

INDIA  
AND  
THE GATT

# INDIA AND THE GATT

By

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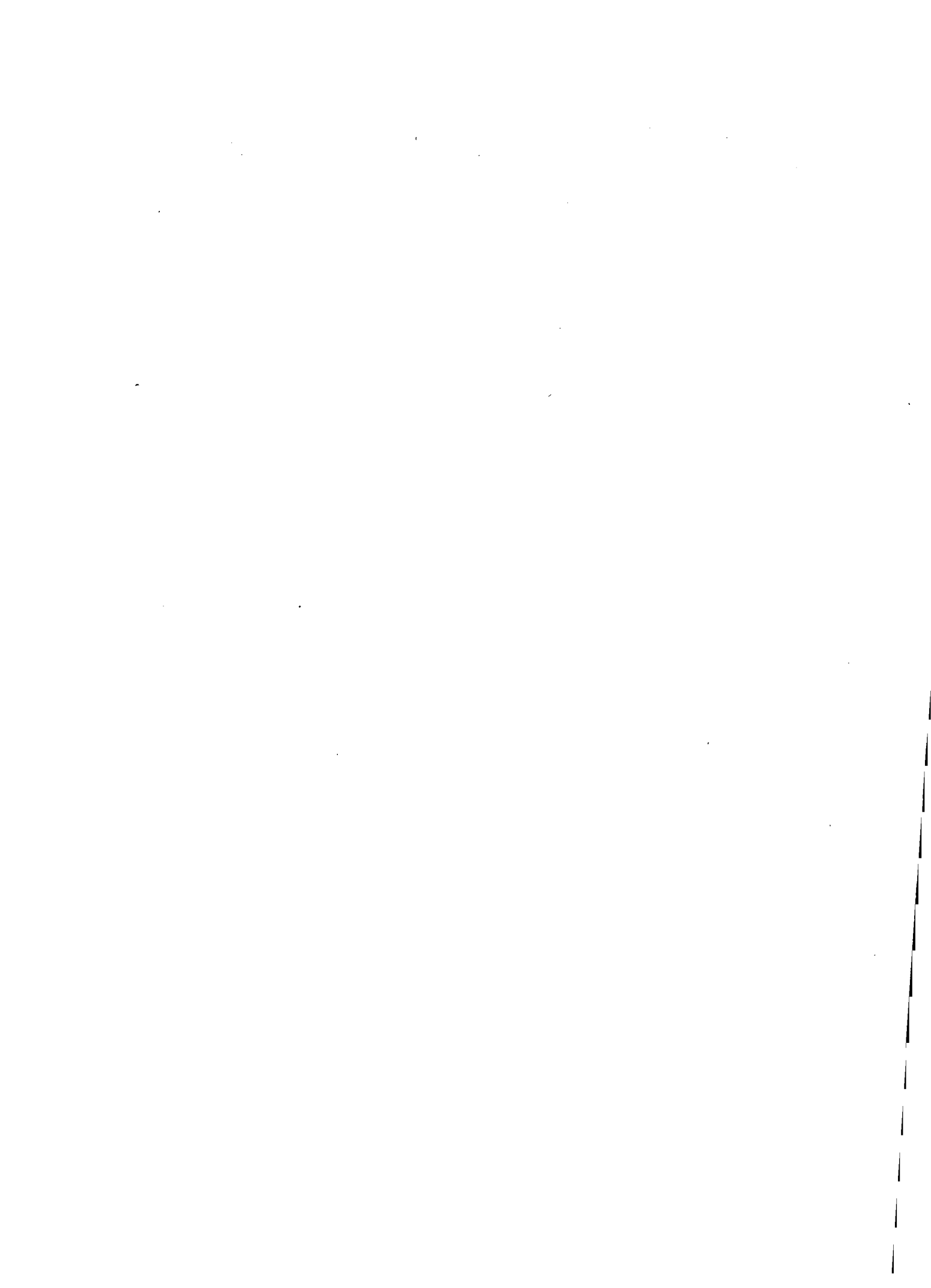
New Delhi

1995

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IN LOVING MEMORY OF MY MOTHER

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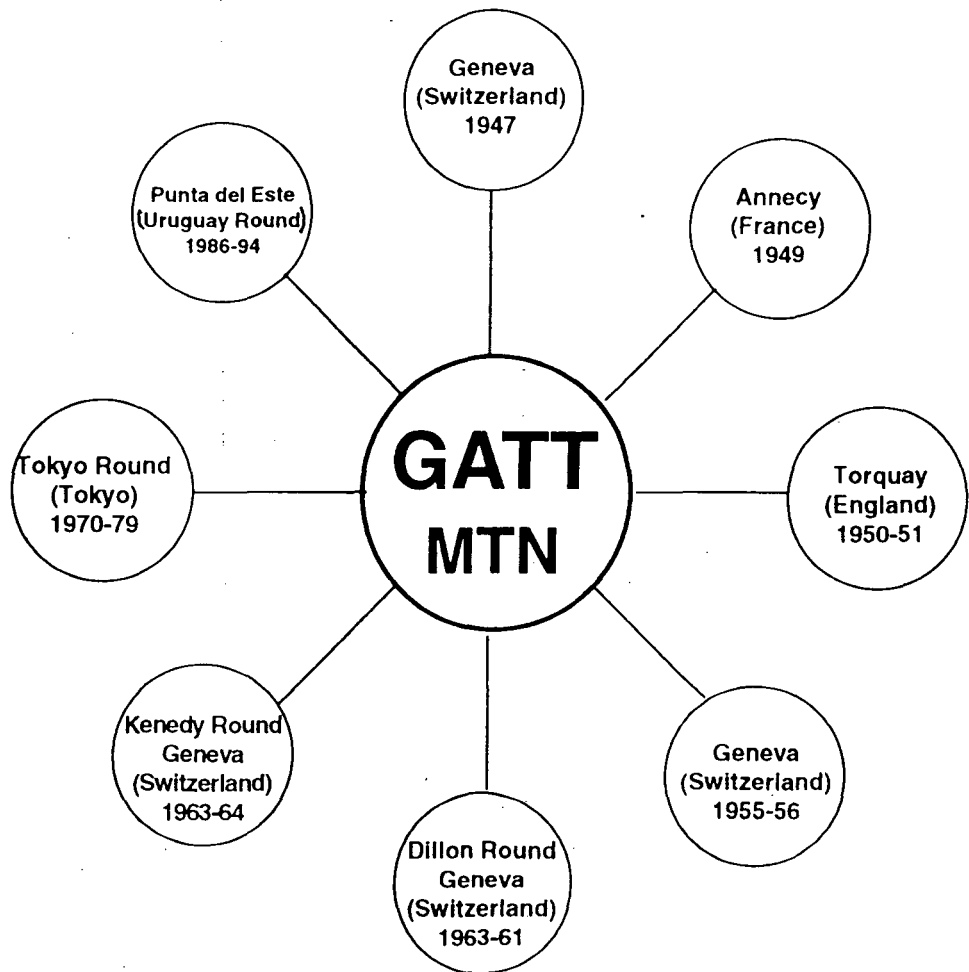
  
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New Delhi

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## INTRODUCTION

Of the various factors that contribute to the overall growth of a nation, trade is one of the most important ones. The history of mankind shows that it is trade, in one or other form, that has remained the major activities of human civilisation. To control the trade and to keep it in desired track, local, regional or national administration has been keeping on enacting laws, rules, regulations, acts and agreements as and when required. General tendency of a flourishing trade is to cross the national border and enter within the ambit of what is known as International trade. To control the international trade, it is necessary to have common regulations and an apex body. Fulfilment of this necessity was long overdue and it was only in 1947, that the General Agreement on Tariffs and Trade, i.e., the GATT came into being. In the nineties, the GATT, by virtue of the Uruguay round of talks, became a major international event. Every international and national forum, newspaper, periodical became agog with the discussion on the GATT. It also became a highly emotive issue in India.

This study is an attempt to trace the history and Origin of the GATT and India's association with it. It has been studied with special references to India. However the stand taken by other less developed countries on important issues have also been discussed wherever emphasis so

demanded. The study focuses its attention on India's role in promoting and facilitating co-operation in the field of international trade under the auspices of the GATT.

The GATT concerned itself primarily building a non-discriminatory rule based on free world trading system. In pursuit of achieving this objective, the GATT brought under its mandate a large number of issues such as tariff-reduction, removal of non-tariff barriers, elimination of subsidies etc. Through a series of multi-lateral trade negotiations, it also gave commendable importance to the problems of less developed countries in respect of international trade. It provided some special preferences to them.

It is within this setting that the present study examines India's participation in the GATT at the policy making level. The purpose is to sketch the essential traits of India's approach and role in the field.

In this study some issues and provisions of the GATT, like reciprocities, countervailing duties, anti-dumping etc. have not been dealt with not because these are less vital but because these issues lie outside the scope of this study. As a student of International Organization, my basic aim is to focus on India's role and, therefore, only those issues have been taken into consideration on which India strived hard and stood for achieving positive results not

only from India's own point of view but also keeping in mind the general interest of less-developed countries. These issues like the one of economic development have gone in a big way in bringing some important changes in the GATT. The study covers the deliberations of India at various GATT conferences during the span of almost four decades starting from the conference on Trade and Employment in 1946.

The study has been divided into five chapters. Chapter I traces the history and origin of the GATT and India's role.

Chapter II deals with the position of the less-developed countries, their endeavour to get preferential treatment in the GATT. It also counts some changes in the GATT rules and provisions, in the direction that would recognise the inherent weak position of less-developed countries in bargaining and dealing with the most advanced and developed nations of the world. As the study revolves on India, this chapter also focuses on the role of India in taking up issues of special interest to less-developed countries.

The next three chapters basically examine India's association with the GATT and the contribution it made in liberalising the international trade and in promoting non-discriminations while maintaining the special status of the less-developed countries.

In chapter III, some initial issues have been discussed that were faced by India in the early years of evolution of the GATT. Efforts have been made to draw a clear picture of the adverse reactions faced by India back home regarding the membership of the GATT and exchange of concessions.

Chapter IV examines India's role in various multi-lateral Trade Negotiations prior to the Uruguay round held under the GATT.

Chapter V evaluates India's role in the Uruguay Round. This round has been the witness of unprecedented change, friction of opinions and divergence of views. Three new issues of Trade Related Intellectual Property rights (TRIPS), Trade Related Investment Measures (TRIMS) and SERVICES, have been discussed in this chapter with particular references to India.

Lastly, the conclusion sketches an over all performance of India in the GATT.

## CONTENTS

Chapter	Page no.
Acknowledgement	i
Introduction	ii
<b>I. ORIGIN OF THE GATT AND INDIA'S ROLE</b>	<b>1-52</b>
- Pre GATT Situation and Efforts Towards the GATT	3
- US Proposal for Expansion of World Trade and Employment	7
- How the Preparatory Committee Decided to Frame the Draft Charter	9
- India's Reaction to US Proposal (Full Employment-Commodity Trade - Quantitative Restrictions)	11
- Whether It Was Possible for India to Play an Independent Role Despite Being a British Colony	21
- The First Session of the Preparatory Committee and India's Role	25
- Geneva Session of the Preparatory Committee	33
- Havana Conference and India's Role	44
<b>II. INDIA, LESS DEVELOPED COUNTRIES AND THE GATT</b>	<b>53-119</b>
- Which Countries are Less Developed	53
- Criteria for Identification	53

-	The Situation of the Less Developed Countries at the Time of Tariff Conference in Geneva in 1947	56
-	India, Less Developed Countries and the GATT 1947-57	63
-	The Review Session and Revision of Article XVIII	68
-	Some Important Amendments of Article XVIII	76
-	Results of the GATT Review and India's Standpoint. (Assistance to Economic Development - Reduction of Tariffs - Withdrawal of Concessions - Quantitative Restrictions - Use of Import Restrictions)	81
-	Haberler Report and after 1957-67	90
-	Follow-up Action of the Haberler Report (The 1958 Action Programme-Ministerial Meetings of 1961 and 1963)	92
-	The New Chapter on Trade and Development	99
-	Further Endeavour by the Less Developed Countries for Preferential Treatment	107
-	Why India and Other Less Developed Countries Decided to Join the GATT	113
	<b>III. INDIA AND THE GATT - INITIAL ISSUES</b>	<b>120-131</b>
-	Problems with South Africa and Pakistan	122
-	India at the Time of Ratification	126
	<b>IV. INDIA IN MULTILATERAL TRADE NEGOTIATIONS UNDER THE GATT</b>	<b>132-158</b>
-	The First Tariff Conference	133

-	The Second Tariff Conference	136
-	The Third and the Fourth Tariff Conferences	138
-	The Fifth Tariff Conference (Dillon Round)	138
-	Reciprocity - India's Contribution and Achievement	147
-	The Sixth Tariff Conference (Kennedy Round) and the Seventh Tariff Conference (Tokyo Round)	157
	<b>V. URUGUAY ROUND OF TALKS</b>	<b>159-210</b>
-	The Punta del Este Declaration	160
-	The New Issues and India's Initial Stand	161
-	Trade Related Investment Measures (TRIMS)	164
-	Aims of the Uruguay Round Negotiations on TRIMS	165
-	Issues and Progress in the Group	166
-	Trade Related Intellectual Property Rights (TRIPS)	172
-	Aims of the Uruguay Round Negotiations on TRIPS	174
-	Background for TRIPS	174
-	India's Position	176
-	Service Sector	184
-	General Agreement on Trade in Service (GATS)	203
-	India joins the WTO	207
	<b>CONCLUSION</b>	<b>211-219</b>

## **Appendix**

I	Important Meetings and Conferences	220
II	Sequences that led to the formation of the GATT	222
III	Bodies having Indian membership	223
IV	Art. XVIII before revision	224
V	The URMTN Organisational Chart	226
VI	The WTO Structure	227
VII	Abbreviations used	228

## **BIBLIOGRAPHY**

230-239



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CHAPTER I

ORIGIN OF THE GATT  
AND INDIA'S ROLE

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## CHAPTER I

### ORIGIN OF THE GATT AND INDIA'S ROLE

The General Agreement on Tariffs and Trade is a multi-lateral trade agreement between sovereign states enumerated in a series of schedules.

The General Agreement was negotiated in Geneva by the representatives of twenty three countries<sup>1</sup> and was signed by them on October 30, 1947. It was given provisional application on January 1, 1948 under a protocol of provisional application.<sup>2</sup> All the original signatories have since adhered to this protocol, which means that all the schedules negotiated in Geneva have gone into effect. Negotiations for the adherence to the protocol by other countries began at Annecy in 1949.

The GATT is one of the important institutions that played a crucial role in the post-war growth of trade. The GATT, the guardian of post-war rules under which a maze of international trade barriers were to be dismantled, was originally designed as a contract to ensure that the trade

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1. Australia, Belgium, Brazil, Burma, China, Canada, Cuba, Ceylon, Chile, Czechoslovakia, France, India, Luxemburg, Lebanon, New Zealand, Netherlands, Norway, Pakistan, Syria, South Africa, Southern Rhodesia, U.K. and U.S.A.
  2. GATT, Final Act 55 United Nations Treaty Series. (Geneva, 1947) p.194.

amongst the members of the agreement would be conducted according to a set of general rules that would encourage them to progressively remove the barriers to international trade and thus entail an era of free-trade based on multi-lateralism.

It is appropriate to note that when efforts were channelised worldwide towards setting the international trade in order, the idea was to have an organisation on the line of IMF. (International Monetary Fund) and IBRD (International Bank for Reconstruction and Development) to take care of international trade as a whole. In fact Bretton Wood conference (1944) had envisaged it. However, at the end of London Conference<sup>3</sup> (1946) it was realised that to devise and establish such an organisation would take time. It was decided that at the next session of the conference in the following year in Geneva (1947) a kind of an agreement would have to be reached to take care of the immediate concerns of the countries to do away with ill practices that have percolated from the days of Great Depression and doing much harm to international trade.

To this end in view it was recognised that dismantling of tariff barriers was of utmost necessity. Therefore

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3. U.N. Conference on Trade and Employment, Second session of the preparatory committee. (London, 1946).

efforts were directed to reach an agreement in this direction. These efforts eventually led to the formation of the General Agreement on Tariffs and Trade (GATT). As such, the issues that were raised in London and Geneva conferences and the views expressed therein are extremely relevant and important to trace the history, evolution and origin of the GATT as well as the role played by the participating countries in those historic moments.

The work of the Preparatory Committee on General Agreement, unlike the charter of ITO, (International Trade organisation) was not *ad referendum* to the Havana conference and therefore it is treated separately.<sup>4</sup>

#### **PRE-GATT SITUATION AND EFFORTS TOWARDS THE GATT**

The GATT that took definite shape in the Geneva conference in 1948, owes much to the efforts that were made throughout the period after the first world war, when world economy was largely in ruins. Therefore to know the origin of the GATT, it is also necessary to trace the conditions that prevailed over the periods and the efforts that were made to set things right.

International regulations of trade developed first in response to the problems which different national

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4. See, p. 25.

regulations had created to maintain favourable trade balances. The barriers that obstruct the free flow of trade had been raised higher and higher by the Governments of various nations, when the world was fast approaching towards world war I. Principal methods resorted to were raising of tariffs, imposition of quotas, restricting certain fields to domestic industries, direct control of imports and currency regulations etc. Such practices produced increasing distortions. The total volume of trade was restricted. "They prevented each economy taking advantage of the benefits of comparative costs i.e of acquiring imports from those areas where they could be produced the cheapest and they channelled trade according to arbitrary government policy rather than according to normal commercial principles"<sup>5</sup> Those were the years during which economic nationalism reigned supreme, "Restrictions by one country led to restrictions by another and the spiral of restrictions threatened to smother the world trade"<sup>6</sup> such policies were self defeating because a policy of 'beggar thy neighbour' eventually beggared all. It was to discourage such policies

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5. Evan Luard, International Agencies : The Emerging Framework of Interdependence. (London, 1977), p.196

6. A. Hoda, Developing Countries in the International Trading System (New Delhi, 1987), p.1.

that international regulations were thought of. This started through bi-lateral arrangements like treaties, to reduce tariffs and other restrictions. Multi-lateralism developed a little later when the scene deteriorated further as the first world war played havoc with the economy of Europe. Normal patterns of trades were disrupted by the war, heavy debts were incurred, businesses were dislocated. It had been realised that to be effective, bi-lateral arrangements needed to be on multi-lateral basis; otherwise they would create a new form of discrimination and obstruct the free-flow of trades. Therefore for the first time, removal of barriers and 'equality of treatment' were promised in President Wilson's 14 Point programme<sup>7</sup> and these were sought to be achieved through the League of Nations. But the League of Nations hardly had any mandate over economic affairs, and therefore it could not achieve the desired result.

The scene received a further jolt when 'Great Depression' hit Europe badly. The Gold standard disappeared, currencies were thrown into chaos and the future was in doldrums. It was widely recognised that to have a lasting peace in the world, not only political stability but also economic stability was essential. There was widely shared

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7. On January 8, 1918 President Wilson of America put forward his famous 14-point programme for the establishment of the League of Nations.

view that the mistakes of the past had to be rectified and restrictions and discriminations had to be done away with. There was consensus regarding the establishment of an institutional structure and a contract under the guidance of which nations would commit to return, as soon as possible, to the liberal principles of trade in order to ensure growth of trade, and raise the standard of living and dignity of human being.

