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TRADE PROTECTIONISM UNDER THE WTO: THE IMPACT ON MUSLIM COUNTRIES

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The very objective of establishing the GATT and the WTO is to liberalise trading regimes in the world. Within seven years of the WTO inception, many new issues were brought in under its jurisdiction compared to the GATT. These active developments created fear and bitterness among many Muslim countries as they felt marginalised, exploited and pressured. While they are still in the process of assessing gains of opening up, they are over-poured by many new complex issues. At the same time, contradiction of what has been preached by the WTO and its practice seems to become more apparent these days. The WTO has been convincing the world, particularly the developing countries, that a liberalised trading system would generate enormous advantages. But, in practice, some of the Agreements signed under this multilateral body contain implicit protectionist elements. The objective of this paper is to explain how these Agreements can turn out to be a protectionist tool, in contrast to their claimed objective to liberalise global trading activities.

1. INTRODUCTION

The key motive of the WTO trade Agreements is to liberalise trading regimes in the world. Since the inception of the WTO, there were many changes in the international trade agenda. The issue of concern is that while the WTO is propagating its liberalisation belief to the developing countries, a new trend of trade protectionism is being cleverly incorporated into the Agreements for the benefit of the developed countries. A worrying trend is the growth of new forms of protection as traditional trade barriers are lowered. There is an increase in the use of sophisticated methods such as the use of standards, certification procedures, and anti-dumping and anti-subsidy measures to protect domestic interests. Among the WTO trade Agreements that could have protectionist effects are the Safeguards Measures (particularly anti-dumping duties), the Agreement on

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Agriculture, the Agreement on Standards and Technical Trade Barriers (SPS and TBT), the Agreement on Trade Related Intellectual Property Rights (TRIPs) and the Agreement on Textiles and Clothing (ATC). All these measures have potentials to be used as implicit forms of non-trade barriers that have become tools to safeguard the interests of business communities from the developed and also the developing nations.

The objective of this paper is to explain how some of these Agreements can turn out to be a protectionist tool, in contrast to their stipulated motive of smoothening global trade movements. In addition, the paper intends to highlight problems and challenges that Muslim countries may face in entering into a more "liberalised" world trade regime.

2. ANTI-DUMPING AS A PROTECTION TOOL

It is quite common to hear these days that countries tend to restrict imports on the basis that low import price is indicative of illegal dumping. The recent 30 per cent import duty slapped on imported steel by the US government to support its ailing steel producers is just one case among many. It is very unfortunate that anti-dumping measures that were included in the Agreement on Implementation of Article VI of GATT 1994 (i.e. the Anti-dumping Agreement) that supposed to be used as a safeguard, have become channels for protectionism that were heavily used by developed countries, and now increasingly resorted to by developing countries since 1990s. The concern is that although anti-dumping was initially intended to stop predatory pricing, it is now mainly used to safeguard interests of domestic industry, i.e., to protect inefficient local industries. The liberalisation of the textiles and clothing and agriculture sectors is expected to provoke countries to initiate more anti-dumping cases.

Dumping is defined as the export of a good for an unfairly low price, defined either as below the price in the exporter's home market or below some definition of cost (Deardorff, 1997: 28). According to Knoll (1991), dumping, as described in the legislative history and the one that is embodied in the law as it is applied today, is very different. The notion underlying the initial concept of dumping is predatory pricing. Predatory pricing is the practice of charging less than the marginal cost of production in order to drive competitors out of business so that the price cutter can thereafter raise its price level and recoup its losses. Predatory pricing is harmful not only to competitors but to consumers as

well. Because predatory pricing is a technique for monopolising an industry, it is prohibited by the antitrust laws. However, the statutory concept of dumping has nothing to do with predatory pricing. A foreign firm is considered dumping if it sells merchandise in a country below fair market value. Fair market value is the average price of the product in its home market or, if lower, the cost of producing the product. In practice, the anti-dumping law is tilted in favour of domestic industries and biased against importers. Therefore, we see today that anti-dumping measures are being popularly used by industries to shield them from stiff foreign competition. The law is now used to substitute for other kinds of protection (Wirtz, 2001). A speech by Evan Bayh, the Senator of Indiana State, USA, on September 12, 2000[1] is a testimony of how anti-dumping duties can be abused to protect domestic interests:

"The recent steel import crisis once again reminded everyone that, without the anti-dumping and anti-subsidy orders, the domestic industry is at the mercy of foreign governments and foreign steel producers. During the latest crisis, steel workers across my State were forced into early retirement, relegated to lesser jobs, required to absorb reductions in shifts, or simply laid off. My only answer to these hard working men and women and their families was that the uncertain state of their industry would not persist and that strict enforcement of the trade laws would provide relief and prevent further devastation... The result --as you are well aware-- was that the domestic industry resorted to much needed trade remedies, including the imposition of anti-dumping and anti-subsidy measures to remedy the effects of unfairly traded imports concerning a variety of steel products"...

Political reasons can also be manipulated by the developed countries to protect their local industries with the help of anti-dumping measures. For example, Iran once dominated the world pistachio market. But in 1987, California growers capitalised on tensions between the US and Iran and convinced the government to slap a 241 per cent duty on Iranian pistachios. California growers quickly took over Iran's US market share providing enough leverage to make US growers the world's second largest producer behind Iran (Wirtz, 2001).

Chart 1 shows that the overall trend for a number of anti-dumping initiations is clearly upward, particularly since the Uruguay Round

[1] http://www.senate.gov/-bayh/Press/2000/12SEP00pr.htm.

Agreements were signed - more than doubling from 157 in 1995 to 330 in 2001. From 1916 to 1970, there were almost 800 such cases in the United States, or about 15 cases a year (Wirtz, 2001). In 1970s, the average per year was 23, and then increased sharply to 139 cases a year in the 1980s. In the 1990s, anti-dumping use grew in the early years but reduced around the time that the WTO was created. However, the latter years of 1990s saw a growth again, making the yearly average number of initiations for the 1990s a figure of 232 (Stevenson, 2002). In the last two years, the average was 301 cases, illustrating an increasing trend.

Chart 1: AD Investigations Initiated Between 1980 and 2001

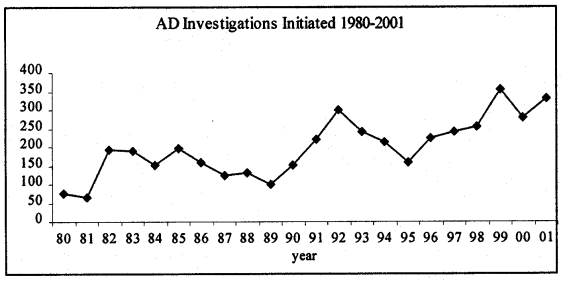

Table 1: Anti-Dumping Investigations, 1980 to 2001

Year	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01
No. of AD Initiations	76	64	193	189	153	195	160	125	132	101	152	222	300	242	215	157	224	243	254	356	281	330

Source: Data for 1980 to 1995 was taken from Stevenson (2002). Data for 1995 onwards was obtained from WTO website.

Over the years, the use of anti-dumping has spread to a larger number of countries and an increasing number of developing countries are now resorting to this instrument to protect their local industries. In 2001, 24 different countries initiated anti-dumping investigations, and many of them came from the developing world. With a standardised framework of dumping laws to work with, domestic industries in developing countries began to seek the same protection that the developed countries' industries have been getting for decades through the anti-dumping clause. In the 1980s, about 95 per cent of anti-dumping cases came from the United States, Australia, Canada, the European Union and New Zealand (Wirtz, 2001). However, by the year 1995,

developing countries have been responsible for about half of all such initiations. The number of annual cases by new or non-traditional users has grown by 50-fold since the early 1980s, and they filed 55 per cent of all anti- dumping petitions in 1999 and 2001.

