditions designed to reduce distortion. Any support that would normally be in the amber box, is placed in the blue box if the support also requires farmers to limit production. At present there are no limits on spending on blue box subsidies.

**Green box:** Subsidies that do not distort trade, or at most cause minimal distortion are place under Green Box. These subsidies are allowed without limits. They have to be government-funded and must not involve price support. It includes programmes that are not targeted at particular products, direct income supports for farmers that are not related to current production levels or prices, environmental protection programmes, agricultural research and-development subsidies etc.
Development Box: Article 6.2 of the Agriculture Agreement allows developing countries additional flexibilities in providing domestic support. The type of support that fits into the developmental category are measures of assistance, whether direct or indirect, designed to encourage agricultural and rural development and that are an integral part of the development programmes of developing countries. They include investment subsidies which are generally available to agriculture in developing country members, agricultural input subsidies generally available to low-income or resource-poor producers in developing country members, and domestic support to producers in developing country members to encourage diversification from growing illicit narcotic crops.

Trade Related Intellectual Property Rights (TRIPS)

Introduction

Intellectual property (IP) is a category of property that includes intangible creations of the human intellect. Artistic works like music and literature, as well as some discoveries, inventions, words, phrases, symbols, and designs can all be protected as intellectual property.

Intellectual Property law is created to encourage the creation of a large variety of intellectual goods. To achieve this, the law gives people and businesses property rights to the information and intellectual goods they create, usually for a limited period of time. Because they can earn profit from them, this gives economic incentives for their creation.

Types of Intellectual Property Rights

**Patent:** A patent protects an invention. It gives the holder an exclusive right to prevent others from selling, making and using the patented invention for a certain period (typically 20 years from filing date).

**Copyright:** A copyright protects the expression of literary or artistic work. Protection arises automatically giving the holder the exclusive right to control reproduction or adaptation.

**Trademarks:** A trademark is a distinctive sign which is used to distinguish the products or services of one business from others. Trademarks are often closely linked to brands. They can either be registered or unregistered.

**Industrial Design:** Protects the form of outward appearance or aesthetic style of an object. Does not protect functionality or unseen (internal) design elements. Eg. Shape of a soft drink bottle.

**Trade Secrets:** A trade secret is a formula, practice, process, design or compilation of information used by a business to obtain an advantage over competitors. Trade secrets are by definition not disclosed to the world at large. Eg. the composition formula of Maggi or Pepsi.

**Geographical Indication:** A geographical indication (GI) is a sign used on products that have a specific geographical origin and possess qualities or a reputation that are due to that origin. In order to function as a GI, a sign must identify a product as originating in a given place. In addition, the qualities, characteristics or reputation of the product should be essentially due to the place of origin. Since the qualities depend on the geographical place of production, there is a clear link between the product and its original place of production. For Eg. Banarasi Saree, Darjeeling Tea etc. These rights are generally enjoyed by a community rather than individual only.

As the volume of trade in goods and services involving intellectual property has increased greatly in recent years, the importance of the protection of intellectual property for the world economy has grown enormously. Inappropriate and insufficient protection of intellectual property can distort free trade.

In the developing countries, the protection of intellectual property rights has been often insufficient. In contrast, the developed countries have problematic intellectual property regimes that, for example, openly discriminated against foreign nation and provide excessive protection.

The WTO sought to establish an appropriate framework for the protection of intellectual property in order to bring greater order to international trade. A consensus on the TRIPS Agreement was reached in Marrakesh in April 1994 and took effect on 1 January 1995. Some of the salient points of agreement are:

- It sets down minimum standards for the regulation by national governments of many forms of intellectual property (IP) as applied to nationals of other WTO member nations.
- It covers all legally recognized intellectual property rights (copyright and related rights, patents, industrial designs, trademarks, geographical indications, layout-designs of integrated circuits and undisclosed information).
It incorporates and improves upon protection levels of the earlier frameworks like Paris Convention (for industrial property rights) and the Berne Convention (for copyrights).

Developed countries were given a transition period of one year from the date of entry into force of the WTO Agreement; developing countries and transformation countries were given five years (until January 2000); and least-developed countries were given 11 years (until January 2006). The transition period for least developed countries to implement TRIPS was further extended to 2013, and until 1st January 2016 for pharmaceutical patents, with the possibility of further extensions.

TRIPS Agreement is to date the most comprehensive multilateral agreement on intellectual property (IP). TRIPS also specifies enforcement procedures, remedies, and dispute resolution procedures. Protection and enforcement of all intellectual property rights shall meet the objectives to contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge and in a manner conducive to social and economic welfare, and to a balance of rights and obligations.

**TRIPS and Flexibilities**

**Compulsory Licensing:** Compulsory licensing is when a government allows someone else to produce the patented product or process without the consent of the patent owner. In current public discussion, this is usually associated with pharmaceuticals, but it could also apply to patents in any field.