After the World War II, the first major step was taken at Bretton Wood Conference on July 22, 1944 When '**United Nations Monetary and Financial conferences**' adopted the Articles of Agreement of the I.M.F. and IBRD to facilitate expansion of international trade by promoting exchange stability and making available funds to members for financing deficits in the balance of payments. However BRETTON WOODS CONFERENCE had recommended that additional mechanism were needed for removing barriers to international trade. This led to a proposal by the United States of America (U.S.A.) in 1945 for the establishment of an 'International Trade Organization'. This proposal titled '**Proposal for expansion of World Trade and Employment**' led to a series of discussions which ultimately laid the foundation of the HAVANA CONFERENCE.

U.S. 'PROPOSAL FOR EXPANSION OF WORLD TRADE AND EMPLOYMENT'

The U.S. proposal<sup>8</sup> highlighted the following points:

- i) The devices by which Govt have distorted the natural flow of private trade be modified or abandoned, that tariffs be substantially reduced and preferences eliminated.
- ii) Fair treatment to the commerce of all friendly states.
- iii) To act individually and co-operatively to prevent private cartels and combines from restricting the trade of the world.
- iv) That any international agreement adopted to protect the many small producers of Primary Commodities in the event of surplus production against the impact of sudden and violent changes in world markets be designed to facilitate correction of the cause of their difficulties not to perpetuate them
- v) That all of these commitments be embodied in World Trade charter and carried out through an ITO established under the charter, in appropriate relationship to the Economic and Social Council (ECO-SOC) as an integral part of United Nations Organisation (UNO).

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'8. 'Clair Wilcox, A Charter for World Trade (New York, 1949), p.50.



The United Kingdom (U.K.) expressed its reservation when U.S.A. sent the copies of the proposal to various Govts for consideration. UK was quite reluctant to compete on equal basis as "her hope lies in the market that are sheltered by preferences"<sup>9</sup> However two Anglo-American agreements (December 1945) were effected and U.K. accepted the proposal only as a basis for further discussion and to do its best to bring such a discussion to a successful conclusion.

In a series of notes exchanged with the U.S.A. between Oct 1945 and Dec 1946, the Government of Belgium, Greece, Poland, France, Turkey, Czechoslovakia endorsed the purposes of the proposal.

In Feb 1946, the Eco-Soc of U.N.O. at its first meeting at the initiation of the U.S.A., passed a resolution calling for an '*international conference on Trade and Employment*' to consider the question of establishing an ITO. It constablihed a Preparatory Committee Consisting of Nineteen members<sup>10</sup> to arrange for the conference and to prepare a draft charter for such an organization. The main United

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9. Ibid., p.51.

10. Australia, Belgium, Brazil, Canada, Chile, China, Cuba, Czechoslovakia, France, India, Labanon, Luxemburg, Netherlands, Newzealand, Norway, South Africa, USSR, U.S.A. & U.K.

Nations Conference was preceded by three Preparatory Conferences in 1946-1947; The two sessions of the committee were held in London and Geneva, and the other namely the meeting of the New York Drafting Committee held between the two sessions. The Secretary-General of the United Nation sent invitation to <sup>the</sup> nineteen members for participation in the Preparatory Committee. All members accepted the invitation except the USSR as it did not find it possible to devote enough time to such an important and far-reaching question. In the meanwhile, before meeting of the Preparatory Committee, the USA submitted a suggested charter for the proposed organisation which in nutshell was but an elaborated version of its earlier proposal. Brazil submitted a draft chapter of its own, India a detailed Commentary<sup>11</sup> on the USA proposal and the UK a memorandum on employment policy.

#### HOW THE PREPARATORY COMMITTEE DECIDED TO FRAME THE DRAFT CHARTER

Though profound national interest permeated every nook and corner of the discussions on the proposed charter, the Preparatory Committee decided to concentrate its attention

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11. Discussed in p. 11.

on a series of concerned issues after a prolonged discussion of these documents. On Norwegian and Dutch initiative it established six committees, five of which took in their agenda one chapter each of the suggested charter i.e., employment, commercial policy, commodity policy, cartels and organization; the sixth was to deal with industrial development.

The Preparatory Committee, in effect divided itself into six conferences each of which carried out its work by considering amendments or alternatives to the United States draft charter in their particular field. Although the Preparatory Committee divided its work into six separate issues, as the debate proceeded, it soon became evident that the "six conferences were interlocking and interdependent. Certain broad issues like 'King Charles Head' kept reappearing first in one committee, then in another. These were all more or less closely related to what came to be called 'the balance of charter'.<sup>12</sup>

The suggested charter laid down four basic rules of commercial policy to be observed by all members although an exception to these rules was provided for countries in

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12. W.A. Brown; *The United States and Restoration of World Trade: An Analysis and Appraisal of the I.T.O. charter & the General Agreements on Tariffs and Trade*, (Washington D.C., 1950), p. 68.

'balance of payments' crisis. The four basic rules contained<sup>13</sup> in the charter were-

- a) To accord general Most Favoured Nation (MFN) treatment to all Members.
- b) Not to increase any preferences above the level existing on July 1, 1939 and July 1, 1946 whichever was lower.
- c) To negotiate to reduce Tariffs and to eliminate preferences.
- d) To eliminate quantitative restriction on imports and exports.

On the basis of these four rules, the Preparatory Committee started its negotiations. Before going to look into the proceedings of the sessions of the Preparatory Committee, it is important to see how India reacted to the US proposals and how it prepared herself to take part in the works of the Preparatory Committee as it was one of the nineteen (19) invites to the Preparatory Committee.

#### **INDIA'S REACTION TO THE U.S. PROPOSAL**

The first reaction of the Government of India to the U.S. proposal was a comprehensive memorandum prepared by its

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13. *ibid.*, p.69.

Ministry of Commerce. The memorandum<sup>14</sup> contained comments on almost all aspects of the U.S. proposals. The major issues dealt with by it, however come under the following three headings.

- i) The objective of full employment
- ii) The problem of commodity export prices
- iii) Permissibility of quantitative restrictions

#### ***Full employment***

The Government of India accepted in principle that full employment was a necessary condition for expansion of trade. But at the same time it expressed the view that full employment should not be understood merely in its quantitative aspect. The memorandum therefore pointed out that from the point of view of an industrially backward country with low standards of production, high and stable employment itself cannot lead to an appreciable rise in the national standard of living. It is the quality of the employment that matters much more than the actual numbers employed."<sup>15</sup>

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14. ECOSOC Doc.E/PC/T/5, (October 21, 1946).

15. *ibid*, p.17, *Emphasis in the original*.

In order to achieve a satisfactory level of income within the country, the Governments would have to undertake industrial development policy which might imply trade restrictions. However, such programmes and policies, as far as possible, be compatible with the economic well-being of other countries. What India tried to make clear was that "there was no question of India accepting an undertaking beforehand to the effect that it would refrain from adopting measures for the maintenance of employment if they were incompatible with international undertakings designed to promote an expanding volume of trade and investment in accordance with comparative efficiency of producers."<sup>16</sup>

### ***Commodity Trade***

As far as commodity trade was concerned, the memorandum pointed out that an important omission in the U.S. proposal was the exclusion of short term price fluctuations and its impact on the economics of the less developed countries. The US proposal completely missed this major problem and concern of the less developed countries.

The section dealing with the 'commodity trade' in the US proposals was termed 'Inter-governmental commodity arrangements'. S.N. TAWALE has summed up very beautifully

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16. *ibid*, p.18.

the objective of the U.S. proposal and the flaw on it. In his words -

It was clear from this expression 'Inter-Governmental commodity arrangements' that the proposal did not intend to deal with comprehensive international commodity policy, but instead, confined themselves to one aspect of the problem, namely inter-Governmental system of co-operation designed to mitigate the danger of a serious world wide recession by means of disposing unsold stocks of a particular commodity to other countries. Evidently this solution applied to a situation under which the production and supply of a particular commodity would fail to respond to the cyclical forces, thus resulting in a chronic disequilibrium in the market of that particular commodity.<sup>17</sup>

But apart from this cyclical fluctuations, the short term seasonal fluctuations to which the commodity trade was subjected and which was considered one of the most serious problems by the less developed countries, had been totally ignored by the US proposals.

India pointed out that the products that make up most of the exports of the less developed countries show large price-fluctuations from month to month and year to year.

"This is generally due to the low demand elasticities for many of those products and to low supply elasticities in primary products everywhere, which tend to be still lower in

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17. S.N. Tawale, India's Economic Diplomacy, (Meerut, 1975), p.50.

underdeveloped countries because of the general rigidity of their economies."<sup>18</sup>

Another aspect of the problem is the instability due to weather which is a characteristic feature faced by almost all less developed countries, especially when the production technique is not up to the mark. In many fields, as Myrdal puts it - "Import of primary commodities though weighting very heavily in trade balance of the exporting underdeveloped countries, constitute only marginal supply to the importing countries & are in danger of being cut more than proportionally when demand falls."<sup>19</sup> This, very often results in heavy losses on primary producing countries, as well as incurring a serious degree of instability in their external financial position.

Moreover, U.S. proposal has not only overlooked the problem of less developed countries, but also limited themselves to the problem of over-production. The impact of the cyclical change on primary producing countries belonging to the less developed group are quite different from industrialised countries who are also engaged in primary production. As far as the less developed countries are

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18. G. Myrdal, *An International Economy: Problem and Prospects*, (New York, 1956), p. 219.

19. *ibid*, p. 290.



concerned, their import capabilities are linked inherently to the export of primary products i.e. import heavily depends on export. Thus the price fluctuation not only affects that product but it causes the upsetting of the economy as a whole, which may not happen in the case of industrialised countries. So unless a remedy to this problem is found, it would not only affect the less developed country but do much harm to the world trade. Because unless the purchasing power of the less developed countries is improved, the demand for industrial products from industrialised countries would also fall. Therefore the memorandum categorically pointed out the absence of any remedial measures to short term seasonal fluctuations as the- "most vulnerable point in the whole defensive mechanism which the US proposal seeks to erect against recession."<sup>20</sup>

### ***Quantitative Restrictions***

It is mentioned earlier that the great depression gave rise to a series of economic policies which in turn paved the way for restrictive and discriminatory regulations. These practices affected the international trade in such a way that international trade came to standstill. Therefore

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20. ECOSOC Doc, n.14, p. 48.

both USA and UK had agreed to the point that quantitative restrictions such as quotas and licensing system were harmful and did much harm to the international trade. So it should bid a good bye to that bygone era of quantitative restrictive practices.

The proposals, however, contained a provision permitting exception to the general rule of prohibition of quantitative restrictions on the ground of balance of payments (BOP) difficulties. This was clearly an attempt on the part of the USA to patch up its differences with the UK. Because the deliberations of the Preparatory Committee clearly bears the testimony that USA was all throughout against quantitative restrictions in international trade. But U.K. keeping in mind her serious balance of payment crisis insisted on inclusion of the exception on the ground of BOP crisis.

In the opinion of India, the less developed countries had equal, if not greater claim in demanding similar concession. India justified her opinion by analysing the fact that nation building in India would set forth under state planning which would require the direct controls, protection of her nascent industries and selective use of available resources to the best advantage of the country.

Thus the memorandum in a way laid the foundation of India's stand to be taken in the forthcoming meetings of the Preparatory Committee of the UN conference on trade and employment.

The Govt. of India did not restrict its endeavour to play an active role in the UN conference only by preparing the memorandum. To consolidate its stand it went further. As a next step towards defining India's position and concretising its viewpoint, the memorandum was put at the disposal of the Trade & Tariff Sub Committee of the Consultative Committee of the Economists.<sup>21</sup>

The sub committee known as Loknathan Sub Committee not only considered the view point of the Govt. of India but also took into account the views of the Indian industrial and commercial associations.

By considering both the official and non-official view points, it prepared its own report<sup>22</sup> and submitted the same to the Trade Policy Committee of the Govt. of India which finalised the position to be taken by India.

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21. India, Constituent Assembly, Legislative Debates, Part II, vol.1, no.1, (New Delhi, 1949), p. 84.

22. UN Doc.E/PC/T/V/14 (New York, 1946), p.5.  
The sub Committee consisted of P.S. Loknathan (Chairman), Gyan Chand, B.N. Ganguli. A.I. Qureshi, D. Ghosh and B.N. Adarkar.

The Lok-Nathan Sub Committee scrutinised the reasonings behind the US proposals and criticised the scheme on various grounds.<sup>23</sup>

- i) The proposals reflected poor insight and inadequate understanding of the problems of less developed nations.
- ii) The proposals were of a negative character.
- iii) The proposals had assumed the international trade as an end in itself but international trade was not so. It was a means to an end, the end being the maintenance of high level of employment & standard of living.

The sub committee rather sought to add the words 'to promote the economic development of backward countries and to raise the standards of living of their peoples' at the end of paragraph 3 section A of the proposals.<sup>24</sup>

Thus the sub. committee's report paved the way for India's future role in insisting the inclusion of economic development in the charter.

Regarding the exception in quantitative trade restrictions, Loknathan Sub-Committee stated in a clear cut languages that, "In following a policy for future, care

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23. *ibid*, p. 60.

24. *ibid*, p.62.

must be taken to see that no obsession with past experiences is allowed to blind us to the valuable part which trade restrictions can play in development of world's economic resources provided such restrictions are employed for constructive purposes".<sup>25</sup>

The Loknathan Sub-Committee further exposed the flaw in the US proposal like its objective of high and stable level of employment without reference to high real income. Then the Loknathan Sub-Committee took serious note of US proposals in its insistence on the Members not to hamper the conduct of trade which was carried on 'in accordance with the comparative efficiencies of production.' It therefore suggested the deletion of this part on the ground that its acceptance would lead to perpetuation of the existing international division of labour.

Thus we see that Loknathan Sub-Committee did not only point out the negative points of the US proposal but also did much needed ground work which would go in a long way to choreograph India's stand and help it play the role of a spokesman on behalf of a large number of countries which were still under the tutelage of colonial powers and hardly in a position to bargain with the world power being bereft of any power.

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25. *ibid*, p.61.

Now it is important to see how India placed her views in the meetings and how successfully it brought into picture the plight of less developed world, its special needs, the rationale behind its demand for special treatment and whether it could convince the the developed countrics. One question that comes instantly to mind and needs an explanation is whether it was possible for India to play a significant role, because it was still under the tutelage of mighty British empire.

**WHETHER IT WAS POSSIBLE FOR INDIA TO PLAY AN  
INDEPENDENT ROLE DESPITE BEING A BRITISH COLONY.**

It is true that when India took part in the first negotiation concerning the establishment of the ITO, it was not a free country but a colony of the British. But this fact as S.N.TAWALE puts it, "did not prevent the British Government from giving considerable leeway to the Indian delegation"<sup>26</sup> There were two important factors which weighed in favour of an independent stand and attitude towards the proposed conference.

*Firstly*, India was not a signatory to the Lend-Lease

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26. Tawale, n. 17, p. 26.

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Agreement with the US Government.<sup>27</sup> President TRUMAN of the USA in his last report on Lend-Lease Aid submitted to the Congress on 30th August 1945, quoted \$2,033 million and \$516 million as total Lend-Lease aid to India and total Reverse-Lend-Lease aid by India respectively<sup>28</sup> This showed a substantial balance against India. Neither the statistics nor the rationale behind the Lend-Lease agreement were acceptable to India, the assumption of equal sacrifice behind the entire scheme was not supported by India. Because the decision to enter into the war was not the decision of any popularly elected Government of India. Therefore the consideration of equal sacrifice was irrelevant as far as India was concerned. The sacrifices made either by Britain or USA could not give rise to any moral or legal commitment on the part of India. *Secondly*, the amount it was felt by

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27. Lend-Lease agreement : The agreement was made between USA and UK in Feb '1942 under which USA undertook to supply to UK defence articles, defence services and defence information. UK was to contribute to the defence of USA for this. The principle behind the agreement was the willingness of USA to forgo the balance of receipts which UK would have to pay after settlement of respective claims but USA was to be compensated in terms of an UK commitment to post war international economic multilateralism. This commitment was formulated in Article 7 of the lend-lease Agreement. Under this Article, the parties to the agreement were to take action for elimination of all forms of discriminatory treatment in international commerce. *Except India*, other dominions of UK signed such agreement later.

28. *Commerce*, (Bombay, September 8, 1945), p. 51.

India, was received in London, where it was reallocated leaving a meagre sum for direct expenditure in India. So on this ground India refused to sign the agreement.

Thus by not signing the Agreement, India kept herself free from any obligation to support the U.S. position at the conference, specially Article 7 of the Agreement would have made India commit beforehand to some obligations. The same feeling was expressed on the floor of the Parliament when the honourable Member T.T. Krishnamachari told the house to a similar query whether India could pursue an independent line of action at the Preparatory Committee meetings, that the previous Government did one good thing when it refused to abide by the Article 7 of the Lend-Lease Agreement. He told the house -

The house will recollect that during the war, notwithstanding the fact that the then Government had perpetrated many deeds which put this country into difficulties, they sought to clear one particular pitfall, namely they refused to become parties to Lend Lease Agreement of the United States of America, which also meant subscribing to Article 7 of that Agreement. Article 7 of the Agreement is really the provocation for the Geneva and Havana conferences : because by reason of that Agreement, the United Kingdom and other countries who were the beneficiaries under that Agreement had to take steps to bring down the barriers that were imposed by them on multi-lateral trade. It must be said to the credit of the then Government in India that they scrupulously avoided all indications of any participation in that Agreement.... The house will understand that if the Government of India participated in Geneva and



Havana conferences, they did so as *free agent* and not *compelled* by the force of *circumstances* resulting from any prior agreement that their predecessors were parties to."<sup>29</sup>

Another factor which contributed towards pursuing an independent line of approach in World Trade deliberations, as far as India was concerned was its external financial position after the war. India had emerged after the war as a creditor country. "The pressure of uni-lateral transfer of fund estimated roughly at Rs fifty crores per year which had a depressing effect on India's external trade in the past had been wholly eliminated".<sup>30</sup>

Thus with sound financial footing, the bargaining position of India became strong and it decided not to hesitate to make full use of it, at the conference, in the interest of less developed countries.

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29. India, Debates, no. 14, p. 69. Emphasis added.

30. ECOSOC Doc, n. 14, p. 11.  
N.B. An excellent study on Multi-lateral settlement of the sterling Balances has been Provided by R.N. Gardiner, in his book, *Sterling-Dollar Diplomacy* (Oxford, 1956).

**THE FIRST SESSION OF THE PREPARATORY COMMITTEE — AND  
INDIA'S ROLE**

The first session of the preparatory Committee was held in London from Oct 15 to Nov 26, 1946. It was attended by a galaxy of representatives (other than the nineteen invitees) from both intergovernmental agencies (Viz FAO, IMF, IBRD) as well as non-governmental agencies (viz international chamber of commerce, the international co-operate alliance, the World Federation of Trade Unions, and the American Federation of Labour etc.) Some members of the UNO who were not invited to the Preparatory Committee like Combodia, Poland, Peru, Mexico, Syria sent their observers.