Table 2: Anti-Dumping Initiations (Reporting Countries) from January 1, 1995 to December 31, 2001

Country	1995	1996	1997	1998	1999	2000	2001	Total
Developed Countries								
US	14	22	15	36	47	47	74	255
EU	33	25	41	22	65	32	28	246
Australia	5	17	42	13	24	15	23	139
Canada	11	5	14	8	18	21	25	102
New Zealand	10	4	5	1	4	10	1	35
Japan	0	0	0	0	0	0	2	2
Muslim Countries								
Indonesia	0	11	5	8	10	3	4	41
Turkey	0	0	4	1	8	7	14	34
Egypt	0	0	7	12	5	1	6	31
Malaysia	3	2	8	1	2	0	1	17
Other Selected Developing Countries								
India	6	21	13	27	65	41	75	248
Argentina	27	22	15	8	24	45	26	167
South Africa	16	13	23	41	16	21	6	156
Brazil	5	18	11	18	16	11	16	95
Mexico	4	4	6	12	11	7	5	49
Korea R.	4	13	15	3	6	2	4	47
Chinese Taipei	0	0	0	0	0	3	3	6
Thailand	0	1	3	0	0	0	1	5
Total	157	224	243	254	356	281	330	1845

Source: Based on data from www.wto.org/english/tratop e/adp stattab2 e.htm.

Between 1995 and 2001, the US was the main anti-dumping initiator (255 cases). India initiated 248 anti-dumping cases, a little higher than European Union (246). Other developing countries that have actively used the anti-dumping measure were Argentina, South Africa and Brazil (see Table 2). As a whole, Muslim countries that have used anti-dumping measures are not many. Those of them who have used these measures are mainly middle-income countries. Indonesia is the highest user of this protection tool, with 41 cases, followed by Turkey (34), Egypt (31) and Malaysia (17).

The countries which have been the main initiators of anti-dumping investigations in years 1995 and 2001 are shown in Table 3. Between 1995 and 2001, only two countries, EU and Argentina, have reduced the number of anti-dumping initiations. Other countries have actually increased their anti-dumping activities significantly. The most obvious ones are India, US, Canada and Australia. Another interesting development is that India became the heaviest user of the measure in 2001, taking over from EU in 1995. Two Muslim countries, Egypt and Turkey, entered the list of the top ten users of anti-dumping duties. For the first time, China is included in the statistics (6 cases) in 2000 and 2001 (see Table 3). China is expected to join the anti-dumping super-powers in the coming years.

Table 3: Top Ten Users of Anti-Dumping Measures, 1995 and 2001

1995			2001		
	Country	No. of Cases		Country	No. of Cases
1.	EU	33	1.	India	75
2.	Argentina	27	2.	US	74
3.	South Africa	16	3.	EU	28
4.	US	14	4.	Argentina	26
5.	Canada	11	5.	Canada	25
6.	New Zealand	10	6.	Australia	23
7.	India	6	7.	Brazil	16
8.	Australia	5	8.	Turkey	14
9.	Brazil	5	9.	South Africa	6
10.	Mexico	4	10.	Egypt	6

Source: Based on data from www.wto.org/english/tratop e/adp stattab2 e.htm.

China was the most targeted country of anti-dumping investigations. Over the period 1980-1998 there were 330 anti-dumping cases brought against her and 90 cases in the last two years. Most of these cases (between 1995 and 2001) were made by Argentina (36), Australia (13), the EU (36), the United States (33), India (48) and South Africa (48)[2]. China's main exports were affected, including textiles, garments, light industrial products, electric home appliances and pharmaceuticals.

Among the Muslim countries, Indonesia is the most targeted country, followed by Malaysia, Turkey and Egypt. Since 2000, more Muslim countries were targeted, including Algeria, Bahrain, Bangladesh, Jordan,

[2] Taken from http//www.wto.org/English/tratop_e/adp_stattabl_e.htm.

Table 4: Anti-Dumping Initiations (Affected Countries) from January 1, 1995 to December 31, 2001

Country	1995	1996	1997	1998	1999	2000	2001	Total
Developed Countries								
US	12	21	15	15	14	12	13	102
Japan	5	6	12	13	22	9	12	79
Germany	7	9	13	8	13	4	9	63
UK	6	4	6	4	2	8	6	36
EU	0	1	2	4	6	9	8	30
France	0	4	4	10	8	1	3	30
Canada	2	1	3	3	0	1	7	17
Belgium	1	2	3	3	2	0	4	15
Australia	1	0	0	2	3	4	1	12
Austria	0	2	3	0	3	3	0	11
Muslim Countries								
Indonesia	7	7	9	5	20	13	13	74
Malaysia	2	3	5	4	7	9	5	35
Turkey	2	3	1	2	6	7	5	26
Egypt	1	2	1	2	0	1	3	10
Saudi Arabia	0	1	0	3	2	3	1	10
Iran	0	1	2	0	2	3	2	10
Pakistan	0	2	1	0	1	0	1	5
UAE	0	0	1	0	0	2	2	5
Libya	0	0	0	0	0	1	1	2
Algeria	0	0	0	0	1	0	0	1
Bahrain	0	0	0	0	1	0	0	1
Bangladesh	0	0	0	0	0	0	1	1
Jordan	0	0	0	0	0	0	1	1
Oman	0	0	0	0	0	0	1	1
Qatar	0	0	0	0	0	0	1	1
Other Selected Developing Countries								
China P. R.	20	43	33	28	41	43	47	225
Korea R.	14	11	15	24	34	21	19	138
Thailand	8	9	5	2	19	12	16	71
India	3	11	8	12	13	10	12	69
Brazil	8	10	5	6	13	9	12	63
Russia	2	7	7	12	17	10	7	62
South Africa	2	6	4	5	4	6	10	67
Mexico	3	4	2	9	4	1	3	26
Singapore	2	0	4	0	5	0	11	22
Total	157	224	243	254	356	281	330	1854

Source: Based on data from www.wto.org/english/tratop e/adp stattab2 e.htm.

Oman and Qatar. Indonesia was targeted with anti-dumping initiations by 18 different countries between 1995 and 2001 (see Table 5). Most of the complaints came from Australia (15 cases), Turkey (12), the United States (12), India (8) and the European Union (8). Turkey faced anti-dumping investigations from 10 countries and majority of the cases were filed by the European Union. Similarly, for Egypt and Malaysia, most of the anti-dumping initiations came from the EU (see Table 5).

Steel and chemical products continue to dominate, together accounting for more than two-thirds of all global anti-dumping investigations. In 2001, the most affected sectors by anti-dumping actions were base metals (37 per cent), mostly steel, chemicals, plastics and rubber products (33 per cent), textiles and related products (10 per cent), mechanical engineering and appliances (7 per cent) and food and agriculture (4%). However, more than half of all active anti-dumping duties in developed countries target mature industries such as metal and chemical products. The US is the major initiator of anti-dumping cases involving steel products, i.e., about 44 per cent of all investigations involving the sector. The Indian chemical industry is most active in seeking protection against imports of chemical products, involving 47 per cent of all investigations on the sector. This constitutes more than 70 per cent of all Indian anti-dumping investigations.

The type of products that are subject to anti-dumping duties spread from products like steel and automobile to simple products like gas lighters. In 2001, the 330 investigations involved 138 different products. However, this significant number of investigations involved only a limited number of countries.