Compulsory licensing and government use of a patent without the authorization of its owner can only be done under a number of conditions like national emergencies and other circumstances of extreme urgency etc.

**Parallel Importing:** These are products marketed by the patent owner (or trademark or copyright-owner, etc.) or with the patent owner’s permission in one country and imported into another country without the approval of the patent owner.

**World Intellectual Property Organisation (WIPO)**

WIPO is the global forum for intellectual property services, policy, information and cooperation. It is a self-funding agency of the United Nations, with 189 member states.

Its mission is to lead the development of a balanced and effective international intellectual property (IP) system that enables innovation and creativity for the benefit of all. Its mandate, governing bodies and procedures are set out in the WIPO Convention, which established WIPO in 1967.

WIPO, along with Cornell University and INSEAD publishes ‘Global Innovation Index (GII)’ which ranked India 60th out 130 most innovative countries in the world.

In previous two years, it was 66th (2016) and 81st (2015) position.

**Sanitary and Phyto-Sanitary Measures (SPS)**

The Sanitary and Phytosanitary Measures (the ‘SPS Agreement’) was incorporated in World Trade Organization on 1 January 1995. It is concerned with the application of food safety, animal and plant health regulations in cross border trade of biological goods. As a part of SPS, all nations undertake measures to ensure that food products are safe for consumers, and also to prevent the spread of pests or diseases among animals and plants. These Sanitary and Phytosanitary measures (SPS) may be applied in many forms, such as:

- Requiring products to come from a disease-free area
- Specific treatment or processing of products
- Setting of allowable maximum levels of pesticide residues
- Permitted use of only certain additives in food

Sanitary and Phytosanitary measures apply not only to domestically produced food or local animal and plant diseases but also to products coming from other countries. Sanitary and Phytosanitary measures allow countries to set their own standards. But it also says regulations must be based on science. They should be applied only to the extent
necessary to protect human, animal or plant life or health. And they should not arbitrarily or unjustifiably discriminate between countries where identical or similar conditions prevail.

**European Union Ban on Imports of Indian Mangoes**

In 2014, the European Union decided to impose ban on import of Indian mangoes due to concerns over the presence of pests and insects in consignments arriving from India. This was basically due to shortcomings in the phytosanitary certification system of Indian exports. As Europe is one of the key markets for Indian Mango exports, the ban resulted in substantial loss to Indian farmers.

After revamping the quality control measures, irradiation techniques and robust certification system of exports, India applied for revocation of the ban. After much persuasion, the ban was lifted by European Union in 2015.

**General Agreement on Trade in Services (GATS)**

The treaty was created to extend the multilateral trading system to service sector, in the same way the General Agreement on Tariffs and Trade (GATT) provides such a system for merchandise trade. The creation of the GATS was one of the landmark achievements of the Uruguay Round, whose results entered into force in January 1995.

Role of services have been increasing rapidly, domestically as well as in international trade, with time. Services currently account for over 60 percent of global production and employment. Many services, which have long been considered genuine domestic activities, have increasingly become internationally mobile. This trend is likely to continue, owing to the introduction of new transmission technologies (e.g. electronic banking, tele-health or tele-education services), the opening up in many countries of long-entrenched monopolies (e.g. voice telephony and postal services), and regulatory reforms in hitherto tightly regulated sectors such as transport. Combined with changing consumer preferences, such technical and regulatory innovations have enhanced the “tradability” of services and, thus, created a need for multilateral disciplines.

GATS aims for creating a credible and reliable system of international trade rules; ensuring fair and equitable treatment of all participants (principle of non-discrimination); stimulating economic activity through guaranteed policy bindings; and promoting trade and development through progressive liberalization. Obligations contained in the GATS may be categorized into two broad groups:

1. **General obligations:** These apply directly and automatically to all members and services sectors. MFN and Transparency are the two key obligations under this head. Members are held to extend immediately and unconditionally to services or services suppliers of all other Members “treatment no less favourable than that accorded to like services and services suppliers of any other country”.

2. **Specific Commitments:** These are the commitments concerning market access and national treatment in specifically designated sectors. Such commitments are laid down in individual country schedules whose scope may vary widely between Members.

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**Negotiations in services under GATS are classified in 4 modes (interests of different countries depend upon this classification)**

- **Cross-border supply:** It is defined to cover services flows from the territory of one Member into the territory of another Member. For eg. Business Process Outsourcing, KPO or LPO services. Here, it’s in India’s interest to push for liberalization given its large human resource pool and competitive IT industry.

- **Consumption abroad:** It refers to situations where a service consumer (e.g., tourist or patient) moves into another Member’s territory to obtain a service.

