requirement of minimum support from the concerned industry for initiation of investigation. Finally, the investigation must establish, on the basis of objective evidence, the existence of a causal link between the increased imports of the concerned product and the serious injury or threat thereof. But safeguard measures shall not be applied against a product originating in a developing country Member, as long as its share does not exceed three per cent of the imports of the importing Member or the imports of developing countries with less than three per cent import share collectively do not exceed more than nine per cent of the total imports (Article 9 of the AOS).

2.4.1.2 Safeguard measures

The safeguard measures can be of two types, *viz.*, an additional import duty and QRs. In both cases, the application of safeguard measures shall only be to the extent necessary to prevent or remedy the serious injury occurred and to facilitate appropriate adjustment. If a QR is used, such a measure shall not reduce the quantity of imports below the level of a recent period, which shall be the average import during the last three representative years for which statistics are available. If a Member desires to restrict the quantity of import below this average, it can do so only if a clear justification is given that a different level is necessary to prevent or remedy the suffered serious injury. Further, it is provided that in order to facilitate adjustment, the Member applying the measure shall progressively liberalise the same at regular intervals during the period of application (Article 7 of the AOS).

2.4.1.3 Quota modulation

Notwithstanding the MFN condition provided for under Para 2 in Article 2 of the AOS, flexibility is permitted in the allocation of quotas among exporting countries, subject to certain conditions. Members with a substantial interest in supplying the product shall be consulted for an agreement on the distribution of quotas.

2.4.1.4 Provisional safeguard measures

Article 6 of the AOS provides that in critical circumstances where delay would cause damage which would be difficult to repair, a Member may take a provisional safeguard measure in the form of an additional duty after a preliminary determination of clear evidence of increased imports causing or

threatening to cause serious injury. However, if the succeeding detailed investigation does not establish evidence for serious injury, the increased amount of duties collected as provisional safeguard measure has to be promptly refunded. But QRs cannot be imposed as provisional safeguard measures.

2.4.1.5 Duration of safeguard measures

Safeguard measures are emergency actions and hence shall be of short duration. The duration of provisional safeguard measures shall not exceed 200 days (Article 6 of the AOS). In the case of other definitive safeguard measures, the period shall not exceed four years unless competent authorities of the importing Members determine with sufficient evidences that continuance of safeguard measure is necessary. However, the total period of application of a safeguard measure shall not exceed 10 years for developing countries (Article 9 of the AOS) and eight years for other countries (Article 7 of the AOS).

2.4.1.6 Level of concessions and other obligations

A Member proposing to impose or extend safeguard measures shall endeavour to maintain a substantially equivalent level of concessions between it and the exporting Members which would be affected by such a measure (Article 8 of the AOS). If a Member applying a safeguard measure does not offer substantially equivalent compensation for the adverse trade effects, the affected exporting Members have a right to retaliate with suspension of concessions to the concerned Members. However, in cases where the safeguard measure has been taken as a result of an absolute increase in imports and in conformity with the provisions of the AOS, the right to retaliate shall not be exercised for the first three years of the application of the safeguard measures.

2.4.1.7 Notification and consultation

Under Article 13 of the AOS, a Committee on Safeguards is established under the authority of the Council for Trade in Goods, in accordance with Para 5 in Article IV of the WTO Agreement. The AOS upholds the need for maximum transparency to be maintained in the application of safeguards and all actions pertaining to any of the Articles under the AOS and Article XIX of the GATT 1994 shall be notified to the WTO through the Committee on Safeguards. The

consultation process shall also be notified to the Council for Trade in Goods through the Committee on Safeguards. The Committee on Safeguards shall maintain an effective surveillance over the general implementation of the AOS and related matters.

The AOS is not applicable to measures taken by Members pursuant to other provisions of GATT 1994 or other Agreements or legal instruments (Article 11 of AOS). Thus, AOS is not applicable to the agricultural products having special safeguard provisions under Article 5 of the Agreement on Agriculture (designated with the symbol "SSG" in the schedules of concessions under Article II of the GATT 1994) and products coming under the purview of the Agreement on Textiles and Clothing.

2.4.1.8 Safeguard measures – System in India

Every country can have its own system for the administration of safeguards which shall be in conformity with the respective provisions of the Article XIX of the GATT 1994 and the AOS. The provisions empowering the GOI to impose safeguard duty are contained in Section 8B of the Customs Tariff Act of 1975, added on March 1, 1997 (Gupta, 1998: 54). The manner in which safeguard duty can be imposed and the procedures required to be followed in conducting safeguard investigations are governed by the Customs Tariffs (Identification and Assessment of Safeguard Duty) Rules, 1997 notified on July 29, 1997. The safeguard duty is charged at specific rates on the landed value which is the sum of the assessable value of imports for customs purposes (cif value of imports + 1 per cent of the cif value of imports as landing charges) and basic duty. The Clause 112 of the Finance Bill 2001-2002 amended Section 8B of the Customs Tariff Act so as to empower the GOI to exempt (either fully or partially) specified quantity of any goods imported from any country or territory from safeguard duty. Normally, safeguard duties are not applicable to articles imported by approved 100 per cent Export Oriented Units (EOUs), units in the Free Trade Zones (FTZs) and Special Economic Zones (SEZs) under Section 8B, Sub-section 2A of the Customs Tariff Act, 1975. The products imported with duty free advance licenses are also exempted from the payment of safeguard duties.

The GOI may appoint an officer not below the rank of a Joint Secretary to the GOI or such other officer as it may think fit as the Director General (Safeguards), to function as the designated authority related to safeguard provisions/rules. The Director General, attached to the Ministry of Finance is in charge of investigation, identification of surge in imports, serious injury and causal link and has to submit appropriate recommendations to the government regarding the imposition of safeguard measures (Rule 3). An investigation can be initiated on receipt of a written application, as specified, by a domestic producer or interests representing the domestic producers. Investigation can be initiated by the Director General *suo moto* if he is satisfied, with the information received from any Collector of Customs or any other source, that sufficient evidence exists on increased imports, serious injury or threat thereof and causal link between the increased imports and injury inflicted (Rule 5). The Director General may call for information through public notice which are to be provided by the concerned persons within 30 days (Rule 6). Any information provided on a confidential basis, upon cause being shown, shall not be disclosed without specific authorisation of the party (Rule 7). The GOI may impose a provisional duty for a period not exceeding 200 days from the date of imposition, on the basis of the preliminary findings submitted by the Director General at the initial stage of the investigation (Rule 10). The final report, documenting the findings related to the increased imports, serious injury or threat thereof and the causal link has to be submitted to the government within eight months of the initiation of the investigation (Rule 11). The GOI may impose, by a notification in the Official Gazette, a safeguard duty on the product if such a recommendation is made by the Director General. But if the final finding of the Director General is negative, the GOI shall withdraw the provisional duty imposed, within 30 days of the publication of the findings and refund the duty thus collected (Rules 12 and 15). If the duration of the duty levied exceeds one year, the duty shall be progressively liberalised at regular intervals during the period of imposition (Rule 17). The Director General shall from time to time review the need for continued imposition of safeguard duties and make appropriate recommendations to the government on continuance/liberalisation/withdrawal of the safeguard duties (Rule 18).

2.4.2 Imposition of anti-dumping duties

Para 1 in Article VI of the GATT 1994 recognises that dumping is to be condemned if it causes or threatens to cause material injury to an established industry in the territory of a contracting party or materially retards the establishment of a domestic industry. Further, Para 2 of the said Article empowers the contracting parties to levy on any dumped product, an anti-dumping duty, not greater than the defined margin of dumping. The Agreement on Implementation of Article VI of the GATT 1994, popularly referred to as the Agreement on Anti-dumping Duties (AAD) deals with the determination of dumping and imposition of anti-dumping duties.

2.4.2.1 Determination of dumping

Liberalisation and the ongoing process of globalisation coupled with large scale export oriented mass production have been significantly increasing the proportion and volume of products earmarked for global market. With the expansion of the trading horizon, one of the strategies often resorted to capture global market has been dumping. Dumping in simple terms implies selling goods in the external markets at prices lower than those in the domestic market of the exporter. Article 2 of the AAD defines dumping *ie.*, introduction of a product into the commerce of another country at a price less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like products when destined for consumption in the exporting country.

The normal value shall be constructed by the authority in the following situations, *viz.*, (i) there is no sale of the like product in the domestic market of the exporting country; (ii) the volume of domestic sales is less then five per cent of the quantity exported to the importing country; (iii) there is no export to a third country; and (iv) the sales are not in the ordinary course of trade (Paras 2 and 3 in Article 2 of the AAD). The normal value shall be constructed on the basis of the records, kept by the exporters or producers, under investigation and in accordance with the generally accepted accounting principles. The constructed normal value shall include cost of production, selling, general and administrative costs (SGAs) and profit. In cases where there is no export price or when the same appears to be unreliable, the export price also needs to be

constructed. The export price is constructed on the basis of the first resale to an independent buyer after deducting all costs incurred between importation and resale.

Export price and normal value shall be compared at the same level of trade, normally at ex-factory level and in respect of sales made at, as nearly as possible, the same time (Para 4 in Article 2 of the AAD). The difference between the export price and normal value expressed as a percentage of the former is defined as the dumping margin. Normally, the comparison shall be between a weighted average normal value and a weighted average of export prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction- to- transaction basis. In exceptional circumstances where the export prices differ significantly among different purchases, regions or time-periods, a normal value established on a weighted average basis may be compared to export prices of individual transactions (Para 4 in Article 2 of the AAD).

2.4.2.2 Determination of injury

The establishment of injury was not a necessary condition for the imposition of anti-dumping duties under Article VI of the GATT 1947 but later included during the Kennedy Round, following the incorporation of the same in the US law (Gupta, 1996: 44). In the AAD, the concept of material injury, criteria for its determination, causal relationship between dumped imports and injury to the domestic industry *etc.* have been clearly spelt out. The footnote of Article 3 of the AAD defines injury as the material injury to a domestic industry or material retardation of the establishment of such an industry. The determination of injury shall be based on positive evidences involving an objective examination of the (i) volume of the dumped imports and the effect of the dumped imports on the prices in the domestic market for like products; and (ii) consequent impact of these imports on the domestic producers of such products (Para 1 in Article 3 of the AAD). The increase in the volume of dumped imports may be in absolute or relative terms as compared to the production or consumption in the importing country. With regard to price, the authorities need to determine whether there has been a significant price undercutting by the dumped imports or the dumped imports have caused a

price depression or prevented a price increase in a significant manner. The determination of the threat of a material injury involves a subjective assessment on the part of the investigating authorities and shall be carried out with special care. In the case of nascent and developing industries, only the test of material retardation is applicable. In order to impose anti-dumping duties, a causal relationship shall be established between the dumped imports and injury determined in a domestic industry. In normal circumstances, domestic industry is interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production. The Agreement also provides for treating the industry in an area covering two or more countries having characteristics of a single and unified market as domestic industry, in terms of Para 8 (a) in Article XXIV of the GATT 1994.

2.4.2.3 Initiation and investigation

The investigation on dumping may be initiated on a written application with evidence lodged on behalf of the domestic industry by any person/association which considers itself aggrieved by the dumped imports or by the authorities themselves *suo moto* (Article 5 of the AAD). Investigation needs to be initiated only if the evidence submitted are accurate and adequate and the application is supported by the domestic producers. Support by the domestic industry is deemed to exist if the application is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product, produced by that portion of the industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers supporting the application account for less than 25 per cent of the total production of the like product produced by the domestic industry (Para 4 in Article 5 of the AAD).

During the investigation, the authorities shall consider evidence on both dumping and injury simultaneously. The margin of dumping to be considered *de minimis* is less than two per cent. The volume of dumped imports is negligible if it accounts for less than three per cent of the imports of the importing country or the imports from various countries with less than three

per cent individual share collectively account for less than seven per cent of the total imports. Once the authorities decide to initiate an investigation, they are required to issue a public notice for the benefit of all the interested parties. An appropriate period of investigation may be determined by the authorities. The authorities shall collect information from all interested parties, mainly through questionnaires and information provided on a confidential basis shall be treated as such. The authorities shall verify the authenticity and accuracy of the information provided by different parties. If the parties refuse access to information or do not provide information within a reasonable period, preliminary and final determination may be made on the basis of the best information available to the authorities. The investigation is required to be concluded within one year and under no circumstances in more than 18 months after initiation (Para 10 in Article 5 of the AAD).

2.4.2.4 Price undertakings

Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from exporters to reduce prices or to cease exports. But price undertakings shall not be sought or accepted unless the authorities have made a preliminary determination of dumping and injury caused by such dumping (Article 8 of the AAD).

2.4.2.5 Provisional measures

If the preliminary determination is affirmative, the authorities can impose provisional measures to prevent injury being caused during the course of the investigation (Article 7 of the AAD). Provisional measures may take the form of a provisional duty or preferably a security, by cash deposit or bond equal to the amount of the anti-dumping duty provisionally estimated. If the final duty is higher than the provisional duty, the difference shall not be collected but if the former is lower than the latter, the difference shall be reimbursed (Article 10 of the AAD).

2.4.2.6 Imposition and collection of final duties

In the imposition of anti-dumping duties after the final determination, it is desirable that the duty be less than the dumping margin if such lower duty would be adequate to remove the injury to the domestic industry (Article 9 of

the AAD). In all cases, the amount of anti-dumping duty shall not exceed the margin of dumping, as established under Article 2 of the AAD. In the case of anti-dumping duty, upon the determination of material retardation of the establishment of an industry, it shall only be prospective in imposition. In other cases, where final determination is affirmative, anti-dumping duties may be levied retroactively from the date of imposition of provisional measures. In certain situations, duty may be levied from not more than 90 days prior to the date of application of provisional measures on products which had already entered for consumption. The burden of the anti-dumping duties shall be passed on to the final customers as would be evident from the movement in prices.

An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury. Any definitive (final) anti-dumping duty shall be terminated on a date not later than five years from its imposition unless the authorities in a review determine that the expiry of the duty would be likely to lead to the continuation or recurrence of dumping and injury thereof (Article 11 of the AAD). When there is both export subsidies and dumping, the practice shall be to determine first the extent of subsidisation and the rate of countervailing duties and thereafter calculate dumping margin to determine the anti-dumping duty. Further, each Member shall maintain judicial, arbitral or administrative tribunals to review the determination of the designated national authorities in charge of the identification of dumping and imposition of anti-dumping duties. Under Article 14 of the AAD, the national authorities can take action on dumping on behalf of a third country. However, the AAD does not have effective provisions against the possible circumvention of anti-dumping duties by changes in the characteristics or packaging of the products by importers (Gupta, 1996: 99-100). No specific differential treatment is prescribed for developing countries in the AAD, in contrast to other Agreements. Under Article 16 of the AAD, a Committee on Anti-dumping Practices is established under the WTO to monitor the implementation of the AAD. Any disputes among the Members in this subject may be settled through consultation and if not possible, according to the provisions of the Understanding on Dispute Settlement.

The anti-dumping investigations have steadily increased since 1995. The major users of anti-dumping duties have been the US, EU, Australia and Mexico. During recent years, developing countries such as Argentina, India, Brazil *etc.* have been increasingly applying anti-dumping duties. The relative share of developing countries in anti-dumping duty investigations which formed around 10 per cent during the late 1980s has sharply risen to around 50 per cent by the late 1990s (WTO, 2001[a]: 22).

2.4.2.7 Imposition of anti-dumping duties- System in India

In India, the imposition of anti-dumping duties is authorised under Section 9A read with Section 9B of the Customs Tariff Act (1975), substituted under Customs Tariff (Amendment) Act, 1995. A new Section 9C is added in the amended Act to deal with the appellate provisions. Accordingly, the GOI vide Notification No. 2195 NT Customs, dated January 1, 1995 notified the Customs Tariffs (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. The rules and procedures adopted by India correspond to the provisions stipulated under Article VI of the GATT 1994 and AAD.

The designated authority in India is an officer not below the rank of a Joint Secretary to the GOI. Accordingly, a Directorate General of Anti-Dumping and Allied Duties was created in the Ministry of Commerce, GOI. At present, the Additional Secretary in the Ministry of Commerce is the designated authority. While the designated authority undertakes investigations and makes recommendations, the duties are imposed and collected by the Ministry of Finance. In the spirit of Article 9 of the AAD, the GOI restricts anti-dumping duty to the lower of the two *viz.*, dumping margin and injury margin. Injury margin is the difference between the fair selling price due to the domestic industry and the landed cost (assessable value + basic duty) of the product.

The GOI has exempted inputs going into export production from the payment of different types of duties. Hence, imports made for the approved 100 per cent EOUs and units in the notified FTZs and SEZs are exempted from the payment of anti-dumping duties vide Customs Notification No.05/18.01.94. Later, the GOI exempted imports under duty free advance licences also from the levy of anti-dumping duties vide Customs Notification No.41/31.04.97.