What are the implications of this new trend for the developing countries? The main concern is that anti-dumping is now increasingly being used to protect local industries from foreign competition. The anti-dumping clause has been abused and has lost its initial objective of protecting local industries from unfair business practices, i.e., predatory dumping activities.

Is this a good development for Muslim countries? No, for two reasons. First, most of the anti-dumping cases are initiated against developing countries. Second, the high financial costs incurred for implementing an anti-dumping case. The provisions of anti-dumping

Table 5: Anti-Dumping Investigations, Reporting and Affected Muslim Countries, 1995-2001

Reporting Countries	EU	India	South Africa	US	Argen-tina	Aust.	Brazil	Can.	Taipai	Col-umbia	Egypt	Korea	M'asia	New Z.	Philip.	Poland	Thai.	Turkey	Indo-nesia	Mexico
Affected Countries																				
Algeria	1																			
Bangladesh		1																		
Bahrain			1																	
Egypt	6		3	1																
Indonesia	8	8	5	12	2	15	1	3	1	2	2	3	3	5	1	1	1	12		
Iran		5				2					2						1			
Jordan																				
Libya	2																			
Malaysia	9	4	5	3		5		2	1	1		2			2			1		
Oman		1																		
Pakistan	3		1								1									
Qatar		1																		
S. Arabia	1	3	1			2		1						1						
Turkey	8	3	2	4	2			2			1								1	1
UAE		3				1														
Total																				

Source: Based on data from www.wto.org/english/tratop_e/adp_stattab2_e.htm.

Table 6: AD Initiations by Sectors, 1999-2001

Sector	1999	2000	2001
Chemicals, Plastics, Rubber Products	31.6	27.5	33.3
Steel and Metal Products	28.0	37.8	36.5
Textiles and Related Products	10.9	6.4	9.5
Mechanical Engineering/Appliances	7.7	13.5	7.2
Paper and Wood Products	7.4	3.2	1.7
Food and Agriculture	3.2	4.4	4.0
Others	11.2	7.2	7.8
Total	100.0	100.0	100.0

Source: Stevenson (2002).

Table 7: AD Initiations by Product Groups, 2001

Country	Product	No. of Cases	Country	Product	No. of Cases
USA	CR Carbon Steel Products	20	Egypt	Electric Filament Lamps	6
Canada	Hot Rolled Steel Sheet	13	India	Ply-Iso Butylene	6
Turkey	Polyvinly Chloride	11	USA	Stainless Steel Bar	6
USA	Carbon&Alloy Steel Wire Rod	11	Australia	PVC Homo-polymer Resin	5
Canada	Cold Rolled Steel Sheets	9	China	Caprolactam	5
USA	Structural Steel Beams	8	EC	Tube and Pipe Fittings	5
India	BOPP Film	7	EC	Welded Tubes and Pipes	5
India	Lead Acid Batteries	7	India	Acrylic Fibre	5
Brazil	Polyvinly Chloride	6	USA	Circular Welded Carbon Steel Pipe	5
EC	Hot Rolled Coils	6			

Source: Stevenson (2002).

Agreements are very complex and very detailed information has to be collected. Developing countries find it extremely difficult to initiate such proceedings in their own countries and follow them up to successful conclusion as the collection and analysis of the supporting facts are extremely costly. In addition, government officials in charge of anti-dumping cases are very few in Malaysia, for example, there are only 6 officers handling these cases. This, by far, contrasts with USA and EU, where they have enormous resources, personnel and technology to handle such cases.

Given this problem and the probability of rising challenges in this area that Muslim countries may face in the future, it is imperative that these countries demand collectively from the WTO to simplify the procedures of anti-dumping actions. It is also important for them to seek provision of advisory and legal services through multilateral and regional initiatives. The Muslim countries should also propose amendments to the Anti-dumping Agreement, i.e., to tighten loose ends to minimise abuse or misuse. Finally, since there is an increasing number of anti-dumping initiations by the Muslim countries, there is a need for cooperation among them in disseminating information and learning from each other's experience.

One of the ironies of anti-dumping measures is that they have been not applied hitherto to agriculture - a sector in which the EU systematically dumps with subsidies its surpluses on world markets (Simpson, 1999). The WTO regime has clearly legalised dumping under the Agreement on Agriculture to protect their farm industry.

3. PROTECTIONIST AGREEMENT ON AGRICULTURE

The US Government yet again announced a new law to enhance protection given to the farm industry. This happened very recently in May 2002. President Bush signed a law boosting crop and dairy subsidies by 67 per cent, which is worth $51.7 billion[3]. Developing countries, of course, were not happy with this development and heated discussion was staged on this issue. Zambian Agriculture Minister, Mundia Sikatana for example, commented that this move would be a big hurdle for Africa's farmers to enter overseas markets, and further said that "…they are the same people who tell us not to subsidise production but are doing exactly that." Developing countries have raised concerns in many platforms that the United States and Europe are using subsidies to keep prices artificially low, effectively paying the world's richest farmers to beat competition from impoverished peasants. Large-scale subsidised exporting of European Union surpluses of some products has driven down the world price and led to distortions in world trading pattern. For beef and sugar, European Union exports have been a major depressing factor. For cereals, the effect of the internal support policies

[3] "US Subsidies Ring Alarm Bells for Africa Farmers", *Trade Observatory*, May 15, 2002, obtained from http://www. tradeobserveratory.org/news/index.

of the European Union and the United States together has at times led to the virtual collapse of the world market price. In Sub-Saharan Africa, European Union beef has been sold at one half the price of locally produced beef. This destroyed the local market. In another case, the Uruguayan lost much of their beef export market in neighbouring Brazil as a result of EU dumping in late 1980s.

Agricultural sector has always been kept outside the GATT negotiations, and has received heavy protection from the government. In the area of agriculture, importing countries use a variety of instruments for protection -tariffs and non-tariff measures, other charges and internal taxes, minimum import prices, voluntary export restraint arrangements and sanitary and phytosanitary regulations and technical standards. This is also the sector that received the highest level of subsidies, particularly in the developed countries. This sector has been dealt differently under the GATT, where it has been excluded (fully or partially) from various liberalisation requirements on goods (e.g., subsidies for exports, quantitative restrictions and tariffs). This is because the agriculture is a highly protected and subsidised sector in the developed countries, and there are significant vested interests among the governments of the developed countries to continue protection to this sector. Thus, calls for liberalisation of the agricultural products have skilfully been avoided for decades to protect the interest of farmers in developed countries.

The kind of agricultural products which fall under the jurisdiction of GATT rules clearly indicates the unequal treatment given to products produced by developed and developing countries. Tropical agricultural products, that are mainly produced by developing countries and are raw materials for the manufacturing sector in the industrialised countries, face relatively low levels of protection in OECD countries (Valdes, 1987:572). These products enter the OECD market without much barrier, and a large volume of agricultural trade in tropical products operates under GATT rules. However, temperate and subtropical products (mostly produced by developed countries) face several restrictions on market access to OECD countries. In addition, much of the trade in the main temperate and subtropical agricultural products is beyond GATT rules.

Dissatisfied with this unequal treatment, the developing countries have been pushing for complete liberalisation of the agricultural sector. There has also been concern that policies governing this sector need to

be disciplined under the GATT/WTO because the empirical evidence across countries suggests that, without such discipline, many countries would eventually adopt policies that increasingly assist and insulate farmers from foreign competition (Anderson, 1998:4). Since there was every indication that agricultural protection would continue to spread unless explicitly checked, the Cairns group of agriculture-exporting countries was formed. The Cairns Group currently comprises 15 members: Australia, Argentina, Brazil, Canada, Chile, Colombia, Fiji, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand and Uruguay[4]. The Group's main purpose was to ensure that agricultural trade liberalisation remained high on the agenda of the Uruguay Round (Anderson, 1998:3). Agricultural sector has been one of the stickiest and most sensitive issues in the multilateral negotiations for liberalisation, but with persistent pressure from the Cairns Group, USA and some developing countries, agriculture was finally incorporated into the GATT/WTO discipline in 1995.