- **Commercial Presence:** It implies that a service supplier of one Member establishes a territorial presence, including through ownership or lease of premises, in another Member’s territory to provide a service (e.g. domestic subsidiaries of foreign insurance companies or hotel chains). It is in interest of west to push for liberalisation here. Hence, there has been sustained pressure to open up higher education sector, insurance sector, Medical sector etc through this mode.
Presence of natural persons: Consists of persons of one Member country entering the territory of another Member country to supply a service (e.g., accountants, doctors or teachers). The Annex on Movement of Natural Persons specifies, however, that Members remain free to operate measures regarding citizenship, residence or access to the employment market on a permanent basis. E.g. Indian IT companies sending their engineers for onsite work in US/Europe or Australia. Here again it’s in India’s interest to push for liberalization.

While the overall goal of GATS is to remove barriers to trade, members are free to choose which sectors are to be progressively “liberalised” (i.e. marketised and privatised), which mode of supply would apply to a particular sector, and to what extent that “liberalisation” will occur over a given period of time.

Agreement on Trade Related Investment Measures (TRIMS)

The Agreement on TRIMS of the WTO is based on the belief that there is strong connection between trade and investment. Restrictive measures on investment are trade distorting. According to the TRIMS provision, countries should not adopt the investment measures which restrict and distort trade.

The objective of TRIMS is to ensure fair treatment on investments in all member countries. WTO gives a list of prohibited investment measures like local content requirement, export obligation, technology transfer requirement etc. that violates trade. Few exemptions to developing countries are also provided under TRIMS.

Agreement on Subsidies and Countervailing Measures (SCM)

The WTO SCM Agreement contains a definition of the term “subsidy”. The definition contains three basic elements: (i) a financial contribution (ii) by a government or any public body within the territory of a Member (iii) which confers a benefit. All three of these elements must be satisfied in order for a subsidy to exist.

Sometimes some subsidies can cause injury to domestic industry of one country due to subsidized imports of other country. Hence it causes a situation of unfair competition and surge of imports.

Against such subsidies members can take Countervailing Measures, such as imposing countervailing duties or antidumping duty. These can only be done in a transparent manner and a sunset period should be specified.

- **Countervailing Duty** – It is imposed on imported goods to counterbalance subsidy provided by the exporter country.
- **Anti-Dumping Duty** – At times countries resort to subsidize production or exports so heavily that exporters are able to sell goods below domestic price or even cost of production in foreign markets. It is aimed at wiping out target country’s industry. Anti-Dumping Duty is aimed at counterbalancing such subsidization.

### 15.8 Important Ministerial Meets

**Doha Ministerial Meet and Doha Development Agenda (DDA)-2001**

The Agenda was officially launched at the WTO’s Fourth Ministerial Conference in Doha, Qatar, in November 2001. Its aim was to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules.

Doha round is the first to focus on helping developing countries join the global marketplace, and boost their economies as a result. WTO members agreed that for realizing this objective, the rules in each of the areas must be appropriately designed.

The main negotiating issues in the Doha Round are as follows:

- **Agriculture**: It was agreed that agriculture must be stripped off of all policy distortions, including the unacceptably high levels of subsidies that provide unfair advantage to the large conglomerates controlling global trade in commodities. It was also decided that the existing Agreement on Agriculture (AoA)
would be amended to address smallholder agriculture and give developing countries new instruments to address concerns regarding food security, protection of rural livelihoods and rural development. These instruments are:

- **Special Safeguard Mechanism (SSM):** WTO’s Special Safeguard Mechanism (SSM) is a protection measure allowed for developing countries to take contingency restrictions against agricultural imports that are causing injuries to domestic farmers.

- The contingency measure is imposition of tariff if the import surge causes welfare loss to the domestic poor farmers. SSM is allowable only to the developing countries, but the design of exact rules of the SSM created conflict among the WTO members. Setting the conditions for putting restrictions on imports and the amount of tariff imposition became contentious issues and it caused the delay in the implementation of the entire Doha Development Agenda. Powerful negotiating countries at the WTO, the US and India had conflicting versions about the structure of the SSM. Other countries joined the two sides later.

- **Special Products:** At the 2005 WTO Ministerial Conference in Hong Kong, members agreed to allow developing countries to “designate an appropriate number of tariff lines as Special Products” (SPs) based on “food security, livelihood security and rural development”. These products do not come under the Tariff reduction agreement under WTO.

### WHY INDIA WANTS SSM

<table>
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<tr>
<th>Country</th>
<th>SSM (€)</th>
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<tbody>
<tr>
<td>Switzerland</td>
<td>59</td>
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<tr>
<td>Norway</td>
<td>49</td>
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<tr>
<td>Iceland</td>
<td>40</td>
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<td>Japan</td>
<td>12</td>
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<td>Canada</td>
<td>10</td>
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<tr>
<td>US</td>
<td>9</td>
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Developed nations already enjoy safeguard mechanism (% of farm tariff lines under SSG)

- **Non-Agricultural Market Access (NAMA):** NAMA covers manufacturing products, fuel and mining products, fish and fish products, and forestry products. These products are not covered by the Agreement on Agriculture or the negotiations on services. NAMA calls for a reduction or elimination in tariffs, particularly on exportable goods of interest to developing countries. The Doha Talks also required adequate and appropriate flexibilities to be provided for protecting economically vulnerable industries. The WTO considers the NAMA negotiations important because NAMA products account for almost 90% of the world’s merchandise exports.