The appellate authority in India for judicial review of the determination of the designated authority (under Article 13 of the AAD) is the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT), constituted under Section 129 of the Customs Act, 1962. Every appeal shall be heard by a Special Bench, constituted by the President of the Tribunal, comprising the President, one Judicial Member and a Technical Member as provided under Section 9C of Customs Tariff (Amendment) Act, 1995. The CEGAT may, after giving the parties to the appeal an opportunity to be heard, issue such orders as it finds appropriate, confirming, modifying or annulling the order appealed against. In accordance with sub-section (b) of Section 130E of the Customs Act of 1962, an appeal on any order related to dumping of CEGAT lies before the Supreme Court of India. Besides taking recourse to the provisions of judicial review under the domestic law of the Member imposing anti-dumping measures, settlement can also be reached in accordance with the provisions of the Understanding on Dispute Settlement under the WTO.

2.4.3 Imposition of countervailing measures

Articles XVI and VI of the GATT 1994 refer to the issue of subsidies and countervailing measures respectively. Subsidisation, aimed at enhancing competitiveness, either in the form of grants or revenues foregone by government or other public agencies has been a topic of serious negotiations from the Tokyo Round. Improving GATT disciplines related to subsidies and countervailing measures affecting international trade, on the basis of a review of (i) Articles VI and XVI of the GATT 1994; and (ii) the progress made upto Tokyo Round was one of the main objectives of the Uruguay Round of negotiations as mentioned in the Punta del Este Declaration of 1986. The Agreement on Subsidies and Countervailing Measures (ASCM), adopted in the Uruguay Round, deals with all products except notified agricultural products (Article 13 of the Agreement on Agriculture) and civil aircrafts (Footnote No.15 of the ASCM). All the existing subsidy programmes which had been inconsistent with the ASCM had to be brought into conformity with the Agreement within three years of the date of entry into force of the WTO (Article 28 in Part IX of the ASCM).

Subsidy is defined as involving a financial contribution, revenue foregone, or income/price support by a government or public body, which confers a benefit to the recipient (Article 1 of the ASCM). The ASCM classified subsidies into prohibited, actionable and non-actionable subsidies and the respective Articles are arranged in Parts II, III and IV of the Agreement. The provisions of the Agreement are effective only if a subsidy is specific as defined in Article 2 of the ASCM. The prime criterion to determine the specificity of a subsidy is the access to it. If the access is confined to an enterprise, industry or group of industries within the jurisdiction of the granting authority, the subsidy shall be specific. But special assistance programmes for regional development in the designated backward regions shall be non-specific if the assistance is granted to all units set up in such areas.

The Footnote No.1 of the ASCM and the Note to Article XVI of the GATT 1994 provide that the following two types of tax exemptions shall not be deemed as subsidies:-

i. Exemption of exported products from duties or taxes levied on similar products destined for domestic consumption; and

ii. Remission of such duties or taxes already paid on exported products not in excess of those have been already levied.

2.4.3.1 Prohibited subsidies

The prohibited subsidies[2] are:-

i. Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance; and

ii. Subsidies contingent, whether solely or as one of several other conditions upon the use of domestic over imported goods.

No Member shall grant or maintain these subsidies (Article 3 of the ASCM) and they shall be deemed to be 'specific' (Article 2 of the ASCM).

2.4.3.1.1 Remedies with regard to export subsidies

If a Member grants a prohibited subsidy, any other Member with a complaint shall initiate a consultation with such Member. If the consultation fails, the matter shall be taken up with the Dispute Settlement Body (DSB) which may establish a Panel, assisted by a Permanent Group of Experts (PGE), to investigate the matter. The Panel shall submit its recommendations to the

DSB which may adopt the same, unless one of the parties opt to proceed with the matter with the Appellate Body. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute (Article 4 of the ASCM).

2.4.3.2 Actionable subsidies

Specific subsidies, causing adverse effects to the interests of other Members and not included under prohibited and non-actionable subsidies are referred to as actionable subsidies. The adverse effects may be:-

i. An injury to the domestic industry of another Member;

ii. Nullification or impairment of benefits accruing directly/indirectly to other Members under GATT 1994, especially the benefits of concessions bound under its Article II; and

iii. Serious prejudice to the interests of other Members.

The definition, coverage and scope of "injury" are the same as in the case of the AAD. Injury shall mean material injury or threat of material injury to a domestic industry or material retardation of the establishment of such an industry. Serious prejudice shall be deemed to exist if the total *ad valorem* subsidisation of a product exceeds five per cent or subsidies are to cover the losses sustained by an enterprise/industry or there exists direct forgiveness of debts and if the subsidy in any manner affects the actual/potential trade of any other Member in absolute or relative terms, subject to the other specified conditions under Article 6 of the ASCM.

2.4.3.2.1 Remedies

The remedies against actionable subsidies are similar to those against prohibited subsidies. In the event of the Member not taking appropriate steps to remove the adverse effects or withdraw the subsidy, the DSB shall grant authorisation to the complaining Member to take counter measures. If a party to the dispute requests arbitration, as per Article 22 of the Understanding on Dispute Settlement, the Arbitrator shall determine whether the counter measures are commensurate with the degree and nature of the adverse effects already identified (Article 7 of the ASCM).

2.4.3.3 Non-actionable subsidies

Subsidies which are not specific are defined as non-actionable subsidies. Further, the following specific subsidies also shall be non-actionable:-

i. Assistance for research activities conducted by firms or by higher educational or research establishments on a contract basis with firms, if assistance covers not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activities involving the translation of a research finding into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use including the creation of a first prototype which would not be capable of commercial use (Footnote No.29 of Article 8 of the ASCM);

ii. Assistance to disadvantaged regions within the territory of a Member, given pursuant to a general framework of regional development and non-specific within the eligible regions; and

iii. Assistance to promote adaptation of existing facilities to the new environmental requirements imposed by law or other regulations which result in greater constraints and financial burden on firms (Article 8 of the ASCM).

However, each of the above non-actionable subsidies is also subjected to certain other specific conditions detailed in Article 8 of the ASCM. According to Footnote No.26, appearing in Article 8 of the ASCM, the provisions of this Agreement do not apply to the fundamental research activities, independently conducted by higher educational/research establishments. In the estimation of overall rate of subsidisation, the non-actionable subsidies need not be included (Para 8 in Annex IV of the ASCM).

The non-actionable subsidies also become countervailable, if the grant of such subsidies causes damage to other Members and if no mutually acceptable solution has been reached in the consultation process among the concerned Members and if the subsequent recommendations of the Committee on Subsidies and Countervailing Measures are not adhered within the stipulated time period (Article 9 of the ASCM).

2.4.3.4 Countervailing measures

Along with the remedies under Articles 4 and 7 of the ASCM in the form of counter measures against prohibited and actionable subsidies, Members may simultaneously initiate proceedings to impose countervailing duties to

offset the adverse effects of subsidies in accordance with the provisions of Article VI of the GATT 1994 and Part V of the ASCM. Para 3 in Article VI of the GATT 1994 defines countervailing duty as a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise.

2.4.3.4.1 Initiation and investigation

The provisions regarding initiation and investigation to determine the existence, degree and effect of any alleged subsidy, are similar to those prescribed for the determination of dumping and injury thereof provided under the AAD. An application shall include evidence of the existence of (i) subsidy and if possible its amount; (ii) injury; and (iii) a causal link between the subsidised imports and the alleged injury. There shall be immediate termination of investigation where the amount of a subsidy is *de minimis* ie., less than one per cent *ad valorem* (Article 11 of the ASCM). Investigation needs to be initiated only if the evidence submitted are accurate and adequate and the application is supported by the domestic producers. Support by the domestic industry is deemed to exist if the application is supported by domestic producers whose collective output constitutes more than 50 per cent of the total production of producers who have expressed either support or opposition to the application. However, if the collective output of the domestic producers supporting the application accounts for less than 25 per cent of the total production, no investigation shall be initiated. Once the authorities decide to initiate an investigation, they are required to issue a public notice for the benefit of all the interested parties. If the subsidised imports are effected through a third country, it will be regarded as trade between the country of origin and the importing country. An appropriate period of investigation may be determined by the authorities. However, an investigation is required to be concluded within one year and the maximum duration is 18 months after initiation (Article 11 of the ASCM). The authorities shall collect information from all interested parties, mainly through questionnaires and information provided on a confidential basis shall be treated as such. The authorities shall verify the authenticity and accuracy of the information provided by different parties. If the parties refuse access to information or do not provide

information within a reasonable period, preliminary and final determination may be made on the basis of the best information available to the authorities (Article 12 of the ASCM). Throughout the period of investigation, Members whose products are subjected to investigation shall be afforded a reasonable opportunity to continue consultations with a view to clarify the factual position to arrive at a mutually agreed solution (Article 13 of the ASCM).

Imposition of countervailing measures necessitates the determination of the amount of subsidy. The methodology for calculation of the subsidy shall be provided for in the national legislation of the Members and consistent with the guidelines given under Article 14 of the ASCM. The guidelines provide for treating an assistance given by government as subsidy only if the assistance confers a benefit to the recipients.

2.4.3.4.2 Determination of injury

The injury shall be determined on the basis of an objective examination of positive evidence on:-

(i) The volume of the subsidised imports in absolute and relative terms and the effect of the subsidised imports on prices in the domestic market for the like products; and

(ii) The consequent impact of these imports on the domestic producers of such products (Article 15 of the ASCM).

It shall be established that the subsidised imports are causing injury and unless protective measures are taken, material injury would occur or continue. The demonstration of the causal relationship between the subsidised imports and the injury to the domestic industry shall be based on an examination of all relevant evidence by the authorities. A determination of the threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility and the application of countervailing measures in such cases shall be considered and decided with utmost care.

2.4.3.4.3 Provisional measures

If the preliminary determination is affirmative, the authorities may impose provisional measures to prevent injury being caused during the course of the investigation. Provisional measures may take the form of a provisional duty or preferably a security, by cash deposit or bond equal to the amount of

the countervailing duty provisionally estimated. If the final duty is higher than the provisional duty, the difference shall not be collected but if the former is lower than the latter, the difference shall be reimbursed (Article 17 of the ASCM).

2.4.3.4.4 Price undertakings

Proceedings may be suspended or terminated without the imposition of provisional measures or countervailing duties, upon receipt of satisfactory voluntary undertakings from the government of the exporting Member, agreeing to eliminate or limit the subsidy or take other appropriate measures to nullify the effects of the subsidy. Alternatively, undertakings can also be accepted from the exporters to raise prices or cease exports to eliminate the injurious effect of the subsidy. But price undertakings shall not be sought or accepted unless the authorities have made a preliminary determination of subsidisation and injury caused by such subsidisation (Article 18 of the ASCM).

2.4.3.4.5 Imposition and collection of countervailing duties

If the designated authority makes a final determination of injury, a countervailing duty may be imposed in accordance with the provisions of Article 19 of the ASCM. The countervailing duty shall be levied in the appropriate rate on a non-discriminatory basis. In the case of countervailing duty, upon the determination of material retardation of the establishment of an industry, it shall only be prospective in imposition. In other cases, where the final determination is affirmative, countervailing duties may be levied retroactively from the date of imposition of provisional measures. In certain situations, duty may be levied from not more than 90 days prior to the date of application of provisional measures on products which had already entered for consumption (Article 20 of the ASCM). The burden of the countervailing duties shall be passed on to the final customers as would be evident from the movement in the prices in the domestic market.

A countervailing duty shall remain in force only as long as and to the extent necessary to counteract the injury caused by the determined extent of subsidy. Any definitive (final) countervailing duty shall be terminated on a date not later than five years from its imposition unless the authorities in a review

determine that the expiry of the duty would be likely to lead to the continuation or recurrence of subsidy and the injury thereof (Article 21 of the ASCM). As already mentioned, when there is both export subsidies and dumping, the practice shall be to determine first the extent of subsidisation and the rate of countervailing duty and thereafter calculate the dumping margin to determine anti-dumping duties. Further, each Member shall maintain judicial, arbitral or administrative tribunals to review the determination of the designated national authorities in charge of the imposition of countervailing duties (Article 23 of the ASCM).

A Committee on Subsidies and Countervailing Measures has been established under Article 24 of the ASCM, comprising representatives from each Member country. The Committee shall set up subsidiary bodies as appropriate and a Permanent Group of Experts, comprising five independent experts. Members are required to notify all the specific subsidies and actions related to the ASCM to the Committee which shall keep regular surveillance of the developments in the Member countries (Articles 25 and 26 of the ASCM).

2.4.3.5 Differential treatment for developing countries and transitional economies

The prohibition of export subsidies contingent upon export performance shall not apply to the least developed/developing countries listed in Annex VII of the ASCM. Other developing countries shall phase out export subsidies within a period of eight years. The least developed countries, so designated by the United Nations and those developing countries with per capita income below US $1000 are the listed eligible countries for exemption. However, the Annex VII developing country Members which have attained export competitiveness in terms of claiming a share of 3.25 per cent or more in the world trade of any product for two consecutive calendar years are required to phase out export subsidies over a period of two years (Article 27 in Part VIII of the ASCM). The prohibition of subsidies contingent upon the use of domestic over imported goods shall not apply for eight years for the least developed countries and for five years for developing countries. In the case of Member countries in transition from a centrally planned economy, export subsidies shall have to be phased out in seven years (Article 29 in Part IX of the ASCM).

Any countervailing duty investigation of a product originating from a developing country Member shall be terminated as soon as the authorities concerned determine that:-

i. Subsidies *ad valorem* does not exceed two per cent (3 % for Annex VII developing countries and developing countries which have eliminated export subsidies) or

ii. The volume of the subsidised imports represents less than four per cent of the total imports of the like product in the importing Member, unless developing countries with less than four per cent share collectively account for more than nine per cent of the total imports (Article 27 of the ASCM).

The ASCM provides that subsidies for a limited period granted within and directly linked to a privatisation programme of a developing country Member shall be non-actionable.

2.4.3.6 Export subsidies to primary products

Article XVI of the GATT 1994 provides that the contracting parties shall seek to avoid the use of subsidies in the export of primary products. Para 3 of the said Article provides that if however, a contracting party grants directly or indirectly a subsidy, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world export of that product over and above the shares of the other contracting parties during a previous representative period. For the purpose of this provision, a primary product is defined in the Note to Article XVI of the GATT 1994 as any product of farm, forest or fishery or any mineral in its natural form or which has undergone such processing, as is customarily required to prepare it for marketing in substantial volume in international trade. However, the provisions under Article XVI of the GATT 1994 have become irrelevant due to the more rigid and comprehensive provisions under ASCM and AOA.

2.4.3.7 Imposition of countervailing duties – System in India

In fulfilment of the commitment of the GOI to adopt the provisions in the ASCM, the Customs Tariff Act of 1975 was amended vide the Customs Tariff (Amendment) Act, 1995. The Sections 9, 9A and 9B have been substituted with new Sections and a new Section 9C dealing with appellate provisions has also been incorporated. Accordingly, the rules in this regard, the Customs Tariff

(Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995 have been notified. The rules and procedures adopted by India fully conform to those provided under Articles VI and XVI of the GATT 1994 and the ASCM.

The GOI by notification in Official Gazette may appoint a person not below the rank of a Joint Secretary or such other persons as the designated authority (Rule 3). At present, the designated authority in India is the Additional Secretary in the Ministry of Commerce. The designated authority shall initiate an investigation, upon receipt of a written application on behalf of the domestic industry or *suo moto* if the designated authority is satisfied from the information received from any Collector of Customs appointed under the Customs Act, 1962 or any other source, that sufficient evidence exists to justify the initiation of the investigation (Rule 6).

Rule 15 empowers the GOI to impose a provisional duty on the basis of the preliminary findings recorded by the designated authority. If the final determination by the designated authority is definitive, the government may impose a countervailing duty not exceeding the amount of subsidy determined (Rule 20). If the finally determined duty is higher than the provisional duty, the differential shall not be collected and if it is lower the differential shall be refunded (Rule 23). The date of commencement of the duty shall be the date of publication of the notification of the final findings or date of imposition of provisional duty or date commencing 90 days prior to the imposition of provisional duty as recommended by the designated authority (Rules 19 and 22).

An appeal against the orders of the designated authority shall be filed before the CEGAT, constituted under Section 129 of the Customs Act of 1962. Every appeal shall be heard by a Special Bench constituted by the President of the Tribunal, comprising the President, one Judicial Member and a Technical Member as provided under Section 9C of the Customs Tariff (Amendment) Act of 1995. The CEGAT may, after giving the parties to the appeal an opportunity to be heard, issue such orders as it finds appropriate, confirming, modifying or annulling the order appealed against. In accordance with Section 130 E of the Customs Act of 1962, the order of CEGAT relating to imposition of any customs

duty including countervailing duties can be appealed in the Supreme Court of India. Besides taking recourse to the provisions of judicial review under the domestic law of the Member imposing countervailing measures, settlement can also be reached in accordance with the provisions of the Understanding on Dispute Settlement.