Josling (1999:2) divided the agricultural agenda in the GATT/WTO into four categories. The first is that of the “core agenda”, mandated by the Uruguay Round Agreement on Agriculture (URAA). Issues included in this agenda are market access, export competition and domestic support. The second category of agenda is what has been referred to as “new issues”. This includes the administration of tariff rate quotas (TRQs) and export restrictions. The third category includes “parallel issues” which lies somewhat outside the URAA but have major implications for agricultural trade. This includes issues related to genetically modified food and feedstuff, the question of regional trade agreements and the issue of the future of commodity preferences. The fourth category involves issues of intellectual property rights (patenting of genetic material), competition policy (which would impinge on many areas of agricultural trade where competition is less than 'perfect' and markets are not fully contestable), and investment policy (which touches the agricultural and food sectors increasingly as foreign direct investment becomes an important avenue for development in this area). These were the issues that came under serious attack during the Ministerial meeting in Seattle in December 1999 (which effectively did not take place).

[4] Originally it involved 14 countries excluding Paraguay and South Africa but including Hungary.

The "core agenda" covers issues related to market access, reduction of export subsidies and limitation of domestic support system. The market access provisions require the elimination of all NTBs (including VERs) and their conversion into equivalent tariffs. These tariff rates have to be reduced by an average of 36 per cent from 1986-88 levels and by a minimum of 15 per cent for each tariff item (24 per cent and 10 per cent respectively for developing countries) and bound at those levels[5]. These NTBs and their equivalent tariffs are expected to be phased out in six years (from 1995) for developed countries and ten years for developing countries, with least developing countries exempted from these requirements.

It has been argued that the initial tariff bindings are far higher than the actual tariff equivalents. Anderson (1998:6) reported that the European Union has set the tariff bindings on average at about 60 per cent above the actual tariff equivalents of the CAP[6] in recent years. Similarly, the United States have set theirs at about 45 per cent above the recent rates. Many developing countries have chosen to bind their tariffs on agricultural imports at more than 50 per cent and some as high as 150 per cent. For developing countries, they are allowed to convert unbound tariffs into "ceiling bindings" unrelated to previous actual rates of protection.

Agricultural export subsidies are to be cut from their 1986-90 levels, over a 6-year period, by 36 per cent in value terms (24 per cent for developing countries) and 21 per cent in quantity terms (14 per cent for developing countries), then bound at that level. Some areas will have larger cuts, e.g., 88 per cent for US rice subsidies.

In the case of domestic agricultural subsidies and income support scheme, Article 6 of the Agreement on Agriculture establishes the concept of an Aggregate Measurement of Support (AMS) -which is the current budgetary expenditure on these items. All members (except the least developed) are to reduce their AMS from the average 1986-88 level by 20 per cent (13 per cent for developing countries), with some credit for AMS reductions made since 1986. Which measures within AMS that need to be trimmed is left to each government to decide, but the reduced AMS total

[5] Taken from Dunkley (2000: 54).
[6] Common Agricultural Policy.

may not be increased again after the implementation period. Certain types of government support schemes that are not trade distorting are exempted from the ruling. This includes payment for limiting output; income support unrelated to production, drought or other emergency relief; regional development planning; infrastructure support; research; disease control; food security policies and so on.

The question is whether the developing countries will benefit from this agreement Agricultural exporting countries do report some increased market access due to the Uruguay Round implementation (Dunkley, 2000: 273). However, this positive gain is offset by high tariffication and increasing safeguard measures. Most of the developing countries did not have non-tariff barriers to be converted to tariff equivalent in the first place. They also hardly had any domestic support and export subsidy for agriculture. Therefore, this would mean that they are prohibited from raising their tariffs, and introducing domestic support and export subsidy measures in the future, even if their overall development strategy would suggest the wisdom of such a policy[7]. It is crucial, therefore, that this issue be raised in the forthcoming negotiations and developing countries must try to restore the possibility of adopting measures that would ensure sustainable development in their economy and reject measures that will have counteracting effects on the economy.

Critics claim that the developed countries' market for agricultural products countries will still be inaccessible despite of the elimination of trade barriers (Dunkley, 2000; and Martin Khor, 2000a). This is because the general level of tariff protection, domestic support and export subsidies will remain very high. The developed countries put very high tariff equivalents for their non-tariff barriers at the conclusion of the Uruguay Round, which range from 250 per cent to 390 per cent for some products. For example, in the initial year of the Agreement, there were very high tariffs in the US for sugar (244 per cent) and peanuts (174 per cent); in EU for beef (213 per cent), wheat (168 per cent); in Canada for butter (360 per cent) and eggs (236 per cent) and in Japan for wheat (353 per cent)[8]. The rich countries have to reduce such high rates by only 36 per cent on average by the end of 2000. The Australian Government's

[7] South Centre, "The Uruguay Round Agreements and the WTO work programme tasks for developing countries", no date, http://www.southcentre.org/papers/wto/toc.htm.
[8] Martin Khor (2000b).

Bureau of Agricultural and Resource Economics (ABARE) has assessed that 'dirty tariffication' and the like has resulted in higher barriers in some agricultural sectors than before the Uruguay Round (Dunkley, 2000: 273).

It has also been argued that the Agreement on Agriculture has been highly inequitable and this has serious implications on developing countries (see South Centre, 1998). The problem is that once the agreement is signed, member countries are not allowed to revert back. This would create problem because some Muslim countries, for example, may face chronic foreign exchange shortage and, therefore, wish to enhance their food production. In order to promote agricultural production, the government may want to protect its domestic market and subsidise the agricultural sector. However, this may not be possible for the reason given above. It has been suggested, therefore, that during the forthcoming negotiations, Muslim countries should collectively try to restore the possibility of adopting such measures, so that they are not prohibited from having recourse to them if and when they decide to use them (see South Centre, 1998). The Muslim countries must also request reduction in the existing tariff levels, as mere reduction by a certain percentage may not be enough. There is a need to push for a commitment to have low ceilings for tariffs and subsidies. It is important, therefore, that Muslim countries start to analyse their experience and consult with each other to identify overall objectives, major areas of interest and negotiating strategies for the next round of negotiate on trade in agriculture.

Another channel where the developed countries have used the WTO regime to protect their agricultural and food sector is the Agreement on Sanitary and Phytosanitary Measures (SPS Agreement). This issue is discussed in the next section.

4. TRADE RESTRICTIONS WITH THE SPS STANDARDS

The use of SPS measures to protect the agricultural and food sector in the developed countries is increasing, and commentators have argued that it is becoming a convenient option for countries to protect their local industries. This is evidenced by the significant increase in the number of trade disputes over standards brought to the WTO since its inception (see Table 8). The majority of the cases brought to the WTO Dispute

Settlement Body centred on trade in agricultural products and obligations under the Agreement on Sanitary and Phytosanitary Measures (SPS) (Maskus, Wilson and Otsuki, 2000).