- **TRIPS (Compulsory License vs. patent protection):** The issue involves the balance of interests between the pharmaceutical companies in developed countries that held patents on medicines and the public health needs in developing countries. It was agreed that waiver under TRIPS agreement be allowed to a member country to export pharma product made under Compulsory Licensing to Least Developed countries and certain other member countries. It also allows members to not to allow evergreening of Patents.

- **Special and Differential treatment to developing countries:** In Doha round, members agreed that Developing and Least developed countries will continue to be eligible for a favorable treatment. Duty Free Quota Free Access should be given to Least Developed Countries (LDCs).

### Inordinate Delay in Finalization of Doha Development Round

The Doha round of talks failed to get the desired outcome because of the divide between the developed and developing countries on WTO, IMF and World Bank.

- The key argument of the developing countries was that the current rules and regulations are more in favour of the developed or industrialized countries; and the developed countries don’t come forward for trade concessions for the developing countries. The developing countries set the market conditions as per their own needs.

- On the other hand, the developed countries and blocks such as EU argue that the developing economies don’t comply with their demands for near zero-tariffs in agriculture and services.

During most of the Doha talk rounds, the developed countries pressurized the developing countries to open their markets further via so called Trade...
Facilitation Agreement (TFA). On the other hand, the developing countries pressurized the developed countries to bring more transparency to rules and regulations in the global financial bodies; and for removing or raising the cap on food and agricultural subsidies (this also known as ‘aggregate measure of support’, or AMS). The issue got politicized in both the blocks.

**Bali Ministerial Conference and Bali Package**

The Ninth Ministerial Conference of WTO was held in Bali, Indonesia on December 2013. The key issues discussed in this meet included Trade facilitation, Agriculture negotiations, Cotton, Least-developed countries, Monitoring mechanism, Small and vulnerable economies, E-commerce, Non-violation in intellectual property etc. The outcome of this conference was called Bali Package which was the first agreement reached through the WTO that is approved by all its members.

- **Peace Clause**: It allows countries such as India to continue to freely procure and stock grains for the public distribution system even if subsidies resulting from these breach limits under the WTO’s Agreement on Agriculture (AoA). The peace clause provided a four-year reprieve, during which no country would be penalized for any excessive expenditures on food security programs.

- **Trade Facilitation Agreement (TFA)**: The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area. Estimates show that the full implementation of the TFA could reduce trade costs by an average of 14.3% and boost global trade by up to $1 trillion per year.

The developing countries said that the developed ones just are rallyiing behind the Trade Facilitation Agreement to get the markets opened up in developing countries to their goods and services without providing permanent solutions to their problems. They also wanted an agreement on special safeguard measures (SSM) to protect farmers against import surges.

**Nairobi Ministerial Conference**

The Tenth Ministerial Conference of the WTO was held in Nairobi, Kenya during 15-19 December 2015. The agenda of this meeting was to take forward issues that were unresolved during last ministerial conference in Bali in 2013. The components of Nairobi Package were:

- Developed countries such as United States will need to eliminate the farm export subsidies immediately, except on a handful of agriculture products. The developing countries were allowed to end these export subsidies by 2018.

- The Developing countries were given flexibility to cover marketing and transport costs for agriculture exports until the end of 2023. Additional time was given to the poorest and food importing countries. This simply implied that India will not be able to offer export subsidies for sugar and other farm products after eight years.

- The countries struck a deal on IT trade whereby, they would eliminate the tariffs on 201 IT products per year. The idea is to make all IT products duty-free by 2019.

- No final decision was taken on public stock-holding as well as Special Safeguard Mechanisms (SSM).

**Buenos Aires Ministerial Conference**

The 11th Ministerial Conference of WTO was held in Buenos Aires, Argentina from 10th to 13th December, 2017.

- The 11th Ministerial Conference ended in a stalemate on issue of public stockholding and no permanent solution to the peace clause could be reached. However, the peace clause will continue to be in place until any successful resolution on the issue takes place.

- Some progress did take place in furthering the negotiations on fisheries subsidies cut, however no commitment was made at the end of the meeting. Member states did agree to secure a deal on elimination of fisheries subsidies by the next ministerial in December 2019.
India stood firm on its stand on the fundamental principles of the WTO, including multilateralism, rule-based consensual decision-making, an independent and credible dispute resolution and appellate process, the centrality of development, which underlies the DDA, and special and differential treatment for all developing countries.