The first session began its discussion on the basis of the suggested charter. Some other Governments also submitted documents notably India and Brazil among the less developed countries. The UK also submitted a memorandum on the employment policy. Long and detailed discussions were held on the basis of these documents. The issues in LONDON were raised by the proposals of USA to outflow the use of quantitative restrictions, as a matter of principle permitting only in exceptional cases subject to international approval. The principle was accepted generally but the character of exception remained a matter of serious

debates. The Australians argued that the American draft was more negative than positive, consisting of prohibitions rather than positive measures to expand trade. Australia took the lead in presenting the case of industrialisation in the less developed countries and India, China, Lebanon, Brazil and Chile supported the move. The concern of these countries was that freedom to promote industrialisation by imposing quotas or imports be retained. The developed nations were not very keen to such proposal as this might lead to the breakdown of the very basis of free trade.

However, the controversy was resolved with the acceptance of an US proposal that a new chapter on economic development would be included containing a provision under which a member of the trade organization would be allowed to obtain permission in particular cases to employ an import quota in promoting the industrialization of less developed countries.<sup>31</sup>

Thus the less developed countries succeeded in bringing home to the sponsors of the scheme that industrialisation of the less developed countries should be considered as an integral part of any trade policy. The first round of the battle was thus won by the less developed countries when the Preparatory Committee set up a Joint

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31. UN DOC, E/PC/T/33 (London, 1946), p. 6.

Committee of Committee I and III [Committee on *Employment and Activity* and Committee on *General Commercial Policy* respectively] on Industrial Development, to consider the question related to economic development of less developed countries.

In recognition of the leading role India had played and was expected to play, *the chairmanship of the joint committee was awarded to India.*

The Joint Committee on Industrial Development began its deliberations on the basis of the US Draft Charter. The UK, speaking on behalf of the industrialised countries, put up a defence of the basic principles underlying the Draft Charter. Technical and capital assistance was felt to be necessary for industrial development. This assistance, either domestic or international, should, however be provided with the sole purpose of increasing efficiency and productivity.

Another aspect of the industrial development is the case of infant industries. The British delegates maintained that since these industries could be sheltered from the onslaught of international competition through Tariffs and Subsidies, the method of quota was both unnecessary and undesirable.

The representative of India emphatically declared his

disagreement with the above view. The talk of efficiency or cost of individual industries was misleading. Reason being the question under consideration was simply not the development of a particular industry but as put by Indian delegates - "the Promotion of the whole level of all forms of economic activity together".<sup>32</sup> Therefore the issue of Protection should be seen from a proper and wider perspective.

In Committee I (Employment and Economic Activity) the Indian representative continued to hammer at the Employer Provisions in the Draft charter. The Indian delegates insisted the inclusion of the following in the Employment Provisions -

- i) Maintenance and Stability of the income of the primary producers.
- ii) Diversification of employment with a view to drawing away surplus labour from agriculture and other primary occupation to industry.
- iii) General Economic Development of the less developed countries.

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32. UN Doc E/PC/T/C, I and II/8, p. 1.

Unless these important provisions were inserted in the employment section, India would not be able to accept the particular section. China also supported India in this regard.

The pressure of the less developed countries for re-orientation of the Draft Charter was so persistent that the Preparatory Committee had to yield to their demands on a number of issues. India's effort to make economic development of less developed countries as one of the chief ingredients of the international commercial policy bore fruit when an independent chapter on industrial development was inserted in the proposed charter.<sup>33</sup> The Preparatory Committee recognized that the progressive development of economic resources in all parts of the world is essential for two reasons - firstly, to raise the living standards and secondly, to expand volume of trade.

It was also recognised that special governmental assistance may be required for promoting industrial development and that such assistance may take the form of protective measures. However, it could not make much headway in the face of stiff resistance from the developed nations. Their penchant insistence on the elimination of qualitative

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33. UN DOC, n. 30. See Appendix.

restrictions submerged the aspirations of less developed world.

Compared to the original US Draft the London Draft moved a bit further in recognising the need of the less developed countries. The London Draft endorsed the viewpoint of the Indian delegates that

In the less industrialised countries whose economies are more essentially based on primary production, a deficient demand shows itself not so much in mass unemployment (the common form in industrialised countries) as in development or unprofitable employment among their primary producers<sup>34</sup>

The London Draft accordingly mentioned 'under-employment' alongside 'unemployment' in the chapter dealing with Employment issue.<sup>35</sup>

The London session of the Preparatory Committee thus devoted particular attention to the problems of industrialisation and general economic development of less developed countries.

The representative of India, while speaking in the last plenary meeting of the preparatory committee, referred to this change in the attitude of the more advanced countries which was reflected in the revised Draft i.e., the London

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34. UN Doc, n. 30, p. 4.

35. *ibid*, Article 3 Para I.

Draft. There was now a clearer recognition, he said, of the right and duty of all Members to promote the general economic development of their respective countries.

Another issue where India fought a hard battle was the issue of imposing penalty in case a Member fails to fulfill its obligation to carry out tariff negotiations, without sufficient justification. It was provided that in such case the organisation would authorise the complaining Member to withhold tariff concessions negotiated under the charter from the offending Member and if it actually did so the offending Member was given the right to withdraw from the organization. The organization was to act through an Interim Tariff committee, composed initially of the Members of the organization who were also parties to the General Agreement on Tariffs and Trade.

In the London Session, India with the support of some other less developed countries, like Chile & Brazil, strongly objected to the inclusion of this Penalty clause. As a result the London Draft required that a country's reasons of failure to carryout tariff negotiations have to be determined "having due regard to the provisions of the charter as a whole." Consequently, the provisions of Economic Development chapter became mendatory to be considered before any action could be taken against the



offending Member. The Geneva Draft in the next session made a further progress when it added to regard the economic position of the Member complained of. These concessions were still unsatisfactory to less developed countries which wanted a specific reference to their legitimate needs for the protection. Underlying this attitude was the distrust that since the interim committee would be dominated by highly developed countries there would be little prospect of having a sympathetic treatment of the condition of the less developed countries. The issue could not be settled until late in the Havana conference when sufficient representation of less developed countries in the committee was assured. Since Havana charter never came into force so it is out of context to discuss its final settlement.

Coming to the assessment of the London session it can be said that despite initial success in pushing forward the case of their needs, the less developed countries could not move beyond certain point. This is evident from the Question asked by the Indian representative — "Have we moved far enough?"<sup>36</sup> He welcomed the provisions giving some measures of freedom to use tariff subsidies for the purpose of promoting industry. But he pointed out that a less developed country which might not find it possible to give up its

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36. UN Doc E/PC/T/32 (London, 1946), p. 6.

right to use more direct methods of trade restriction as the same may be vitally necessary for the success of development plans. The Draft was conspicuously silent about this aspect.

Thus we see in the first conference the less developed countries were only able to table their problems but as far as their remedial measures were concerned it could not achieve much success.

It needs to be clarified here that although the original structure of the GATT took shape from the issues and debates of London and Geneva session, it would be extremely difficult to study those issues sessionwise separately because same issues cropped up at both the sessions. Therefore demarcation of a water-tight separation of the two sessions would make the same issues unnecessarily repetitive. To avoid much repetition, only those issues would be discussed that assumed serious proportion. Sometimes reference of the London Draft would be drawn while discussing the Geneva one or vice-versa.

#### **GENEVA SESSION OF THE PREPARATORY COMMITTEE**

This session is very important from the point of view of the origin of GATT as in this session the final touch was given to the GATT.

As it was felt by some of the most influential

countries that the long time required for the negotiation of the International Trade Organization should not hold up the action on the reduction of barriers particularly because they considered the immediate post-war period to be the most favourable time for such action. This led to the idea of holding multi-lateral negotiations for the reduction of tariffs.

At the conclusion of the London session, the preparatory committee passed a resolution expressing the desirability of reciprocal and mutually advantageous negotiations aimed at a substantial reduction of tariffs and the elimination of preferences. The resolution also recommends the concerned governments to hold the tariff negotiations under the sponsorship of the preparatory committee and as part of the second session of the committee, in accordance with the procedures recommended in the memorandum on procedures approved by the preparatory committee at the first session.

At the meeting of the Drafting Committee at New York (held between the two sessions of preparation committee at London and Geneva), the first full draft of the GATT was prepared and at the Geneva session (April-Nov. 1947) the text of the GATT was finalised. Tariff Negotiations were also held.

The Final Act of the second session of the preparatory committee was signed on 30th October 1947, authenticating the text of the GATT along with the schedules of tariff commitments. The general provision of the text are very similar to that of provisions of Geneva Draft.

At this session, the major issues engaged the attention of India. First was the issue of Quantitative Restrictions. The second arose out of the US attempt to insert new provisions in respect of private foreign investment in chapter III of the London Draft.

The discussion of economic development assumed a new orientation and purpose in this session. Under Art 13, Paragraph I, Members recognized the fact that 'special governmental assistance may be required in order to promote the establishment or reconstruction of particular industries and that such assistance may take the form of protective measures'. Protection was thus regarded as not very desirable but something which the organisation had got to reconcile. "It was in this grudging and apologetic way in which the right of protection is sought to be recognised and conceded"<sup>37</sup> that distorted the perspective of whole issue.

Moreover the Indian representative pointed out that the

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37. UN Doc. E/PC/T/A/PV/3, (London, 1946), p. 16. (Speech of the representative of India),

whole of Art 13 suggested a sort of superiority complex' of those who would compete in the international market and had no need of applying protective methods. India did not want this superiority complex to pervade and to be present in the text of the GATT. "Protection in her opinion must not be viewed as a mere concession to weakness but as a legitimate instrument of development."<sup>38</sup>

If this view was accepted the elaborate procedure laid down in paragraph 3, of Art. 13, would appear contrary to its spirit. The critical issue involved, as was explained by the Australian delegate to Commission A, in its fourth meeting, was whether it should be the right of a country contemplating protective action to take action along these lines prior to consulting with and obtaining the approval of organisation, or whether it should be required to consult with the organization<sup>and</sup> with other countries concerned ~~and~~ to obtain approval before it takes such action.

India's insistence on the right of imposition of quantitative restriction was due to its necessity in the programme of planned development. The condition of prior consultation with the approval of the organisation as well as the affected countries would, as India feels, lead to the

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38. *ibid*, p.18.

destruction of its basic purposes, i.e., the economic development. Moreover if a country can impose quantitative restrictions on the ground of BOP crisis, the same treatment should be meted out to the less developed countries where they have embarked upon the path of development. Because they are on the same boat as that of the countries facing the BOP crisis, only the characters of the crisis being different.

The representative of India made it clear that its demand in this regard was neither unqualified nor did it mean denial of the right of the affected members to approach the organisation for redressal of their grievances. Further, it was not intended to be a license for violating negotiated agreements procedures prescribed in Art 13. It could be applied to a situation under which the measures of quantitative restrictions affected a negotiated agreement between the countries concerned.<sup>39</sup>

It was significant however that India was not alone in claiming the right to use quantitative restrictions as a Protective measures. China, Lebanon, New Zealand, Cuba, Chile, Syria supported India. India's stand was based on certain well understood facts as mentioned above. The quantitative regulations of foreign trade might be

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39. *ibid*, p.20.

indispensable to economic planning independently of balance of payments difficulties. The tariffs might not always be useful instruments to apply for the purpose of economic planning. Moreover, for the development of certain key industries quantitative restrictions could be useful. Thus India argued it points very well on the basis of above facts.

In response to the Indian viewpoint, provisions were made to the effect that if in anticipation of the concurrence of the organisation in the adoption of protective measures there is a substantial increase or threatened increase in the importation of the product concerned, the member may adopt such measures as the situation may require.

However the Indian delegation was not very happy with this small concession. This is evident from the speech made by K. C. Neogi the then Minister of Commerce while speaking on the stand taken by Indian delegates at Geneva he stated, "Unfortunately however even at this stage, the position relating to Quantitative Restrictions was not found to be satisfactory from the point of view of India."<sup>40</sup>

India decided to take up the same issue at the Havana

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40. India, Debates, n.14, p. 87.

Conference - "As regards to quantitative restrictions, the Indian Delegation will take up the line that each country should have freedom to impose quantitative restrictions subject to certain limitations ...If this suggestion is outvoted, the Delegation will accept the charter as it stands."<sup>41</sup>

It must be said to the credit of India that its delegation succeeded to a considerable extent in getting the position relating to quantitative restrictions modified and by a subsequent protocol this modified position has been incorporated to the GATT.

As informed by K. C. Neogy, originally, resort to Quantitative Restrictions, was expected to be confined only to countries faced with balance of payment crisis. But after discussions and deliberations, the scope of Quantitative Restrictions was widened so as to cover in the first instance, industries that had been established between 1st January 1939, and 24th March, 1948 in respect of which Quantitative Restrictions could be resorted to without much difficulty. Approval of the other CONTRACTING PARTIES<sup>42</sup>

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41. *ibid*, p. 88.

42. \*In the text of the GATT whenever reference is made to the contracting parties acting jointly they are designated as CONTRACTING PARTIES. In this study CONTRACTING PARTIES has been used.



would be more or less automatic. In some other cases a country would be able to use Quantitative Restrictions provided that she had proved that it was unlikely to be more restrictive of international trade than any other practicable and reasonable measures permitted under this Agreement. If approval of the CONTRACTING PARTIES are obtained, then a country would be able to resort to such practices.

The second issue, relating to the provisions regarding private foreign investment, received equally serious attention from India. The controversy broke out due to the US proposal to add the following comment on Article 9 of Chapter IV [ECONOMIC DEVELOPMENT], of the revised Draft Charter - 'They also recognise the private and public international capital movement into productive investments, in promoting and facilitating such development.'<sup>43</sup>

The U.S. amendments on investment were designed to encourage the resumption and flow of private international investment primarily by incorporating the following three principles.<sup>44</sup>

- i) That national treatment should be accorded to foreign investments.

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43. UN Doc. E/PC/T/A/PV.I (London, 1946), p. 17.

44. Brown, n. 12, p. 87.

- ii) That MFN treatment should be accorded without qualification.
- iii) That in the event of expropriations, compensation should be adequate, effective and prompt.

The US move was viewed with considerable alarm by India. The Indian representatives stated that India did not want to allow private foreign investors to get an economic and political hold on national life.

Indian delegations pointed out that it was well decided in London that the issue of private foreign investment and technical equipment would not be stretched as it was felt that "to impose unreasonable impediments following from this issue would prevent other Members from obtaining facilities such as capital funds, equipments, technology, skill etc. as required for economic development. Many members were not in a position to bear the brunt of private investment".<sup>45</sup>

This was an unexpected move for the Indian representative. Because on the one hand there was the assurance from the London session, and on the other hand the question of allowing foreign private investment was

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45. UN Doc. D/PC/T/34/Rev.1, p.8, (Article 61, Paragraph C).

still under the consideration of the government. Therefore it was not possible to take definite stand given the pending decision. At the same time the Indian delegates gave a hint that such a question was unlikely to find a favourable place in the policy of the Government.

Therefore the Indian delegates sought adjournment of the meeting for a day. Surprisingly India found herself alone in strong opposition to the US attempt to have the issue discussed in the meeting. The position of India could well be apprehended if one looks at the economic policies of the Latin American countries since they were not against foreign direct investment. It was quite clear that India found herself in the move bereft of any supporters except Czechoslovakia. From less developed world as in the preparatory committee there were hardly any solid and strong group of Afro-Asian countries.

However India made it clear that she was not against the foreign direct investment as such but her crusade is against its inclusion in the chapter on economic development and that the issue of protection of national self interest simply cannot be overlooked.

To elaborate her stand India further expressed the view that the chapter as it stood, even with its imperfections, was something like a charter of development for the

relatively under developed countries. It was more or less the right and freedom of the less developed countries to economic development and consequent policy. There was no place for a detailed statement of the terms under which the foreign capital should flow.

India was however in favour of laying down a general principle embodying the essential safeguard for creditor countries in the line of the New York Draft. The Principle was.

Each Member which receives facilities for its industrial and general economic development shall not only carry out all international obligations regarding the treatment of enterprises, skills, capital arts and technology imported from other countries to which it may be subject or which it may undertake pursuant to sub-paragraph (c) of Art 61 or other wise, but also shall in general take no unreasonable action injurious to the interest of particular entities or persons within the jurisdiction of the members which supply it with such facilities<sup>46</sup>

However with India and other less developed countries failing to include the 'economic development' chapter to the GATT text, much of the efforts made were in vain. But these efforts did not go in waste because the inclusion of part IV to the GATT could be seen to be a victory of less developed countries which for the first time recognized the concept of economic development.

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46.. UN Doc. E/PC/T/A/PV.4, p. 36.

Although India failed to garner much support in this issue in Geneva session, it succeeded in resisting the incorporation of the US proposal unchanged in next session at Havana. Among the clauses which were finalized in consultation with the Indian delegation was one providing for the reservation of a part or the whole of the future expansion of a given industry by her own nationals. The concept of 'equal treatment' also underwent changes when it was agreed that foreign enterprises might not be entitled to any special treatment being accorded to a national one and secondly that such privileges, if accorded to a foreign enterprise in the past, could be withdrawn without violating the terms of the relevant Article. It is unfortunate that Havana charter never saw the light of the day but the role played by India should be acknowledged as she was able to bring some modification without which, the foreign enterprises would have sweeping powers.

#### **HAVANA CONFERENCE AND INDIA'S ROLE**

The United Nation Conference on Trade and Employment was held at Havana on 21st Nov. 1947 to March 1948 to consider the draft of the ITO charter. After vigorous debates on many issues and considering some new issues like

the membership of Germany and Japan, the conference was able to draw up an ambitious charter which came to be known as Havana Charter. An indepth study of the whole conference lies outside the scope of this work. In brief the charter was an elaborate one.

Havana conference covered a wider range of problems that had ever been tackled by any other economic conferences in the history of international efforts to have a free flow of trade. As Wilcox, points out,

The Havana charter makes the first attempt in the history to apply uniform principles of fair dealing to the international trade of private enterprise and public enterprise. It asks all the nations to commit themselves in a single document to a policy of non-discrimination in their customs charges and in their requirement of international taxation and regulations<sup>47</sup>

The charter aimed at international co-operation on employment and economic activities, commercial policy reconstruction, restrictive business trade practices and inter-governmental commodity agreements. It envisaged wide ranging obligations. The organization was provided with extensive authority to study the natural resources and assisting in devising plans for the useful usage of such natural resources for the economic development. Out of the

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47. Wilcox, n. 8, p.58.

sixtyfive invites fifty six joined the conference and fifty four countries signed the document on March 24, 1948.

The charter was to enter into force on its acceptance by a majority of the Governments signing the final Act. But unfortunately the charter could not see the day due to the refusal of USA to ratify it. US Govt. announced in 1950 its decision not to seek further approval for it from the congress. The government of UK declared "There was no likelihood of the I.T.O. mentioned in the Havana charter being established and developed as official instrument."<sup>48</sup>

The result is that "the demise of the I.T.O. knocked out the organisational base of the of GATT (as it was envisaged the GATT would be incorporated to the charter). It was a half way house on the road to I.T.O."<sup>49</sup>

It would be recalled that at Geneva the Indian delegation had reserved its position on Articles 13 (Governmental assistance to economic development) and chapter IV (Commercial Policy). India's hope to re-open these issues in the final conference, ~~were~~ bogged down in the face of stiff resistance from the developed countries. The conference was originally scheduled to come to end by the middle of January 1948. But it continued as no solution

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48. UNCTAD Doc. E/conf, 46/36 (Geneva, March, 1946), p. 9.