2.5 Provisions under AOA

At present, the provisions of the Agreement on Agriculture (AOA) are not applicable for NR as it is not included in the product coverage of the Agreement (see Appendix 2). As the GOI has proposed to the WTO in January, 2001 to include NR along with jute, coir *etc.* in the product coverage of AOA, it would be worthwhile to examine the main provisions of the Agreement. Moreover, the analysis of the implications of the WTO provisions on NR industry in Chapter 3 includes the potential implications of the sector if it is covered by the AOA.

In the Punta del Este Declaration of 1986, the contracting parties agreed that there was an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing existing restrictions and distortions. The three broad objectives of the negotiations on agriculture as emphasized in the Declaration were: (i) improving market access through reduction of import barriers; (ii) improving the competitive environment by imposing disciplines on all types of subsidies; and (iii) minimising the adverse effects of the sanitary and phytosanitary regulations on trade in agriculture. The preamble of the AOA reiterated the long term objective to establish a fair and market oriented agricultural trading system and recognised the particular conditions and needs of the developing country Members and agreed to have special and differential treatment for such Members. The Agreement focuses mainly on four broad areas *viz.*, market access, special safeguards, domestic support and export subsidies. The notified least developed countries are not subjected to any reduction commitments with regard to tariffs and subsidies. The negotiations on minimisation of the adverse effects of the sanitary and phytosanitary regulations on trade in agriculture finally led to the birth of a separate Agreement on the Application of Sanitary and Phytosanitary Measures (ASPM), the origin of which could be traced back to Article XX (b) of the GATT 1994.

2.5.1 Market access

The AOA primarily envisaged (i) tariffication of all non-tariff trade barriers (NTBs) such as QRs, variable import levies, minimum import prices, discretionary import licensing, VERs and other border measures; (ii) progressive reduction in the set tariff levels; and (iii) other commitments to enhance market access (Article 4 of the AOA). However, certain primary agricultural products, designated with the symbol "ST-Annex 5" in the country schedules can maintain NTBs subject to the conditions of eligibility and minimum market access tariff quotas, as laid down in the Annex 5 of the AOA. Bound rates as required under Article II of the GATT 1994 have to be committed for agricultural products in the country schedules. The base rate of duty of already bound items is the bound rate before January 1, 1995 and for the unbound items it is the actual tariff rate charged in September 1, 1986. The reduction commitments in import tariffs of developing and developed countries are given in Table 6. The extent of committed tariff reduction and the implementation period vary between developing and developed countries. The country-specific reduction commitments with regard to tariffs were not recorded in the AOA as they were the outcome of negotiations with the referred reduction commitments as targets. In the negotiations, most of the developing countries chose to set fixed bound tariff ceilings that do not decline over the years (WTO, 2001b)[3]. The base rate in cases involving conversion of NTBs into tariffs was estimated on the basis of the difference between internal and external prices of the concerned products during 1986-90 period. The tariff universe of agricultural products is more complex due to the widespread use of non-*ad valorem* tariffs such as specific, mixed, compound and technical tariffs, especially by the developed countries. Non-*ad valorem* tariffs lack transparency and their protective effects are also complex. Developed countries such as the US, EU and Canada are among the countries which have bound 20 to 50 per cent of the agricultural tariff lines with non-*ad valorem* bindings. India and most of the other developing countries have bound only less than 20 per cent of the tariff lines of agricultural products with non-*ad valorem* bindings. The bound rates of agricultural products have been generally higher compared to those of industrial products. For instance, the OECD

average bound rate for agricultural products is higher at 36 per cent compared to 14 per cent for industrial products (WTO, 2001[a]: 48). As in the case of other products, any subsequent modification of the bound rates of the agricultural products has to be in accordance with the provisions of the Article XXVIII of the GATT 1994 or Article 20 of the AOA.

Tariff quotas were constituted to maintain the level of market access during the base period (1986-88). The tariff quotas had to be equal to the quantities imported during the base period. But if import had been insignificant (less than 5 % of domestic consumption) during the base period, the tariff quotas were to increase from three per cent of the domestic consumption during the base period in 1995 to five per cent by 2000 for developed countries and by 2004 for developing countries (*ibid*: 51-52). The tariff rates to accomplish the tariff quotas were required to be low or minimal. Both quota volumes and quota tariff rates had to be mentioned in the commitment schedules. Currently 38 Members have tariff quotas specified in the schedules of concessions covering 1379 cases. Out of the total, 562 are scheduled to increase over the implementation period, 812 to remain constant and five to decline in quantity. However, the quota fill rates had been only around two third of the committed quotas during 1995-99 period (*ibid: 51-57*; and WTO, 2001[b]).

2.5.2 Special safeguards

The special safeguards provided for under Article 5 of the AOA empower the Members to impose additional duties automatically if the quantity or price of the import of an agricultural product exceeds the fixed trigger levels during a year. The trigger level of quantity shall be set according to a schedule based on market access opportunities, defined as imports as a percentage of the corresponding consumption during the three preceding years for which data are available. The trigger level of price equals the average of the reference prices[4] during the base period of 1986 to 1988. In order to qualify for the special safeguards, the tariff lines of the concerned products shall be designated with the symbol "SSG" in the country schedules. If a country has not reserved the right to invoke special safeguards in the schedules of concessions, normal safeguards only can be applied on agricultural products.

Unlike the AOS, the invoking of special safeguards does not require the complainant to show that imports have caused injury. The special safeguards cannot be applied against imports effected under committed tariff quotas. The special safeguards under the AOA permit only levy of additional duties whereas under the provisions of the AOS, both QRs and additional duties can be imposed. But the conditions for imposition of safeguards under the AOS are more rigorous and time consuming. However, the additional duty imposed under special safeguards shall not exceed one third of the level of the ordinary duty in effect in the year in which it is imposed. Further, the additional duty shall only be maintained until the end of the year in which it is imposed. Only 38 Members including the US, Canada, Japan and 12 member states of EU had reserved the right to apply special safeguards covering a combined total of 6072 cases. During 1995-99 period, 435 tariff items were subjected to price based special safeguards. Around 50 per cent of them were by the US (mainly on the import of dairy products and tea, coffee, cocoa and mates) followed by EU (mainly on the import of sugar and confectionary). EU and Japan together accounted for 96 per cent of the 205 volume based special safeguards invoked during 1995-99 period. Invoking the volume based special safeguards by EU and Japan were mainly on the imports of fruits/vegetables and animal products respectively (WTO, 2001[a]: 81-83 and WTO, 2001[b]).

2.5.3 Domestic support

The disciplines on domestic support measures are to prevent trade distorting subsidies and to identify acceptable instruments of support. The AOA envisages to quantify the total support through the determination of Aggregate Measure of Support (AMS) and to effect progressive reduction in the support. The AMS refers to the annual level of support, expressed in monetary terms, provided for agricultural products, other than those provided under programmes qualifying for exemption from reduction provided under Annex 2 of the AOA. The components of domestic support exempted shall be generally provided through a publicly funded government programme (including revenue foregone), not involving any transfer from consumers to producers and the support in question shall not have the effect of providing price support to producers. The permissible support measures which are exempted from AMS

calculation are grouped under green box and blue box measures. The domestic support measures which are to be included in the measurement of AMS are called amber box measures. The green box measures are:-

i. Government assistance programmes on general services such as research, pest and disease control, training, extension and advisory services, inspection, marketing and promotion services and infrastructural investments;

ii. Expenditures or revenue foregone in relation to the public stockholding for food security (but the difference, if any, between the acquisition price and external reference price shall be accounted for the calculation of AMS);

iii. Expenditures or revenue foregone in relation to the provision of domestic food aid, provided the eligibility to receive the aid shall be subjected to clearly defined criteria and the government shall purchase the food items at current market prices; and

iv. Direct payments (or revenue foregone) to producers such as decoupled income support; government financial participation in income, insurance and income safety net programmes; payments for relief from natural disasters; structural adjustment assistance provided through producer retirement programmes, resource retirement programmes and investment aids; payments under environment programmes; and payments under assistance programmes for disadvantaged regions (WTO, 2001[b]).

The blue box is an exemption from the general canon that all production linked subsidies must be reduced or kept within *de minimis* levels. It consists of payments or revenue foregone in production limiting programmes directly linked to acreage or animal numbers, often resorted by developed countries to prevent over production and subsequent glut in the agricultural markets. Currently the Members with notified blue box measures are EU, Iceland, Norway, Japan, the Slovak Republic, Slovenia and the US (*ibid*).

The amber box measures include product specific subsidies, market price support and non-product specific subsidies on inputs such as fertilizer, electricity, irrigation *etc.* The subsidy for market price support is the difference between the administered prices and external reference prices multiplied by the quantity of production which gets the price support. The reference price shall be the average of the fob unit values in the case of a net exporting country and the average cif unit values in the case of a net importing country during the

base period of 1986 to 1988. Article 6 of the AOA exempts investment subsidies generally available to agriculture and input subsidies generally available to low income or resource poor producers from the estimation of AMS in the case of developing countries. The exempted subsidies are often referred to as S&D (special and differential) box measures.

Table 6. Reduction commitments under AOA

Items	Developing countries (%)	Developed countries (%)
Tariffs		
➢ Average cut for all agricultural products	24	36
➢ Minimum cut per product	10	15
Domestic support (Base period: 1986-1988)		
➢ AMS	13	20
Exports (Base period: 1986-1990)		
➢ Subsidy outlays	24	36
➢ Subsidised quantities	14	21
Implementation period for all commitments	1995-2004	1995-2000

Source: WTO, 2001[b]

The AMS net of the exempted measures is subjected to reduction commitments to the extent of 20 per cent by developed countries during 1995-2000 and 13 per cent by developing countries during 1995-2004 period (Table 6). The *de minimis* percentage of AMS below which no reduction commitment is required shall be five and 10 per cent of the value of agricultural production respectively for developed and developing countries. Out of the 136 Members of the WTO, only 30 had total AMS reduction commitments (*ibid*). However, Members with no scheduled reduction commitments shall have to maintain the non-exempted support within the relevant *de minimis* levels. As the AMS reduction commitments are not sector specific the Members have flexibility in managing the subsidy regimes of the individual products. The strategy of providing huge subsidies to agriculture by the developed countries has been older than the multilateral trading arrangements evolved since 1947. However, the circumvention of the prevailed domestic support measures through massive reinstrumentation[5] of the subsidy regimes overtime by the developed

countries has been a contradiction of the professed objectives in the post-Marrakesh era. A WTO study highlights that the relative share of subsidy disbursements by developing countries under S&D box was only 0.83 per cent of the gross subsidy disbursements of the 68 Member countries covered (WTO, 2001[a]: 84-85).

2.5.4 Export subsidy

The Members of the WTO are committed not to provide export subsidies other than those in conformity with the AOA vide Article 8 and the export subsidy commitments are listed in Article 9. The developed countries are committed to reduce export subsidies by 36 per cent and exports of subsidised quantities by 21 per cent during 1995-2000 period. The developing countries are expected to effect reduction commitments of 24 per cent in export subsidies and 14 per cent of exports of subsidised quantities during 1995-2004 period. In both cases, the reductions shall be from the respective levels during the base period of 1986 to 1990 (Table 6). Out of the 136 Members only 25 had scheduled export subsidy reduction commitments which included EU, Canada and the US. Those countries with export subsidy reduction commitments can continue to subsidise exports of products on which they have such commitments whereas others cannot subsidise the agricultural exports at all (WTO, 2001[b]). However, the developing countries are exempted from the commitment to reduce the following two types of subsidies:-

i. Provision of subsidies to reduce the costs of marketing exports of agricultural products (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs and the costs of international transport and freight; and

ii. Internal transport and freight charges on export shipments provided or mandated by governments on terms more favourable than for domestic shipments.

The Committee on Agriculture under the Council for Trade in Goods of the WTO, constituted as per Article 17 of the AOA, shall monitor the administration of various provisions and commitments by the Members and the disputes shall be settled according to the provisions of the Dispute Settlement Understanding.

2.5.5 The peace clause

The provision of due restraint under Article 13 of the AOA, popularly known as the peace clause, protects countries using subsidies if they comply with the provisions of the AOA from being challenged under other WTO Agreements. The peace clause limits the invoking of actions against domestic support measures and exports subsidies under Articles VI, XVI and XXIII of the GATT 1994, application of remedies under Part III of the ASCM and imposition of countervailing duties under Part V of the ASCM. The peace clause is due to expire by the end of 2003 (WTO, 2001[b]).

2.5.6 Article 20 negotiations

Article 20 of the AOA recognises that reform in the agricultural sector is an ongoing process and stipulates to launch fresh negotiations during the implementation period after taking into consideration the experience of implementation. The mandate of the negotiations as laid down in the Article is substantial and progressive reduction in support and protection leading to fundamental reforms. The first phase of the negotiations began in the first quarter of 2000 and ended with a meeting in March, 2001 for stocktaking. So far 45 proposals have been submitted by 126 Members. The main proposals submitted by the developing countries are the following:-

i. Elimination of tariff peaks and escalation, simplification of the tariff structures and abolition of the non-*ad valorem* tariffs;

ii. Reduction in tariffs through sectoral and product-by-product negotiations in contrast to the comprehensive formula approach of the Uruguay Round;

iii. Substantial liberalisation of trade in products of interest to developing countries;

iv. Improvements in tariff quota systems;

v. Restriction of special safeguard provisions to developing countries;

vi. Tightening up of the green box criteria;

vii. Elimination of blue box measures;

viii. Inclusion of non-trade concerns such as rural development, poverty alleviation, environmental protection *etc.* in determining permissible subsidies;

ix. Creation of a "Food Security/Development Box" to enable developing countries to use domestic support as a policy measure in development planning;

x. Elimination of export subsidies with continuance of special and differential treatment for developing countries; and

xi. Limiting of peace clause to developing countries alone.

The second phase of the Article 20 negotiations began in March 2001 and is continuing currently (*ibid*).

2.5.7 Implementation of the provisions of the AOA in India

2.5.7.1 Market access

As already mentioned, the tariff lines of agricultural products have been bound by India at three levels *viz.*, 100 per cent for primary products, 150 per cent for processed products and 300 per cent for edible oils. But the lower bound rates of certain agricultural products already bound during the earlier GATT rounds had been kept at such levels. But in the context of the elimination of QRs by April 1, 2001, the GOI wanted more flexibility in the imposition of appropriate tariff rates so as to protect the interests of the farming community. Hence, action was initiated under Article XXVIII of the GATT 1994 and bound rates of 37 items were raised in the negotiations concluded in January 2000 (see Appendix 1). All the QRs on agricultural products maintained on BOP grounds were removed by April 1, 2001.

2.5.7.2 Special safeguards

India did not designate any of the agricultural products with the symbol "SSG" in its schedule of commitments under Article II of the GATT 1994 and hence cannot apply special safeguard measures under Article 5 of the AOA. Thus, India can resort to safeguard measures only under the provisions of the AOS for agricultural products.

2.5.7.3 Domestic support

India was not required to reduce the domestic support measures as its AMS during the base period (1986-88) was negative. It is reported that the product specific AMS for India (for 17 products out of 22 products for which India maintained market support programmes) amounted to (-)Rs 242 billion

forming around (-)27.74 per cent of the total value of agricultural production, excluding forestry and fishery. The volume of non-product specific AMS was to the tune of Rs 46 billion. Thus, the total AMS stood at (-) Rs.196 billion which formed (-)22.5 per cent of the total value of the agricultural output during 1986-87 to 1988-89 period (Gulati and Sarma, 1994: 858-59). The AMS to agriculture in India continues to be negative even in the post-Uruguay Round (PUR) phase (Rao, 2001:3455).

2.5.7.4 Export subsidies

The export subsidies listed in Article 9 of the AOA designated for reduction commitments are not being practised in India (GOI, 2001[a]: 4). Exemption for export profits from income tax under Section 80-HHC of the Income Tax Act is not covered in the listed subsidies. Moreover, the GOI has been utilising the special exemption provided for developing countries vide Article 9 (4) of the AOA in the export promotion schemes designed and implemented by the Agricultural and Processed Food Products Export Development Authority (APEDA).

2.5.7.5 Article 20 negotiations

India submitted its proposals for the ongoing negotiations under Article 20 of the AOA on 15.01.2001. Indian proposals can be classified into two broad categories:-

i. Creation of a food security box and further strengthening of the trade defence mechanisms to: increase the flexibility enjoyed by the developing countries in providing domestic support to the agriculture sector, ensure food security and take care of livelihood concerns; and

ii. Increase in market access opportunities for developing countries through substantial reduction in tariffs and domestic support and elimination of export subsidies, tariff peaks and tariff escalation by developed countries.