**Buenos Aires Declaration on Women and Trade**

- Nearly three-fourths of the 164-member World Trade Organisation (WTO) have supported a declaration seeking women’s economic empowerment by expeditiously removing barriers to trade.
- The members have agreed to explore and find ways to best tackle women's general lack of access to trade financing and sub-optimal participation of women in public procurement markets.
- Inclusion of women-led businesses, in particular, small firms in value chains has also been identified as a theme related to trade and the economic empowerment of women.

**India’s Stand**

- India stayed away from declaration, opposing the linking of gender and trade and said that such issues should be discussed outside WTO.
- Agreeing to the proposition to link gender and trade could lead to advanced countries using their high standards in gender-related policies to curb exports from the developing world.
- Discussing such issues at WTO will set a precedent to bring in other non-trade issues such as labour and environment standards into the WTO’s ambit.

The deadlock between the developing and developed countries has made it impossible to launch new negotiations beyond the DDA. This has raised questions about the body's ability to govern increasingly disputed global trade. As a result, there has been an increasing number of bilateral and multilateral Free Trade Agreements (FTA) between nations, hence creating existential crisis for WTO.

### 15.9 India and WTO

**India’s Food Security Program and WTO**

The World Trade Organization (WTO) Agreement on Agriculture allows developing countries broad authority to provide price support and public stockholding for food security, if the stocks are acquired to support low income and resource-poor producers. The WTO rules allow subsidization of these food security programs as long as total domestic agricultural subsidies by developing countries do not exceed 10% of the total agricultural output.

The food security act was passed in 2013, guaranteeing access to staple foods at subsidized rates to nearly two-thirds of India’s population. This meant nearly doubling the size of its massive food acquisition and stockholding program, which could potentially violate WTO commitments under AoA.

Apprehending that full implementation of food security programme may result in breach of the WTO cap, India has been seeking amendments in the formula to calculate the food subsidy cap. However, during the Bali conference, members agreed to an interim ‘Peace Clause,’ under which any breach of the ceiling by a developing nation would not be challenged. The ‘Peace Clause’ is available to developing nations, including India, till a permanent solution is found to public stockholding for food security purposes.

**View of Developed Countries (mainly US):** They questioned special and differential treatment to countries with a high GDP. They argued emerging economies like India does not need such favourable clause on food subsidies.

**India’s Stand**

The key arguments of India in finding the ‘Permanent Solution’ to the food security program are:

- Developed countries should see per-capita GDP of India not the absolute GDP in analysing the requirements of developing countries like India.
- India had said the credibility of the WTO would be affected without a permanent solution to the issue. This is a matter of survival for eight
hundred million hungry and undernourished people in the world. WTO exists to promote free & fair trade. “Fair” should include protection of livelihood & food security of our majority who depend on farming.

- **Issue in subsidy computation methodology:** A farmer producing, say, wheat is considered receiving a subsidy if the procurement price paid to him is higher than a world “reference” price, which is, however, taken at the levels prevailing during 1986-88. India wants the subsidy computation methodology to reflect current international prices. It will, then, have more flexibility in fixing minimum support prices (MSP), which have already crossed $ 235 per tonne in wheat.

- **The AoA rules on public stockholding are vague and general.** While direct provision of food to vulnerable consumers at subsidized prices is permitted, such programs are not to have “the effect of providing price support to producers”. At the same time, there is specific exemption with regard to supporting “low-income or resource-poor producers”. According to India, over 90 per cent of its farmers fall under this category and hence the subsidies incurred its food security programs would be exempt from any reduction commitments under AoA. Hence India is seeking greater clarity on these provisions.

**H-1B Visa issue and GATS**

The H-1B visa program was launched by USA in 1990 and is intended to help American firms deal with labour shortages in rapidly growing fields that demand specialized skills, such as research, engineering and computer programming.

The program has an annual cap of 65,000, and an additional 20,000 visas are granted to employees with master’s degrees from American universities. In 2015, US President Barack Obama had signed into law which had introduced a hefty $4,000 fee for certain categories of H-1B visa and $4,500 for L1 visa. Under this law, companies having more than 50 employees and having more than 50 per cent of their US employees on H-1B and L1 visas were forced pay the new fee from April 1, 2016. India has remained a major beneficiary of this program.

India filed a complaint against the United States decision to impose high fees on L-1 and H-1B categories of temporary working visas in the World Trade Organization (WTO) in 2016.

India has argued that the U.S. is violating its obligations under General Agreement on Trade in Services (GATS) as well as the GATS Annex on Movement of Natural Persons Supplying Services, to not discriminate against or between non-U.S. service providers. US measure is inconsistent with the global norms and it would impact Indian IT professionals as it makes Indian IT companies less competitive in that market.

**India Solar Panel Dispute and TRIMS**

India’s Jawahar Lal Nehru National Solar Mission, which was launched in 2010, aims to generate 100 GW of Solar Power by 2022 and also to promote domestic industry and manufacturing.