49. Hoda, n. 6, p.4.

could be reached between the less developed and the Developed world. On January 30, 1948 on the request of sixteen Latin American countries a co-ordination group - Consisting of twelve members was set up to facilitate the working of the conference. India was one of the member of the group.

Initially India submitted a major amendment of the Article 12 of the suggested charter (related to foreign investment) on the ground that such an article was outside the perview of the charter. However India dropped the proposals when the chapter III relating to Economic development was placed before the Committee II (March 1948) because the developed countries vehemently opposed this.<sup>50</sup>

The Havana conference on the whole did not go beyond the substantive decisions reached at Geneva. Therefore there was not much scope left for India to play highly constructive role as the issues it wanted to highlight were almost decided at Geneva. Beside taking up the issue of economic development, it exposed another serious issue that was raised by Norway and supported by USA & UK and other shipping countries. Norway wanted an amendment obligating

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50. United Nations Conference on Trade and Employment : Final Act and Related Documents (U.N. Havana, Cuba), p.21.



members not to require their export or imports to be financed, shipped or issued by enterprises of any specific nationality. Since it was directed against restrictive business practices in the shipping field, as desired by the less developed countries, and was clearly not in the interest of incipient new merchant marines. There was strong opposition under the leadership of India. India asserted that if the amendment was retained it could not sign the charter. Consequently the proposal was withdrawn on the ground that shipping was outside the scope of the charter.

Thus we see that India played an extremely important role both in preparing the text of the GATT as well as the draft charter of ITO. It is quite clear from the above analysis that Anglo-American sponsorship of the policy of multi-lateralism was "due to the influence of the traditional theory of International Trade which in fact had its roots in the experience of the western industrialised countries."<sup>51</sup>

It did not take into account the basic inequality among the partners in International Trade. As Thomas Balogh puts it - "It was a static rearrangement, reallocation of given

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51. Tawale, n. 17, p. 26.

factors among industries to minimize costs."<sup>52</sup> Therefore, it was expected that India would take up the issue of 'economic development' of the less developed countries and India on its part did that very well in highlighting the position of the less developed countries. India placed its arguments on various subjects either in favour or against not merely from the point of her own interest but always keeping in mind the broad general interest of the newly liberalised countries.

It was not an easy task to do. This is evident from the account given by late Prof N.G. Ranga in the parliament on February 1, 1949, to quote him.

I can say how anxious our delegation was to drive a hard bargain with other nations... there was a stage when our delegation was seriously considering whether it would be in our interests at all to put their signature to the charter, the agreement that was being negotiated.<sup>53</sup>

Now, why it was so that India wanted to withdraw from the conferences. As it was narrated by Prof. N.G. Ranga, India was hesitant to sign the treatment as various restrictions were being placed upon all those countries which were to become parties to the Agreement. One such item

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52. Thomas Balogh, Unequal Partners, vol. I (Oxford, 1963). p. 25.

53. India, Debates, n. 21, p. 62.

was the Quantitative Restrictions. In the inter-war period certain countries led by Germany invented certain methods of safeguarding their own home industries for example by licensing of imports, controlling of exports, resorting to the age-old method of barter etc. In order to implement these measures, they wanted to have two levels of prices one domestic, and another an export level. Germany under Hitler introduced such new system of making this distinction between the two levels of prices. America and other countries were hard hit by this system and they wanted to make sure that no such thing would be repeated and that other countries would agree not to resort to what are known as trade restrictions measures. Whether India agree to this or not was the question looming large before our delegation. Prof. Ranga, who was also a member of the delegation, wanted to reserve the right to go back home and to consult the legislature and then to decide whether to put signature to the agreement or not as would be found necessary in the interest of the country. But the USA delegation was unwilling. They insisted that if India wanted to become a Founder Member at all and enjoy the privileges coming therefrom, it should affix her signature then and there alone. If India refused to do so it was wide open to USA and her supporters to put restriction as and when India

want to become the member of the proposed organization and to sign the Agreement. "This is the sort of whip hand which America has utilized not only in regard to this particular thing but also in regard to... World Monetary fund as well as the world Bank."<sup>54</sup>

So Indian delegation had to balance this sort of advantages and disadvantages and finally decided in favour of putting her signature to the agreement.

Thus, India played an active role in all the conferences at London, Geneva and finally at Havana and the main contribution of India lies in the fact that it attempted to establish economic development of less developed countries as an important segment of the world trade and economic policy. At a time when there were only a few less developed countries, India alone almost single handedly fought the case of less developed countries specially the newly independent ones. In a sense 'India was ploughing a lonely furrow'.

The important role it played could well be judged from her being a Member of Committees which were instrumental in bringing concrete results. India was the distinguished member of the following committees

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54. *ibid*, p. 63.

- a) Preparatory committee Executive Board (elected by the interim commission of the proposed organization ITO)
- b) Joint Committee (on industrial development). In the London session India was the chairman of the committee.
- c) Co-ordination Committee set up at Havana to break the deadlock.
- d) New York Drafting Committee.

In this way India was associated with the development of the first phase of the GATT and made valuable contributions.

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CHAPTER II

INDIA, LESS DEVELOPED  
COUNTRIES AND THE GATT

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## CHAPTER - II

### INDIA, LESS DEVELOPED COUNTRIES AND THE GATT

#### WHICH COUNTRIES ARE LESS DEVELOPED

To study the position vis-a-vis the status of the Less Developed Countries in the GATT it is necessary to look at the very basic thing i.e. what do we imply by less developed countries. As the term itself suggests, the less developed countries are those countries which are economically backward. It is to be noted that in and outside the GATT a number of terms have been used synonymously to imply the countries which are economically backward viz., undeveloped, underdeveloped, less developed, developing countries and lesser developed countries. However the term 'Less Developed Countries' has given official sanction in the new Part IV of the General Agreement on Tariffs and Trade (GATT).<sup>1</sup>

#### CRITERIA FOR IDENTIFICATION

In the suggested charter nothing was said of the relationship between 'Economic' development and 'Trade' and

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1. GATT, Activities of GATT, (Geneva, November, 1965), p.7.

there was no mention of the developing or less developed or undeveloped countries as such.

However, in the preparatory committee for the Havana Conference, reference was made to countries - "*In which resource are as yet relatively undeveloped.*"<sup>2</sup>

In 1955, when the GATT was revised, for the first time the position of certain CONTRACTING PARTIES, which are not economically developed was recognised.

The CONTRACTING PARTIES recognise that the attainment of the objective of the agreement will be facilitated by progressive development of their economy particularly of those CONTRACTING PARTIES the economies of which can only support *Low Standard of living and are in the early stages of development.*<sup>3</sup>

The definition refers to the co-existence of two criteria, viz., low standard of living and early stage of development'. It was also recognised that a country which does not satisfy the first condition i.e. low standard of living but the economy of which is in the process of development can have the right to take measures for the support of infant industries under escape clause.

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2. Karin Kock, International Trade Policy and the GATT (Stockholm 1969), p. 219, Emphasis added.

3. *ibid.* Emphasis in the original.



Thus we see the new Part IV of the GATT which was added to the text of the GATT after the revision in 1955, a clear differential is made in the text between 'less developed' and developed countries but still no definition or criteria is given for recognising a country as 'less developed' or 'developed'.

In April 1963, as will be seen an attempt was made in the Committee III of the GATT, to identify the less developed countries, but again the attempt proved to be futile, as no yardstick could be devised and it was also felt that such an attempt to fix quantitative criteria like Gross National Product (GNP) etc. would lead to conflicting situation and unfruitful discussion. Therefore in the first instance, it was left to the countries themselves to consider their economy less developed or not, on its own initiative (as it was declared in the 'Kennedy Round') under the special rules for less developed countries. In problematic cases, the 'Committee on Trade and Development' has to decide and consider whether a country comes under 'less developed category' in the sense of Part IV.

Not only in GATT, but also in UNCTAD<sup>4</sup> attempts were made to list developed and less developed countries, but as

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4. United Nations Conference on Trade and Development (UNCTAD).

it is clear from the comments of Japanese spokesman, a renowned economist, that the conference did not make much headway.

The conference did not take much account of the fact that there are different stages of development and different levels of income among both the developed and developing countries. It treated members of each group more or less on equal terms.<sup>5</sup>

The above analysis shows the difficulties of labeling countries as 'developed' and 'less developed'. Since the term 'less developed countries' has been given an official sanction in the GATT, it would be used to imply the countries which are economically backward and still grappling with problems like unemployment, balance of payments, dependence on foreign aid etc:

#### **THE SITUATION OF THE LESS DEVELOPED COUNTRIES AT THE TIME OF TARIFF CONFERENCE IN GENEVA IN 1947**

At the end of the world war II, there existed three groups of less developed non socialist countries. We categorise them as A, B and C.

A) The first comprised countries that had achieved political independence before the war, many of them

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5. Kock, n.2, p.222.

since the 19th century or further back in history. To this group belonged the Latin American Countries, a few countries in Africa (Liberia, Ethiopia and Egypt), some countries in Asia like Thailand etc:

- B) To this group come those countries which were on the threshold of independence or had already achieved autonomy in their commercial policy. Countries like India, Burma (now called Myanmar). Ceylon (now called Sri Lanka), Philipines and Indonesia belong to this group and they could take part in the Havana Conference on this basis.
- C) The other group comprised of dependencies, "for which an independent status could be foreseen sooner or later", <sup>6</sup> They had no voice in the Havana Conference.

In the Preparatory Committee, for the Havana Conference four less developed countries took part, namely Brazil, India, Cuba and Lebanon. They participated also in the first tariff conference in Geneva in 1947 which eventually led to the formation of the GATT and where these countries acquired the status of Founding Member.

In international trade, the Latin American countries were the most important group among the old less developed countries. 'Old' in the sense that they achieved

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6. Ibid., p.223.

independence much earlier than their counter-parts in Africa or Asia and this provided them a sound footing in international trade scenario. But they were more closely linked with USA as put by Cock "they had more and more been drawn both politically and economically into the sphere of interest of the US. They accepted in principle the American ideal of free trade and free enterprise."<sup>7</sup> This is evident from a declaration made by the foreign Ministers of Latin American countries on July 1940 that they would maintain "so far as possible... the liberal and peaceful principles of international commerce."<sup>8</sup> But they could not honour their statement as they had to have recourse to protective measures as they were facing serious balance of payments crisis. Their dollar reserves that accumulated during the war were first diminishing due to higher rate of imports which in a way contributed to serious balance of payments crisis.

On the whole it can be said that after the war the Latin-American countries started their economic policy on the basis of pre-war practices, internally freedom for private enterprise, domestic or foreign owned, to operate

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7. Ibid.

8. Ibid.

with the minimum of government intervention and externally the use of tariffs, quotas and exchange regulation, that had their roots in the period followed by great depression.

It was therefore evident that they would pose serious opposition to various propositions in Havana Conference. It was quite natural on their part that they opposed the commitment to negotiate on tariffs and the need to obtain prior approval before seeking preferences. They were vociferous in their demand to preference for less developed countries and joined hands with India in enhancing the position and demands of less developed countries.

The other "new less develop countries (newly independent) that took part in the Havana Conference had one thing in common, i.e. their close economic relationship with their mother countries : for example, the Philippine Republic with the USA, Indonesia with the Netherlands. India, Pakistan etc with Britain ; they belonged to the sterling areas and not only did they have close economic relations with Britain but also had close proximity with the metropolis as far as administrative pattern was concerned.

The newly independent state which now had to formulate their own national and international policies and to get recognition in an international conference, and to create their own independent identity, were faced with a number of

serious problems. They had to face the task of nation-building, social upheavals, lack of capital and administration chaos. They recognised that the rapid industrialisation of an economically backward country still reeling under the effects of an old colonial system would not be possible without government planning and investments. They also realised that export earnings and sterling/dollar balances accumulated during <sup>the</sup> war had to be used in a meticulously planned way. Domestic industries should be given impetus to take care of the perennial problem of lack of diversity in their export trade.

This was the general set up of all less developed countries which either achieved independence or were on the door step of independence. India's position was a little better which needs a mention.

Firstly, India had not only a large foreign reserve cushion to comfort with, it had the largest pool of intellegentsia, economist and sound administrative system.

Secondly, India at that hour of its 'tryst with destiny', was fortunate to have leaders who could not only gave shape to her policy but took care of interest of crores of people of subjugated territories who lacked voice. On September 17, 1946 Nehru in his first address to the nation

through All India Radio over Foreign Policy announcement (as a leader of interim Govt) observed-

We shall take part in international conferences.. not merely as a satellite of other nation... we are particularly interested in the emancipation of colonial and dependent countries and people, and in the recognitions in theory and practice of equal opportunities for all races, we seek no domination over others and we claim no privileged position over other peoples. But we do claim equal and honourable treatment of our people wherever they may go and we cannot accept any discrimination against them<sup>9</sup>

This statement in a way voiced the aspirations of millions and millions of people aspiring for independence. This provided a kind of leadership role to India. It was the only country capable at that moment among the ~~the~~ less developed countries, to highlight their plight in international platform. India's leadership quality attained a high degree when it played important roles in the League of Nations and the Brettonwood Conference where it took up the case of newly independent countries or countries which were still under the foreign yoke. By aligning with the cause of colonial people, by expressing solidarity with their endeavour to achieve freedom, India was able to carve out an independent niche and a position in the world.

Moreover it was a member of the preparatory committee.

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9. V.D. Mahajan, International Relations (New Delhi, 1965), p.158.

All these provided an opportunity for India to play the role of a spokesman of <sup>the</sup> less developed world in the GATT as well as Havana Conference in 1947 and in 1948 respectively.

In the debate on the America's suggested charter at the London Session of the preparatory committee in 1946, the Indian government presented an expert report on the guiding principles for the commercial policy of India and its relations to the development programme of the country. It was emphasized in the report that domestic planning for industrialisation required planning of foreign trade in order to increase exports and regulate imports. Therefore a country like India claimed freedom in the fields of tariffs, quantitative restrictions and subsidies, India also proposed that quotas, non-discriminatory if possible, be allowed for protection of new industries and for the adaptation of foreign trade to domestic planning. Moreover, it was declared that India wanted access on equal terms to all markets. It was therefore not interested in preferences and adherence to the principle of non-discrimination and equal treatment. However on this issue the attitude of the Government of India has changed in later phase which would be discussed later.

On the whole the other Asian and African states were facing the same problems like India even if opinions



differed on some issues. The Latin-American countries had a different approach towards domestic policies, yet the same was true for their economies also. Therefore the less developed countries could join hands as an opposition force during preparation for the Havana conference and in the conference itself India and the less developed countries endeavoured to bring structural changes and ~~economic~~ preferential treatment.

#### **India, Less developed countries and the GATT 1947-57**

One of the important feature of this period that attracts the attention is that of the stagnating membership of the less-developed countries.

At the 1947 Geneva conference twenty-three countries had taken part and of them ten were less developed countries. At Annecy, the number of developed and less developed countries negotiating for accession had been ten and five, and at Torquay six and three respectively.<sup>10</sup>

It is true that at the time of signing the GATT Protocol, countries which form the core of less developed countries today, did not have an independent existence, yet, not all the independent less developed countries, howsoever

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10. See, Basic Instruments and Selected Documents of GATT (BISD), vol.I, for detail discussion.

small in number did prefer to join the GATT. Some of the countries which joined the GATT did not show much enthusiasm although they welcomed the utility of the tariff negotiation. Their position has been best described by E.W. White as "At best their attitude would be one of the reluctant acceptance of an apparent necessity".<sup>11</sup>

On January 1, 1954 GATT strength rose to thirtyfour (twentyone developed and thirteen less developed countries). Three countries China (Formosa), Lebanon and Syria had left the organization although they had acceded to the Agreement in 1947. Three other countries namely Liberia, Korea, and Philippines had withdrawn their candidature by not acceding to the GATT within the stipulated time-frame. As a result, the number of less developed countries remained the same in 1957 as it was in 1954, whereas all the capitalist developed nations except Japan and Switzerland became the members of the GATT. This stagnating membership of the less developed countries has been attributed to several reasons like the omission of the Havana Charter, specially those provisions, which related to the economic development, instability in the world market for raw materials, lack of strong institutional base etc.

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11. E.W. White; *The first ten years of GATT* (Geneva, 1958), p.5.

The fact is that when the idea of the GATT was first conceived, the economy of the war-torn Europe was prevalent on the minds of the framers of the Agreement. It was conceived as an institution that would take care of the post-war growth of the west. The special need and somewhat shaky position of the less-developed countries were simply not in the agenda. These countries have hardly witnessed any development during their long period of subjugation under colonial power because the colonial master were only interested in the exploitation of the colonies to suit the demand of the metropolis. Therefore it was unjust on part of the developed nations to ask these nascent economics to stand at par with their diversified and highly developed economics. The less developed countries demanded some special preferences. They raised the idea that trade is to supplement aid. In achieving the re-distribution of income, they should be accorded greater freedom to raise and maintain trade barriers. However at the time of the preparatory conferences, such an approach had not taken shape. At the Havana Conference, "the less developed countries were too anxious to ensure that ITO Charter did not bind their hands over much..."<sup>12</sup> An issue which assumed

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12. A. Hoda, *Developing Countries in the International Trading System*, (New Delhi, 1987), p.30.

greater controversy and gave birth to much debate both at Geneva and Havana, was the *'issue of prior permission'* of the organization that had to be secured before a country could embark upon measures like quantitative restrictions. While the less-developed countries under the leadership of India, demanded to take recourse to such measures (as quantitative restrictions) as an automatic right, the developed nations vehemently protested the same and felt that each case should qualify for *'prior'* approval of the organization before putting it into operations. This appeared to be a kind of *'stamp'* or *'certificate'* to be issued from the developed countries. Therefore it is quite obvious that less developed countries were quite apprehensive of the efficacy of such a move, because in their experience, the developed nations were never sympathetic towards their (less developed countries) problem.

The less-developed countries were also not too happy with the way Article XVIII, has been inserted into the GATT. Although Article XVIII has been drafted on the basis of Article XIII, and Article XIV of the Havana charter, the less-developed countries pointed out that it lacked the wider significance of the Havana charter. The provisions of the Havana charter envisaged preferential arrangements

for economic development. They expressed the resentment because the Article XVIII of the GATT, bereft of the wider implications of the Havana Charter, had lost much of its significance. Although the Article XVIII (pertaining to Economic Development and Reconstruction) recognised the necessity of governmental assistance, the rules for exception were so detailed, inflexible and unduly time consuming that practically the very purpose of the Article has been defeated. The necessity for seeking prior approval coupled with the obligations to report annually on the progress made, and the restrictive attitude to the Article held by developed countries, "acted as deterrent to developing countries availing themselves of the concessions they had strived to obtain."<sup>13</sup>

Same sentiment has been echoed by the Minister of Commerce of Srilanka in 1954 in the Review session when he expressed the view that - "...the restrictions and limitations it place practically destroy the benefits that it prefers to confer."<sup>14</sup> He argued that Article XVIII be re-written and received overwhelming support from other less developed countries like India, Chile, and Pakistan. This

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13. Kock, n.2, 228.