In the first category, the proposal to rationalise the product coverage of the AOA by inclusion of certain primary agricultural commodities such as natural rubber, jute, coir *etc.* was also included.

2.6 Non-tariff import restrictions

Elimination of NTBs has been one of the important objectives of the GATT/WTO negotiations. Article 11 of the AOS prohibits the Members from seeking, taking or maintaining any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or import which are popularly referred to as grey area measures. All such measures had to be phased out within a period not exceeding four years after the date of entry into force of the WTO Agreement (Para 2 in Article 11 of the AOS). However, an exception was provided allowing each Member to keep one NTB in place until December 31, 1999. Though significant progress has been achieved in the elimination of NTBs, available evidence suggests that the NTBs continue to exist in both agricultural and industrial sectors of both developing and developed countries (WTO, 2001[a]: 18-20). But certain import restrictions can still be maintained under various Articles of the GATT 1994 and WTO Agreements. Such WTO compatible measures can be broadly grouped under sanitary and phytosanitary measures and technical barriers to trade.

2.6.1 Sanitary and phytosanitary measures

The Agreement on the Application of Sanitary and Phytosanitary Measures (ASPM) applies to all sanitary and phytosanitary regulations which may directly or indirectly affect international trade. Sanitary and phytosanitary measures intend to protect human, animal and plant life and include all relevant laws, decrees, regulations, requirements and procedures as listed below:-

i. End product criteria;
ii. Processes and production methods;
iii. Procedures for testing, inspection, certification and approval;
iv. Quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport;
v. Provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and
vi. Packaging and labelling requirements directly related to food safety.

Though ASPM covers all products, it mostly affects the agricultural, fishery and forestry products due to their higher susceptibility to infestation,

quality deterioration *etc.* To harmonize the sanitary and phytosanitary measures, the Members shall actively participate in the relevant international organisations and their subsidiary bodies, in particular, the Codex Alimentarius Commission, International Office of the Epizotics and the international and regional organisations operating within the framework of the International Plant Protection Convention (Article 3 of the ASPM). Article 10 of ASPM provides for special and differential treatment for the developing country Members in terms of longer time frames for compliance and other exceptions. Article 2 of the APSM ensures that sanitary and phytosanitary measures shall not be applied in a manner which would constitute a disguised restriction on international trade. There shall not be any unjustifiable or arbitrary discrimination in the enforcement of the referred measures between countries or between the home country and other countries.

2.6.1.1 Compliance in India

The GOI in order to ensure that the imports do not lead to unwanted infiltration of exotic diseases and pests into the country has decided to subject the import of primary products of plant and animal origin to "Bio Security & Sanitary and Phyto-Sanitary Permit" to be issued by the Department of Agriculture and Co-operation. The issue of the permit will be based on the import risk analysis of the product to be conducted on the basis of scientific principles in accordance with the ASPM. The imports of certain specific items have been subject to other relevant legislations such as Prevention of Food Adulteration Act of 1954; Plants, Fruits and Seeds (Regulation of Import into India) Order of 1989; Tea Waste (Control) Order of 1989; Meat Food Products (Control) Order of 1973 *etc.* in conformity with the principle of national treatment embodied in Article 2 of the ASPM (GOI, 2001[c]).

2.6.2 Technical barriers to trade

Technical regulations and standards can be imposed on imported products including packaging, marketing and labelling requirements in conformity with the provisions of the Agreement on Technical Barriers to Trade (ATBT). The Members shall be fully responsible for ensuring full compliance with the provisions of the Agreement by other local government bodies and non-governmental bodies within their territory. Article 4 of the ATBT directs

the Members to accept and comply with the Code of Good Practice given in Annexe 3 of the Agreement for adoption and application of technical standards. The Article 12 of the Agreement provides special and differential treatment for the developing country Members in terms of assistance in the preparation of technical standards and time limited exceptions in whole or in part from the obligations. Article 2 of the ATBT ensures that the technical regulations enforced on products imported from any other country shall be accorded treatment no less favourable than that accorded to like products of national origin and there shall not be any arbitrary discrimination between countries.

2.6.2.1 Compliance in India

The GOI vide Annexure A of DGFT Notification 44-RE/24.11.2000 listed 131 products, the imports of which are subjected to mandatory compliance of technical standards prescribed by the Bureau of Indian Standards. The list mainly consists of food products (48), steel (33), cement (14) and household appliances (12). These products are subjected to equivalent technical standards in the domestic sector as well. The import of machinery, equipments, motor vehicles *etc.* into India whether original or second hand are also subjected to technical standards vide separate orders. The imports of drugs and alcoholic beverages are also subject to stringent technical standards (GOI, 2001[d]; 2001[e]).

2.7 State trading enterprises (STEs)

The operations of the STEs established by the contracting parties which are engaged in operations involving imports and exports shall be transparent and in conformity with the general principles of the GATT 1994, particularly its Article XVII. Such STEs shall make purchases and sales solely in accordance with commercial considerations. The commercial considerations shall include price, quality, availability, marketability, transportation and other conditions of purchase and sale. The STEs shall also extend to the enterprises of other contracting parties adequate opportunity to compete for participation in such purchases or sales. However, these principles need not be followed when the purchases are made as part of a tied loan or if the imported products are for the immediate or ultimate use by the concerned government.

If any contracting party establishes, maintains or authorises a monopoly over the importation of any product included in the schedule of concessions, the monopoly shall not afford any protection in excess of the extent of protection provided for in the schedule of concessions (Para 4 in Article II of the GATT 1994). If a contracting party establishes, maintains or authorises an import monopoly of a product not included in the schedule of concessions under Article II of the GATT 1994, it shall upon request inform other contracting parties the import mark-up or if it is not possible, the price charged in the resale of the product. Import mark-up refers to the margin by which the price charged by the import monopoly for the product imported exceeds the landed cost.

The contracting parties shall notify the products which are imported into or exported from their territories by the STEs. The contracting parties maintaining STEs shall upon request provide information about the operations of such enterprises except confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises.

2.7.1 Compliance in India

In India, the import of agricultural products like wheat, rice, maize, other coarse cereals, copra and coconut oil has been placed under the category of state trading. The designated STEs conduct the imports of these commodities solely on the basis of commercial considerations. Similarly, imports of petroleum products including petrol, diesel, ATF and urea are also done through the mechanism of state trading (GOI, 2001[b]: 12).

Chapter 3

WTO AGREEMENT AND THE NR SECTOR

This chapter deals with the important policy implications for the NR sector in India and WTO compatible strategies to address the emerging issues based on the analysis of major provisions of the WTO Agreement contained in the previous chapters.

3.1 Categorisation of NR as an industrial product

The major polemical WTO related issue in the NR sector during the PUR phase has been its categorisation as an industrial product. The issue has attained a 'celebrity status' in the media since the fall in domestic NR prices from the peak level during 1995-96. In the WTO Agreement, there is no standard classification of commodities as agricultural or industrial products or raw materials. However, the products covered by the AOA are listed in its Annex 1 as per Article 2 (see Appendix 2). Therefore, the products not covered by the AOA and Agreement on Textiles and Clothing are considered to be industrial products for all trade related policy measures. Accordingly, all forms of NR, SR and rubber products are deemed as industrial products. Inclusion of NR under the AOA could have extended to it special and differential treatment with regard to market access, tariff bindings, safeguards, domestic support *etc.* on par with other listed agricultural products. Apparently, the classification of commodities as agricultural and other products during the Uruguay Round negotiations was not based on any standard or uniform criteria but rather determined by the negotiating strength of the contracting parties. The exclusion of NR from the list of agricultural products is inconsistent, illogical and unjustifiable on the following grounds: -

i. Article XVI of the GATT related to subsidies defines primary products as "any product of farm, forest or fishery or any mineral in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume for

international trade". This is a broad banded definition covering primary products in farm, forest, fishery and mineral sectors. In the absence of any specific definition of agricultural products in the original GATT text, the classification into agricultural and other products should have been based on this definition of primary products. Thus, the AOA should have covered any product of farm in its natural form or which has undergone such processing as is customarily required to prepare it for marketing in substantial volume in international trade. Therefore, the logical premise of the inclusion of both raw and processed forms of NR among the other products is inconsistent with the basic GATT-definition of primary products and lacks the required degree of transparency.

ii. The Punta del Este Declaration of 1986 notified agriculture as an agenda for negotiations in the Uruguay Round and set the primary objective as to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those related to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets. There was no indication in the Declaration to limit the negotiations to certain agricultural products as it clearly spelt out that the negotiating group had "primary responsibility for all aspects of agriculture". Further, NR has been seriously affected by all the maladies mentioned in the referred Declaration such as structural surpluses, uncertainty, imbalances and instability during the last five decades. The predominance of smallholdings controlling more than 80 per cent of the world NR production and a volatile market dominated by the oligopsonistic characteristics underline the basic conceptual contradictions in the classification. Moreover, there is no justification in discriminating farmers on the basis of the crop cultivated. Thus, withholding the legitimate rights of more than nine millions of small rubber growers all over the world to avail the beneficial treatment accorded to other agricultural products was illogical and unjustifiable.

iii. The preamble to the AOA states that the developed country Members would take into account fully the particular needs and conditions of developing country Members and special and differential treatment for developing countries was an integral element of the negotiations on agriculture. Paradoxically, NR, an agricultural crop which is entirely produced by developing country Members was excluded from the product coverage of the AOA.

iv. The contradictions within the product coverage of the AOA are evident from the fact that while NR is excluded, raw materials for industrial applications such as cotton, flax, hemp, wool, silk, hides, skin *etc.* in raw forms are included. Other major agricultural products not included in the product coverage of the AOA are jute and coir.

v. The inclusion of NR in the category of industrial products is also inconsistent with the standard norms hitherto followed by the UN and other international agencies. The UNCTAD, World Bank, Common Fund for Commodities *etc.* have been categorising NR as an agricultural product, grouping it along with cotton and jute in the sub-group of agricultural raw materials.

vi. In India, around 87 per cent of the NR production is accounted for by the dominant smallholdings sector and the average size of a holding is 0.50 ha. There is no manufacturing process involved as far as the smallholders are concerned and all the operations involved in NR cultivation and processing are purely agricultural.

vii. Finally, in India, the income from rubber plantations is treated as agricultural income for all taxation purposes.

In this context, it is also important to note that in the Dunkel Draft, the Annex 1 to the AOA which described the product coverage of the Agreement, had been more flexible as there was a provision which could enable any participant to include additional items as agricultural products in its schedules of commitments other than those listed in the Agreement, provided other participants also agreed (GATT, 1991:L.23). However, this clause which provided more flexibility in the product coverage of the Agreement was removed when the AOA was finalised.

3.2 NR as an industrial product : Implications and policy perspectives

As NR is categorised as an industrial product under the WTO Agreement, provisions relevant to it are those related to industrial products. Therefore, the implications and policy options compatible with the WTO Agreements and provisions on the NR sector in India are analysed under the following heads:-

1. Bound rates and applied tariff rates;
2. Commitments under MFN exceptions;
3. Elimination of QRs;
4. Safeguard measures;
5. Anti-dumping duties;
6. Domestic support and export subsidy; and
7. Non-tariff import restrictions

3.2.1 Bound rates and applied tariff rates

As already explained in Chapter 2, the GOI had adopted different norms in fixing the bound rates for industrial and agricultural products. With regard to industrial products, the norm was to fix the bound rate at 40 per cent for those tariff lines for which the base duty (basic duty plus other duties and charges as on January 1, 1990) was at or above 40 per cent and 25 per cent for the tariff lines with base duty below 40 per cent. The norms for agricultural products have been more liberal with ceiling bindings at higher levels such as 100 per cent for primary products, 150 per cent for processed products and 300 per cent for edible oils.

Table 7. Bound rates of rubber and rubber products committed by GOI

HS Code	Description of products	Base duty (%)	Bound rate (%)
400110	Latex pre-vulcanised and not	-	UB
400121	Smoked sheets (RSS)	85	25
400122	Technically specified natural rubber (TSR)	85	25
400129	Other NR, except latex	145	25
400130	Balata, gutta-percha *etc.* and similar natural gums	85	40
400211	Latex (SBR/XSBR)	145	40
400219	Other SBR/ XSBR	105	40
400220	Butadiene rubber (BR)	105	40
400231	Isobutene- isoprene butyl rubber (IIR)	105	40
400239	Halo-isobutene-isoprene rubber	145	40
400241	Latex, chloroprene rubber	85	40
400249	Acrylonitrile-butadiene rubber (NBR)	105	40
400251	Acrylonitrile-butadiene rubber latex	85	40
400259	Other acrylonitrile- butadiene rubber	105	40
400260	Isoprene rubber (IR)	105	40
400270	Ethylene- propylene non-conjugated diene rubber	105	40
400280	Mixtures of NR with any other SRs	105	40
400291	Other rubber latex	85	40
400299	Other synthetic factice rubber derived from oils	105	40
400300	Reclaimed rubber	85	40
400400	Wastes, parings and scrap of rubber and powders and granules obtained there from	85	40
400510	Rubber compounded with carbon black or silica	145	40
400520	Solutions, dispersions other than those of subheading 400510	145	40
400591	Plates, sheets and strips	145	40
400599	Other compounded, unvulcanised rubber	145	40

HS Code	Description of products	Base duty (%)	Bound rate (%)
	excluding plates and sheets		
400610	Camel back strips for retreading rubber tyres	145	40
400690	Other forms and articles of unvulcanised rubber	145	40
400700	Vulcanised rubber thread and cord	145	40
400811	Plates, sheets and strips of cellular rubber	145	40
400819	Others of cellular rubber	145	40
400821	Plates, sheets and strips of non-cellular rubber	145	40
400829	Others of non-cellular rubber	145	40
400910	Tubes, pipes and hoses of vulcanised rubber not reinforced or otherwise combined with other materials without fittings	145	40
400920	Tubes, pipes and hoses of vulcanised rubber reinforced or otherwise combined with metal materials without fittings	145	40
400930	Tubes, pipes and hoses of vulcanised rubber reinforced or otherwise combined with textile materials without fittings	145	40
400940	Tubes, pipes and hoses of vulcanised rubber reinforced or otherwise combined with other materials without fittings	145	40
400950	Tubes, pipes and hoses of vulcanised rubber reinforced or otherwise combined with other materials with fittings	145	40
4010	Conveyor/transmission belts/ beltings of vulcanised rubber	-	UB
4011	New pneumatic tyres of rubber	-	UB
4012	Retreaded/used pneumatic tyres of rubber, solid/cushions tyres, interchangeable tyre treads and tyre flaps of rubber	-	UB
4013	Inner tubes of rubber	-	UB
4014	Hygienic/ pharmaceutical articles of vulcanised rubber other than hard rubber with or without fittings of hard rubber	-	UB
4015	Articles of apparels and clothing accessories of vulcanised rubber	-	UB
4016	Other articles of vulcanised rubber other than hard rubber	-	UB
4017	Hard rubber in all forms including waste and scrap articles of hard rubber	-	UB

UB = Unbound

Note: All the tariff lines under chapter 40 of HS on rubber and rubber products have been unbound before the Uruguay Round. In none of the products, initial negotiating rights (INRs) have been granted to any other contracting party.

Source : GATT (1994: 5/XII/Part II/87-91)

The commitments of bound rates submitted by India for tariff lines falling under Chapter 40 of HS (dealing with rubber and rubber products) along with the respective base duty rates are given in Table 7. Dry forms of NR covering sheet rubber (RSS), technically specified rubber (TSR) and other dry forms of processed rubber were bound at 25 per cent and NR latex was kept unbound. Different forms of synthetic rubber (SR) and reclaimed rubber (RR) were bound at 40 per cent. Intermediate and minor rubber products with HS codes from 4004 to 4009 were bound at 40 per cent whereas major rubber products with HS codes from 4010 to 4017 including tyres and tubes were kept unbound.

Thus, in the case of NR (except latex) alone, the norms for fixing bound rates for industrial products had been violated. As the base duty of dry forms of NR in the base year was 85 per cent (above the threshold level of 40 %), the items should have been bound at 40 per cent according to the norms. Even the rate of basic duty of all forms of NR during 1990 was 60 per cent. Conversely, the bound rates of other tariff lines with HS codes of 400130, 400241, 400251, 400291, 400300 and 400400, which had base duty equivalent to that of NR had been fixed at 40 per cent. Thus, while the declared norms had been the criteria to fix the bound rates for all the tariff lines in Chapter 40 of HS, the bound rates of processed dry forms of NR alone were committed at a lower level. The relative flexibility in fixing the import tariff rate of NR latex, on account of its unbound status has only a minimal impact on the domestic NR market as its share was only 6.9 per cent of total NR imports by India during 1990-91 to 1999-2000 period (Rubber Board, 2000: 35). Dry forms of NR such as RSS, TSR and crepe together have been dominating NR production and consumption with a relative share of around 90 per cent. Therefore, the fixation of lower bound rates for the dominant dry forms of NR is not only regressive but also an explicit violation of the standard norms fixed by the GOI.