In order to be eligible to participate under the programme, a solar power producer is required compulsorily to use certain domestically sourced inputs namely solar cells and modules for certain types of solar projects. In other words, unless a solar power producer satisfies this domestic content requirement, the government will not ‘guarantee’ the purchase of the energy produced.

In 2013, the U.S. brought a complaint before the WTO arguing that the domestic content requirement imposed under India’s national solar programme is in violation of the global trading rules. Specifically, it said, India has violated its “national treatment” obligation by unfavourably discriminating against imported solar cells and modules.

India principally relied on the ‘government procurement’ justification, which permitted countries to derogate from their national treatment obligation provided that the measure was related to “the procurement by governmental agencies of products purchased for governmental purposes and not with a view to commercial resale or use in production of goods for commercial sale.

World Trade Organisation (WTO) panel, in its ruling on the dispute, found that the domestic content requirement imposed under India’s national solar programme is inconsistent with its treaty obligations.
under the global trading regime. The panel found that the product being subject to the domestic content requirement was solar cells and modules, but the product that was ultimately procured or purchased by the government was electricity. The domestic content requirement was therefore not an instance of "government procurement".

India-US Poultry Dispute

India had banned importing of poultry meat and eggs from US in 2007. These were banned as a part of precautionary measure undertaken to prevent outbreaks of Avian Influenza and bird flu. However, The World Trade Organization (WTO) ruled in 2015 that ban on import of eggs, poultry meat, pigs from US is not consistent with the prevalent international norms.

India and TRIPS (Intellectual Property Rights)

For India, the WTO’s TRIPS agreement became binding from 2005 onwards as the country has got a ten-year transition period (1995-2005) to make the domestic legislation compatible with TRIPS. India also got additional five-year transition period till 2010 because of not having product patent regime in critical sector like pharmaceutical. Different amendments to the various existing Acts- Patent Amendment Act (2005) and Copyright Amendment Act (2010), and new legislations were made to strengthen domestic legal framework to fulfill the harmonization with the WTO’s TRIPS agreement.

India and Compulsory Licensing

Compulsory Licenses are authorizations given to a third-party by the Government to make, use or sell a particular product or use a particular process which has been patented, without the need of the permission of the patent owner.

The provisions regarding compulsory licenses are given in the Indian Patents Act, 1970 and in the TRIPS (Trade-Related Aspects of Intellectual Property Rights) Agreement at the International level. Although this works against the patent holder, generally compulsory licenses are only considered in certain cases of national emergency, and health crisis. There are certain pre-requisite conditions which need to be fulfilled if the Government wants to grant a compulsory license in favour of someone.

As per Section 84, following grounds can be used to grant compulsory licenses:

- That the reasonable requirements of the public with respect to the patented invention have not been satisfied, or
- that the patented invention is not available to the public at a reasonably affordable price, or
- that the patented invention is not worked in the territory of India.

In March 2012, India granted its first compulsory license ever. The license was granted to Indian generic drug manufacturer Natco Pharma Ltd for Sorafenib tosylate, a cancer drug patented by Bayer.

Section 3(d) of the Indian Patent Act

Section 3 of the Patents Act speaks of inventions which are not patentable. Section 3(d) of the Patents Act was introduced by the 2005 Amendment. The section sets a 'novelty' standard. For a product to be patentable, something genuinely new should have been discovered or added to an existing product.

Section 3(d) of the Indian Patent Act restricts grant of patent for “incremental innovations” in many drugs unless it provides significant therapeutic advantages to existing molecules. The section stipulates following conditions under which the product will not be patentable:

- If the alleged ‘new product’ just involves the discovery of a new form of an existing substance, and it does not enhance the efficacy of the older form of the product.
- Mere discovery of a new use for an already known substance e.g., discovery of blood thinning property of aspirin after it was patented for curing headaches.
- Mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant.

One of the prominent incidents of controversy around section 3(d) of Indian Patent Act was the Novartis case of 2013. In this case, the Supreme Court upheld the validity of section 3(d) rejecting Novartis’ application of patent for its drug, Gilivac,
which helps in treatment of cancer. The apex court held that Glivec was only a ‘beta-crystalline’ form of the already existing anti-cancer drug Imatinib. Therefore, Glivec was just a new form of a already known substance, and hence discovery of a new property wouldn’t qualify it for granting of patent.

National IPR Policy 2016

The National IPR Policy 2016 is a vision document that aims to create and exploit synergies between all forms of intellectual property (IP), concerned statutes and agencies. It sets in place an institutional mechanism for implementation, monitoring and review. 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 TRIPS agreement.

The Policy lays down the following seven objectives:

1. **IPR Awareness:** Outreach and Promotion to create public awareness about the economic, social and cultural benefits of IPRs among all sections of society.

2. **Generation of IPRs:** To stimulate the generation of IPRs.

3. **Legal and Legislative Framework:** To have strong and effective IPR laws, which balance the interests of rights owners with larger public interest.