14. Ibid.

necessitated a revision of the Article XVIII because gradually the dis-satisfaction of these countries became loud enough. They had enough reasons to believe in the step-motherly attitude of the GATT. For example no limit had been imposed in the Geneva draft on subsidy which was a "protective device tailored for rich countries, while protective measures like quantitative restrictions which they felt was suitable for less developed countries was banned."<sup>15</sup>. Therefore it is no wonder that they dubbed the GATT as 'rich man's club'.

#### THE REVIEW SESSION AND REVISION OF ARTICLE XVIII

In October 1953, the CONTRACTING PARTIES, took the decision to conduct, at their ninth session, a comprehensive review of the GATT "upon the experience gained since it has been in provisional operation... and in the light of this review, to examine to what extent it would be desirable to amend or supplement the existing provision of Agreement",<sup>16</sup> By that time the realisation had deepened that the less developed countries needed some additional flexibilities as far as the provisions of the GATT were concerned.

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15. A.Hoda, Developing Countries in the International Trading System (New Delhi, 1987), p.31.

16. GATT, BISD, Second Supplement (Geneva, 1954), p.29.

In the year 1955, when the review took place, the less-developed countries had the chance to air their grievances, in a concrete way. They labeled serious criticism against the functioning of the GATT and pointed out the lacunae of it.

The criticisms labelled are briefly as under:-

- a. The provisions for the implementation of the Article XVIII, were 'unduly long, dilatory and cumbersome'. The provision relating to prior permission along with other limitations had practically limited its scope.
- b. The concept of 'infant industry' that had been included under Article XVIII, has little appeal to the less developed countries as the original text did not make any distinction between economic structure as an aggregate but the provision was drafted keeping in mind separate industry as such.
- c. The exclusion of 'commodity arrangement' has been cited, by less-developed as another draw backs of the GATT.
- d. The GATT did not have any provisions for new and fresh preferential arrangements.
- e. Another problems which was highlighted by Chile, and supported by all other less developed countries was-the non co-operative attitude on part of the developed

nations to initiate modifications in the bound tariffs either during or at the end of the period in which negotiated items remained bound, even though this was demanded by a number of countries, specially those, the custom duties of which were quite low at the time of the negotiation.

India as expected took part in the conference, with full vigour and it appears from the candid expression made by T.T. Krishnamachari (Minister of Commerce and Industry) on the floor of Parliament on September 19, 1955 (while speaking on the 'Motion' concerning the 'White Paper on GATT'), that Indian delegation was able to master the support off all the less-developed countries on all important issues and point of views expressed by India on that session.

I would like to tell the House that the under-developed countries practically all over the world looked to us for guidance and it is a matter of some satisfaction, I am sure to the Government, as well as to the House, that the trust they reposed on our delegation, they had not reposed that trust in vain.<sup>17</sup>

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17. India, Lok Sabha, Debates, vol.7, Session 10, 1955, Col.14453, (Motion regarding white paper on GATT).  
Empahsis added



India, drew the battle line much before the review session. This becomes evident from the following observations,

We gave the Indian delegation a clear brief to press for amendments to the articles of the GATT to secure two objectives : firstly, under-developed countries like India should be enabled, to use quantitative restrictions on imports in order to fulfil their programme of economic development, ...Secondly, sufficient flexibility regarding the bound rates of tariffs should be secured to enable, under-developed countries to make changes as and when new industries develop.

The above observation itself suggests the stand taken by the Government of India in the review session. The Indian delegation mainly took the initiative to secure for the less developed countries, the right to use quantitative restrictions other than balance of payments difficulties, and also spoke in favour of periodical adjustment in the schedules of bound tariffs which becomes imperative in the wake of rapid changes. It is important to note that India made constant and relentless efforts to secure the use of quantitative restrictions since the days of preparatory conferences. While preparing for the review, the Government of India, took extensive help from important commercial and industrial establishments in the country as well as leading economist both within and outside the government. FICCI,

and ASSOCHAM both<sup>18</sup> were closely involved with the Government of India in its drive to devise a stand in forthcoming review session. In fact Mr. Bansal, the Director General of FICCI later agreed to be a member of the Indian delegation. Apart from these, the Planning Commission and the Tariff Commission were also closely associated with the preparation of the brief in the final stage.

Armed with so many inputs from various quarters, India placed its views with great competence. Expressing its views, India desired to see the provisions of the GATT strengthened so as to make it more effective in eliminating discriminations dealing with unfair commercial practices of all kinds, whether indulged<sup>in</sup> by the government or by powerful private interest.

Speaking on periodical adjustment of tariff schedules, India made it clear that it does not see, any harm, under the GATT practice, that a country should give tariff concessions in return which has asked for and received. But there should be a suitable procedure, to enable countries in the process of rapid economic development to withdraw concessions on particular items without too much delay and

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18. FICCI: Federation for Indian Chambers of Commerce & Industries, ASSOCHAM: Associated Chambers of Commerce.

difficulty. So what has been demanded is nothing but a little flexibility which would recognise the need of these countries which are in the midst of rapid economic changes.

Highlighting the need to use quantitative restrictions in situations other than balance of payment crisis the Indian delegation pointed out with considerable logic that while the GATT provisions stipulated the use of quantitative restrictions in case of balance of payment crisis, it did so with the underlying assumptions that such a crisis is of temporary nature. While this could just be a passing phase in cases of developed nations, for country which has been crippled economically for long, this could be of chronic nature. This has almost become a special feature of less developed countries. Therefore India strongly argued in favour of the right to use quantitative restrictions and said, "They need to retain quantitative restrictions on imports even when they are not in immediate balance of payments difficulties".<sup>19</sup> If one looks at the points made by India, the force of the arguments becomes evident because in a developed nation, to protect the domestic industry what is needed is that it has to ensure that price of imported

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19. India, Debates, n. 16, Col. 14456.

article is slightly higher than the indigenous one. But in less developed countries, the penchant and preference for imported articles are well known even if those articles are costlier. In such a situation tariff is not an effective instrument. A country has to take recourse to protective measures to save the indigenous industry.

It is important to note that the point that India strived hard to bring forth is the inherent inequality that persisted in the world. It is due to this persisting inequality that India sought to achieve the use of quantitative restrictive measure by the less developed countries, what is interesting is that India's stand in this regard went sea change.<sup>20</sup>

Sir N. Ragahavan Pillai, (under secretary of foreign affairs) of the Indian delegate to the review session thundered.

If the economies of all countries belonging to the GATT were similar the divergencies of outlook would perhaps not be great. But among the contracting parties there are countries which are industrially and economically advanced and others with a backward economy and a very low standard of living. If we want to wish to retain both classes of countries within one common field, there will have to be greater flexibilities in the provisions

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20: ~~See Page 62.~~ In the beginning India was not in favour of preferences. See Page 62.

that are to apply to all of them. *Equality of treatment is equitable only among equals. A weakling cannot carry the same load as a giant.*<sup>21</sup>

He further maintained that in the name of reducing barriers to international trade they should not be denied the fullest opportunity to develop their economy and the most appropriate measures for the purpose.

The Indian delegate, specially Mr. Pillai received thunderous applause from all other participants from less developed countries for the force of argument in his speech. The problem of equality cropped up again and again in various sessions of the GATT right from the beginning when the Polish delegate cited the lack of recognition of this basic inequality in the Havana charters as being one of the reason not to sign Havana charter. But none before Mr. Pillai made it a basis to attack the existing provisions of the GATT in this way. It is true that given the unequal positions of the less developed countries, it cannot be expected that they should relinquish import restrictions and abstain from using protective device. "All nations are equal and that the international community should be based on

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21. Myradal Gunnar, An International Economy : Problem and Prospects (NewYork, 1956), p.291, Emphasis added.

principles and rules that are applied to all. It is an ideal that they should be equal but if, in fact they are not, equal treatment becomes inequality"<sup>22</sup>

In this way India and other less-developed countries voiced their feelings in chorus, which resulted in a complete overhaul at the review session of the provisions on Governmental Assistance to Economic Development and Reconstruction (Art XVIII). The structural nature of their balance of payments problem was recognised and to resolve the issue the secretariat took the initiatives in drafting a revisions of the Articles XVIII.

#### **Some Important Amendments of Article XVIII.**

The review ended in reaffirming the fundamental rules of the Agreement. A new preamble was added to the old Article XVIII which looked more positive in its approach to the problems of development and it explicitly recognised:

In order to implement programmes and policies of economic development designed to raise the general standard of living of their people such measures are justified in so far as they facilitate the attainment of this agreement.<sup>23</sup>

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22. Ibid.

23. Kock, n:2, p. 229.

- i) The greatest change brought about by the revision of Article XVIII was the inclusion of exception for balance of payments reasons. In the new section B of Article XVIII it was recognised that balance of payments difficulties in the less developed countries were connected not with a temporary imbalance in their foreign resources, but with "their efforts to expand their internal market as well as from the instability of their terms of trade"<sup>24</sup> This has in a way improved the provisions of Art XII pertaining to exceptions for balance of payments. The aim of Article XII was to give countries in a temporary imbalances a possibility to forestall an "imminent threat of a serious decline in a country's monetary reserves".<sup>25</sup>
- ii) After the revision, the word "imminent" was eliminated from the conditions under which a deviation from the general ban on quantitative restrictions could be made and secondly "low monetary reserves", was changed into "inadequate reserves".

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24. India, debates, n.15, col.14456.

25. Ibid., col.14456.

- iii) The earlier provision of holding annual consultation by the less developed countries maintaining balanced of payments restrictions, was changed and it was decided to hold consultation once in two years.
- iv) Section A of the Article XVIII provides further facilities to less developed countries to raise tariffs on bound items in order to promote the establishment of particular industries. Under this section, tariffs changes can be made only when there is agreement, but even if there is no agreement between parties concerned, the GATT organization can, if it finds that the applicant country has offered adequate compensation, authorise the withdrawal of the concessions. Even when compensation offered is not adequate, if the country concerned has made every reasonable efforts to offer compensation, it may still withdraw the concession, but in such case, the country whose interest has been injured may equally withdraw equivalent concessions.
- v) The revised Article recognised that support for new industries should be created by giving the less-developed countries greater flexibilitates in their commercial policy. The CONTRACTING PARTIES in the early



stage of development should enjoy additional facilities to enable them (i) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the *establishment of particular industry* to (ii) to apply quantitative restrictions to stimulate specific branches of production and to protect the balance of payment in a manner which takes full account of the continued high level of demand for imports likely to be triggered off by their programmes of economic development.

The term 'establishment of new industries' is not quite clear i.e. whether it implies the establishment of a new branch of an old industry or a substantial transformation of the existing industry. In the working party which prepared the revision, it was strongly stressed that, such protective measures could not be used in case of existing industries in general but if the industry in question supply 'a relatively small proportion of domestic demand' then such support could be provided of. This implies that imports could not be unduly restricted.

Even if Article XVIII was made more flexible, still it contained so many safeguards that it remained unattractive

for the less developed countries. It is to be noted that the measures envisaged, were restricted to the regulation of imports by tariffs or quantitative restrictions in order to promote import substitution or to use RAUL PREBISCH words, "in favour of inward-looking industrialisation".

There was no recognition of the fact that the greatest hindrance to the export from less developed countries comes from industrially developed countries in the form of high tariffs, quotas, and, internal taxes etc.

It is therefore not surprising that less-developed countries were not too happy from the outcome of review session. It is true that for the first time their feelings towards the GATT, their complain regarding lack of understanding of their problems and the apathy of their developed counterpart found an acceptance and that for the first time they were able to bring some changes in the GATT rules howsoever limited in character. This was the first indication that less developed countries were able to use their collective strength to force the developed countries to look into the force and rationale behind such demands.

The revised Article was put into force in 1957, by that time it had already lost much of its efficacy except for the

provision for cases of balance-of-payments difficulties therefore. They renewed their efforts in order to have just treatment in the GATT.

#### **RESULTS OF THE GATT REVIEW AND INDIA'S STANDPOINT**

Commenting on the Review session, Government of India voiced its opinion of the Review session on some issues central to the interest of India in particular and less developed countries in general. India expressed its satisfaction over the little achievement that accrued to the less developed countries but at the same time cautioned that more reforms would be needed to make the less developed countries to stand at par with their western counter part.

Following are the issues on which India expressed its views.

#### ***Assistance to Economic Development***

India expressed satisfaction at the insertion of a new Article dealing with 'Government Assistance to Economic development with special regard to the problems of

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\* The entire Section is based on India, debates, n.15, col 14447 ff. & "GATT-Review : India's Stand-point Explained", *Journal of Industry and trade* (New Delhi), April, 1955, cols. 14488-9.

countries whose economy can only support low standard of living and is in the early stages of development.' India maintained that this Article would enable the countries concerned to deviate temporarily from other provisions of the GATT in the interest of their economic development and to help the establishment of particular industries.

### ***Reduction of Tariffs***

The most important and widely used method of protecting industries is of course the tariffs. The method for affecting a reduction in tariffs is to sponsor negotiation between Member countries in which a country may agree to keep its tariff on any particular item bound against increase above a certain level in return for a corresponding concession similarly received from another. India has participated under such arrangements in various tariff negotiations in Geneva, Torquay and Annecy.

The changes proposed in the new GATT affecting tariffs are two. Firstly a new article has been proposed for inclusion in the agreement, the purpose of which is to recognise the value of tariff negotiations directed to "the substantial reduction of the general level of tariff and in

particular the reduction of such high tariffs which discourage the importation of minimum quantities".<sup>26</sup>

Secondly India feels that the proposed Article would not impose any new obligations as it has been made clear in the Article that each country will have the right to decide whether or not to engage in such negotiations.

#### **Withdrawal of Concessions**

In regard to the items on which concessions have already been given, a new set of rules and procedures have been evolved to enable countries to withdraw particular items from their schedules of concessions. Special facilities have been provided to the less developed countries. As a result a country like India or any other less developed country would be benefited because then they would be able to re-negotiate with other countries which have been the principal suppliers of the commodity in question for raising the bound rate of duty on it or for making it wholly free from the bounding so that the duty concession be changed in the future without reference to the

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26. "GATT-Review : India's Stand-point Explained", *Journal of Industry and trade* (New Delhi), April, 1955, cols. 14488.

GATT. In such negotiation the country wanting the change will normally be expected to give concessions on other items which are substantially equivalent to the concessions which is being withdrawn.

In exceptional cases, it would also be possible for countries to withdraw an item without offering new concessions in its place though in such an event the countries whose exports are affected by the withdrawal would be at liberty to withdraw equivalent concessions from among those which was given to the country concerned under the GATT.

However India feels that an arbitration machinery would be of great help in such negotiation to expedite quick and equitable settlement.

### ***Quantitative Restrictions***

Turning from tariff to quantitative restrictions on imports India recalled that under the original Provisions of the GATT quantitative restrictions on imports were to be abolished altogether. The only major exception to this general rule was that a country in BOP difficulties could use quantitative restrictions on imports with a view to avoid a serious decline in its resources of foreign

exchange. India although never recognised quantitative restrictions as a method of granting protections to industries. Yet, it felt its necessity. The view has been expressed in the following lines -

In this country 'Quantitative Restriction' have not been officially recognised as a method of granting protection to industries. Nevertheless, it has been necessary to control the volume of imports on Balance of Payments conditions and the restrictions imposed have, in fact provided a good deal of incidental protections to practically all industries.<sup>27</sup>

In the review, one of the main factors which was taken into account was the possibility that in the near future the major European currencies would become convertible. There arise the risk that other countries may try to build up a favourable balance with it to augment their holdings of convertible foreign exchange.

India put forward the case of less developed countries in such altered situation. The fact that a less developed country which is in the early stage of development and is engaged in a programme of industrialisation would continue to be in BOP difficulties for a much longer period and would therefore have to take special steps to conserve their

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27. *ibid*

scarce foreign reserve for a period of time.

In the wake of concern expressed by less-developed countries under the leadership of India, it has been accepted that such countries should, through the use of import restrictions, be allowed to maintain reserves, which are adequate in relations to their programme of economic development.

It was also provided that periodical consultations (annually for developed countries biennially for less developed countries) would be held after such convertibility to examine whether such provisions are being misused or not.

#### ***Use of Import Restrictions***

This is another issue where India took active part and placed the demand that in some countries which are still in the early stage of development, such conditions may exist, which would require the imposition of import restrictions to save their nascent industries.

Such a plea has been recognised and it has been decided at the Review Session that when the proposed amendment comes into affect it would ensure that such needy countries would have the permission to take recourse to such step to establish new industries. The expression 'setting up of new



industries' would not only mean setting up a new industry in its literal sense but also the establishment of a new branch of production in an existing industry, as also the substantial transformation of an existing industry supplying a relatively small proportion of the domestic demand. Even if the concurrence of such measures is not forthcoming the country concerned would still under the revised GATT be able to apply those measures though in that event a country whose trade has been adversely affected could withdraw or suspend an equivalent concessions under the GATT provisions towards the country adopting such measures.

However there is one exception to this general approach to import restrictions. When the item in question is one on which the tariff has been bound by negotiation under the GATT it would be unfair to nullify the value of the tariff concessions by restricting the volume of imports otherwise than on BOP grounds. Therefore in such cases, the country concerned can apply the measures only if it obtains the agreement of affected country or failing such agreements, by going through provisions similar to those relating to the withdrawal of tariff concessions.

So this was the view of India on various proposed changes that were agreed upon in the review session. These

views were expressed by India in reply of queries from various quarters both in Parliament and outside the Parliament to know the happenings of the review session and the standpoint of India as far as the proposed amendments are concerned.

As we have seen that so far the less developed nation's endeavour was to bring flexibilities to the GATT provision so that the governments can have freedom to undertake the measures considered necessary for implementing development. Since the revisions of the GATT Article did not provide much benefits to the less-developed countries therefore by late fifties it began to be felt that this was not enough. The feelings has been reflected in the stagnating membership of the GATT. From 1954 to 1957 the number of CONTRACTING PARTIES, as far as the less developed countries are concerned remained stand still. During the same period a study conducted by the Economic Commission for Latin America (ECLA) revealed the fact that it is absence of freedom in exercising the foreign trade policy under the GATT that has prevented them from joining the GATT.<sup>28</sup> Even the countries which joined the GATT earlier a serious question mark has

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28. ECLA DOC. E/CN.12/369/Rev.1, (Geneva, April 1956), PP.6-7.

been put before them whether or not they should remain with the GATT. In Brazil and India Serious debate was going on over the prudence of the decision to become the member of the GATT and to continue with it.

This silence along with the campaign made by the less developed countries ultimately bore fruit when at the Ministerial Session of the CONTRACTING PARTIES in 1957, it was decided to constitute an expert panel to examine the trends of international trade and the reported failure of the less-developed countries to reap the benefits of expanding international trade. This created the favourable ground for Gottfried Haberler to step in and to take the work of the proposed panel. The Panel headed by him, submitted the report in October 1958, which came to be known as Haberler Report.