Normally, the developing countries keep unbound tariff lines so as to protect products of strategic commercial importance and those vulnerable to market shocks. The basic objective of keeping such unbound tariff lines is to ensure maximum flexibility in the fixation of the applied rates of import duty.

Among the tariff lines pertaining to NR, SR, RR and rubber products, the GOI has kept unbound tariff lines for NR latex and rubber products with HS codes from 4010 to 4017 including tyres and tubes, to ensure maximum protection. Thus, the GOI has the flexibility to raise the import duties of NR latex and rubber products falling under the tariff lines from 4010 to 4017. However, it could be argued that the higher bound rates of rubber products and the flexibility guaranteed by the unbound tariff lines of major rubber products would indirectly benefit the domestic NR sector as the demand for NR is a derived demand for the rubber based products. But such an argument presupposes an insulated NR market which no more exists and in fact the WTO Agreements and provisions heralded a scenario of global sourcing of raw materials. An increase in the demand for NR, consequent to an increase in the demand for rubber based products can be sourced from either the domestic or international markets depending on the comparative prices, applied rates of import duties, domestic taxes and expenses on freight, insurance *etc.*

The current applied rates of duties for rubber and rubber products in India are given in Table 8. The basic duty of dry forms of NR is 25 per cent and it is equivalent to the committed bound rate. The basic duty of NR latex, SR, RR and rubber products (except pneumatic tyres of rubber used on aircraft) is 35 per cent. The total duty incidence[6] varies among products due to the differences in additional and special additional duties. Nevertheless, the total import duty incidence is the lowest in the case of dry forms of NR and it is the highest in the case of automotive tyres and allied products.

Table 8. Applied rates of duties for rubber and rubber products in India (2001-2002)

HS Code	Description of products	Applied rates of duty (%)			
		Basic	Additi-onal	Special additio-nal	Total
400110	NR Latex whether or not vulcanised*	35	0	4	40.4
400121	Smoked sheets*	25	0	4	30.0
400122	Technically specified NR*	25	0	4	30.0
400129	Other forms of NR*	25	0	4	30.0
400130	Balata, gutta-percha, guayule etc*	35	0	4	40.4
4002	SR in all forms	35	16	4	62.9

HS Code	Description of products	Applied rates of duty (%)			
		Basic	Additi-onal	Special additio-nal	Total
4003	Reclaimed rubber in all forms	35	16	4	62.9
4004	Waste, parings and scrap of rubber and powders and granules obtained there from	35	16	4	62.9
4005	Compounded rubber, unvulcanised, in primary forms or in plates, sheets or strips	35	16	4	62.9
4006	Other forms and articles of unvulcanised rubber	35	16	4	62.9
4007	Vulcanised rubber thread and cord	35	16	4	62.9
4008	Plates, sheets, strip, rod and profile shapes of vulcanised rubber other than hard rubber	35	16	4	62.9
4009	Tubes , pipes and hoses of vulcanised rubber other than hard rubber	35	16	4	62.9
4010	Belts and beltings	35	16	4	62.9
401110	New pneumatic tyres of rubber used on cars	35	32	4	85.3
401120	New pneumatic tyres of rubber used on buses and lorries	35	32	4	85.3
401130	New pneumatic tyres of rubber used on aircraft	25	32	4	71.6
401140	New pneumatic tyres of rubber used on motor cycles	35	32	4	85.3
401150	New pneumatic tyres of rubber used on bicycles	35	0	4	40.4
401191	New pneumatic tyres of rubber having a herring-bone or similar tread	35	32	4	85.3
401199	Other new pneumatic tyres of rubber	35	32	4	85.3
4012	Retreaded or used pneumatic tyres of rubber; solid cushion tyres, interchangeable tyre treads and tyre flaps of rubber	35	32	4	85.3
401310	Inner tubes of rubber of a kind used on motor cars, buses and lorries	35	32	4	85.3
401320	Inner tubes of rubber of a kind used in bicycles	35	0	4	40.4
401390	Other inner tubes of rubber	35	32	4	85.3
401410	Sheath contraceptives	35	0	4	40.4

HS Code	Description of products	Applied rates of duty (			
		Basic	Additi-onal	Special additio-nal	Total
401490	Other hygienic or pharmaceutical articles of vulcanised rubber	35	16	4	62.9
4015	Articles of apparel and clothing accessories including gloves	35	16	4	62.9
4016	Other articles of vulcanised rubber other than hard rubber	35	16	4	62.9
4017	Hard rubber in all forms, including waste and scrap and articles of hard rubber	35	16	4	62.9

Note : There are variations in the duty of certain tariff lines at 8 digit level classification and certain lines have anti-dumping duties.

* There is a cess of Rs.1.50 per kg of import in addition to the total duty incidence

Source : Goyal (2001:412-417)

3.2.1.1 Bound rates of rubber in other major NR producing countries

Table 9 provides a comparison of the bound rates for NR, SR and RR committed by other major NR producing countries. In order to ensure maximum flexibility in fixing import tariffs for the protection of the domestic NR sector, three major NR producing countries *viz.*, China, Thailand and Sri Lanka kept all the processed forms of NR unbound. The lowest bound rate of five per cent for NR in Malaysia is beneficial to that country as it has been importing unprocessed rubber in bulk quantities for processing and re-export. During the year 2000, Malaysia had imported 0.78 million tonnes of NR of which 92.3 per cent was grouped under the category of unclassified raw forms intended for further processing and re-export (ANRPC[a], 2001: 32). The bound rates committed by Brazil and Indonesia for NR at 35 and 40 per cent respectively are higher than that of India. India was the only major NR producing country which treated NR in dry forms and latex differently in the fixation of bound rates.

Among the major NR producing countries only China and India have large and captive domestic markets for the raw material. As the consumption of NR in China is around 185 per cent of its own production, the domestic NR market is not sensitive to massive imports. Conversely, in India where the gap between NR production and consumption is relatively narrow, the domestic market is highly sensitive to the volume as well as timing of the imports.

Nevertheless, China has retained the option of maximum flexibility in ensuring protection to the domestic NR sector by keeping the relevant tariff lines unbound.

Table 9. Bound rates for rubber committed by major NR producing countries (%)

Country	NR			SR*	RR
	RSS	TSR	Latex		
Thailand	UB	UB	UB	30	UB
Indonesia	40	40	40	40	40
India	25	25	UB	40	40
Malaysia	5	5	5	5-30	30
China	UB	UB	UB	20-35	35
Sri Lanka	UB	UB	UB	UB	UB
Brazil	35	35	35	22-35	35

* The range pertains to bound rates for different tariff lines of SR
UB – Unbound
Source : Original schedules of concessions of the respective countries in GATT (1994)

Similarly, India and Malaysia are the only two countries among the major NR producers which have committed higher bound rates for SR compared to NR. The inherent contradictions behind the comparable options are two fold. While the Malaysian rubber products manufacturing sector has been historically dominated by NR based latex products, dry rubber products have been accounting for more than 85 per cent of NR consumption in India. Therefore, the potential substitution between NR and SR is higher in India compared to Malaysia. Moreover, SR production and consumption have been substantially higher in India (Rubber Board, 2000: 27-28). Hence, the relatively higher extent of protection extended to SR in terms of a higher bound rate vis-à-vis NR will have more serious implications in India compared to Malaysia. From a broader perspective, the issue assumes significance as NR is produced in India by around one million smallholdings whereas SR is manufactured by a handful of companies in the corporate sector.

The bound rates for different forms of NR committed by major NR consumers such as the US, Japan and EC are zero. However, South Korea has a negligible bound rate of 2.0 per cent for NR. The zero bound rates of major consuming countries will be advantageous to their industries arising from the complete dependence on imports for the NR requirements. However, most of

these countries impose specific duties in different names which are consistently applied on all products. For instance, Germany with zero bound rate for NR has an import turnover tax of 16 per cent which is common to all products. Similarly, Greece with zero import duty for NR has a value added tax amounting to 13 and 18 per cent depending on the port of import (GOI, 2001g; 2001h).

3.2.1.2 Bound rates of other plantation/cash crops

Table 10 presents a comparison of bound rates committed by the GOI for different plantation/cash crops. Since all the items except NR are classified as agricultural products, the bound rates are 100 and 150 per cent for raw and processed forms respectively. Therefore, operationally, the bound rates of dry forms of NR have been 29.4 per cent of the base duty compared to 107 per cent in the case of processed tea and coffee. Consequently, the flexibility drawn from the higher bound rates was effectively used by enhancing the import duty rates of tea and coffee in the Union Budget for 2001-2002 to

Table 10. Bound and applied duty rates of different plantation/cash crops in India

Item	Base rate* (%)	Bound rate (%)	Basic duty in 1999-00 budget (%)	Basic duty in 2000-01 budget (%)
Raw coffee	140	100	15	70
Decaffeinated/roasted coffee	140	150	15	70
Tea (green and black)	140	150	15	70
Mate	140	100	35	35
Vanilla	Rs.60/Kg+ 40	100	35	35
Clove	140	100	35	35
Nutmeg	140	100	35	35
Cardamom	140	100	35	35
Ginger	140	150	35	35
Turmeric	140	150	35	35
NR	85	25	25	25
TSR	85	25	25	25
Latex	-	UB	35	35

UB-Unbound

* Base rate of duty is the duty prevailed on 1-9-1986 for all items except NR and the duty prevailed on 1.1.1990 for NR (GATT, 1994: V/Part I-1, Part II-1)

Source : GATT (1994:V/Part I/27-29); Goyal (2000: 425-435); (2001: 412-417)

ensure protection in the context of the removal of QRs on March 31, 2001 whereas the existing import duty of 25 per cent for dry forms of NR could not be raised.

3.2.1.3 Tariff revisions, peaks and escalation

Table 11 presents the reduction in tariff rates committed by different countries for rubber and rubber products. The estimates are based on the tariff bindings committed by individual countries in the Uruguay Round. The tariff reduction committed ranges from 10.7 per cent in Malaysia to 93.3 per cent in Japan. But the true indicators of the reduction in tariff protection are the absolute difference in the average tariffs before and after the Uruguay Round and the enhancement in binding coverage. The difference in the average tariff rates in the developed countries in absolute terms was nominal. Tariff rates for rubber products existed in the developed countries even before the Uruguay Round had been very low. In fact, the tariff liberalisation in the developed countries had been a gradual process taking over eight rounds of multilateral trade negotiations supplemented by a host of policy instruments including signing of regional trade agreements and formation of customs unions (UNCTAD, 1999: 134-136). The tariff rates in the developing countries had been very high and the rates were considerably reduced in the Uruguay Round. As is evident from Table 11, the difference in the average tariffs of rubber and rubber products before and after the Uruguay Round was the highest for India (82.9 percentage points). In this context, it is important to note that most of the developing countries resorted to tariff reductions in fulfilment of the conditionalities of the structural adjustment loans availed from the Bretton Woods twins - IMF and World Bank (Dubey, 1996:4-7; Dasgupta, 1998:75-92).

The data on the coverage of bound items before and after the Uruguay Round presented in Table 11 are based on the four digit level HS. There was no change in the binding coverage in the case of developed countries as all the tariff lines had been bound before the Uruguay Round itself. Conversely, binding coverage in respect of rubber and rubber products had been nil in India, Malaysia and Thailand and nominal in South Korea and Brazil. Thus, it was the developing countries which effected both higher reduction in tariff

rates in absolute terms and enhancement of binding coverage in the Uruguay Round with regard to rubber and rubber products.

Table 11. Extent of tariff reduction in rubber related tariff lines

Country	Unweighted simple averages			Committed tariff reduction(%)	Binding coverage (%)	
	Tariff rate during 1990 (%)	Committed bound rate (%)	Difference (Percentage points)		Before UR	After UR
United States	4.8	2.6	2.2	45.8	100.0	100.0
European Community	5.1	2.9	2.2	43.1	100.0	100.0
Japan	4.5	0.3	4.2	93.3	100.0	100.0
South Korea	21.3	11.6	9.7	45.5	11.8	100.0
Malaysia	20.5	18.3	2.2	10.7	0.0	82.4
Brazil	84.7	34.2	50.5	59.6	5.9	94.1
Thailand	43.1	30.0	13.1	30.4	0.0	58.8
India	121.7	38.8	82.9	68.1	0.0	52.9

UR – Uruguay Round

Source : Computed from the original country schedules of the respective countries in GATT (1994)

Table 12. Reduction in tariff escalation in rubber products

Country	Reduction in tariff escalation (%)	
	With respect to tyres	With respect to other rubber products
Canada	46.3	36.3
European Union	26.8	51.2
Japan	100.0	100.0
United States	29.7	57.5

Source : UNCTAD (1995:89)

Tariff lines pertaining to rubber and rubber products do not face tariff peaks (bound rates exceeding 12 per cent) in the developed countries except the 14 per cent bound rate in the US for HS tariff line 40151950 related to "gloves other than surgical". However, in South Korea, an advanced country with respect to rubber based industries, most of the tariff lines related to rubber products have a bound rate of 13 per cent.

The extent of reduction in the MFN tariff escalation (trade weighted) by stage of processing effected by the Quad-4 countries with respect to tyres and other rubber products is given in Table 12. Rubber products had been identified as one of the sectors highly vulnerable to tariff escalation (UNCTAD, 1999:136). An OECD study has reported that though tariff escalation had been considerably reduced during the Uruguay Round, it is still prevalent in sectors such as rubber, metals, textiles, leather, clothing and wood, affecting vertical diversification through value addition in developing countries (Fukasaku, 2000:11).

3.2.1.4 Policy options

3.2.1.4.1 Modification of the bound rates

The contracting parties can modify the schedules submitted under Article II of the GATT 1994 or withdraw any of the concessions offered in the schedules by negotiations and agreement among the contracting parties primarily concerned (Article XXVIII of the GATT 1994). There are convincing and justifiable grounds to modify the bound rates of dry forms of NR by India as listed below:-

- Strategic commercial importance of NR to the Indian economy as a raw material;
- Predominance of small growers accounting for 87.5 per cent of the area under the crop;
- Marginal size of the holdings (mean size of a rubber holding in India is 0.50 ha);
- Unbound tariff line of NR latex;
- Disparity in the applied rates of import duty of latex and dry forms of NR;
- Higher bound rates of SR and RR in India at 40 per cent;
- Higher bound rates of rubber products at 40 per cent;
- Unbound tariff lines of major rubber products including tyres and tubes;
- Unbound tariff line of NR in Thailand, Sri Lanka and China;
- Higher bound rates of NR in Indonesia and Brazil;

- Higher bound rates of other plantation crops in India; and
- Violation of the norms in the fixation of bound rates of dry forms of NR in India.

Considering the above mentioned points, action may have be initiated either to raise the bound rates of the processed dry forms of NR or to withdraw the binding and keep them unbound as in the case of latex and major rubber products. The committed bound rates can be modified according to the provisions of the Article XXVIII of the GATT 1994. In the case of NR, since INRs have not been accorded to any contracting party by India, the modification of the bound rates shall be carried out through negotiations and agreement with contracting parties having principal supplying or substantial interests. In such negotiations, compensatory adjustments may have to be incorporated for the potential trade loss of major trading partners on account of the modification. But as the volume of imports of NR to India is insignificant as a proportion of the total volume of exports of NR by major exporting countries, potential compensatory adjustments would be negligible[7].

3.2.1.4.2 Rationalisation of the tax structure

The estimation of tax incidence on imported and domestic rubber at an assumed uniform price of Rs.30 per kg is presented in Table 13. Imported rubber carries a basic duty of 25 per cent, special additional duty of four per cent and a cess of Rs.1.50 per kg. The surcharge on basic duty of 10 per cent imposed under Clause 118 of the Finance Bill of 1999 is withdrawn in the Union Budget for 2001-2002. The additional customs duty is equivalent to the excise duty on similar articles produced or manufactured in the country and it is absent in the case of NR. The special additional customs duty is levied to collect from the importers the equivalent of sales tax in the domestic market. The cess on imported rubber had been only Rs.0.50 per kg whereas domestically produced rubber carried a cess of Rs.1.50 per kg. However, recently the cess on imported rubber has been enhanced to Rs.1.50 per kg. Domestically procured rubber bears a purchase tax of 11 per cent and an additional sales tax of 15 per cent on the purchase tax, imposed by the Government of Kerala (GOK) and a cess of Rs.1.50 per kg imposed by the GOI.