4. **Administration and Management:** To modernize and strengthen service-oriented IPR administration.

5. **Commercialization of IPRs:** To get value for IPRs through commercialization.

6. **Enforcement and Adjudication:** To strengthen the enforcement and adjudicatory mechanisms for combating IPR infringements.

7. **Human Capital Development:** To strengthen and expand human resources, institutions and capacities for teaching, training, research and skill building in IPRs.

The IPR policy has also spelled out some tangible goals as follows:

1. Reducing the time taken on clearing the backlog of IPR applications from current 5 to 7 years to 18 months by March 2018.

2. Approve trademark applications within one month by 2018. Currently, a trademark approval takes around 13 months on average.

3. Designate DIPP as nodal agency for coordination, guidance and regulatory works.

4. The Policy also seeks to facilitate domestic IPR filings, for the entire value chain from IPR generation to commercialization. It aims to promote research and development through tax benefits.

5. The policy has been released with a vision statement that envisions an India where creativity and innovation are stimulated by IP for benefit of all; IP promotes advancements in Science & Technology, arts and culture, traditional knowledge and biodiversity resources; knowledge is main driver of development and knowledge owned is transformed into knowledge shared. It endeavours for a “Creative India; Innovative India”.

IPR policy has tried to be a balancing act overall. Firstly, the policy has not tried to dismantle or bypass the Section 3(d) of Indian Patent Act 1970 which says that marginal alterations doesn’t entitle new patent. The policy makes it loud and clear that India will not go beyond what is needed to be TRIPS-compliant; and it will use flexibilities to address its developmental concerns.

Secondly, the policy has kept Compulsory License intact with restrictions in case of a public health emergency such as in case of a public health emergency such as epidemics. This is also compliant with the World Trade Organization’s guidelines. This implies that government has not compromised on two major issues.
• Special 301 report is the annual review of the intellectual property protection and market access practices in foreign countries by United States trade representatives (USTR). It is conducted in pursuance to the section 182 of the Trade act of 1974, under which US government can put sanctions on such countries listed under Section 301 report. USTR has kept India in the ‘Priority watch List’ in its Special 301 report due to weak enforcement of Intellectual Property Rights.

TRIPS Plus
• TRIPs Plus is the term denoted to higher level of Intellectual Property protection norms demanded by some of the developed countries. These protections are not prescribed by the WTO’s TRIPS regime. Although termed as ‘TRIPS-Plus,’ these norms are not formally related to TRIPS. Developing countries who are becoming members of FTAs involving developed nations are under pressure to enact these tougher conditions in their domestic patent laws.

• One prominent example of emerging TRIPS plus norms is Data exclusivity. It is basically the protection of clinical test data which is submitted to a regulatory agency in order to prove safety, quality and efficacy of a new drug to be introduced, and also preventing the generic drug manufacturers from relying on this data for utilizing in their own applications.

Photocopy: Access to knowledge vs Patent Protection
• In 2012, few academic publishers moved Delhi High Court seeking a permanent injunction to restrain Photocopier shop (at DU premises) from making copies of chapters of textbooks published by them and selling to students as “course packs”. They wanted DU to get a licence and seek permission for preparing course packs after paying copyright dues.

• The copyright law recognises the right of ownership of the producer/publisher on the material, and does not allow its reproduction without permission — barring “exceptions”. Section 52 of the Indian Copyright Act lays down several “acts (that) shall not constitute an infringement of copyright”, including “research or private study” and “by a teacher or a pupil in the course of instruction”.

• The Division Bench of Delhi High Court upheld the expanded scope of interpretation of “course of instruction” under Section 52(1)(i) and said that the expression “course of instruction” in the relevant part of the Act referred to the entire academic year, and was not restricted to specific classroom lectures. It ruled that while photocopying was “reproduction of the copyright material” as defined under the Copyright Act, it was covered under the exception for “fair use”, that allowed copying for academic purposes in the course of studies.

• The court’s verdict has expanded the definition of terms in the Act to include the copying of work by educational institutions. This will help tens of thousands of students to continue to access study material that may not be readily available. The verdict has particular significance for technical studies, books on which are often in limited circulation and very expensive.