Table 8: Disputes Related to the SPS Agreement, 1995-May 2002

Year/Cases Field	Case	Dispute Description	Target Country	Complainant
1995	DS3	Testing and inspection Requirements	Korea	USA
(6 Cases)	DS5	Shelf Life Regulation – Frozen Meat	Korea	USA
	DS18	Import Ban – Salmon	Australia	Canada
	DS20	Shelf Life Regulation – Bottled Water	Korea	Canada
	DS21	Import ban – Salmon	Australia	USA
	DS22	Measures Affecting Desiccated Coconut	Brazil	Sri Lanka
1996	DS26	Import Ban – Hormone-treated Beef	EU	USA
(4 Cases)	DS30	Measures Affecting Desiccated Coconut and Coconut Milk Powder	Brazil	Philippines
	DS41	Testing and Inspection Requirements	Korea	USA
	DS48	Import Ban – Hormone-treated Beef	EU	Canada
1997	DS76	Quarantine Regulations	Japan	USA
(5 Cases)	DS96	Import Quotas on Agricultural, Textiles and Industrial Products	India	EU
	DS100	USDA Decision on Poultry Product Safety	USA	EU
	DS102	Measures Affecting Pork and Poultry	Philippines	US
	DS104	Measures Affecting the Exportation of Processed Cheese	EU	US
1998	DS133	Measures Concerning the Importation of Dairy Products and Transit of Cattle	Slovak Rep.	Switzerland
(5 Cases)	DS134	Import Duties – Rice	EU	India
	DS135	Asbestos and Asbestos Products	EU	Canada
	DS144	Certain Measures Affecting Import of Cattle, Swine and Grain	USA	Canada
	DS148	Measures Affecting Import Duty in Wheat	Czech Rep.	Hungary
1999	DS169	Measures Affecting Imports of Fresh, Chilled and Frozen Beef	Korea	Australia
(1 Case)				
2000	DS203	Import Restrictions – Live Swine	Mexico	USA
(4 Cases)	DS205	Import Restrictions – Canned Tuna	Egypt	Thailand
	DS209	Measures Affecting Soluble Coffee	EU	Brazil
	DS210	Administration of Measures Establishing Custom Duties for Rice	Belgium	USA
2001	DS237	Certain Import Procedures for Fresh Fruit	Turkey	Ecuador
(3 Cases)	DS223	Definitive Safeguard Measures on Imports of Preserved Peaches	Argentina	Chile
	DS240	Import Prohibition on Wheat and Wheat Flour	Romania	Hungary
2002	DS245	Measures Affecting the Importation of Apples	Japan	USA
(Jan-May)	DS256	Import Ban on Pet Food	Turkey	Hungary

Source: Based on data obtained from www.wto.org/english/tratop e/dispu status e.htm.

Almost all countries have their own SPS standards, and governments usually use SPS measures to ensure that food is safe for consumers, and to prevent the spread of pests or diseases among animals and plants. The SPS Agreement[9] that was signed under the WTO encourages countries to harmonise SPS measures with international standards where feasible, but it does not require governments to accept international standards (Stewart and Johanson, 1999). WTO members can maintain SPS rules that are stricter than the international norm; however, such measures must be justified scientifically or must be the consequence of the level of SPS protection a member deems appropriate. The SPS Agreement requires that members work with relevant international organisations such as Codex Alimentarius Commision (Codex), the International Office of Epizootics (OIE) and the Secretariat of the International Plant Protection Convention to promote harmonisation. If measures differ from international standards or if international standards do not exist, a member country is obliged to notify other members of its measures through the WTO. A country must allow some time between the publication of a new measure and its entry into force in order to allow trading partners to comment on the changes (Jensen, 2002).

SPS measures can have significant effects on market access for developing countries. The usual problems faced by exporters are lack of information regarding the SPS standards in a particular country; simultaneous application of multiple standards and regulations; costs and complications of testing and verification procedures; lack of scientific data; lack of transparency and inconsistent application of customs procedures. These problems may be manipulated to establish health related measures that could be turned into non-tariff restrictive barriers to market access. Henson et al. (2000) reported that developing countries are strongly constrained in their ability to export food products by SPS mandates in developed countries. Such requirements, according

[9] The SPS Agreement permits countries to maintain SPS measures necessary to protect human, animal, plant life and health. The SPS Agreement, however, requires member countries of the WTO:

1. to base their SPS measures on sciences;
2. not to use SPS measures as disguised barriers to trade;
3. to recognize the equivalency, where possible, or different procedures used by other members for protecting against similar risks;
4. to base their SPS measures on risk assessments;
5. to recognize the concepts of disease- and pest-free areas;
6. to maintain transparent SPS regulations; and
7. not to use control, inspection, and approval procedures as unjustified SPS barriers to imports.

to them, ranked as the most significant constraint on exporting agricultural and food products to the EU, ranking ahead of transportation costs, tariffs and quotas. They further noted that among destination markets, the European Union afforded the most problems, followed by Australia, United States, Japan and Canada.

There are many evidences of trade restrictive impact of the SPS Agreement. The procedural requirements are the main constraint for exporters to comply with standards set by a certain country. For example, India accounts for almost 60 per cent of the global mango production, but it can not export mangoes to the United States as this country demands vaporised heat treatment of mangoes, facilities for which did not exist in India until recently (Jha, 2002: 23). Similarly, Uganda's fish exports were affected because the EU demanded a comprehensive monitoring programme, which would determine levels of organ chloride pesticides, organophosphate pesticides and sediments from the lake. India's milk is not allowed to enter the EU market because Indian cows are not mechanically milked. It is also not easy to sell poultry products in the US. To penetrate the US poultry products market, an exporter is required to be declared Newcastle-free. It took five years for Costa Rica to be declared Newcastle-free (Jha, 2002)[10].

Another case is related to aflatoxins levels in nuts. In 1997, the European Commission proposed uniform standards for total aflatoxins setting the acceptable level of contaminant in certain foodstuff[11]. On January 8, 1998, the EU notified the WTO Secretariat of a proposed sanitary rule on aflatoxins. This triggered serious concerns among exporters of affected food products (Henson et al., 2000). Exporting countries including Bolivia, Brazil, Peru, India, Argentina, Canada, Mexico, Uruguay, Australia, and Pakistan requested that the European Union provides the risk assessments on which it had based its proposed

[10] By year 2000, the countries declared Newcastle-free by the USDA were Australia, Canada, Chile, Costa Rica, Denmark, Fiji, Finland, France, Great Britain, Greece, Iceland, Luxembourg, New Zealand, Ireland, Spain, Sweden, and Switzerland.

[11] Aflatoxins are a group of structurally related toxic compounds which contaminate certain foods and result in the production of acute liver carcinogens in the human body. The major aflatoxins of concern are designated B1, B2, G1 and G2, and these toxins are found usually in foods. Aflatoxin B1 is usually predominant and the most toxic of the four categories and has been identified in corn and corn products, groundnuts and groundnuts products, cottonseed, milk, and tree nuts such as Brazil nuts, pecans, pistachio nuts and walnuts.

standard (WTO, G/SPS/R/12, 1998). Otsuki, Wilson and Sewadeh (2001) estimated that the implementation of a new aflatoxin standard in the European Union will have negative impact on African exports of cereals, dried fruits and nuts. African export revenue from the 15 European countries is estimated to decrease by 59 per cent for cereals and 47 per cent for dried and preserved fruits and edible nuts. The total loss is estimated to be nearly US$ 400 million for cereals, dried and preserved fruits, and nuts[12].

In the case of rice, Indian producers have complained that aflatoxin standards serve protectionist purposes (Jha, 2002). In the first six months of 2000, roughly 2 consignments of basmati and non-basmati consignments to the United States were rejected on the grounds that they were dirty and contained "foreign matter". Jha found that the problems were larger in the case of basmati or premium rice rather than for non-basmati rise. Exporters were of the opinion that USFDA standards and the relative stringency of the basmati rice standards were primarily on account of protection provided to domestic producers in the United States. Another example is the recent imposition of 104 tests for pesticides by Japan on Chinese rice exports, instead of the 47 tests applied earlier in the decade.