Table 13. Tax incidence on imported and domestic NR

Tax/duty	Rate	Tax incidence *(Rs./kg)	
		Imported NR	Domestic NR
Basic duty	25 %	7.58	0.00
Special additional customs duty	4 %	1.52	0.00
Cess	Rs.1.50 per kg	1.50	1.50
Purchase tax	11 %	0.00	3.47
Additional sales tax on purchase tax	15 %	0.00	0.52
Total tax incidence		10.60	5.49
Special additional customs duty + cess		**3.02**	
Internal taxes escaping from additional import duties		**2.47**	

* Price of Rs.30 per kg is assumed in both cases

The turnover tax of 1.5 per cent announced in the GOK Budget of 2001-02 was withdrawn for all products except alcoholic beverages and petroleum products on November 12, 2001. The GOK announced a provisional rebate in the purchase tax on rubber on October 31, 2001 worth 5 percentage points. Due to the ineffectiveness of the rebate in improving the price of NR in the domestic market, it was limited to rubber purchased by Kerala State Rubber Marketing Federation, Kerala State Warehousing Corporation and joint concerns of Rubber Board and Rubber Producers Societies with effect from November 15, 2001. As rubber plantations are concentrated in Kerala, the taxes imposed by the GOK cover 92.1 per cent of the rubber produced in the country (Rubber Board, 2000: 13).

Under Para 2 in Article II of the GATT 1994, any charge equivalent to an internal tax, levied consistently on domestic products, can be imposed on imported products in excess of the committed bound rates. But since the purchase tax is a state tax which is not consistently levied nationally, it escapes from adding to import duties. The total tax incidence on domestically produced rubber under an assumed price of Rs.30 per kg will be Rs.5.49. However, the imported rubber bears only Rs.3.02 per kg as special additional duty and cess over and above the basic duty. Therefore, Rs.2.47 per kg of internal taxes cannot be levied on imported NR (Table 13). If the taxes imposed

by the state governments can be replaced with nationally consistent GOI taxes under mutually agreeable conditions, the equivalent of such taxes could be charged from the importers as well. Hence, the tax structure may be rationalised by the state and central governments so as to prevent import duties escaping some of the internal taxes.

3.2.2 Commitments under MFN exceptions

The MFN exceptions committed by India which cover rubber or rubber products are SAPTA, Indo-Sri Lanka Free Trade Agreement and Bangkok Agreement. The tariff concessions offered by India under the GSTP do not include rubber or rubber products. However, the manufacturing industry is benefited through GSTP as the tariff preferences offered to India by other countries include rubber tyres. The tariff concessions committed by India for rubber and rubber products under the MFN exceptions are presented in Table 14.

The only major NR producing country among the signatories to the Agreements enjoying tariff concessions is Sri Lanka. As Sri Lanka is a signatory to all the three Agreements, it has been enjoying tariff concessions for most of the tariff lines related to rubber products. Thus, NR can enter India from Sri Lanka with a tariff concession of 20 per cent making an effective basic duty of 20 per cent instead of the MFN duty of 25 per cent. But the import from Sri Lanka constituted only 4.2 per cent of the gross NR import of India during 2000 (ANRPC[a], 2001:32). Moreover, trade of India with Sri Lanka is beneficial as imports from it accounted only for 0.45 per cent of India's total value of imports of rubber and rubber products whereas the exports of such products to Sri Lanka amounted to 2.02 per cent of the country's total exports during 1998-99. Further, the value of the imports of rubber and rubber products from Sri Lanka accounted for only 20.4 per cent of India's exports of such products to that country (see Table 15). The trade with SAPTA members as a whole was highly favourable to India as the imports formed only 4.92 per cent of the exports. The major source of favourable balance of trade with members of SAPTA was the trade with Bangladesh which accounted for 5.26 per cent of total exports of rubber and rubber products from India. Conversely, the trade in rubber and rubber products with members of the Bangkok

Table 14. Tariff concessions for rubber and rubber products committed by India under country preferences

HS Code	Description of products	Applied rate of duty (%)	Tariff concession on the applied rate of duty (%)		
			SAPTA	ISFTA	BA
400110	NR Latex whether or not vulcanised	35	0	0	20
400121	Smoked sheets	25	0	0	20
400122	Technically specified NR	25	0	0	20
400129	Other forms of NR	25	0	0	20
4002	SR in all forms	35	0	50	0
400599	Others under HS 4005	35	10	0	0
4006	Other forms and articles of unvulcanised rubber	35	50	0	0
4007	Vulcanised rubber thread and cord	35	50	0	0
4008	Plates, sheets, strips, rod and profile shapes of vulcanised rubber other than hard rubber	35	50	0	0
4009	Tubes, pipes and hoses of vulcanised rubber other than hard rubber	35	50	50	0
401011	Conveyor and transmission belts reinforced with other materials	35	15	50	0
401029	Other conveyor and transmission belts n.e.c.	35	10	50	0
4010	All other tariff lines related to belts and beltings	35	0	50	0
401110	New pneumatic tyres of rubber used on cars	35	0	50	30
401120	New pneumatic tyres of rubber used on buses and lorries	35	50	50	30
401130	New pneumatic tyres of rubber used on aircraft	25	50	50	30
401140	New pneumatic tyres of rubber used on motor cycles	35	0	50	30
401150	New pneumatic tyres of rubber used on bicycles	35	50	50	30
401199	Other new pneumatic tyres of rubber	35	0	50	30
4013	Inner tubes of rubber	35	0	50	30
4014	Hygienic or pharmaceutical articles of vulcanised rubber	35	50	50	0
401511	Surgical gloves	35	50	50	0

HS Code	Description of products	Applied rate of duty (%)	Tariff concession on the applied rate of duty (%)		
			SAPTA	ISFTA	BA
401519	Other gloves	35	50	50	0
401691	Floor coverings and mats	35	50	0	30
401693	Gaskets, washers and other seals	35	50	0	0
401694	Boat or dock fenders, whether or not inflatable	35	50	0	0
401695	Other inflatable articles	35	10	0	0
401699	Other articles of vulcanised rubber other than hard rubber	35	10	0	30
4017	Hard rubber in all forms, including waste and scrap and articles of hard rubber	35	0	0	0
Signatories of SAPTA	Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka				
Signatories of BA	Bangladesh, India, Republic of Korea, Papua New Guinea and Sri Lanka				

SAPTA – SAARC Preferential Trading Agreement, ISFTA – Indo-Sri Lanka Free Trade Agreement BA – Bangkok Agreement
Source : Goyal (2001: App/3-App/42)

Table 15. India's trade in rubber and rubber products with countries of tariff preferences (1998-99)

Countries	Share in India's total rubber based exports (%)	Share in India's total rubber based imports (%)	Imports as a % of exports
Bangladesh	5.26	Negligible	0.02
Bhutan	0.01	0.00	0.00
Maldives	0.01	0.00	0.00
Nepal	0.61	0.08	11.64
Pakistan	2.17	0.01	0.53
Papua New Guinea	0.02	0.00	0.00
South Korea	0.11	10.58	8801.86
Sri Lanka	2.02	0.45	20.40
SAPTA Members	**10.08**	**0.54**	**4.92**
Bangkok Agreement Members	**7.41**	**11.03**	**136.58**

Source : GOI (1999[a]:740-779); GOI (1999[b]:407-437)

Agreement was unfavourable to India. The negative balance of trade with members of Bangkok Agreement can be mainly attributed to the trade with South Korea which accounted for 10.58 per cent of the total rubber and rubber products imports of India during 1998-99. But a major share of the imports from South Korea was SR which has not been provided with any tariff concessions. The major items entering Indian market from South Korea with tariff preferences are tyres, pipes and hoses and other articles of vulcanised rubber (GOI, 1999[b]:407-437; Goyal, 2001:App/3-App/42).

3.2.2.1 Implications of GSP

Exports of rubber and rubber products from developing countries have been entering developed countries with tariff concessions under GSP (ITC, 1995:1-10). However, the popularity of the GSP channel has been shrinking over time due to the adverse features of the scheme described in Chapter 2. The general reduction in tariff levels during the Uruguay Round led to a significant erosion in GSP margins. There was an overall loss in trade weighted GSP margins to the extent of 82, 61, 50 and 32 per cent in trade with Canada, Japan, the US and EU respectively (UNCTAD,1995:86). The Uruguay Round resulted in a 40 per cent decline in the overall GSP margin which will be further squeezed as tariff liberalisation in industrial and agricultural products is to continue in the forthcoming rounds of negotiations as well (Fukasaku, 2000:3-20).

3.2.2.2 Policy options

3.2.2.2.1 Exclusion of NR from Bangkok Agreement

Though mutual trade agreements among the contracting parties have to function according to the provisions of Article XXIV of the GATT 1994, the WTO does not intervene in the negotiations related to MFN exceptions. Hence, action may have be initiated to exclude NR from the list of products enjoying tariff preferences under the Bangkok Agreement to prevent potential import of NR from Sri Lanka to India with tariff concession.

3.2.2.2.2 Monitoring of NR imports from Sri Lanka

Meanwhile, the imports of NR from Sri Lanka may have to be strictly monitored to see whether the rules of origin are maintained, to prevent third country transit trade through Sri Lanka.

3.2.2.2.3 Studies on GSP and GSTP schemes

As already mentioned, there are currently 15 GSP schemes maintained by 29 developed countries. Similarly India exchanges tariff concessions with 14 countries under GSTP. The GSP and GSTP schemes of other countries have to be studied to identify the tariff lines related to rubber and rubber products for which tariff concessions have been offered and document the country specific procedural formalities and rules of origin.

3.2.3 Elimination of QRs

With the elimination of QRs on 715 items on March 31, 2001, India has freed 9363 tariff lines of QRs which formed 92 per cent of the tariff lines of HS at 10 digit level. The description of the tariff lines pertaining to different processed forms of NR included in the 715 tariff lines freed of QRs on March 31, 2001 is given in Table 16. The QRs on all these items had been lifted for SAARC countries with effect from August 1, 1998 (GOI, 2001[b]:10). But among the SAARC Members, Sri Lanka is the only country which has been producing and exporting NR. There have been apprehensions that the removal of QRs would cause massive imports of different commodities into the domestic market. But the statistics on trade during the recent years reveal that the freeing of QRs has not considerably altered either the rate of growth in imports or its composition. The imposition of QRs on certain items did not mean that there had been complete ban on the import of such items earlier. They had been imported by the canalising agencies or others under different licensed channels. The value of the imports of 894 items, freed of QRs on March 31, 1999, increased by 17 per cent in the succeeding financial year. But the share of the items in the total value of imports of India registered only a marginal increase from 6.6 to 6.9 per cent. The share of the 714 items, freed of QRs on March 31, 2000 in the aggregate value of imports, in fact, declined from 2.6 to 2.3 per cent during the first six months of 2000-2001 (CRR&VS, 2001). The

non-oil imports during 2000-01 (April- January) witnessed a negative growth rate and the top 20 products continued to constitute 86-88 per cent of total imports as it had been in the past (GOI, 2001[b]:11). However, most of the items included in the list of 715 items, for which QRs have been removed on March 31, 2001, including NR have been highly sensitive products with a long history of protection and trade restrictions. Hence, there is a growing concern on the probable implications of the removal of QRs on these items.

Table 16. Processed forms of NR freed of QRs on March 31, 2001

Sl. No. in the list of 715 tariff lines	HS code	Description of the tariff line
175	40011001	NR latex, not pre-vulcanised
176	40011002	NR latex, pre-vulcanised
177	40012100	NR, smoked sheets
178	40012201	Oil extended NR
179	40012202	Chemically modified forms of NR, including graft rubber
180	40012209	Other technically specified NR
181	40012901	Other *Hevea* rubber
182	40012902	Crepe rubber from latex, pale latex crepe
183	40012903	Estate brown crepe
184	40012909	Other NR, non-latex
185	40013000	Balata, gutta-percha, guayule *etc.*

Source: GOI (2001[f]:9)

The two immediate implications of the removal of QRs on NR are: (i) free importability under Open General License (OGL) with duty; and (ii) duty free importability under Duty Entitlement Pass Book (DEPB) and Duty Free Replenishment Certificate (DFRC) schemes. The likelihood of NR imports under OGL depends on the difference between the prevailing domestic and international market prices, tax incidence on domestic and imported rubber, freight, insurance and transportation charges and the purchase policies of the major consuming industries in India. Table 17 facilitates a comparison of the cost of NR locally procured and NR imported through different channels.

Table 17. Comparative cost of imported and locally procured NR (Rs/kg)*

Cost components	Imported NR			Locally procured NR
	Under OGL	Without duty	From Sri Lanka	
Price	26.20	26.20	26.20	32.09
Basic duty	6.93	0.00	5.55	0.00
Special additional customs duty	1.33	0.00	1.27	0.00
Cess	1.50	0.00	1.50	1.50
Purchase tax	0.00	0.00	0.00	3.69
Additional sales tax	0.00	0.00	0.00	0.55
International freight, insurance etc	2.61	2.61	2.61	0.00
Inland freight *etc*	0.25	0.25	0.25	1.38
Total cost	**38.82**	**29.06**	**37.38**	**39.21**

* Total cost in Mumbai with prices of 18/10/2001

The cost of locally procured NR would be marginally higher by Rs.0.39 per kg when the price of comparable grade in the international market under OGL (Rs.26.20/kg) is compared with the minimum notified price of RSS 4 (Rs.32.09/kg) in India. The cost of NR imported from Sri Lanka would be only Rs.37.38 per kg, cheaper than the cost of domestic rubber by Rs.1.83 per kg. But with the withdrawn purchase tax rebate (of 5 percentage points) of GOK, the total cost of domestic rubber would have been Rs.37.29 per kg, cheaper than the cost of imported rubber by Rs.1.53 per kg. Exporters can resort to duty free imports of NR under the export incentive schemes of Advance Licensing Scheme (ALS), DEPB and DFRC. Basic, additional and special additional duties are exempted under ALS and DEPB whereas under the DFRC additional duties have to be paid (Goyal, 2001:App/46-47,75,DEPB/1-2). Such additional duties paid can be reimbursed later under CENVAT scheme. Therefore, duty free imports of NR can be made under all the three schemes. The eligible quantity to be imported is determined by the licensing authorities according to the standard input output norms (SION), fob value of exports/export obligations and the extent of value addition. The ALS is a pre-export incentive scheme but import of NR under the scheme has been banned by the GOI from February 1999. However, duty free imports of NR had been entering the country even after the imposition of the ban as the validity of the already issued advance licenses was for 18 months. Between the two post-

export incentive schemes, DEPB is more popular among the exporters on account of the higher transferability derived from the absence of nexus between the product exported and the items of import. As there is nexus between the product exported and the items of import under the DFRC scheme, NR can be imported only against the exports of rubber products. But under the DEPB scheme, NR can be imported against the duty credit obtained through the export of any product or by purchase of DEPB credit from other exporters. The EXIM Policy announced for the year 2001-02 has modified ALS, DEPB and DFRC so as to make them more attractive (GOI, 2001[b]:7-10). Hence, the rubber product manufacturers in India may import NR through the duty free channels of DEPB and DFRC schemes if the gap between the cost of locally procured rubber and international prices of NR is higher than the freight, insurance and clearing charges of the imported shipments. The total cost of NR imported under the duty free channels would only be Rs.29.06 per kg compared to the cost of domestic rubber of Rs.39.21 per kg as shown in Table 17. However, anti-dumping, safeguard and countervailing duties, if any, are payable for imports under DEPB and DFRC schemes. But anti-dumping and safeguard duties cannot be applied on imports made under ALS. NR is included in the 300 sensitive items to be monitored by the "War-room" constituted by the GOI as part of the EXIM Policy announced on March 31, 2001 to tackle the consequences of the removal of QRs.

3.2.3.1 Policy options

3.2.3.1.1 Banning of imports under DEPB and DFRC schemes

Any modification can be effected by the GOI in the export incentive schemes. Hence, action may be initiated to ban NR imports under DEPB and DFRC schemes. Alternatively, arrangements may be made to supply adequate quantities of NR to the rubber products exporters from domestic sources, at the rates equivalent to the cif value of imported rubber.

3.2.3.1.2 Retention of the ban on NR imports under the ALS

The present ban on the import of NR under ALS may have to be continued.

3.2.3.1.3 Monitoring of NR imports

The imports of NR have to be strictly monitored to identify situations in which safeguard measures, anti-dumping duties or countervailing measures can be applied.

3.2.3.1.4 Rationalisation of the tax structure

The domestic tax structure of NR may be rationalised, as already explained, so as to apply all the local taxes on imported rubber.

3.2.3.1.5 Collaboration with the "War-room"

Regular liaison may be made with the "War-room" constituted as per the EXIM Policy announced on March 31, 2001 to tackle the consequences of the removal of QRs on 300 highly sensitive products including NR.