<table>
<thead>
<tr>
<th>State</th>
<th>Articles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Andhra Pradesh</td>
<td>Srikalahasti Kalamkari, Kondapalli Bommalu, Machilipatnam Kalamkari, Buditi Bell &amp; Brass Craft, Andhra Pradesh Leather Puppetry, Uppada Jamdani Sarees, Tirupati Laddu, Guntur Sannam Chilli, Venkatagiri Sarees, Bobbili Veena, Mangalagiri Sarees and Fabrics, Dharmavaram Handloom, Pattu Sarees and Paavadas</td>
</tr>
<tr>
<td>Assam</td>
<td>Assam (Orthodox) Logo, Muga Silk of Assam (Logo), Muga Silk</td>
</tr>
<tr>
<td>Bihar</td>
<td>Madhubani paintings, Applique – Khatwa Patch Work of Bihar, Sujini Embroidery Work of Bihar, Bhagalpur Silk</td>
</tr>
<tr>
<td>Chhattisgarh</td>
<td>Bastar Dhokra, Bastar Wooden Craft, Bastar Iron Craft, Bastar Dhokra (Logo), Champa Silk Saree and Fabrics</td>
</tr>
<tr>
<td>State</td>
<td>Articles</td>
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<tr>
<td>Goa</td>
<td>Fenni</td>
</tr>
<tr>
<td>Gujarat</td>
<td>Tangaliya Shawl, Surat Zari Craft, Gir Kesar Mango, Bhalia Wheat, Kachchh Shawls, Patan Patola, Sankheda Furniture, Kutch Embroidery</td>
</tr>
<tr>
<td>Haryana</td>
<td>Phulkari (Also in Punjab and Rajasthan)</td>
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<tr>
<td>Himachal Pradesh</td>
<td>Kullu Shawl (Logo), Kangra Tea, Chamba Rumal, Kinnauri Shawl</td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>Kashmir Papier Mache, Walnut Wood Carving, Khatamband, Kani Shawls, Kashmir Pashmina</td>
</tr>
<tr>
<td>Karnataka</td>
<td>Byadgi chilli, Kinnal Toys, Mysore Agarbathi, Bangalore Blue Grapes, Mysore Pak, Bangalore Rose Onion, Coorg orange, Mysore silk, Bidriware, Channapatna Toys &amp; Dolls, Mysore Rosewood Inlay, Mysore Sandalwood Oil, Mysore Sandal Soap, Kasuti Embroidery, Mysore Traditional Paintings, Mysore betel leaf, Nanjanagud Banana, Mysore Jasmine, Udupi Jasmine, Hadagali Jasmine, Ilkal saree, Navalgund Durries, Karnataka Bronze Ware, Molakalmuru Sarees, Monsooned Malabar Arabica Coffee, Monsooned Malabar Robusta Coffee, Coorg Green Cardamom, Dharwad Pedha</td>
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<td>Madhya Pradesh</td>
<td>Chanderi Fabric, Leather Toys of Indore, Bagh Prints of Madhya Pradesh, Bell Metal Ware of Datia and Tikamgarh (Logo), Bell Metal Ware of Datia and Tikamgarh, Maheshwar Sarees &amp; Fabrics</td>
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<td>Maharashtra</td>
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</tr>
<tr>
<td>Manipur</td>
<td>Shaphee Lanphee, Wangkheii Phee, Moirang Phee</td>
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<tr>
<td>Nagaland</td>
<td>Naga Mircha</td>
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<tr>
<td>Punjab</td>
<td>Phulkari (Also in Haryana and Rajasthan)</td>
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<tr>
<td>Rajasthan</td>
<td>Kota Doria, Blue Pottery of Jaipur, Molela Clay Work, Kathputlis of Rajasthan, Sanganeri Hand Block Printing, Bikaneri Bhujia, Kota Doria (Logo), Phulkari (Also in Haryana and Punjab), Bagru Hand Block Print, Thewa Art Work, Makrana marble</td>
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<td>State</td>
<td>State-wise Compilation of Geographical Indications</td>
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<tr>
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<tr>
<td>Telangana</td>
<td>Pochampally Ikat, Silver Filigree of Karimnagar, Nirmal toys and craft, Nirmal furniture, Nirmal paintings, Gadwal Sarees, Haleem, Cheriyal Paintings, Pembarthi Metal Craft, Siddipet Gollabhama, Narayanpet Handloom Sarees</td>
</tr>
<tr>
<td>West Bengal</td>
<td>Darjeeling Tea (word &amp; logo), Nakshi Kantha, Laxman Bhog Mango, Himsagar (Khirsapati Mango), Fazli Mango, Santipore Saree, Baluchari Saree, Dhaniakhali Saree</td>
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### WTO Boxes

#### Amber Box
Domestic support measures considered to distort production and trade fall into the amber box except those in the blue and green boxes. These include measures to support prices, or subsidies directly related to production quantities.

**DE MINIMIS**
Minimal supports that are allowed as a percentage of agricultural production:
- 5% for developed countries,
- 10% for developing countries

#### Blue Box
This is the "Amber Box with conditions"- Conditions designed to reduce distortion. Any support that would normally be in the amber box, is placed in the blue box if the support also requires farmers to limit production. At present there are no limits on spending on blue box subsidies.

#### Green Box
Subsidies that do not distort trade, or at most cause minimal distortion are placed under Green Box. These subsidies are allowed without limits. They have to be government-funded and must not involve price support. It includes:
- Programmes that are not targeted at particular products
- Direct income supports for farmers that are not related to current production levels or prices
- Environmental protection and regional development programmes