While it may be true that the relentless campaign made by the less developed countries paid dividend when the CONTRACTING PARTIES decided to look after the dissatisfaction and disquiet among the less-developed members but there were other events also which might have made a deeper impression and worked behind the GATT's decision to take action.

Within the GATT the pressure had increased from the

less developed countries to get more access to the foreign markets not only for primary products but also for semi-manufactured <sup>and</sup> manufactured goods.

On the other hand, a simultaneous move by the Soviet Union from 1955 onwards (which had by that time made considerable progress in its commercial relation with the less undeveloped countries) to devise a world trade organisation within the framework of United Nation, made considerable impact on the world opinion regarding the future of the GATT. This posed a threat to the GATT. The question was whether the passivity and pessimism and the silence of the less developed countries lead to a new trade organization that would embrace all the members of the UN, supersede the GATT and take over its tasks. This made the industrialised countries to take seriously the anguish of the less developed countries because they feared that if such an organisation takes shape then they might lose their domineering presence hitherto enjoyed by them.

#### ***HABERLER REPORT AND AFTER 1957-67***

In the report, submitted in OCTOBER 1958, the panel came to the conclusion that -

There is some substance in the feeling of disquiet among primary producing countries that the present rules and conventions about Commercial Policies are relatively unfavourable to them.

The report focussed its attention to the existence of high level tariff in the industrialised countries which has further aggravated the condition of the less developed countries. It also pointed out, that the high level of agriculture protection in industrialised countries. Apart from the financial measures and changes in agricultural trade policies (like adoption of stabilisation policies to arrest short term price fluctuation, to establish a buffer fund and buffer stock mechanism etc., the panel recommended a reduction of revenues and duties in countries consuming tropical foodstuffs and beverages. The report in a somber note suggested :

If this 'disquiet' were not met in negotiations by the importers of primary products, the general system of clearing the channels of trade by a general all-around negotiated reduction of trade barriers may suffer a serious setback; and this would certainly be to the disadvantage of the highly industrialised as well as primary producing countries.

Haberler Report also signaled a series of policy actions to be taken by the less developed countries to increase their share in the world market. The report pointed

out the excessive measures of control being exercised by some of those countries, have gone against the interest of both less developed and developed countries. The less developed countries should stress on putting pressure in bringing changes in the GATT rules rather than seeking favour from developed nations.

This report although limited to the examination of the export trade in primary products throws sufficient light on the conditions of the less developed countries and their position in the world trade as well. It gave due weightage to the claim of less developed countries for better access to the markets for their exports, at least in primary products.

#### **FOLLOW UP ACTION OF THE HABERLER REPORT**

##### ***The 1958 Action Programme***

As a sequel to the consideration of the Haberler Report the CONTRACTING PARTIES<sup>29</sup> at the thirteenth session in November 1958, accepted an Action Programme and established three committees of which committee III, was given the following mandate.<sup>29</sup>

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29. GATT, BISD Seventh Supplement, p.27

To consider and report to the CONTRACTING PARTIES regarding other measures for the expansion of trade, with particular reference to the importance of the maintenance and expansion of export earnings of the less developed countries to the development and diversification of their economics.

This committee was intended to take up the problems of less developed countries. This committee to which *India* was a member, made extensive studies and came out with several recommendations in its report dated November 19, 1959. The recommendation included examination of the tariffs and other similar measures by the industrialised countries with a view to facilitate early expansion of export earnings of the less-developed countries, lowering the tariffs and restrictive measures on manufactured and semi-manufactured items in industrialised countries from less developed countries etc. In a way the committee highlighted the unfavourable conditions under which these group of countries are operating and the growing trade imbalances and finally recommended that the report to be placed to a higher level.

#### ***The Ministerial meetings of 1961 and 1963***

To honour the recommendations, the first Ministerial meeting began (in 1961) discussions on the basis of the

report of the committee III, an US Proposal and a proposal from Nigeria<sup>30</sup> being supported by India along with some other less-developed countries. However the meeting proved to be a failure as no decisions could be arrived. To carry forward the unfinished task another round of Ministerial level meeting was held in May 1963. India took a lead part in the meeting and Mr. Manubhai Shah, the Indian spokesman "despite bullying tactics of the Western power, who wanted remarks to be short, decided not to mince matters but state the unpleasant facts of under-developed economy..."<sup>31</sup> He pointed out that the terms of trade in primary products continued to be unfavourable, exports from less-developed countries showing no signs of increase, discriminatory quota, and tariff walls in case of processed and semi processed products remained intact. He made a number of proposals, that would help the less-developed countries to cope up with the down-slide of the less-developed countries in the World-market. The proposal contained -

i) No Product which could help the less-developed nations

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30. Nigeria's proposal contained an appeal concerning duty free entry of tropical products

31. "GATT : Promises and fulfillment", *Economic Weekly*, (New Delhi, August 10, 1963), p. 1369.



increase their export earnings should be subjected to 'across the board cuts' as proposed by the U.S.

- ii] The industrial countries should provide suitable openings for industrial products from less developed countries through removing trade barriers.
- iii] The trade negotiating committee should set up a suitable machinery to examine and implement tariff preferences on selected products of interest to the less developed countries.

Speaking later, in the course of the general debate, Shri Shah made it clear that industrial countries cannot expect to receive from the less-developed countries reciprocity when across the board cuts were contemplated. Such plain statement was wanted as it "had not been heard in the *palais des nations* for a long time." <sup>32</sup>

Based on the debates and discussions and various proposals including the Indian proposal, the less developed countries presented an Action Programme which envisaged—

"stand still on trade barriers on exports of the less-developed countries, elimination of quantitative restrictions, duty-free entry of tropical products, reduction of at least fifty

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32. *ibid*, p. 1369

percent of duties on semi-processed products exported by less developed countries over the next three years, progressive reduction of internal charges and revenue duties and their elimination by 31st December 1965."<sup>33</sup>

"This Programme was too broad and too exacting to be unanimously accepted by the Ministers".<sup>34</sup> Although there was a general agreement regarding the objective of the Action Programme, opinions differed sharply as what method should be used, whether only those products recommended by committee III, should come under the perview of preferences etc.<sup>35</sup>

In view of the differences of opinion and the growing activities of the GATT, concerning the developmental problems of the less-developed countries, the CONTRACTING PARTIES recognised -

"The need for an adequate legal and institutions framework to enable the CONTRACTING PARTIES to discharge their responsibilities in expanding the trade of less developed countries."<sup>36</sup>

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33. Hoda, n. 13, p. 47.

34. *ibid.*

35. EEC and Associated African States referred to the 'BRASSEUR PLAN' which recommended that preferences be granted unilaterally on selected commodities by industrialised states to less-developed ones.

36. GATT, BISD, Twelfth Supplement, p.45

Following the decision, a 'committee on Legal and Institutional Frame-work of GATT in Relation to less-developed countries' was set up in March 1964 and also a dworking party to study the question of preferences. Simultaneously for the first time, committee III, considered a proposal for preferential treatment between the less-developed countries. Apart from this an Action Committee to assist, implement and co-ordinate the action programme was also set up.

Thus we see despite initial failure, the 1963 Ministerial Meeting proved to be a turning point in the history of endeavours made by the less developed countries towards the evolution of GATT rules to suit their demand. The outcome of the meeting could be said to achieve three dimensions, viz., reforming the Agreement with the object of co-difying the new principles, facilitating the participation of less developed countries in the next round (Kennedy round) and lastly to continue study work in various GATT bodies regarding the problem being faced by less-developed nations.

In the working party and other bodies, the proposal for legitimising departures from the MFN obligation in favour of the less-developed countries was vigroulsy persuaded.

India, proposed that the CONTRACTING PARTIES, should agree to accord preferential treatment to imports of products originating in less-developed countries.

Chile made a more elaborate proposal for the CONTRACTING PARTIES to agree to depart from MFN clause wherever necessary in order to grant special concessions to the less developed countries in the form of reduction or elimination of obstacles to trade in products which are of special interest to their economies. Such concessions should be applicable to all less developed countries but not to any developed country.

In the working party on preferences the representative of India and UAR (United Arab Republic) proposed the following text should be inserted in the proposed chapter on Trade & Development.

Notwithstanding anything contained in this Agreement, and without prejudice to the rights of the contracting parties in paragraphs 2,3 and 4 of Article 1, contracting parties may in accordance with such procedures as may be prescribed in this behalf, accord, with respect to all matters in this Agreement, preferential treatment to products originating in less developed countries with a view to promoting the economic development and international trade of less-developed contracting parties through the expansion of their exports of manufactures and semi-manufactures. Such preferential treatment granted to any contracting party shall be applied automatically and unconditionally to like products originating in all other less-developed contracting parties.<sup>37</sup>

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37. Hoda, n.13, p.48.

## THE NEW CHAPTER ON 'TRADE AND DEVELOPMENT'

In pursuance of the decisions of the Ministers in May 1963, the 'Committee on Legal and Institutional Framework of the GATT in Relation to less-developed countries' worked out the Draft of a Chapter on TRADE AND DEVELOPMENT and submitted it to the CONTRACTING PARTIES. For the first time serious move was afloat to review the working of the GATT and examine the possibility of re-organising it. At a special session (17 to 26 November 1964) the CONTRACTING PARTIES adopted three new Articles on 'Trade and Development' to be incorporated in the GATT as part IV and submitted to the governments for their acceptance.

The committee submitted the report including a draft for chapter on Trade and Development<sup>38</sup> in March 1964 and continued to work to finalise draft till November 1964.

On February 8, 1965 the CONTRACTING PARTIES agreed to the entry of part IV on *de facto* basis pending entry into force *de jure*. This chapter came into effect on June 27, 1966 after the acceptance of the amendment by two thirds of the CONTRACTING PARTIES.

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38. GATT Doc, No. L/2/95/Rev. 1.

The new chapter consists of three Articles entitled-<sup>39</sup>

- \* Principles and Objectives (Art XXXVI)
- \* Commitments (Art XXVII)
- \* Joint Action (Art XXXVIII)

The first Article (XXXVI) establishes the need for conscious and purposeful effort on part of the CONTRACTING PARTIES both individually and jointly to improve access to World Market. The Article recognises that the rules governing international trade should be consistent with the need to promote rapid and sustained expansion of the export income of less developed countries. Among these are provisions relating to access to world market for primary products and the devising of measures aimed at improving and stabilising commodity markets.

The most important provision in this Article is that the developed countries should not expect reciprocity for commitments made by them i.e. "in return for concessions extended to the less-developed countries in the course of trade negotiations, by way of contributions which are

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39. GATT, The activities of GATT, 1964/65, (Geneva 10, November 1965), p.8.

inconsistent with their individual development, financial and trade needs."<sup>40</sup>

It is clear from the language of the above Article that it took the into consideration the fact that less developed countries are hardly in a position to reciprocate tariff concession on imports from developed countries as their industries, being in infant stage, cannot be exposed to competition from highly developed countries.

The core of the chapter is the **Article XXXVII** on commitments which seeks to impose obligations on developed CONTRACTING PARTIES to take certain actions in respect of trade interests of the less-developed countries. Except where compelling reasons make it impossible, developed countries agreed not to increase barriers to exports of products of special interest to less-developed countries. High priority is also given in any adjustment of fiscal policies to the reduction or elimination of fiscal taxes to the fullest extent possible. A procedure for consultation has been provided in case of difficulties in implementing these provisions. These provisions aim at mutual solution to any problem. On their part the less-developed countries

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40. *ibid.*

agreed to implement the provisions of the New Chapter for the benefit of their mutual benefit so far as such action is consistent with their present and future development.

In addition, the developed countries agreed to give consideration to other measures aimed at promoting markets for exports from less-developed countries.

The Article, no doubt brought far reaching consequences but somewhat cautious language of the Articles leaves doubt regarding its efficacy. "The obligations have been diluted considerably by insertion of qualifications. The terms like 'to the fullest extent possible', 'make every effort to do so', 'to give consideration' leaves room for the developed countries to take the obligation lightly."<sup>41</sup>

The **third Article** on "Joint Action" provides for appropriate collaboration by CONTRACTING PARTIES in promoting measures aimed at improving world markets for primary products, as well as in furthering the expansion of trade of less-developed countries through international harmonising and adjustment of national politics. The CONTRACTING PARTIES will also collaborate with the UN institutions and other international agencies active in the

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41. Hoda, no.13, p.77.



field. This Articles is more of a nature of noble wish than any bindings.

The above analysis puts its beyond doubt that the chapter only provides guidelines for the developed countries to formulate politics for the purpose of extending assistance to the less-developed countries in the field of promotion. Although it has been maintained by scholar like Espiell that an interpretation of the MFN in the light of part IV would make preference in favour of the less developed countries consistent with GATT obligations. In fact the Trade Expansion and Economic Co-operation agreement<sup>42</sup> signed between India, UAR and Yugoslavia (1967) was not considered inconsistent with the GATT rules but a number of countries maintained that part IV did not override the obligations of other parts of GATT.

The fact is that the new chapter has become inherently weak due to its silence on preferential arrangement, pet subject of India and other less-developed countries,<sup>as</sup> no mention of time frame within which the developed countries should give effect to the provisions, and its apparent lack of any binding force.

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42. GATT : BISD, Sixteenth suppliment, p. 87.

Although the New Chapter does not have any binding force yet it cannot be said that the efforts of the less-developed countries have gone in waste. When the CONTRACTING PARTIES have signed it, the very fact emanates from this acceptance that they would honour the provisions as far as possible if not to its fullest strength because when accepted and recognised the somewhat shakey position of the less developed countries and their problems it can be expected that developed countries would now treat the claims and demands of less developed countries with greater care and understanding. The situation stands far better from the beginning when less developed countries and their need could not find any space in the Agreement, when there was no such approach to treat the problems of less developed countries and when the GATT was conceived keeping in mind the post war reconstruction of trade of industrialised countries. The very recognition of the position of the less developed countries in the map of world trade was a great achievement.

Expressing satisfaction over the development, K.B. Lal, leader of the Indian delegation to the GATT conference opined that this chapter was a starting point and provided the legal and institutional framework within which measures to expand the trade of less-developed countries could be

persued. Manubhai Shah, who also represented India, described the inclusions of the part IV, as revolutionary. "Though GATT was based on the concept of non-discrimination its present deviation by Urging the developed countries not to expect-reciprocity is indeed revolutionary."<sup>43</sup>

Speaking on behalf of the Latin American nations Mr. Edwin Lett of Peru, expressed the view that the new chapter must not constitute an end in itself, it should be considered as a starting point. similar view was held by the participants of the twentieth congress of International Chamber of Commerce held in Delhi in 1963, when it declared in a forthright manner that "the primary emphasis should be given to broadening the outlets for the products of least-developed countries, by creating free access to markets through the abolition of all barriers to the movements of commodities.

Commenting on the new chapter the "Economist" says:

...the actual commitments of the new articles whereby the rich shall help the poor, like the practical steps they propose, are vague and disappointing. The rich have committed themselves to little more than giving 'high priority' to reduction and elimination of barriers to less developing countries' trade and these undertakings

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43. Economic Weekly, n. 28, p. 1369.

have been made carefully subject to an escape clause of 'compelling reasons which may include legal reasons'.<sup>44</sup>

In conclusion, it could be said that, though it does not adequately meet the needs and requirement of the less developed countries, the new chapter is an important step towards liberalising international trade in its essence. It cannot be regarded as an end but only the beginning of a long term process and arduous journey towards the transformation of the GATT.

Moreover, not only a new chapter was devised which was solely devoted to the problems of less developed countries and its possible remedies but various other groups and sub-groups were also devised to take care of the problems of less developed countries. A committee (Committee on Trade and Development) was appointed upon the recommendation of legal and institutional committee to take over the functions of three earlier machineries, i.e., legal and institutional committee, working party and action committee. Eight subsidiary bodies were established by the committee on Trade

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44. The Economist (London) (5, December, 1964), p.1170.

and Development to assist it.<sup>45</sup>

A third body, namely, GATT International Trade Center was established mainly to provide information on marketing, on export markets as well as to provide training facilities to personnel to be required for export promotion service.

**FURTHER ENDEAVOUR BY THE LESS-DEVELOPED  
COUNTRIES FOR PREFERENTIAL TREATMENT.**

The part IV of the GATT had left the structure of GATT obligations unchanged as the guidelines provided in chapter IV were not cast in the contractual mould. Moreover there was no mention of any preferential arrangement. Therefore the less-developed countries renewed their vigour in the direction. The move to secure recognition of the need to accord preferential treatment to less developed countries received considerable importance from the deliberation of UNCTAD conference. The enthusiasm regarding UNCTAD was so overwhelming that the developed countries were bound to pay

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45. Eight group are:

(i) Group on examination on Products of export interest to less developed countries, (ii) group on expansion of trade among less-developed countries (iii) group on residual -restrictions (iv) group on preferences by industrial countries (v) group on legal ammendments (vi) working group on interntional commodity problem (vii) Expert Group on Adjustment Aassistance Measures (viii) Export group on Trade and Aid Studies.

heed to the less developed countries' demand of Generalised System of Preference (GSP). An important aspect of the proposal of the less developed countries was that preferential treatment was to be extended uniformly by all developed countries to all products manufactured or semi-manufactured originating in less-developed countries. The UNCTAD deliberation ultimately made the developed countries to accept a non-discriminatory non-reciprocal preference. Thus by 1971 preferences for the less developed countries had become an accomplished fact through the mechanism of waiver from MFN clause. But it should be noted that the departure from the obligation under MFN was merely condoned without making any basic change in the GATT frame work. Therefore less-developed countries' criticism cannot be uncalled for.

At the launching of Tokyo Round of talks in 1973 the less-developed countries were seeking not only a substantial improvement in the condition of access to market but application of differential measures.

Differential and more favourable treatment was a priority item on the agenda of the Framework Group during the Tokyo Round. From the deliberation of the Framework group the CONTRACTING PARTIES adopted the Enabling Clause.

Enabling clause establishes an exception from Art 1 of GATT (MFN) and makes possible departures from the obligation to accord equal treatment to all CONTRACTING PARTIES in order to extend differential and more favourable treatment to the less-developed countries. Although it was made clear that preferences should be generalized, non-reciprocal and non-discriminatory (as stipulated in the 1971 waiver decision on GSP) it has been limited to only those non-tariff barriers which are covered by multilaterally negotiated instruments.

Since the provisions of the Part IV did not adequately influence the course of Kennedy Round (1964-67), at the time of launching the Tokyo Round, it was stressed that during the Tokyo Round full consideration should be given to the demand of less developed countries and the Enabling clause was decided. This partly legitimised the special treatment that the less developed countries were demanding for so long.

The less developed countries succeeded in thwarting the attempt on part of the developed countries to insert the concept of graduation in the enabling clause. The main argument of the less developed countries against graduation - was the commonality in the features of economics of less

developed countries which was far more significant than difference - which had a political flavour.

India continuously opposed the graduation principle as considerable debate was going on over the question whether India should qualify for any special treatment or preference since it achieved considerable advancement by that time in all fields, be it science and technological development or economic progress, compared to many other so called less developed countries. Ultimately India was able to thwart the attempt when other less developed nations joined hand with it.