3.2.4 Imposition of safeguard measures

A country can take safeguard measures when there is a surge in the import of an item, causing or threatening to cause injury to the domestic industry which produces like or directly competitive products under the AOS and Article XIX of the GATT 1994. The safeguard measures comprise additional duty in excess of bound rates and QRs. The surge in imports can be in absolute or in relative terms of domestic production. The range of "like or directly competitive products" is very broad and cover products similar in all respects to the imported products concerned and directly competitive products which technically and commercially compete with the imported products. Thus, safeguard measures can be invoked against an unprecedented increase in the import of NR into India in absolute or relative terms. The interests representing the NR sector can file application for adopting safeguard measures against the surge in imports of SR, RR, master batches, compounded rubber *etc.* and materials like polyurethane, if the technical and commercial substitutability between NR and such products can be established.

All the major NR producing and exporting countries are classified as developing countries under the WTO regime. As the potential NR imports into India would be exclusively from developing countries, the condition under Article 9 of the AOS related to *de minimis* volume of imports from such countries is not relevant. Therefore, GOI can initiate safeguard measures on NR imports from all sources subject to other conditions under the AOS. Since

Indian exports of NR would be destined towards consuming countries, there is no possibility of imposition of safeguard measures against it by the other producing countries.

It may be noted that even if the GOI imposes safeguard duty on NR imports, it will not be applicable on imports under ALS (other than for deemed exports) and imports by 100 per cent export oriented units and units in the FTZs and SEZs. During the period 1998-2001, India imposed safeguard duties on carbon black, acetylene black, flexible slab stock polyol, propylene glycol, phenol, acetone and gamma fabric oxides. The two cases of interest to the rubber sector were the applications to impose safeguard duties on styrene butadiene rubber (SBR) and carbon black. The Director General of Safeguards suspended the investigation in the case of SBR as prima facie it appeared that the injury caused to the domestic industry was due to dumping. Hence, the application was transferred by the Director General of Safeguards to the Director General of Anti-dumping and Allied Duties as per Rule 8 of the Safeguard Rules in India (Goyal, 2001:150; Gupta, 1998:281-286). The item concerned in the other case was carbon black, falling under ITC code 280300, mainly used by the rubber products manufacturing industry. The imports of carbon black had increased both in relative and absolute terms. Imports of carbon black as a percentage of domestic production increased from 7.44 per cent in 1995-96 to 28.18 per cent by 1997-98 (*ibid*). Subsequent to the investigations as per the Customs Tariffs (Identification and Assessment of Safeguard Duty) Rules, 1997, the GOI imposed a safeguard duty at 10 per cent *ad valorem* on import of carbon black to India.

3.2.4.1 Policy options

3.2.4.1.1 Monitoring of the imports of NR

The safeguard measures can be invoked against an unprecedented increase in the import of NR into India in absolute or relative terms. Hence, the import of NR may be monitored to provide relevant information to the Director General of Safeguards in the case of increased imports causing or threatening to cause injury to the domestic industry. The reference period of increased imports and injury thereof can be one year or part of a year.

3.2.4.1.2 Monitoring the imports of competing products

The imports of directly competing products may be monitored as the interests representing the NR sector can file application for adopting safeguard measures against the surge in imports of SR, RR, master batches, compounded rubber *etc.* and materials like polyurethane if the technical and commercial substitutability between NR and such products can be established.

3.2.4.1.3 Retention of the ban on import of NR under ALS

As safeguard measures cannot be applied on import made under the ALS, the ban on import under ALS may have to be continued.

3.2.5 Imposition of anti-dumping duties

Under the provisions of Article VI of the GATT 1994 and AAD, anti-dumping duties can be imposed on imported products when the price or normal value of such products in the domestic market of the exporting country is higher compared to the export price. Action under the AAD for imposition of anti-dumping duties on imported rubber can be initiated, if the price of rubber in the country from which the import is made is higher than the landed cost of the imported rubber as per the Customs Tariffs (Identification, Assessment and Collection of Anti-Dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995. In the case of import of NR into India, there may not arise the need to construct normal value as none of the situations listed in Article 2 of the AAD do not exist. Action can be initiated against dumping of NR by a country through another intermediate country, if it can be established that the products are merely transhipped through the country of export or that the products are not produced in the country of export as per Para 5 in Article 2 of the AAD. It may be difficult to ascertain the "support from domestic industry" required under Article 5 of the AAD for initiation of investigation as more than 87 per cent of the NR production in India is undertaken by around one million smallholdings (Rubber Board 2000: 16). But sub rule (4) of Rule 5 of Anti-dumping Duty Rules in India provides that the Director General of Anti-Dumping and Allied Duties may initiate an investigation *suo moto* if he is satisfied from the information received from any source that sufficient evidence indicates the existence of circumstances to initiate investigations. Hence, the

cost of production, price and market conditions prevailing in India and other NR exporting countries may be monitored to provide appropriate information to the designated authority. Though the normal duration of anti-dumping duties provided for under Article 11 of the AAD is five years, it can be extended if the designated authority determines that the withdrawal of the duty would lead to continuance or recurrence of dumping and injury thereof. The evasion of anti-dumping duties through circumvention by purposive alteration of the technical features of the product is common (Gupta, 1996: 99-100). But the chance for circumvention is less in NR where the grading has been according to the internationally harmonized and approved standards of quality and packing prepared by the Rubber Manufacturers' Association, New York, as described in the Green Book (IRQPC, 1979:1-19) and as per other relevant national and international standards. Imports made under advance licences (other than for deemed exports) and imports made by units in the FTZs and SEZs and the 100 per cent EOUs are exempted from payment of anti-dumping duties in India. However, the scope for imposition of anti-dumping duties in India is curtailed by the rule of limiting anti-dumping duty to the lower of the two, *viz.*, injury margin and dumping margin (Gupta, 1998:916-917).

During the period 1988-2001, India imposed anti-dumping duties on more than 50 items, indicating the extensive use of the provisions under the AAD to check the dumping of products. The items of interest to the rubber sector for which anti-dumping duties have been imposed are NBR, SBR and EPDM from Japan, NBR and SBR from Taiwan and SBR from Turkey, France, USA, Germany and South Korea (Goyal, 2000: 95-149).

Other countries may initiate anti-dumping measures against India if it exports NR at prices lower than those in the domestic market. But since Indian exports of NR would be destined towards consuming countries, there is no possibility of imposition of anti-dumping duties against it by other producing countries. However, NR being a primary product, can be exported at prices lower than those in the domestic market to stabilise domestic prices subject to the conditions specified under Para 7 in Article VI and Para 3 in Article XVI of the GATT 1994.

3.2.5.1 Policy options

3.2.5.1.1 Monitoring of the NR export markets

The domestic price of NR in major exporting countries shall be monitored along with the export prices relevant to India to explore situations of dumping. Application to initiate investigation on dumping needs the support of the domestic industry which is difficult to be furnished in the case of NR sector in India characterised by the preponderance of smallholdings. But as the designated authority can initiate investigation *suo moto* on the basis of information received, relevant information on dumping and injury may have to be provided by concerned institutional agencies as and when such situations arise.

3.2.5.1.2 Retention of the ban on advance licenses

As anti-dumping duties cannot be applied on imports made under ALS, it is necessary to retain the ban on import against advance licenses.

3.2.6 Domestic support and export subsidy

As NR is not covered by the AOA, the issues related to subsidies and countervailing measures are to be dealt with according to the provisions of the ASCM. If the lower price of NR imported into India is due to subsidisation at any stage of production, processing, transportation and export in any other NR producing or exporting country, action can be initiated according to the Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995. Under Article 11 of the ASCM, action can be initiated against a country even if the subsidised NR originates from it and the export is effected through another intermediate country to circumvent the countervailing measures. As in the case of anti-dumping duties, it would be difficult to ascertain the "support of the domestic industry" due to the predominance of smallholdings in NR production. But the Rule 6 empowers the designated authority (Additional Secretary, Ministry of Commerce, GOI) to initiate investigation for the imposition of countervailing duties *suo moto,* if he is satisfied from the information received from any source that sufficient evidence exists to prove the circumstances of subsidisation and injury thereof. The countervailing duties, unless revoked earlier, shall have a duration of five years from the date

of imposition. However, if the GOI in a review finds that the cessation of such duty is likely to lead to the continuation or recurrence of subsidisation and injury, it may from time to time, extend the period of such imposition for a further period of five years (Section 9 (6) in the Customs Tariff Act of 1975). In contrast to anti-dumping and safeguard duties, countervailing duties can be charged on NR imports under ALS and imports made by 100 per cent EOUs and units in the EPZs and SEZs.

In this context, it is important to estimate the extent of *ad valorem* subsidisation of NR through different domestic support schemes in India. The promotion of NR industry in India is entrusted with the Rubber Board under the Ministry of Commerce, GOI, constituted in accordance with the provisions of the Rubber (Production and Marketing) Act, 1947. The planting subsidy and other domestic support schemes for the NR industry are implemented by the Rubber Board. The details of the subsidy disbursements under different heads and outlays for the research and other activities during 1999-2000 are presented in Table 18. The domestic support measures accounted for 35.3 per cent of the budgetary expenditure of Rubber Board during 1999-2000.

Article 8 of the ASCM exempts certain actionable subsidies from the calculation of *ad valorem* rates of subsidisation. The expenditure incurred on research, amounting to Rs.114.3 million need not be added to the expenditure on domestic support as the research being carried out by the Rubber Research Institute of India (RRII), the research department of the Rubber Board, is generally fundamental in nature and not linked to the specific requirement of any firm or individual concern (Footnote No.26 of Article 8 of the ASCM). Neither the Rubber Board nor RRII provide any concessional grants or subsidies to any firm or organisation for conducting specific research projects. Around 30.9 per cent of the subsidy disbursements is accounted for by various assistance schemes implemented in the economically and socially backward north-eastern (NE) states of India. One of the main objectives of expansion of rubber cultivation to the NE region has been to rehabilitate the nomadic tribals and wean them away from the ecologically disastrous practice of shifting cultivation. The subsidies disbursed in the backward regions are also exempted from the calculation of *ad valorem* rates of subsidisation.

Table 18. Composition of the budgetary expenditure of the Rubber Board (1999-00)

Item	Source of funds			Total (Rs Million)
	Plan (Rs Million)	Non-plan (Rs Million)	WBARP• (Rs Million	
Capital, polybag, input and fertilizer subsidies				
o *General*	35.52	-	81.80	117.32
o *Specific to NE region*	49.67	-	30.00	79.67
Tribal Sub Plan/Special Component Plan (including block planting)				
o *General*	13.39	-	-	13.39
o *Specific to NE region*	14.22	-	-	14.22
Subsidies for smoke house, sprayers, rollers, apiculture, bio-gas plants *etc.*				
o *General*	8.17	-	-	8.17
o *Specific to NE region*	4.42	-	-	4.42
Subsidies for improving processing and marketing methods	8.64	-	-	8.64
Productivity enhancement scheme (supply of estate inputs at concessional rates)	-	-	62.04	62.04
Labour welfare schemes	8.87	1.95	-	10.82
Women and tribal development				
o *General*	-	-	6.31	6.31
o *Specific to NE region*	-	-	2.72	2.72
Total subsidies				
o *General*	74.59	1.95	150.15	226.69
o *Specific to NE region*	68.31	-	32.72	101.03
o **Total**	142.90	1.95	182.87	327.72
▼ Research	42.18	55.05	17.06	114.29
▼ Others	169.64	71.39	244.52	485.55
Grand total	354.72	128.39	444.45	927.56

• World Bank Assisted Rubber Project

Source : Computed from Rubber Board (2001:18-S 108)

During the year 1999-00, the production of NR in India was 622265 tonnes and the annual average price of NR (RSS 4) was Rs.30.99 per kg (Rubber Board, 2000:13-47). Thus, the gross value of NR production was Rs.19284 million and the *ad valorem* rate of actionable subsidies was only 1.18

per cent (Table 19). Even if subsidy disbursements in the NE region were included, the *ad valorem* rate of subsidisation would increase only to 1.70 per cent. Under Article 27 of the ASCM, countervailing duty investigation of a product originating in developing countries included in Annex VII (inclusive of India) shall be terminated if the *ad valorem* subsidisation does not exceed three per cent. Hence, the prevailing subsidies and domestic support measures for the NR sector in India are not countervailable by any other country. There is no constraint in enhancing the subsidy disbursements in the backward NE region as such expenditures are non-actionable. Other subsidies can be raised by Rs 351 million (which together with the existing subsidies amount to Rs.578 million forming 3 % *ad valorem*) without inviting action under the provisions of the ASCM. It is also important to note that the total budget of the Rubber Board was only 4.81 per cent of the value of the production of NR.

Table 19. *Ad valorem* rates of subsidisation of NR in India

Production of NR during 1999-2000	622265 tonnes
Average price during 1999-2000 (RSS 4)	Rs 30.99 per kg
Value of production of NR	Rs 19284 million
***Ad valorem* rates of (%)**	
o Total expenditure of Rubber Board	4.81
o Total subsidies	1.70
o Actionable subsidies (except subsidies specific to North East)	1.18

Source : Computed from Rubber Board (2000: 14, 43-48) ; (2001:18- S 108)

Developing countries with per capita income below US $1000 can maintain export subsidies until their relative share becomes 3.25 per cent or more in the global trade of the concerned product for two consecutive years. Hence, among the major NR producing countries, India, Sri Lanka and China with per capita incomes of US $ 370, 800 and 860 respectively can export NR with subsidy as long as their export volumes of NR are below around 161850 tonnes which is 3.25 per cent of the net world exports of NR (World Bank, 2000:10-12; IRSG, 2001:11). The major NR exporters *viz.,* Thailand, Indonesia and Malaysia are deprived of the exemption on prohibited export subsidies as their per capita incomes are US $ 2740, 1110 and 4530 respectively (World Bank, 2000:10-12). Though the developing countries with per capita income below US $1000 can maintain export subsidies, such subsidised exports can

be countervailed by importing countries if the same cause injury to their domestic industry.

Action under the provisions of ASCM can be taken against India by other countries if it exports subsidised NR in such a manner as to cause injury to the domestic industry of the importing countries. But as in the case of safeguard and anti-dumping measures, there is no chance of countervailing measures being imposed on subsidised Indian NR exports as potential destinations will be the major NR consuming countries. However, if the export of subsidised NR from India to elsewhere causes injury to the domestic industry of any other NR exporting country, it can initiate remedies under Article 7 of the ASCM. But Para 9 in Article 27 of the ASCM further limits such remedies, if the subsidised exports originate from developing countries. However, if Thailand, Indonesia or Malaysia can prove that the subsidised NR exports of India have caused serious injury to their domestic NR industries, action can be initiated under Article 7 of the ASCM. But that is a remote possibility when the low volume of the exportable surplus of India is considered. Sri Lanka and China can export NR to India with subsidy as their per capita incomes are below US $ 1000. Subsidised import of NR from China to India is not likely as it is a net importer of NR. Sri Lanka may export subsidised NR to India but its exportable surplus has been significantly declining over time reaching 32502 tonnes by 2000 (ANRPC[a], 2001:14). Moreover, a major portion of its exports is pale latex crepe, which is required for certain specific areas of application.

3.2.6.1 Policy options

3.2.6.1.1 Expansion of domestic support measures

The domestic support measures in India can be expanded without infringing the provisions of the WTO. The total actionable subsidies in India disbursed in the traditional region is only Rs. 22.64 crores and it can be raised upto Rs.57 crores. There is no potential limit for the subsidy disbursements in the backward regions. In this context, it may be noted that at least in three other major NR producing countries *viz.*, Malaysia, Sri Lanka and Thailand the planting subsidy is higher than that of India (Table 20). The planting subsidy in Malaysia, Sri Lanka and Thailand for rubber holdings in the lower size-class are higher by 555, 115 and 283 per cent respectively compared to that of India.

Hence, the domestic support measures can be enhanced by increasing the planting subsidy and input subsidy schemes for enhancing productivity. Special attention has to be given to devise schemes which can enhance the cost and quality competitiveness of NR sector in India. Under the input subsidy scheme, estate inputs have been supplied to the smallholders through the Rubber Producers Societies from 1986-87. The scheme has been found to be successful in enhancing productivity of rubber plantations of small growers through better and timely adoption of scientific cultural practices. But the extent of subsidisation which had been 25 to 50 per cent per item initially has been reduced in a phased manner to five to 10 per cent. Studies have already revealed that the rate of growth in productivity of rubber holdings has declined during the recent years of crisis due to lower level of adoption of scientific cultural practices (Viswanathan and Rajasekharan, 2001: 65-76). This has adversely affected the productivity of the crop, posing serious challenges to the sustainability of NR cultivation in the context of the steep fall in prices. Hence, it is necessary to revive the input subsidy scheme by raising the extent of subsidisation to the initial level of 25 to 50 per cent or higher.