Several observers express deep concern about the obstacles developing countries face when seeking to pursue complaints under the SPS Agreement (Henson and Loader, 2001; Hoekman and Mavrodis 2000; Zarilli, 1999). The dispute settlement process is often lengthy and very demanding in terms of financial capacity and human resources (ACWL, 1999). Filing a complaint about the SPS Agreement requires identification of a violation of a specific commitment. Information is the critical factor (Jensen, 2002). Many developing countries, therefore, feel that they are either unable to use the dispute settlement process at all or that they are only able to do so as part of a collective effort or as a partner to a developed country complaint (Henson *et al.*, 2000). Table 8

[12] Argentina, Australia and India complained to the WTO Secretariat that the EU's proposed regulation would be costly, over burdensome, and thus trade-distorting, and would go beyond what is necessary to protect human health. The EU took these comments into consideration, and at a meeting of the WTO's SPS Committee on June 10, 1998, it announced that it would relax its proposed sampling requirements. The EU's rule on aflatoxins, with the modified sampling requirements was adopted on July 16, 1998.

shows that out of 30 complaints under the SPS Agreements made between 1995 and May 2002, only 6 developing countries are involved. There were no Muslim countries at all that have complained against any countries regarding the usage of SPS standards as trade barriers so far. But this does not mean that Muslim countries are not affected by the SPS standards requirements. Most of them just could not afford to file cases and have constraints to go through the dispute settlement process due to the lack of financial resources and limited knowledge. There were two Muslim countries that became the target of trade dispute related to the SPS standards, namely, Egypt and Turkey. It also appears that more developing countries are getting involved in SPS disputes especially after the year 2000.

Developing countries tend to be "standard-takers" rather than "standard-setters"[13]. Standards and standard setting procedures at international levels are already more or less in place in the developed countries (Jensen, 2002). The major problem of Muslim countries in participating in international standard setting is the cost involved as well as the lack of technical expertise in developing basic information and studies for supporting their arguments in international bodies (see Jha, 2002). The implementation cost of SPS Agreement is also enormous. Notification and inquiry points must be established and the country must have a representation in Geneva that can participate in the meetings of the SPS Committee (Jensen, 2002). To be involved in the international SPS meetings, a member must have an overseas representative as well as technical and financial capacity to back the representation with inputs on how to develop new standards. Finger and Schuler (2000) noted that developing countries carry a heavier burden than developed countries when it comes to fulfilling these commitments. Complying with the SPS standards is far from possible for many developing countries. The main reason is that they lag behind in their capacities for effective certification and accreditation of testing facilities (Stephenson, 1997). Thus, liberalisation of trade in agriculture most probably will lead to an increase in the usage of SPS standards as a protectionist mechanism, particularly in developed countries. The victim will again be the developing countries.

[13] Noor Halima (2001), "SPS Measures and Their Effect on Horticultural and Fish Exports From Kenya", paper presented at the African Workshop on Standards and Trade, 13 September 2001.

5. CONTROVERSIAL AGREEMENT ON INTELLECTUAL PROPERTY PROTECTION

The Trade-Related Intellectual Property Rights (TRIPs) Agreement is a highly controversial addition to GATT for it seeks to add rather than remove a form of protection (Dunkley, 2000: 187). There have been calls that TRIPs should be taken out altogether from the WTO trading system because they actually increase protection and promote monopolistic behaviour. Intellectual property involves skills, invention and methods with a high degree of originality, novelty or uniqueness (Wu, 1999). These qualities result in new products, new ways of making things, distinctive trademarks, artistic and creative works of various kinds. The areas of intellectual property that TRIPs Agreement covers are: copyright and related rights (i.e., the rights of performers, producers of sound recordings and broadcasting organisations); trademarks including service marks; geographical indications including appelations of origins; industrial designs; patents including the protection of new varieties of plants; lay-out designs of integrated circuits and undisclosed information including trade secrets (WIPO, 1996).

Wu (1999) believes that the basic force behind all forms of protection of intellectual property right is to prevent copying, to control supply and to maximise profit. Once the free flow of products and competition are restricted, price, availability and choice of the protected product will be controlled by the owner of the property rights. Therefore, intellectual property rights and protection, once the tools for technological, industrial and intellectual advancement, have now become the instruments through which unfair market practices are executed. These practices now frequently become the means to guarantee market positions and, profitability for businesses. It also has become a form of trade protection.

The call for strengthening intellectual property protection standards and its enforcement dominated negotiations in international forums since the 1980s. Higher expenditure on research and development, stiffer international competition, and changes in the organisation of research and production spurred efforts to intensify intellectual property protection (Wijk and Junne, 1993). The developed countries insisted that inadequate standards of protection and ineffective enforcement of intellectual property often unfairly deprive their rights and lead to

production of counterfeit and pirated products. Therefore, they have to bear heavy losses; for instance in 1986, 193 US firms estimated their aggregate world wide losses in this respect at US$23.8 billion (US, International Trade Commission, 1986). The inclusion of intellectual property rights as one of the issues to be negotiated in the GATT/WTO was mainly the result of the insistence of the US. Various justifications were brought forward during the multilateral negotiations at the General Agreement on Tariff and Trade (GATT) and later in the World Trade Organisation (WTO) for the inclusion of TRIPs, and they can be summarised as follows:

1. Provisions contained in international conventions (WIPO, Paris Convention, Rome Convention and Berne Convention) do not provide adequate protection for intellectual property rights (IPR);
2. Inadequate treatment on the scope of rights;
3. There are national rules which discriminate against foreigners in favour of domestic economic activity; and
4. Inadequate procedures and remedies for the effective enforcement of rights.

As a result of intense multilateral debate, an Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs) was proposed to be included in the WTO. The TRIPs Agreement, which came into effect on 1st January 1995, is claimed to be the most comprehensive multilateral agreement on intellectual property. It deals with each of the main categories of intellectual property rights, establishes standards of protection as well as rules on enforcement, and provides for the application of the WTO dispute settlement mechanism to resolve disputes between Member States.

The Agreement gives all WTO members transitional period so that they can meet their obligations under it. However, there are two important substantive obligations that have been effective from the entry into force of the TRIPs Agreement on 1st January 1995. One is the so-called “non-backsliding” clause in Article 65.5 which concerns changes made during the transitional period, and the other the so-called “mail-box” provision in Article 70.8 for filing patent applications for pharmaceutical and agricultural chemical products during the transitional period. The transitional period, which depends on the level of development of the country concerned, is provided for in Articles 65 and 66. Developed

country members had a one-year transition period; they had had to comply with all the provisions of the TRIPs Agreement by 1st January 1996. For developing countries, the general transitional period is five years, i.e., until 1st January 2000, and for those countries on the United Nations list of least-developed countries the period is eleven years.

What are the concerns regarding the TRIPs Agreement, particularly those which are claimed to be enhancing trade protection and restricting free trade flows? One of the most controversial issues related to this question is parallel importation. The question is whether trademark, copyright and patent owners, as well as the exclusive licensees should be given the right to prohibit parallel importation, and therefore, restrict free flow of goods trade.

Parallel trade or imports are genuine products brought into a country without the authorisation of the copyright, patent or trademark owner (Maskus and Chen, 2000). It occurs when a product covered by intellectual property rights in Nation A is exported to and re-sold in Nation B without the consent of the intellectual right owner. In most cases, import by non-right holder into a third country may violate intellectual property rights even if the product was originally purchased from a right holder. The imports are called parallel imports because traditionally the right holder has the right to control importation of the product, and any imports unauthorised by the holder are considered as infringing the intellectual property rights of the owner.