An exception was however made in the treatment of the Least developed countries.

Thus we see less-developed countries came a long way to secure the right to have special treatment howsoever limited in character but it cannot be over looked also because given the situation it is difficult to conceive of non-reciprocal preferences being bound in the GATT free from any conditions or safeguards. Because that would imply a total change in the structure of GATT which is very difficult.

Therefore it could be said safely that although the GATT rules needed more reforms but at the same time given the limitation, the achievements of the less-development



countries in their dual objectives of revision of GATT rules and preferential arrangement, are by no means small.

This is evident from the rising membership of the less-developed countries from 1957 onwards after a long stand - still in the fifties. While the earlier phase is characterised by 'disquiet' and lack of enthusiasm and stagnation, the later phase is characterised by rapidly rising membership of less-developed countries. It started with Ghana in 1957 and by 1968 the number of CONTRACTING PARTIES belonging to less-developed countries rose to more than sixty.

This change was primarily due to the de-colonisation movement in sixties but at the same time it is true that the growing understanding of the developed nations regarding the problem of less-developed countries also created a favourable ground for the less developed nations to join the GATT. Now their voice could be heard and their weight more greatly felt in committees and sessions than it had been the case earlier.

The reason for failure of GATT to get a positive response from the less-developed countries could be expressed as summarised by Raul Prebisch Words -

Why has GATT not been efficacious for the less developed countries as far the industrialised countries? There are two main reasons. First Havana charter is based on the classic concept that the free play of international economic forces by itself leads to optimum expansion of trade and the most efficient utilization of the worlds productive resources, rates & principles are therefore established to guarantee this free play. Secondly rules & guarantees in question have not always been strictly complied with and, even though they seem to have been observed in the letter in certain instances, the spirit underlying them has not been respected.<sup>46</sup>

Thus we see that the less-developed countries really fought hard to assure a Place in the world trade and in GATT because when the GATT was conceived they were hardly in a position to influence its deliberation barring one or two countries like India & Brazil. Once they achieved their much coveted freedom they directed their efforts at least to bring some reforms if not total change in the GATT and their efforts yielded result to a great extent.

Although a long journey is still ahead yet whatever has been achieved within the parameter of international relation which is characterised by power play, cannot just be overlooked.

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46. Kock. n.2, p.235.

## WHY INDIA AND OTHER LESS-DEVELOPED COUNTRIES DECIDED TO JOIN THE GATT

The entire section above indicates that from the very beginning the less-developed countries looked to the GATT with a sceptical view. They complained that the GATT have mainly benefited the developed industrialised nations. They even dubbed it as 'rich man's club'. The question arises, why the less-developed nations decided to join the GATT. Today the less developed nations forms an overwhelming majority in the GATT. There are countries like Brazil and India, in which this question formed a part of serious debate as whether it should be wise to continue with the GATT. In 1954, the Economic Commission for Latin America (ECLA) conducted a survey to find out why some countries joined the GATT and others did not. Some countries joined the GATT with the expectations as given below<sup>47</sup>

- i. They would be able to defend their interest better, because they are mainly exporting basic products and since principal purchaser of those products are also the member of the organisation the prospects sounds better.

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47. ECLA Doc, n.22, p.8.

- ii. Instead of dealing individually, collective strength would prove fruitful to improve the tariff treatment accorded by the large buyers to them as far as primary products are concerned.
- iii. It has been provided by the GATT that countries with low tariff could make an overall increase in their customs duties before joining and subsequent negotiations being based on these new tariffs.

Therefore it opened an opportunity to improve their trade prospects, which they wanted to avail of.

So far as India is concerned, it decided to join and remain with the GATT for several reasons.

It is true that there was a moment of hesitation in the history of India's association with the GATT in early years (as specified by the honourable member of Constituent Assembly N.G. Ranga). But subsequently India took the decision to carry forward with the GATT. One of the reason of India's decision to continue with the GATT is, as debates in Lok Sabha suggest, that India does not believe in discrimination and since the objective of the GATT is to reduce trade barriers and abolish unfair trade practices, India decided to remain with the GATT as the objectives of

the GATT are in consonance with the philosophy and policy of India. The Minister of Commerce and Industry of India. T.T. Krishnamachari emphatically declared, "... So far as non-discrimination and trade rules were concerned, the GATT not only deserved our support but its provisions should if anything be strengthened."<sup>48</sup>

Secondly, when the question of India joining and continuing with the GATT was hotly debated within the country, many suggestions were impressed from various quarters. "An alternative to joining the GATT," as K.R. Gupta mentioned in his book, " would have been to conclude bi-lateral agreements with all the members of the GATT".<sup>49</sup> In fact such a course was suggested by FICCI in 1953.

FICCI criticized the GATT on four grounds.<sup>50</sup> *Firstly*, "Supernational regimentation of domestic and economic policies would be certain to go against the interests of under-developed countries in the world at present". *Secondly*, that all the members irrespective of divergence in status and needs are expected to live to a uniform

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48. India, Debates, n.15, col 14449

49. K.R. Gupta, *The General Agreements of Tariffs and Trade* (New Delhi, 1967), p. 219

50. *ibid*, col. 14496

commercial code, i.e. FICCI highlighted the point that since there was no special treatment for less-developed countries, it would work against the interest of them. *Thirdly*, the GATT put too much emphasis on foreign trade whereas it has been silent on the 'development of under developed countries'. *Fourthly*, a less-developed country like India, FICCI feels, will have to approach the organization for prior permission in all most every case of development of indigenous industry. Therefore FICCI preferred not to join the GATT as far as India is concerned.

Expressing the same sentiment K.K. Basu, another distinguished Member of Parliament, made a scathing attack against the governments assertion that continuation with the GATT would be advantageous. Speaking on the subject K.K. Basu said that the GATT is completely dominated by western powers and therefore there is hardly any scope that less developed countries would be able to draw any advantage. He opined, - "You cannot have... freedom between a very developed giant and a dwarf."<sup>51</sup>

It may be that there is something true in criticism levelled against the GATT, and therefore resentment were

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51. *ibid*, p.14474

expressed from various quarters against continuing with the GATT and many prescribed that India should move out of it. But such a course was discarded keeping in mind the following factors,

- i) It would be neither profitable nor completely effective because a GATT member will have access for its imports and exports to a large number of countries which are Members of the GATT. It could do without trading with India easily which would not be possible for India.
- ii) Given the situation the terms of trade in case of bi-lateral agreements might be more unfavourable to India than those of the GATT
- iii) There is no guarantee that bi-lateral trade agreements would entail freedom to India to design its commercial policy as it likes.
- iv) The conclusion of bi-lateral agreements with so many countries will require the services of a large number of expertise, in negotiating commercial agreements. Moreover it would result in different sets of agreements as, in case of bi-lateral agreements, the views of the other party, have also to be honoured. Countries differ in position. Some are weak, some are strong. As far as decision - making is concerned, it will differ depending

on the resources available, so also agreements would differ. Ultimately that would give rise to a situation when some countries would feel being discriminated as compared to others. This would defeat the very policy of non-discrimination which is so dear to India.

These factors weighed high in favour of India choosing to associate itself with the GATT. Although India decided to remain with the GATT, at the same time it was made clear that in certain respects the GATT need modification. "...not only from our point of view but also in the interests of many other countries, who like us are anxious to develop their economies at a faster pace."<sup>52</sup> It was also made clear by India that - "GATT should not stand in any way of measures which we may find necessary to adopt in fulfilment of our plan for economic development."<sup>53</sup>

Thus for some obvious reasons India took the decision to remain with the GATT, and subsequently outlined its approach that international co-operation form the core of India's policy; therefore India would strive to work for

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52. India, debates, n.15, col

53. ibid.



harmony and would like to see that the GATT really works in that direction.

We find the reflection of this view again in 1964, when a serious move was afloat to have another world Trade Organization and to scrap the GATT altogether. India, though desiring basic changes in the existing international machinery, did not think in terms of creating a new machinery which would fully substitute the former. To India's view, if it is not possible to persuade the major developed nation to accept modification in the working of the GATT, it can hardly be possible to persuade the major countries to accept a new WTO. "It would be a wise policy not to replace the GATT by a new body but to enlarge its scope and functioning so as to make it an effective instrument..."<sup>54</sup>

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54. "World Trading arrangement", editorial, *Economic Weekly*, vol. 15, no. 20, (May 20, 1963), p. 796.

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CHAPTER III

INDIA AND THE GATT  
INITIAL ISSUES

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### CHAPTER III

#### INDIA AND THE GATT - INITIAL ISSUES

India has been closely associated with the GATT from its very inception. India was one of the nineteen invitees to the Preparatory Committee that had been<sup>1</sup> convened pursuant to the decision of the Economic and Social Council early in 1946.

India was entrusted with the task of preparing an annotated draft agenda on the basis of which negotiations regarding the establishment of International Trade Organization would commence in the forthcoming Conference on Trade and Employment.

India took an active part in the deliberations of the Preparatory Committee and the negotiations for the establishment of the ITO. The work of the Indian delegation in the first session of the Preparatory Committee, which was held in London during October and November 1946, and then accredited to the second session, held in Geneva from April to September 1947, was of basic importance as discussed earlier. *India was also represented on the Drafting Committee set up by the Preparatory Committee for the purpose of editing the charter, which met in New York in 1947.* India was also given a *non-elective* seat on the Executive Committee of the Interim Commission of the

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1. See chapter I, p. 10.

proposed organization i.e. ITO.<sup>2</sup>

It is important to briefly review India's participation in the drawing up of the General Agreement on Tariffs and Trade and its Protocol of Provisional Application. It was provided in the draft charter that members of the proposed organisation should, upon request, enter into negotiations directed to substantial reduction of tariffs and the elimination of preferences. These were to be accomplished on a reciprocal and mutually advantageous basis. High tariffs being by far the most visible obstacle to international trade, lowering of tariffs assumed a significant importance and considered to be an important aspect for the success of such efforts. It was also felt that discussions concerning the establishment of the ITO should not hold up the process of liberalisation of trade, because in all probability, discussions regarding the establishment would take a long time, as one could assume from the vastness of the subject to be dealt with and the diversity of opinions. Moreover, it was also felt that countries represented in the Preparatory Committee would, in advance of adoption of the charter, themselves agree to reduce tariffs and dispense with preferences on a mutually beneficial basis; and thereby more and more nations would be encouraged to participate in

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2. K.P. Karunakaran, *India in World Affairs: A Review of Indias Foreign Relations, Independence Day to Republic day* (Calcutta, 1952), p. 351.

such tariff conferences and ultimately join the proposed ITO.

Tariff negotiations were therefore held concurrently with the second session of the Preparatory Committee at Geneva in April-October 1947. India was represented in the *TARIFF AGREEMENT COMMITTEE* of this session and also invited to join the *TARIFF NEGOTIATIONS WORKING PARTY* for the purpose of examining the draft. India made valuable contributions in the form of reduction of tariffs in the first tariff conference, and thus played an important role in shaping of the GATT, because the first tariff conference was deemed to be an integral part of the establishment of the GATT.<sup>3</sup>

#### **PROBLEM WITH SOUTH AFRICA AND PAKISTAN**

Two countries which figured prominently, from India's point of view, throughout the deliberations on the GATT were Pakistan and South Africa. In Geneva in 1947, the Indian and Pakistani representatives had discussions with the Tariff Negotiations Working Party on the interdependence of economies of India and Pakistan who could not possibly be treated like any other two countries for the purpose of

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3. The role of India in the tariff conferences has been discussed in the next chapter.

trade and commerce. The Preparatory Committee unanimously agreed to make an addition to the relevant article of the GATT that :

Taking into account the exceptional circumstances arising out of the establishment of India and Pakistan as independent states, and recognising the fact that they have long constituted an economic unit, the CONTRACTING PARTIES agree that the provisions of this Agreement shall not prevent the two countries from entering into special arrangements with respect to the trade between them, pending the establishment of their mutual trade relations on a definitive basis.<sup>4</sup>

But this was not the end of the controversy because at the next session of the tariff conference in 1948, Pakistan placed a demand for renegotiating tariff concessions on certain items on the ground that it could not be represented by a separate delegation at Geneva (Partition of India took place at a time when the 1947 Geneva session was in progress and India represented as an undivided country). India opposed Pakistan's move on the ground that Pakistan could renegotiate only after seeking prior approval in the matter from the Government of India.

India's reason for taking up this position was technical. Pakistan's proposal of partial renegotiation might have had the consequence of enabling her to retain the concessions which India negotiated, and the benefit of which

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4. India, *Constituent Assembly, Legislative debates*, Part-II, vol.1, no.1, (February, 1949), p.61.

accrued to Pakistan, while at the same time withdrawing her part of the *quid pro quo* for some of the concessions in which India was interested. Such action would have hit India over a wide range by provoking other countries either to withdraw or modify those concessions which had been given by them jointly to India and Pakistan.

The CONTRACTING PARTIES held the view that Pakistan should directly proceed to discuss the matters with India. However at the second meeting of the CONTRACTING PARTIES later in 1948, Pakistan's renewed request for re-negotiation on certain items in her schedule to the GATT was accepted in principle and a memorandum was drawn up indicating the procedure to be followed in such negotiations. It however, did not affect India's interest.

Another case which India fought was that of South Africa. As Indo-South African commercial exchange had been suspended at the time the GATT was on the anvil, South Africa, who is also a signatory to the Agreement, became, from India's view point a stumbling block to the successful and practical culmination of the Agreement.<sup>5</sup> At the first meeting when India made known her intention to withhold her consent to the application of the concessions between the two countries, the CONTRACTING PARTIES were at a fix because the GATT, as finalised by the Preparatory Committee in

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5. *ibid.*

Geneva, contained no provision to cover the extraordinary situations existing between the two countries. Under the GATT provisions, each country is bound to accord MFN treatment to all other CONTRACTING PARTIES. However, on the request of the Government of India to take into consideration its plea, the CONTRACTING PARTIES promptly made provisions for the situation, notwithstanding South Africa's opposition, through a protocol (a new provision which became an integral part of the GATT). This new provision reads as :

"Without prejudice to the provisions of paragraph 5(6) of Article XXV or to the obligations of a contracting party pursuant to paragraph 1 of Article XXIX, this Agreement, or alternatively Article II of this Agreement, shall not apply as between any contracting party and any other contracting party if:

- a) the two contracting parties have not entered into tariff negotiations with each other, and
- b) either of the contracting parties, at the time either become a contracting party, does not consent to such application.

The contracting parties may at any time before the Havana Charter enter into force, review the operation of this Article in particular cases at the request of any contracting party and make appropriate recommendation.<sup>6</sup>

Speaking on issue the Minister of commerce K.C. Neogy said :

It is well known that for reasons entirely unconnected with trade or commerce India has been forced by the attitude which South Africa has taken in regard to the Indian settlers in that country, to cease trade relations with her. If this Article had not been introduced into the Agreement and if India had not signed the Protocol

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6. Ibid



of Provisional Application subject to the reservation against South Africa in terms of this Article, it would be open to South Africa to accuse India before the contracting parties of violating the terms of the Agreement, to which both were parties along with the others.<sup>7</sup>

#### INDIA AT THE TIME OF RATIFICATION

For all the key countries<sup>8</sup> which signed the protocol of Provisional Application before November 15, 1947, the GATT became applicable from the first day of 1948, except for AUSTRALIA, who applied it immediately after signature.

As required, of the remaining countries, India signed the instrument before the end of June 1948, There has been considerable publicity in regard to this agreement and the Governments of this country in office from time to time prior to the actual formulation of the agreement had done their best to call into consultation and in many cases, expert opinion available in this country. A fairly comprehensive Press note was issued on the 18th of November, 1947, summarising the main concessions and exchanges in the negotiations in Geneva.

On 21st May, 1948 the proposals of the Ministry of Commerce for acceptance of the Agreement were placed before the standing Advisory Committee of the legislature for that

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7. *ibid.*

8. U.S., U.K., Benelux, Aaustralia.

Ministry, and the standing Advisory committee agreed that the Ministry's proposals reproduced below were sound and acceptable to the committee :

That India's permanent representative to the United Nations be instructed to sign on behalf of India at the earliest practicable date the Protocol of Provisional Application of the General Agreement on Tariffs and Trade with the following reservations.

- a. That the Government of India withhold their consent under Article XXXV to the Agreement being applied as between India and South Africa if and when South Africa becomes a contracting Party and
- b. That the Government of India shall give effect to the agreed tariff concessions in respect of a few items in schedule XII as soon as they have obtained the approval of their legislature.<sup>9</sup>

Finally India signed the protocol for the Provisional Application of this agreement on June 8, 1948 and it has begun to apply to India a month after the date i.e. from the July 8, 1948.<sup>10</sup> Technically therefore Government had to implement all the tariff concessions from that date, but in the absence of the Legislature being in session, they have only implemented their obligations to a limited extent and without final commitment. Other CONTRACTING PARTIES, did not raise any objection to this delay as was clear from K.C. Neogy'S (Minister for commerce) statement that - "the other

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9. India, debates, n.4, p.57

10. The delay is due to the fact that under section 23 of the Sea Customs Act, a notification is to be issued on expiry of thirty days from the date of signature of the Protocol where tariff reduction is involved.

countries, which are parties to the Agreement, have borne with us in the delay that they recognise, is inevitable in terms of the law of the land in full implementation of our part of the Agreement."<sup>11</sup>

India's signature to the Protocol of Provisional Application did not go uncriticised in its Parliament, when on February 1, 1949, K.C. Neogy, Minister of Commerce, brought Indian Tariff (Second Amendment) Bill so as to give effect to the tariff concessions of the Agreement.<sup>12</sup> On his part, Mr. Neogy admirably defended India's participation in the Agreement so also his colleague Shri T.T. Krishnamachari a distinguished member of the constituent Assembly, who later became the Minister of Commerce & Industry Iron and Steel.

The members of constituent Assembly were too anxious to know how far this (decision to join the GATT) would hamper. India's freedom of action and whether India signed the agreement due to pressure from the British Government because when India participated in the first negotiation concerning the establishment of the ITO, it was not a free country but under the tutelage of the British Government.

It is true that when India initially took part in the conference it did not have an independent existence but this

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11. *ibid*, p.59

12. *ibid*, p.56

did in no way bar India from taking an independent position. Because, firstly, India was not a party to the Land Lease<sup>13</sup> agreement. Therefore it was free from making any prior commitment. This is evident from the speech of T.T. Krishnamachari when he expressed the view that -

The house will understand that if the Government of India participated in the Geneva and Havana conference, they did so as free agents and not compelled by the force of circumstances resulting from any prior agreement that their predecessors were parties to that makes our position in judging the agreement a little more easy than it would otherwise have been.<sup>14</sup>

The same sentiment was expressed six years later, when in 1955, serious debates took place on the floor of Parliament regarding the question whether India should remain with GATT or not. K.K. Basu an eminent parliamentarian while discussing the white paper<sup>15</sup> on GATT, raised the question as to why we should trouble ourselves about this agreement on Tariffs and Trade which was entered into by an alien Government.