3.2.6.1.2 Export subsidy for NR

As the per capita income of India is only US $ 370, it can maintain export subsidies without limit. But as export subsidies are to be phased out, once the share in global export reaches 3.25 per cent in two consecutive years, the volume of NR exports shall be monitored to restrict the same from crossing the defined limit. The export subsidy scheme has to be flexible so as to adjust to the NR price movements in the domestic and international markets.

3.2.6.1.3 Monitoring of subsidisation in other countries

Application to initiate investigation of subsidisation needs the support of the domestic industry which is difficult to be furnished in the case of the NR sector in India, characterised by the preponderance of smallholdings. But as the designated authority can initiate investigation *suo moto* on the basis of information received by him, the information on subsidisation and injury may be provided as and when such situations arise. Hence, the extent of subsidisation at cultivation, processing, marketing and export of NR in other major producing countries may be continuously monitored.

Table 20. Rate of planting subsidy in selected NR producing countries

Country		Category	Subsidy (Rs./ha.)	Instalments (No.)
Malaysia		Upto 4 ha	78641	6
		Above 4 ha	53476	
Thailand	New planting	All size classes	45900	---
	Re-planting	All size classes	31195	
Sri Lanka	New planting	All size classes	25046	8
	Re-planting	All size classes	25855	
India		Upto 5 ha (Traditional region)	12000	7
		Upto 5 ha (Non-traditional region)	16000	
		5 to 20 ha (Non-traditional region)	12000	

Source: (ANRPC[b], 2001)

3.2.7 Non-tariff import restrictions

According to the provisions of the Agreement on Technical Barriers to Trade and Agreement on Sanitary and Phytosanitary Measures, certain WTO compatible non-tariff import restrictions can be imposed pertaining especially to standards in quality and packing. But the potential likelihood of imposing such restrictions against NR imports is less as there are internationally approved standards of quality and packing (IRQPC, 1979 :1-19). Moreover, any regulation related to technical or sanitary standards imposed on imported NR should be equally applicable to NR of national origin. In India, NR is not included in Appendix V to the Schedule 1 of ITC (HS) Classifications of Export and Import Items (1997-2002) annexed vide DGFT Notification No.44-RE/24.11.2000 comprising 131 items for which quality standards are mandatory. However, technical quality standards, mandatory for domestic processors under Rule 48 of Rubber Rules 1955, have been applied to imported rubber with effect from December 19, 2001 (GOI, 2001[i]).

3.2.7.1 Policy options

3.2.7.1.1 Enforcement of quality standards

The imported shipments of NR shall be regularly inspected for checking technical quality standards.

3.3 NR under the AOA : Implications and policy perspectives

Since 1997, there has been a growing concern among the planting community and various organised groups in the state of Kerala over the nexus between falling NR prices and status of the crop as an industrial product under the WTO regime. Accordingly, the GOI has included the demand to rationalise the product coverage of the AOA by adding NR along with coir and jute in the proposals it submitted to the WTO in January 2001, as part of the ongoing negotiations under Article 20 of the AOA. But the objective of Article 20 of the AOA is continuation of the reform process in support and protection. Hence, the acceptance of the demand of the GOI may require an amendment of Article 2 dealing with product coverage of the AOA according to the provisions under Article X of the WTO Agreement. According to Article X of the WTO Agreement, any Member of the WTO can initiate a proposal to amend the provisions of the WTO Agreement or the Multilateral Trade Agreements in Annexes 1A and IC by submitting such a proposal to the Ministerial Conference. The amendments which would alter the rights and obligations of the Members shall take effect only if it is accepted by two thirds of the Members and thereafter for each other Member upon acceptance by it. Inclusion of NR under the AOA would extend to it special and differential treatment with regard to market access, tariff bindings, safeguards, domestic support *etc* on par with other listed agricultural products.

3.3.1 Bound rates and applied tariff rates

There is a false notion among the planting community and the general public that the bound rates would rise to 100 to 150 per cent automatically if NR is included in the product coverage of the AOA. While the AOA is a separate Agreement annexed to the WTO Agreement, the commitment of bound rates is as per Article II of the GATT 1994. Hence, even if the WTO

finally amends the AOA so as to include NR, it requires renegotiations under Article XXVIII of the GATT 1994 to modify/withdraw the bound rate of NR committed in the schedule. The negotiations under Article XXVIII of the GATT 1994 are easier and less time consuming compared to the procedures under Article X of the WTO Agreement to amend the AOA for inclusion of NR. There had been many agricultural products covered under the AOA with substantially lower bound rates as they were bound at such rates even before the Uruguay Round. However, in sequel to the Article XXVIII negotiations concluded in January 2000, the GOI was able to modify the bound rates of 37 items, including broken rice, sorghum, millet, pearls, butter and biscuits (see Appendix 1). However, inclusion of NR under the AOA will give India a firm stand to plead for a still higher bound rate in the negotiations under Article XXVIII of the GATT 1994[8].

Once NR is included in the product coverage of AOA, minimum market access in the form of tariff quotas may have to be committed. As the tariff quota is to be the average of imports made during 1986-88 period, India may have to accommodate a tariff quota of 52959 tonnes per year. The tariff quotas are to be filled at tariff rates below the normal duty. The annual average import of NR during 1986-88 was 18.5 per cent of the domestic consumption of NR. But the potential tariff quota is more than three times higher than the import of NR during 1999-00. If the bound and applied rates of duty could not be raised substantially on par with other agricultural products, this provision will have serious implications if NR is included under the AOA. Hence, caution has to be made not to succumb to the possible requests of other countries to commit tariff quota for NR in the ongoing Article 20 negotiations.

3.3.2 Commitments under MFN exceptions

There will not be any change in the relevant provisions with regard to the tariff concessions under MFN exceptions even if NR is reclassified as an agricultural product.

3.3.3 Elimination of QRs

There will not be any change in the relevant provisions relating to the elimination of QRs and exceptions thereof even if NR is reclassified as an agricultural product.

3.3.4 Imposition of safeguard measures

Under Article 5 of the AOA, special safeguard provisions are laid down for agricultural products. The special safeguards empower the Members to impose additional duties if the quantity or price of the import of an agricultural product exceed the fixed trigger levels. Special safeguard measures can be only in the form of additional duties and QRs are not admissible whereas under the AOS both additional duties and QRs can be imposed. Further, special safeguard duty is limited to one third of the prevailing customs duty. But the norms to impose special safeguard duty are more specific and the procedures are easier compared to those under the AOS. But in order to qualify for special safeguard provisions under Article 5 of the AOA, the tariff lines should have to be designated with the symbol "SSG" in the schedule of concessions. All those tariff lines designated with the symbol "SSG" cannot claim safeguard measures under the AOS. India did not designate any of the agricultural products with the symbol "SSG" in its schedule of concessions. Thus, all agricultural and industrial products come under the purview of the AOS in India. Hence, the position of NR would be the same even if it is reclassified as an agricultural product.

3.3.5 Imposition of anti-dumping duties

There will not be any change in the relevant provisions relating to the imposition of anti-dumping duties even if NR is reclassified as an agricultural product.

3.3.6 Domestic support and export subsidy

It has been already mentioned that India need not reduce the prevailing domestic support measures in the agricultural sector as its total AMS during the base period was negative at (-)22.5 per cent. The financial assistance being provided to the NR sector under different schemes broadly fall within the categories of investment subsidies, input subsidies for small growers, and specific programmes for backward regions which are exempted from the calculation of the AMS of developing countries. The NR sector, at present, does not have any other product specific subsidy in the form of assured minimum support price backed by government funds. However, since AMS commitment

883
5/4/2005

is sector wide, there is no potential limit as far as domestic support measures for an individual crop is concerned.

Table 21. AMS of NR sector in India (1999-00)

Cess collected on the domestic production of NR	Rs 747.4 million
o *Ad valorem* rate of AMS with all the subsidies (%)	(-)2.18
o *Ad valorem* rate of AMS with gross budgetary expenses of Rubber Board (%)	0.93
o Ceiling volume of subsidies with a crop specific *de minimis* AMS of 10 per cent (Rs. million)	2675

The potential situation of withdrawal of exemptions accorded to developing countries with regard to investment and input subsidies and insistence on crop specific AMS may be looked into. The Annex 3 to the AOA, dealing with the calculation of AMS provides that any levy of fees paid by producers shall be deducted from the AMS. The GOI charges a cess on the production of NR in India as per Para 12 (ii) of the Rubber (Production and Marketing) Act of 1947. At present, the rate of the cess is Rs.1.50 per kg of NR produced. According to the referred Act, the cess shall be collected either from the owners of the estates in which rubber is produced or from the manufacturers by whom such rubber is used. Though the cess is on the production of NR, it is collected from the manufacturers just for the sake of convenience as there are only around 5300 rubber goods manufacturers in the country compared to around one million small rubber holdings. The total cess collected during 1999-2000 amounted to Rs 755.6 million. Imported NR carried a cess of Rs.0.50 per kg during 1999-2000 and the import of NR during the year was 16436 tonnes making the cess amount Rs. 8.2 million. Thus, the cess amount on the rubber produced in India was Rs. 747.4 million. The estimated *ad valorem* AMS of NR in India covering all the subsidies for 1999-2000 was negative at (-)2.18 per cent (Table 21). It may be noted that even the total budget of the Rubber Board minus the cess collected amounted only to 0.93 per cent of the value of NR output. At a *de minimis* of 10 per cent *ad valorem* AMS, the total volume of subsidies can go upto Rs.2675 million. Thus,

conceptually, there is no serious constraint to enhance the domestic support measures for the benefit of the NR sector in India irrespective of the provisions of ASCM or AOA.

Once NR is included in the product coverage of the AOA, the provision allowing developing countries with per capita income below US $ 1000 to maintain export subsidies until they attain export competitiveness of the ASCM will not be applicable. Export subsidies designated for reduction commitments under Article 9 of the AOA are not being practised in India. However, being a developing country India can maintain subsidies to reduce (i) costs of marketing related to exports of NR (other than widely available export promotion and advisory services) including handling, upgrading and other processing costs and the costs of international transport and freight; and (ii) internal transport and freight charges on export shipments of NR provided or mandated by governments on terms more favourable than for domestic shipments.

3.3.7 Non-tariff import restrictions

There will not be any change in the provisions with regard to sanitary, technical or quality standards even if NR is reclassified as an agricultural product.

3.4 Concluding Remarks

Though the present study conceived in two volumes is not directly in response to the crisis encompassing the NR sector in India since 1997, it assumes significance as the policy initiatives to be pursued by the GOI in the PUR phase have to be WTO compatible. The domestic market prices of NR have been increasingly influenced by changes in world NR market since the launching of economic reforms in 1991 and policy revisions mandated by WTO commitments from 1994. The observed trends in the domestic NR prices since 1992 have been in sharp contrast to its insulated and protected status during the pre-reforms phase. The revival strategies followed since 1997 have been circumscribed by lack of appropriate comprehension of WTO conditionalities and compatible policy inputs.

The proposed policy initiatives can be broadly grouped into two categories, *viz.*, (i) measures which require approval of the WTO; and (ii) WTO compatible measures which can be initiated by the GOI. Modification of the prevailing bound rate as per the provisions of Article XXVIII of the GATT 1994 and inclusion of NR under the product coverage of the AOA in the ongoing Article 20 negotiations are the two crucial measures which deserve priority. However, simultaneous efforts have to be made to enhance the bound rate of NR in the ongoing Article 20 negotiations as the GOI has proposed only to reclassify NR as an agricultural product. Therefore, immediate attention may have to be given for modification of the bound rates as per the provisions of the Article XXVIII of the GATT 1994 as Article 20 negotiations are expected to be prolonged at least till December, 2003. The measures suggested in the second category consists of domestic support, export incentives and WTO compatible trade restrictions. Among these measures emphasis has to be given for direct payments to the farming community which would improve competitiveness in cost and quality from a long-term perspective.

Appendix 1. Products for which bound rates were modified as per Article XXVIII negotiations (January 2000)

Sl. No.	Products	No. of items
1	Skimmed milk powder	2
2	Grapes	1
3	Spelt wheat	1
4	Maize, seeds	2
5	Rice, different forms	4
6	Millet	1
7	Soybean oil	2
8	Maize, others	1
9	Grain, sorghum	1
10	Malt	1
11	Dried peas	1
12	Biscuits	1
13	Rape, colza or mustard oil	2
14	Almonds	1
15	Olive oil	1
16	Apples	1
17	Preparations for infant use	1
18	Oranges	1
19	Plums & sloes	1
20	Prunes	1
21	Industrial fatty alcohol	1
22	Lemons & limes	1
23	Chewing gum	1
24	Sunflower/safflower seeds & oil	1
25	Pears & quinces	1
26	Orange juice	2
27	Potato preparations	1
28	Butter	1
29	Cheese	1
Total		**37**

Source : GOI (2001[b])

Appendix 2. Product coverage of the AOA

Sl. No.	HS	Description
1	HS Chapter 1	Live animals
2	HS Chapter 2	Meat and edible meat of fat
3	HS Chapter 4	Dairy produce; bird's eggs; natural honey; edible products of animal origin not elsewhere stated or included
4	HS Chapter 5	Products of animal origin not elsewhere stated or included
5	HS Chapter 6	Live trees and other plants; bulbs; roots and the like, cut flowers and ornamental foliage
6	HS Chapter7	Edible vegetable and certain roots and tubers
7	HS Chapter 8	Edible fruits and nuts; pee or citrus fruit or melons
8	HS Chapter 9	Coffee, tea, mate and spices
9	HS Chapter 10	Cereals
10	HS Chapter 11	Products of milling industry; malt; starch including wheat gluten
11	HS Chapter 12	Oil seeds and oleaginous fruit, miscellaneous grains; seeds and fruits; industrial and medicinal plants; straw and fodder
12	HS Chapter 13	Lac; gums resins and other vegetable sap and extracts
13	HS Chapter 14	Vegetable planting materials; vegetable products not elsewhere specified or included
14	HS Chapter 15	Animal or vegetable fats and oils and their cleavage products; prepared edible fats; animal or vegetable waxes.
15	HS Chapter 16	Preparations of meat, fish or crustaceans, mollusc or other aquatic invertebrates
16	HS Chapter 17	Sugars and sugar confectionery
17	HS Chapter 18	Cocoa and cocoa preparations
18	HS Chapter 19	Preparations of cereals, flour, starch, or milk, pastry cook's products
19	HS Chapter 20	Preparations of vegetables, fruits, nuts or other parts of plants
20	HS Chapter 21	Miscellaneous edible preparations
21	HS Chapter 22	Beverages, spirits and vinegar
22	HS Chapter 23	Residues and waste from the food

Sl. No.	HS	Description
		industries; prepared animal fodder
23	HS Chapter 24	Tobacco and manufactured tobacco substitutes
24	HS Code 2905.43	Mannitol
25	HS Code 2905.44	Sorbitol
26	HS Heading 33.01	Essential oils
27	HS Headings 35.01 to 35.05	Albuminoidal substances; modified starches; glues
28	HS Code 3809.10	Finishing agents
29	HS Code 3823.60	Sorbitol other than that of HS code 2905.44
30	HS Headings 41.01 to 41.03	Hides and skins
31	HS Heading 43.01	Raw fur skins
32	HS Headings 50.01 to 50.03	Raw silk and silk waste
33	HS Heading 51.01 to 51.03	Wool and animal hair
34	HS Headings 52.01 to 52.03	Raw cotton, waste and cotton carded or combed
35	HS Heading 53.01	Raw flax
36	HS Heading 53.02	Raw hemp

Source : GATT (1994); GOI (1987)

NOTES

1. Harmonized Commodity Description and Coding System, commonly referred to as HS, was developed by the Customs Cooperation Council, Brussels, in June 1983. The HS rationalised and harmonized the coding and description of commodities internationally traded. The digit level denotes the extent of disaggregation of commodities (GOI, 1987: v).

2. An illustrative list of prohibited export subsidies is given in Annex 1 of the ASCM.

3. For example, India has fixed 300 per cent for edible oils, 150 per cent for processed forms and 100 per cent for raw forms of agricultural products.

4. The reference price shall be the average cif unit value of the product concerned or otherwise an appropriate price in terms of the quality of the product and its stage of processing.

5. Out of the 30 countries with AMS reduction commitments, only Argentina and Columbia had current AMS above the committed AMS during 1995 (WTO, 2001[a]:58).

6. The total duty is the cumulative summation of basic duty, additional duty and special additional duty charged on the assessable value.

7. The share of exports of NR to India from Malaysia, Thailand, Indonesia, Vietnam and Sri Lanka during the year 2000 was 0.25, 0.17, 0.06, 0.58 and 2.06 per cent of their total NR exports respectively (ANRPC, 2001[a]).

8. However, it may have to be noted that even if NR is included under AOA and the bound rate is increased to the desired level, the possibility of import of NR as master batches, compounded rubber *etc.* cannot be ruled out unless the bound rates of these items also are raised.

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