The WTO Agreement in TRIPs includes the right of a patent holder to control importation of a product into third markets. Specifically, TRIPs Article 28 states that "[a] patent holder shall confer on its owner the following rights to prevent third parties not having his consent from the acts of making, using, offering for sale, selling or importing for these purposes that product". Although the Agreement does not specifically address the issue of national or international exhaustion (Article 6), it is generally not possible for a government to permit parallel import of a product under patent protection without recourse to confidential test data or other information protected under TRIPs Article 39(3), or without violating TRIPs enforcement provisions designed to permit a right owner fast and effective relief for intellectual property infringements[14].

[14] Taken from http:/ /www.diverted goods.com//modules/browse.asp?action.

It is worth to note here that member countries of TRIPs Agreement are not bound to ban parallel importation.

Companies granted intellectual property protection usually practice price discrimination, i.e., selling the same product in different countries by setting different price levels according to 'what the market can bear'. In some cases, price differentials result in cross-subsidisation between territories. This is made possible by having an exclusive marketing arrangement in a particular country, and the government is usually pressured to provide statutory prohibition against parallel importation. Obviously market monopoly is created through restraint of trade and this is done in pretext of proprietary interest.

The consequence of prohibiting parallel importation is that patent owners tend to segregate their product's market according to geographical areas and unilaterally determine and dictate the price of goods. Prohibition of parallel import also means that if a patent holder charges a higher price in one market and a lower one in another, the higher price country is not allowed to import from a lower-price country without the permission of the patentee. In a survey done by Bala (1995), prices for Amoxil produced by Smith Kline Beecham are different in different markets. The price was $8 in Pakistan, $14 in Canada, $16 in Italy, $22 in New Zealand, $29 in the Philippines, $36 in the USA, $34 in Malaysia, $40 in Indonesia, and $60 in Germany. Similarly, Subramaniam (2000) shows differential pricing strategy for another drug called Zantac, an anti-ulcer drug manufactured by Glaxo-Welcome. The prices vary from $183 in Mongolia to only $2 in India (see Table 9).

Countries that have low prices are those countries which either do not grant patent rights, allow parallel importation and/or impose compulsory licensing. In most cases, the restriction on parallel import would lead to higher prices. In the US, pharmaceutical products are subjected to parallel import ban policy. This has induced major pharmaceutical multinational corporations, such as Glaxo-Welcome, Ciba-Geigy and Pfizer, to charge 43 to 69 times as much for the same drug sold in India. Tamoxifen, a drug used for breast cancer treatment, is priced at a tenth of the price charged in the US, while a month's supply of an osteoporosis drug is sold for $170 in the United States but only $45 in Canada and $51 in Mexico[15]. Australian studies have

[15] "Re-import and Save", *The Washington Post*, 29 September 2000.

demonstrated that parallel importation prohibition has resulted in sound recordings becoming priced higher than the same product elsewhere (Wu, 1999: 227).

Table 9: Retail Prices in US$ of 100 Tablets of Zantac in 11 Asian Countries

Countries	Zantac (100x150)
Bangladesh	9
India	2
Indonesia	41
Malaysia	55
Mongolia	183
Nepal	3
Pakistan	22
Philippines	63
Sri Lanka	61
Thailand	37
Vietnam	30

Source: Retail Drug Prices: The Law of the Jungle, HAI News No. 1000, Apri11998. Taken from Balasubramaniam (2000:18).

Ganslandt and Maskus (2001) reported that in Sweden, the growth of parallel imports since 1995 was significantly high. Before 1995, Sweden prohibited parallel imports of pharmaceutical products. The European Union, on January 1, 1995, required Sweden to allow them in. Their study found that the price of goods subjected to import competition, including parallel-traded products themselves, fell approximately 4 per cent in the import market relative to the prices of products not subject to parallel trade.

But developing countries face problems when they want to allow parallel importation. For example, in the Philippines, the pharmaceutical multinational corporations association had sued its Department of Health for parallel importing drugs from India in the year 2000[16]. The Philippine Government allowed parallel importation of pharmaceuticals in its health policy to make patented and branded medicines cheaper in the government hospitals. Parallel imports significantly reduced the costs of medicines in the Philippines, where the government was able to procure Salbutamol (for asthma treatment) produced by Glaxo-Wellcome for P294.75 with the parallel import from India, compared to

[16]"Drug Makers Go to Court on Imports", *The Malaya,* 23 November 2000, p.6.

P294.75 charged by Glaxo in the Philippines. Another company that sued the Philippines Government was Bayer that sells Nifedipine at P25.25 per capsule while the government's price was P4.54. Roche was in the picture as well, charging P24.1 for Cotrimoxazole per tablet compared to P4.73 for the same drug imported from India. The suing action by the pharmaceutical companies indicates that their main concern is to maximise profit and not the health of the people.

Parallel imports ban is clearly trade prohibitive, and it has obviously been abused by the multinational corporations. However, the WTO regime facilitates and approves such practices for their benefit.

6. THE AGREEMENT ON TEXTILES AND CLOTHING (ATC)

The pre-WTO textile regime was another forthright contradiction of normal GATT Rules. When developing countries were becoming competitive in textiles in the 1960s, they were 'persuaded' to enter into 'orderly marketing arrangements' to give textile industries in the developed countries time to adjust. The sector was therefore governed by special arrangements called the Multi-fibre Agreement (MFA). Under the MFA, industrialised countries negotiated bilateral agreements to restrict the quantity of imports from each developing country. These arrangements usually set quotas for the amount of trade that is permitted in the textile or clothing item concerned (Oxley, 1990: 177).

The defence of protectionist instruments such as the Multi-Fibre Agreement has been the protection of jobs. A Swedish study estimated that the MFA, costs £100 per household per year, and £12,500 to £24,000 per job saved. Another study estimated the cost of the MFA to UK consumers to be £980 million (Simpson, 1999). But, what happens to developing countries due to protectionist measures by the developed countries is of a little concern to them. Consider this case: In the 1980s, there was an increase of shirt exports from Bangladesh which produced a 'surge' to 1.8 per cent of American imports. The Americans invoked the anti-surge mechanism of the MFA leading to immediate closure of half of Bangladesh’s shirt factories, whose workers were mainly women earning second incomes for their families.

The MFA was supposed to be temporary. But it lasted over a quarter century. One consequence of this was that textile exporters from developing countries could not benefit from their competitiveness and had

to slow down their pace of industrialisation and diversification. There are evidences of exports from developing countries constrained by the MFA. Therefore, the developing countries members of the MFA, grouped in the International Textiles and Clothing Bureau (ITCB), concertedly tried to negotiate the phasing out MFA, which received serious objection from the USA and European countries throughout the late 1980s. Despite strong refusal from the industrial countries, the ITCB members stood firm and finally got their proposals incorporated into the report of the Group of Negotiations on Goods (GNG) for the meeting in Montreal in 1989, and finally been concluded in the Uruguay Round. Consequently, the Agreement on Textiles and Clothing (ATC) was signed in 1995.

The ATC requires member countries to phase out the MFA quota over a ten-year period from 1 January 1995 in three roughly equal stages. Market access into restrictive countries is to be gradually increased through measures such as raising of import growth ceilings in each phase, the abolition of various NTBs, a doubling of duty-free admissions, tariff reductions by 22 per cent in industrial countries and increased tariff bindings, though some transitional safeguards are to be allowed (Dunkley, 2000: 53).

