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WTO Agreement: Reformation or Recolonization

M.D. Nair*

There is a major concern that, with the end of the cold war, the World is moving into an era of unipolarity and consequently of economic and political dominance by the rich and developed countries over the less privileged. Even though the powerful nations of the World, the U.S.A., Western Europe (considered as a single entity for all practical purposes) and Japan have their major differences in their global perceptions in matters of trade and economic growth, monetary and fiscal systems and political ideologies, there is a tremendous degree of commonality when it comes to attitude towards their role in managing, monitoring and controlling global affairs particularly related to developing countries.

Genesis Of WTO

The formation of the latest World body, the WTO, after several years of acrimonious debates beginning in 1947, with eight major international regulatory conferences aimed at reducing tariff and non-tariff barriers, culminating in the last one in 1993, is an indication of the inherent complexities of the issues involved. While the first five discussed only Tariff Reductions as the main theme, the Conference in Geneva (the Kennedy Round) in 1964-67 included anti-dumping measures, the next round called the Tokyo Round, held in Geneva from 1973 to 1979, introduced non-tariff measures and framework agreements. It was only in the final round held from 1986-1993, the Uruguay Round, for the first time, added the largest ever package of market access concessions, trade in services and intellectual property systems and an Agreement to replace GATT with WTO systems.

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Trade-Related To Intellectual Property Rights (TRIPS)

There has been increasing concerns among many developing countries that issues related to intellectual property and trade in services which were introduced in the last round of negotiations in GATT, would favour developed countries' interest and work to the detriment of the economically weaker countries. However, as a result of the persuasive negotiations initiated by Arthur Dunkel, the then Director General of GATT, a compromise formula was arrived at, particularly in the area of Trade Related to Intellectual Property Rights (TRIPS), by which, developing countries were given a transition period of 5 years for implementation of a harmonised system and 10 years for those developing countries, which had under their Patent Law, no provision for protection of products in the area of pharmaceuticals and agrochemicals. During the transition period, countries which wanted to utilise the above concessions were obliged to allow filing of product patents from January 1, 1995, the day the WTO came into being, and give Exclusive Marketing Rights for products subject to the conditions that a corresponding patent should have been issued in a Member Country and the concerned product should have been approved for marketing in a Member Country and in the Country in question.

World Trade Organisation (WTO)

This new International Organisation has a co-operative relationship with the U.N. Established in January 1, 1995 as a successor to GATT, it has a statute commensurate with those of the World Bank or the IMF. At present, 134 countries are Members of the WTO.

Like the GATT, WTO embodies many reciprocal rights and obligations for trading countries and its core principle is the Most Favoured Nation (MFN) clause. Under this, all Members are bound to accord each other treatment on tariffs and trade as favourable as they give any other Member country.
General Agreement On Trade In Services (GATS)

GATS establishes a multi-lateral framework for trade in services. Considering that, in 1990, services such as Banking, Insurance, Tourism, Construction or Telecommunication accounted for 20% of total World Trade in Goods and Services, the importance of GATS can be well-visualised. The principal elements of GATS framework include --

- MFN Treatment
- National Treatment
- Market Access
- Free flow of payments and transfers

National treatment requires GATS countries to ensure that domestic laws do not discriminate against foreign firms. One of the important service areas covered by GATS is the Telecommunication Sector. Already 69 countries among the 134 WTO Members included telecommunication services in the schedules and committed to apply free market forces in this sector.

Role Of Telecommunications Industry In Economic Growth Of Developing Countries

Modern Information Society affects all human activities impinging on the quality of life and social and economic development. For example, knowledge based industries based on Information and Communication Technology (ICT) affect learning, health, communication, work and leisure. It is equally applicable to the developed and developing countries, the latter not only as consumers, but also as active participants. Apart from conventional modes of information transfer, the modern tools include Cellular Mobile Telephones, Satellite Communication, Geo-stationery Observation Satellites, Internet and WWW Technology, ISDN and ATM Services and CD ROMS, Tele-ports for Tele-working and Tele-medicine for therapeutic purposes as well as for tracking of epidemics and endemics in different countries of the World.
The important aspects affecting the growth of the communications industry in developing countries covered under GATS of WTO include, reduction of tariffs to zero by 2000 AD on a wide range of communication equipments, framing of rules to ensure that technical standards for equipments do not result in barriers to trade, Government procurement codes and respect for Intellectual Property Rights on goods purchased, multi-lateral trade rules to be implemented by opening markets to all countries, all firms including foreign ones to be allowed to compete and market access to provide services to be made available and laws and rules affecting trade in services to be made transparent.

Under GATS, exceptions are also allowed to developing countries. For example, Members may invoke rules, such as permissions to extend preferences through bilateral or regional trade agreements as long as they do not harm other Members. Typically, exceptions could cover use of portion of radio spectrum for military use, or for prevention of obscenity through video, audio or internet and application of laws to protect individual privacy in relation to data transmission services.

However, unlike other provisions under GATT, eg: TRIPS, there is no scope under GATS to provide even temporary safeguard when a domestic industry suffers from foreign competition. There is very little distinction made between domestic and foreign suppliers, since GATS treats commercial presence of telecom services as a form of trade.

**Strategies For Developing Countries**

There are two options available for developing countries, first to decide to commit themselves to the rules of GATS i.e., provide free market access in terms of quantitative restrictions, caps on foreign equity, treatment of foreign services or suppliers on par with domestic counterparts and create transparency with regard to framing and implementation of the framework.. In the second option with no commitmen, free market access will not be provided, there is no uniform treatment obligation, preferential treatment to national companies is possible
and each country can decide on the levels of equity it will permit to foreign companies.

The flip side of the second option which *prima facie* will appear to give sovereignty and independence to developing countries, is that foreign and *state-of-the-art* technology in the telecom sector will not be available and the much-needed foreign investment will not be forthcoming. In addition, and most importantly, international two-way communication systems will be stifled and the benefits of the new information and communication technologies will be denied.

**Need For A New Impetus To Develop And Sustain A World Information Order for Developing Countries**

The need is, therefore, to establish the pre-requisites for the development of the information society, namely, infrastructure, regulatory framework and standards. Facilitating access of the developing countries to ICT through human resources, technology transfer, production, trade and Research & Development have to be given high priority. World Bank estimates that, in order to reach global standards in communication, developing countries’ investment needs are of the order of US$ 60 bio. At current levels of funds available, national and international public funds available are only US$ 2.3 bio. The balance has to be brought in by the private sector, which needs to be assured of returns on investment, possible, only if adequate infrastructure and guarantees are provided. Fostering joint ventures between developing and developed countries' private sector also is an important pre-requisite, side by side, with the creation of awareness and political will, so very essential if these countries are to leapfrog into a new Information Age.
WTO AGREEMENT: REFORMATION OR RECEONIZATION?

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