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CONTENTS

Sr. No.	TITLE & NAME OF THE AUTHOR (S)	Page No.
<u>1</u>	Terrorism - Social Causes, Economic Impact in India and Possible Control Measures with Special Reference to Technology-driven Avenues. B. L. Shivakumar	<u>1-27</u>
<u>2</u>	An Analysis On Consumer's Attitude Towards Apparel Private Label Brands – A Study In Chennai Region. R. SATHYA and Dr. S. SHEELA RANI	<u>28-52</u>
<u>3</u>	I Want To Be A Leader. Dr. Supriya Jha	<u>53-71</u>
<u>4</u>	Conceptualizing Student's Perception On Academic And Personality Dimensions Using Gap Analysis. Dr. Vijaya Mani, Geeta Santhosh and K Subhash babu	<u>72-92</u>
<u>5</u>	Impact of Global Financial Crisis on Indian Banking Sectors: Strategies for achieving sustainable growth. Mr. Rabindra Ku Mohanty, Mr. Duryodhan Jena and Dr. Subhasmita Biswal	<u>93-107</u>
<u>6</u>	WTO: Revise Agreement on Trade Related Investment Measures. Dr. M. Sugunatha Reddy and Dr. B. Rama Bhupal Reddy	<u>108-117</u>
<u>7</u>	Office- Politics, a Game of Strategy through Communication Skills. By Dr. S. K. Singh	<u>118-135</u>
<u>8</u>	A Fixed Point Result By Using Altering Distance Function. Krishnapada Das, Indranil Bhaumik and Binayak S. Choudhury	<u>136-153</u>
<u>9</u>	India's E-Governance: Present Scenario and Future Planning. Sanjay Jangra	<u>154-166</u>
<u>10</u>	Power Quality: Problems, Protection And Solutions. S. Gupta and Neha Bajpai	<u>167-183</u>

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Title

**WTO : REVISE AGREEMENT ON TRADE RELATED
INVESTMENT MEASURES**

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ABSTRACT:

An attempt is to be made for still more serious endeavors to bring an amendment in the agreement on 'Trade related investment measures' (TRIMS), at least for greater accommodation to the developing countries, demanded for sustaining development and macro-economic balances. But, this needs enough preparations to develop a consensus among the developing countries to press for the same in one voice.

INTRODUCTION:

The biannual ministerial conference of the World Trade Organization (WTO) held on December 2005 in Hong Kong. Much preparation are underway in all member countries tackling the issues and working on strategies for negotiations. India should not forget about the December 2001 award of the dispute settlement body of the WTO passed against it.

FOCUS:

The Dispute Settlement Panel (DSP) of the WTO had then ruled against our retaining the twin clauses of 'Minimum Local Content' (MLC) and 'Balancing of Trade' (BT) in our automotive sector policy.

1. The panel had reject the twin clauses, for their being in contravention of the agreement on 'Trade Related Investment Measures' (TRIMS), on December 13, while delivering its decision on the complaints filed by the European Union (EU) and United States (US) on October 6, 1998 and May 1, 1999 respectively.
2. This is the third such successive incidence when we had to swallow the humble pie after the two earlier ones swallowed to comply with the 'Trade Related Intellectual Property Rights' (TRIPS).
3. To phase out Quantitative Restrictions (QRs).

4. These humble encumbrances would not have superseded our sovereignty, had we, the Uruguay round negotiating members not conceded, to explicit grant Unprecedented Judicial Jurisdiction to the Dispute Settlement Panels (DSPs).

5. Over sovereign states including ours, against any unilateral filling of disputes, while signing the Uruguay Round Final Act (URFA) at Marrakesh on April 15, 1994. Even the General Council (GC) and the all-powerful Ministerial Conference (MC) of the WTO too are stripped of any authority to block any rulings of the DSPs.

6. Even the International Court of Justice in Hague too lacks such power to deliver and enforce rulings against sovereign states, unless both of the disputants submit to it. DSPs are the only international institutions created under the WTO regime, which have such absolute legal sanction to enforce rules against sovereign states even on unilateral submissions.