The negotiated compromise allowed the developed countries ten years (that is until 1 January 2005) to adjust their textile sector. The proposed adjustments allow developed countries to 'technically' fulfil their commitments without actually making any material difference in the liberalisation of the textile sector. They have 'back-loaded' the more sensitive items towards the year 2005, thus robbing the exporting countries of the South of any meaningful benefit of the Agreement. Also, contrary to other Uruguay Round Agreements where rights and obligations were negotiated cross-sectorally, for textiles this was done within the sector itself, denying the South of possible trade off in other sectors, and setting a precedent for sectoral negotiations in which the South finds itself at complete disadvantage[17].

Some exporting countries have complained that developed countries importers are slacking on liberalisation commitments by manipulating the tariff reduction formulae and the excessive use of (short-term)

[17] Yash Tandon (n.d), "The WTO: A Southern NGO Perspective", obtained from http://www.ictsd.org/html/review2-3.1.htm.

safeguard provisions. Exporters have queried the continued use of some import barriers and Voluntary Export Restraints (VERs), while a number of disputes in these, including those between competing developing countries, have been submitted to the WTO.

It has also been argued that the ten-year phase out was supposed to be the aspect of the Uruguay Round to most immediately benefit the developing countries that export textiles, clothing and footwear (Martin Khor, 2000a). Martin Khor noted that textile exporting countries have been extremely disappointed and frustrated that five years after the phase-out period began, they have not yet seen any benefits. This is, according to him, due to the 'endloading' of the implementation of developed countries (that is, the liberalisation of most of the products imported from developing countries will take place only in the final year or years), and the benefits will accrue only at the end of the ten-year phase-out period. Another important point to be noted is that, although developed countries have legally complied with the agreement by phasing out quotas proportionately, what actually they have done is that they deliberately chose to liberalise products that were not restrained in the past (see Martin Khor, 2000a).

7. CONCLUSION

The benefits of improved market access derived from the liberalisation efforts by the WTO are being dampened by increased usage of non-tariff measures which come in many forms. There are tendencies for countries to manipulate loopholes that exist in the WTO regime, and work, within the framework of the organisation, to ensure that the trade restrictive measures they use to protect domestic interests are 'legal' and 'acceptable'. It is unlikely that the usage of non-tariff measures will easily diminish. Therefore, Muslim countries must concertedly find ways to control and monitor the inappropriate use of such measures.

REFERENCES

Anderson K. (1998), "Agriculture, WTO, and the Next Round of Multilateral Trade Negotiations", available at http://www.internationalecon.com.

ACWL (1999), "Agreement Establishing the Advisory Centre on WTO Law", obtainable from http://www.itd.org.

Balasubramaniam K. (1988), *Policy Options in Pharmaceutical Patents for Developing Asian Countries,* International Organisation of Consumers Unions: Penang, Malaysia.

Deardorf A. (1997), "An Economist's Overview of the World Trade Organisation" paper presented at US-Korea Academic Symposium on "The Emerging WTO System and Perspective from East Asia", Seoul.

Dunkley G. (2000), *The Free Trade Adventure: The WTO, the Uruguay Round and Globalism -A Critique,* Zed Books: London.

Finger J.M. and P. Schuler (2000), "Implementation of Uruguay Round Commitments: The Development Challenge", *World Economy,* 23 (4), pp.511-525.

Ganslandt M. and Maskus K. (2001), "Parallel Imports of Pharmaceutical Products in the European Union", Working Paper No. 546, The Research Institute of Industrial Economics, Sweden.

Henson S. and R. Loader (2001), "Barriers to Agricultural Exports from Developing Countries: The Role of Sanitary and Phytosanitary Requirements", *World Development,* 29 (1), pp.85-1 02.

Henson S., R. Loader, A. Swinbank, M. Bredahl and N. Lux (2000), "Impact of Sanitary and Phytosanitary Measures on Developing Countries", Department of International Development, London.

Hoekman B. and C.P. Mavrodis (2000), "WTO Dispute Settlement, Transparency and Surveillance", *World Economy,* 23 (4), pp.527-542.

Jensen M.F. (2002), "Reviewing the SPS Agreement: A Developing Country Perspective", CDR Working Paper, February, Centre for Development Research: Copenhagen.

Jha V. (2002), "Strengthening Developing Countries' Capacities To Respond to Health, Sanitary and Environmental Requirements", obtained from http://www.unctad.com/tradeenv/test1/meetings/standards/paper1.pdf.

Josling T. 1999, "Developing Countries and the New Round of Multilateral Trade Negotiations: Background Notes on Agriculture", obtained from http://www.internationalecon.com.

Knoll M.S. (1991), "Dump Our Anti-Dumping Law", *Foreign Policy Briefing*, No.11, July 25. Obtained from: http//www.cato.org/pubs/fpbriefs/fpb-011.html.

Martin Khor (2000a), "Rethinking Liberalisation and Reshaping the WTO", Briefing Paper, Third World Network, Penang.

--------(2000b) "The World Trading System in a Post-Seattle Scenario", Briefing Paper, Third World Network, Penang.

Maskus K.E and Chen Y. (2000), "Vertical Price Control and Parallel Imports: Theory and Evidence", *World Bank Working Paper*, No.2461, World Bank: Washington D.C.

Maskus K., J.S. Wilson, and T. Otsuki (2000), "Quantifying the Impact of Technical Barriers to Trade: A Framework of Analysis", Development Research Group (DECRG), World Bank: Washington D.C.

Otsuki T., J.S. Wilson and M. Sewadeh (2001), "Saving Two in a Billion: A Case Study to Quantify the Trade Effect of European Food Safety Standards on African Exports", World Bank Research Paper No.2563, World Bank: Washington D.C.

Oxley A. (1990), *The Challenge of Free Trade*, Harverster-Wheatsheaf: London.

Simpson R. (1999), "International Trade in the WTO Era: Impact on Consumers", in Rachagan S. (Ed.), *Consumer Protection in the WTO Era*, AIDC-IACL: Louvain-la-Neuve.

Stewart T.P. and Johanson D.S. (1999), "The SPS Agreement of the World Trade Organisation and the International Trade of Dairy Products", *Food and Drug Law*, Vol.54, pp. 55-71.

South Centre (1998), "The Uruguay Round Agreements and the WTO Work Programme Tasks for Developing Countries", at http://www.southcentre.org/papers/wto/toc.htm.

Stevenson C. (2002), *Global Trade Protection Report* 20002, obtained from www.mayerbrownrowe.com.

Valdes A. (1987), “Agriculture in the Uruguay Round: Interests of Developing Countries”, The World Bank Economic Review, Vol.1, No.4, pp. 571-593.

Wijk J.V. and Junne G. (1993), *Intellectual Property Protection of Advanced Technology- Changes in the Global Technology System: Implications and Options for Developing Countries,* UNU/INTECH Working Paper, No.10.

WIPO (1996), “Agreement on Trade-Related Aspects of Intellectual Property Rights”, Annex 1c, unpublished.

Wirtz R.A. (2001), "Anti-dumping: The Free Trade Antacid", *The Region,* December 2001, obtainable from:
http:/ /minneapolisfed.ord/pubs/region/O 1-12/wirtz.html.

Wu Hung- Yuk (1999), “Intellectual Property and the Consumer” in Rachagan S. (Ed.), *Consumer Protection in the WTO Era,* AIDC-IACL: Louvain-la-Neuve.

Zarilli S. (1999), “WTO Sanitary and Phytosanitary Agreement: Issues for Developing Countries”, T.R.A.D.E. Working Paper, No.3, South Centre: Geneva.