Moreover, the DSPs have their effective cutting edge largely against the developing countries alone as several developed countries do maintain national laws authorizing their governments to invoke unilateral trade measures with extra-territorial jurisdictions clearly violating the provisions of the WTO. India has already filed its strong objection to it, in its communication to the GC dated December 15, 1988.

The very concept of national sovereignty had also turned sublime by mere substitution of the provision of 'decision by vote' in the agreement establishing WTO under the URFA, in place of the erstwhile provision of 'decision by consensus', as was under GATT era from 1947 to 1994.

7. The decision by consensus then implied a veto for every member nation in all multi-lateral trade negotiations, and through it, the recognition to the sovereignty of every member nation without whose consent no decision could be carried forward for want of the consensus. But now under the Article IX and X of the agreement establishing WTO, in want of a consensus, any decision can be taken by vote. So at Doha, we had risked of standing out alone but there was no such risk, if we would not have conceded to URFA in the present form at Geneva on December 15, 1993 or at Marrakesh on April 15, 1994.

Therefore, under the present form of URFA, the DSP has ruled that we have ceased to have the right to retain the twin clauses of 'minimum local content' and 'balancing the trade', as

these are in contravention of the Article 2 of agreement on TRIMs, read with the annexure enclosed therewith the agreement. Under article 5(2) of the agreement on TRIMs, all developing countries had to phase out all such TRIMs, inconsistent with URFA. Though under Article 17 of the 'Understanding on Rules and Procedures Governing the Settlement of Disputes', we could go for 'Appellate Review', and, under Article 4 of the agreement on TRIMs, developing countries, having problem of balance of payment (BOP) can retain such TRIM like the MLC or BT but, our contention of BOP crisis was rejected earlier in the case of QRs.

So it was a severe jolt to us in more than one ways, as the twin TRIMs of MLC and BT applicable to the automotive sector were eliminated. The dividend-balancing clause was also eliminated earlier in the year 2000, only to comply with the agreement on TRIMs. The MLC clause in our automotive sector policy in fact discourages mere assembly of finished products, from completely knocked down (CKD) kits or import of completely built units (CBUs).

8. Thereby it gives the benefits of investments in terms of downstream demand generation for the indigenous inputs, their intermediates and raw materials, simultaneously generating employment, incomes, demand and growth in the economy. The BT clause was helping us to restrain the already worsening trade gap.

The government got cautious of these implications of the agreement on TRIMs upon the automotive, auto-ancillary and allied sectors as well as on the BOP as it had made a submission on June 7, 1999, to the GC of the WTO proposing the need to modify TRIMs agreement to provide developing countries more time and even to exempt from dismantling the MLC clause by providing for an enabling provision in Article 2 or 4. But it was too late to rectify once we conceded the same at Marrakesh.

Yet, India had contended in its submission that the domestic content measure is key to encouraging domestic economic activities in raw material and intermediate input sectors, up-gradation of input production, prevention of wastages of foreign exchange in the import of raw materials and intermediate inputs, ensuring linkages of FDI with domestic activities, all act as an important instrument in the development process. India had therefore asserted for a

need to review the TRIMs agreement and remove the hurdles in the way of rapid economic growth of developing countries.

The provisions in the agreement relating to the elimination of MLC requirements come in the way of accelerating the industrialization process in developing countries and scrapping of trade balancing provision deny these countries the means to maintain BOP stability. So the developing countries be allowed to maintain these instruments till their development needs demand these. Hence the transition period mentioned in the Article 5 Para 2 needs to be extended. Though, two biannual ministerial conferences have passed since then, yet the issue had not come up for amendment. Mean while the verdict of DSP had come.

Therefore, attempt is to be made for still more serious endeavors to bring an amendment in the agreement on TRIMs, at least for greater accommodation to the developing countries, demanded for sustaining development and macro-economic balances. But, this needs enough preparations to develop a consensus among the developing countries to press for the same in one voice, as there are 107 developing countries, in this 148 members body.

9. This is possible only if an exhaustive survey is conducted about the losses being suffered by them. India being the most suffer should take the lead to establish a south – south task force on the implications of the agreement of TRIMs for this purpose.

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