To this T.T. Krishnamachari replied -

Though it happened that the delegation to the GATT was sent in 1946, the ratification (i.e. Putting

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13. Land Lease agreement has been discussed earlier in the 1st Chapter see page 22.
  14. India, debates, n.4, p.70
  15. India, *Loksahba, Debates*, Part II, Session.10, vol.7, col.14561, September 5-21, 1955, (speech made by K.K. Basu, Member of Parliament, on **Motion Regarding** the White Paper on the GATT).

signature to the Protocol) was at a time when there was the CONGRESS GOVERNMENT in power, when we discussed it on the floor of this house in 1949, ...I think we were fully Congress. There is no question of anybody else controlling us either from White Hall or from any other part of World.<sup>16</sup>

Further, the Government of India made it clear that it decided to join the GATT not only because it would make multi-lateral trading activity easier but also to aim at a higher level of employment as well as higher level of economic status for the people of the country.<sup>17</sup>

The Minister of Commerce however admitted that the Government had to sign it immediately after the second tariff conference as certain parties like USA unlike Australia (which reduced rates unilaterally without waiting for reciprocal reductions) did not do so and were withholding concessions which they agreed to give to India until India was in a position to give concessions as agreed. So to avoid unnecessary delay the Government of India signed the Protocol of Provisional Application.<sup>18</sup> By this act we gave effect to the General MFN (Most Favoured Nation) treatment and the tariff concessions set forth in the schedules to the GATT. It was also provided that CONTRACTING PARTIES were to implement the commercial policy provisions

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16. Ibid, col 14562. [sic]

17. India, debates, n.4, p.70.

18. ibid, p.57.

of the agreement only to an extent consistent with existing legislations. It was also specified that any signatory could withdraw the concessions agreed upon by giving sixty days notice, because the GATT was originally put into operation under Provisional Application.

Under such circumstances, the question of ratification need not and in fact did not arise at the time of Provisional Application. It was known during that time that USA who accounts for a quarter of the total trade of countries participating in the negotiations of the agreement, did not propose to ratify until it was in a position to ratify the ITO Charter.

Therefore, it could be safely concluded on the basis of K.C. Neogy's observation that India did not barter away her sovereignty, by putting its signature to the protocol of Provisional Application of the GATT because it was open for any country to come out of the GATT by giving 60 days notice, which evidently signifies that the freedom of any country to decide its own course of action in future is not restricted.

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CHAPTER IV

**INDIA IN MULTILATERAL TRADE  
NEGOTIATIONS UNDER THE GATT**

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## CHAPTER IV

### INDIA IN MULTILATERAL TRADE NEGOTIATIONS UNDER THE GATT

It will be clear from discussions in earlier chapters that India is very closely associated with the GATT from the very beginning. Not only did it make valuable contributions in the early phases in shaping the GATT but continued with the same enthusiasm in the later phases and participated in the tariff negotiations arranged by the GATT.

So far eight rounds<sup>1</sup> of trade negotiations have been held under the auspices of the GATT since its inception, the last being the URUGUAY ROUND of trade negotiations.

To a large extent the GATT concentrated on Tariff negotiations especially in the first four rounds of negotiations held at Geneva, Annecy, Torquay, and Geneva mainly concentrating on the reduction of tariff. It was decided only in the Sixties (Dillon Round) that a new technique for negotiations would be conducted aiming at

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|----|---------------|---|
| 1. | First Round   | - Geneva, 1947                              |
|    | Second Round  | - Annecy, France, 1949                      |
|    | Third Round   | - Torquay, England 1950-51                  |
|    | Fourth Round  | - Geneva, 1955-56                           |
|    | Fifth Round   | - Dillon Round, Geneva, 1961-63             |
|    | Sixth Round   | - Kennedy Round, Geneva, 1964-67            |
|    | Seventh Round | - Tokyo Round, Tokyo, 1973-79               |
|    | Eighth Round  | - Uruguay Round, Punta-del-Este, 1986-1994. |



'across the board reduction' in tariff, rather than product by product negotiations. Since then the negotiations assumed a more complex shape.

### THE FIRST TARIFF CONFERENCE

The first round of tariff negotiations was held basically as a part of establishment of the GATT. It was decided in the first session of the Preparatory Committee that the members of the committee should enter into negotiations of the second session, to be held at Geneva in 1947, aimed at substantial reduction of tariffs and removal of other barriers of promotion of trade on a mutually affordable basis. In addition to the members of the committee, some other countries also participated, as more or less they decided to join the GATT, subject to ratification by the legislative bodies of respective countries.

In the first Tariff negotiations conference, held at Geneva from October 10 to October 30, 1947, India conducted negotiations with following countries.<sup>2</sup> The countries are

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2. Ministry of Commerce and Industry, Analysis of tariff concessions exchanged by India with other countries. (New Delhi), p.3.

Australia, Brazil, Benelux (Belgium, Netherlands and Luxemburg), Canada, China, Chile, Cuba, Czechoslovakia, France, Newzealand, Norway, Syria, Lebanon and USA.<sup>3</sup>

No negotiations were conducted with South Africa, because of the 'suspended commercial relationship between the two countries'.<sup>4</sup> Also India did not enter into negotiations with other contracting parties i.e. UK, Sri Lanka and Myanmar (then Ceylon and Burma) as India's commercial relations with these countries are governed by the U.K. - INDIA TRADE-AGREEMENT of 1939 and INDIA - BURMA AGREEMENT of 1941 respectively.

This created an uproar in the constituent Assembly legislative debates when members were discussing the proposed motion to change the Indian Tariff Second Amendment Bill.<sup>5</sup> Some members took opposition to the fact that Govt. of India still preferred to continue with the earlier

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3. All these countries are original CONTRACTING PARTIES. Of these, Australia, Benelux, Canada, Cuba, France & U.S.A. put the agreement into effect as between themselves as of Jan 1, 1948. Thus they became the first batch of signatories to the GATT.  
SOURCE:- BISD, Vol II, Geneva, 1952.

4. Government of India, *Momorandum on the General Agreement on Tariffs and Trade* (New Delhi, 1948), p.4

5. India, Constituent Assmebly, *Legislative debates, Part-II, vol.1, n.1, (New Delhi, 1949), p.76.*

arrangements (which were devised before independence) even after attainment of freedom. This is evident from the statement made by B. DAS (Orissa : General).<sup>6</sup>

To me it is an irony and a tragic fact that I should be discussing even after achieving independence, multilateral trade agreements and the like as if we are still in bondage to the former British empire. The British empire is dead and yet, in the new draft agreement we find preference to British colonies and the United Kingdom. I quite see that the independence Act of 1947, authorises in clause 22, that a trade agreement should be negotiated at an early stage. Why is it that my Government is silent over it'. Why have they not begun the discussion of such a treaty.

To this T.T. Krishnamachari, Member of the Constituent Assmibly replied that this would not effect India much as - "for one thing we cannot give any new preferences"<sup>7</sup> Further he pointed out that the preference amount only to small reduction. "There has been reduction in the matter of duty in certain respect (5 per cent in most cases and 10 per cent in a few)"<sup>8</sup>

Although India did not enter into negotiations, however it was in constant touch with the delegations of these countries and held a series of consultations with UK and the British colonies of Myanmar and Sri Lanka, as some of the

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6. *ibid.*

7. *ibid*, p. 71.

8. *ibid.*

items under negotiations were affecting the preferences enjoyed by these countries in Indian Market conversely. Taking advantage of Art. (XXXV) (which deals with provisions not to confer MFN status to any enemy country) India did not apply the MFN Status to South Africa.

The PROTOCOL OF PROVISIONAL APPLICATION, was signed by India on JUNE 8, 1948 and it started to applying in INDIA from July 1948<sup>9</sup>

To give effect to the concessions granted by India to other countries, Parliament of India passed a bill amending the Indian Tarrif Act of 1934 (on Feb 2, 1949).<sup>10</sup> In implementing an agreed reduction the margin of preferences, the invariable practice has been to leave the standard rate untouched and to raise the preferential rate to the required extent<sup>11</sup>

#### THE SECOND TARIFF CONFERENCE

The second conference for the negotiations of tariff was held at Annecy in 1949. The conference was convened primarily to facilitate the extension of the members of the ~~CONTRACTING PARTIES~~ to the GATT i.e. the countries which

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9. *ibid*, p.59

10. *ibid*, p. 60.

11. *ibid*, p. 60.

could not participate in the Geneva conference<sup>12</sup>

The twenty-three original signatories of the Agreement did not negotiate at Annecy for the further concessions as among themselves but they conducted negotiations with the new signatories. At this conference ten new countries joined the GATT. World Trade affected by concessions increased from sixtysix percent to eighty percent.<sup>13</sup> One hundred and forty-seven sets of bilateral negotiations covering five hundred items were completed between the new and the old original contracting parties.<sup>14</sup>

*India* conducted negotiations and simultaneously exchanged concessions with six more countries, viz., Denmark, Finland, Greece, Hati, Italy and Sweden<sup>15</sup>

Four other countries newly joined the GATT at this conference, viz Dominican Republic , Liberia, Nicaragua and Uuruguay.<sup>16</sup> *India* did not enter into any negotiation with these countries regarding concession of tariffs as , it had no substantial trade relations with them.

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12. W.A. Brown, *United States and Restoration of world Trade: An Analysis and Appraisal of the ITO Charter and the General Aggrement of Tariffs and Trade* (Washington D.C, 1950), p. 5.

13. K.R. Gupta, *A study of General Agreement on Tariffs and Trade* (New Delhi, 1967), p. 68.

14. *ibid*, p. 69.

15. BISD, Vol 1, Annecy Protocol (Geneva, 1947), p.79-92

16. *ibid*, p. 93.

### THE THIRD AND THE FOURTH TARIFF CONFERENCE

At the third conference held at Torquay, India exchanged concessions with six countries which joined the GATT at this conference. This conference was also more or less limited to providing facilities to various countries to join the GATT despite the fact that the US President declared that "at the third round of negotiations the original contradicting parties could, unlike Annecy, exchange tariff concessions between themselves as most of the countries were not in a position to exchange further tariff concessions".<sup>17</sup>

The Fourth Conference was called in Geneva in 1956. India did not take part in the conference as Government of India was not in a position to offer any concessions.<sup>18</sup>

### TARIFF THE FIFTH CONFERENCE

The Fifth Tariff Conference which, held under the auspices of GATT in Geneva IN 1960-61, is unique in a sense that the negotiation was conducted in two phases and India played an active role in both the phases. Specially the second phase constituted a very important landmark as India was able to reach an agreement with USA.

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17. Brown, n. 12, p. 6.

18. Gupta, n. 13, p. 215.

The fifth round was divided into two phases following the changes in international scenario. So far the European Economic Community (EEC) countries used to make commitment in individual capacity. But following the EECs decision to adopt a common tariff for the community as a whole, it became apparent that modifications have to be made to the existing tariff structure. It was not an easy process or task. It required long discussions and consultations with EEC. Therefore the entire first phase was devoted to modifications in the tariff commitments.

In the first phase in addition to the negotiations with EEC, India held consultation with some other countries as well as Australia, Finland, Turkey and Hati. This became imperative because these countries place their proposals of modification of commitments given to India before the GATT authority.

The agreement reached with<sup>19</sup> the community contained that the common tariff would not be increased beyond a specified levels as far as the main items of Indian export are concerned, for example, products like cashew-nuts, tea, vegetables, oil, tanned hides and skins, jute manufactures, coir manufactures etc.

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19. See BISD, Nineth and Tenth Supplement (Geneva, 1962).

The agreement with EEC further specified for the reduction of common tariff on woolen carpets from forty per cent to thirty-two per cent.

India pressed hard for greater compensation in the common tariff but without much success. However the negotiation ended with a note of assurance by the community that "the balance of compensation due to India would be provided during the second phase of negotiations in the form of unilateral concession in the common tariff in India's favour".

If one looks at the statement made by K.C. Reddy Minister of Commerce and Industry<sup>20</sup> it could be safely said that India could not draw a very satisfactory result at the end of the negotiation.

"In the case of the negotiation with the European Economic Committee I would say frankly that we have not had an outcome which is satisfactory to us from the point of view of increasing the volume of our trade with the community."

It seems that one of corner stone of India's policy regarding the negotiation with EEC was to impress upon the

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20. GATT, *Proceedings of the Meetings of Minister 27 to 30 November, 1962* (Geneva, 1962), p.181, Speech by K.C. Reddy, Indian Spokesman "on reduction of tariff reductions".



EEC of its future bright prospects, if it enters into commercial relationship with India.

"At this stage it seems that the strongest card which Arther Lall could play and particularly well qualified to play is not so much to dwell on what our country hopes to get out of the commercial co-operation agreement as on what the members of the enlarged community stand to gain from it".<sup>21</sup>

The second phase, is referred to as the Dillon Round of negotiation after Mr. Douglas Dillon, the then Under-Secretary of the USA who was instrumental in calling a fresh multilateral negotiations to initiate the process of further dismantling of trade barriers and reduction of tariffs.

The negotiations, as put by K.R. Gupta, with the USA "were the most important in the series concluded by India."<sup>22</sup> because USA conceded India's right to have special consideration as a developing country by not insisting on full reciprocity.

Finally, after much deliberations and discussions, an agreement was reached between the two. The agreement provided for a reduction of 20 percent or more in the US Tariff on various products ranging from items of food to items of jute manufacture. The agreement covers twenty eight

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21. V. Balusubramanian, "Some good news from Brussels", *Eastern Economist*, (New Delhi), November 16, 1973.

22. Gupta, n. 13, p. 316.

Indian export products. Important among them are Jute manufactures, coir-manufactures, cashew nuts, sandal wood, oil, buffalo hides, leather etc.<sup>23</sup>

The agreement is on reciprocal basis and in return. India had to give concessions in respect of import duties on twenty-five American products, such as, metal-working machinery, specified textiles machinery, component parts, chemical raw materials, dried skimmed milk, DDI, cinema projection machinery etc.

But there is one difference regarding the concessions to be granted by India. In respect of seventeen out of twenty five U.S. items Indian concession would take the form of an assurance that India would not raise duties on them above the existing level. The agreement, it was decided, would come into effect from July 1, 1962.<sup>24</sup>

From India's point of view the most valued part of the agreement was relating to jute manufactures. Because U.S. constitute the largest single market for Indian jute products. India's share amount to 80% or more to total U.S.

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23. "India U.S. Tariff Cuts", *The Economic Weekly*, (New Delhi, June 30, 1962), p.317.

24. *Ibid.*, p.318.

During this period, India also approached the CONTRACTING PARTIES under Art. XVIII of the GATT agreement, for obtaining a release in case of eight categories of products and to carry forward consultations in this regard with the CONTRACTING PARTIES. It became necessary for India to apply for such consideration as, back home, Indian industries were mounting pressure on the government for protection. Several industries which flourished during the war and post-war period found themselves in hard situation. This is because - "with the disappearance of Korean boom and increasing competition from industrially advanced countries sellers market gave place to buyer's market".<sup>29</sup> Indian Tariff Commission recommended protection in case of certain industries.<sup>30</sup> In case of items bound under the GATT, it was not possible to unilaterally grant protection. Therefore the Government of India approached the CONTRACTING PARTIES. The CONTRACTING PARTIES, acceded to the request of India. India thereby conducted negotiations with concerned countries i.e. those with whom the concessions were negotiated and with some others who showed interest to these concessions.

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29. Gupta, n. 13, p. 217.

30. Government of India, Ministry of Commerce and Industry (Press Note, 24 July 1954).

import of jute manufactures.<sup>25</sup> Another important commodity with great potentiality to U.S. market was cashew nut. India would certainly be benefited for lowering of tariffs to the extent to which price reduction would help to boost sales.<sup>26</sup> Other commodities however result to only marginal gain. Thus reduction of tariffs on important group of foreign-exchange earner was most helpful to India.

Commenting on the agreement, the Economic weekly wrote-

At a time when India's export prospects in Britain, her largest single customer, are overshadowed by the possible impact of Britain's entry into the E.E.C. the agreement reached between the U.S.A. and India for lowering duties on some of our major exports to the U.S.A. comes as a welcome relief.<sup>27</sup>

It became more or less apparent from the speech made by Monsieur Pissani, the French spokesman in Brussels that the commonwealth preferences would come to an end with Britain's entry to the common market. "Either Britain will abandon the link which she has with her suppliers or she does not want to enter Europe except after having ruined it".<sup>28</sup>

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25. Ibid.

26. Ibid., p.319.

27. Ibid., p.316.

28. "The great debate : join or not to join", *Economic Weekly Special Number* (New Delhi, July 1962).

India initially placed her request for obtaining release for eight categories of products.<sup>31</sup> The negotiation ended in certain modification in the schedule of concessions granted by India, and India obtained freedom to raise duties on some items.<sup>32</sup>

In order to get the consent of the concerned CONTRACTING PARTIES to raise the duties on the above mentioned items, India agreed to reduce duty on the following items as compensation -

- (a) plastic materials, namely, colluose plastic excepting cellulose acetate, vinxl resins and styrene.
- (b) (i) high speed steel containing more than thirteen per cent tungsten or its molybdenum equivalent. )  
(ii) special alloy steel containg either  
0.40 per cent or more of chromium or nickel

OR

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- 31. The Products were (i) varities of canned fish tooth paste, tooth powder, talcum powder shaving soap and shaving cream (ii) lithpone (iii) fountain pens & parts (iv) coal tar dyes (v) wines (vi) glass, beads & false pearls (vii) safety.
  - 32. The items were - (a) coaltar dyes (b) razor blades (c) glas beads (d) wines containing not more than fortytwo per cent of proof spirit:
    - (i) champagne and other sparking wines
    - (ii) others sorts.

0.10 per cent or more of molybdeum, Tungsten or vanadium.

In addition, India agreed to bind the import duties on anti-biotics, electric hearing aids, tyres with metallic framework and milk food for infant and invalids at the existing level.

It proves beyond doubt that India had to give substantial concessions to get release from the bound items and that release from bound items is not very easy and that to obtain such release, "concession may have to be given to the contracting parties not only with whom the concerned concession has to be exchanged<sup>33</sup> but in many cases, as happened with India, also to other ~~contracting parties~~ which are substantially interested in the old concessions. Because if the new concessions accrued are of no interest to the parties who are substantially interested in the concessions, then they may not agree to release without compensation for themselves. "This would constitute an additional cost of obtaining the release from bound items".<sup>34</sup>

In selecting items on which concessions are to be

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33. India, Lok Sabha, Debates, vol.7, Session 10, 1955 14469.

34. Gupta, n. 13, p. 218.

granted to other countries and to decide the nature of concessions to be granted, India has looked into three things, i.e., not to grant concession on products receiving protection, the concession granted should not result in loss of revenue and last but not the least is to protect national interest (This policy has been discussed ~~later~~).

#### RECIPROCITY --- INDIA'S CONTRIBUTION AND ACHIEVEMENTS

Apart from this, in these tariff conferences India raised some important issues.

India pointed out in the Ministerial Meeting that the strict application of reciprocity in tariff negotiations has practically exhausted the bargaining position not only of India but in fact of all the less developed countries. The situation of the less developed countries becomes worse when the industrialised countries by invoking the rule (whereby a country can refuse to negotiate on any product) could avoid negotiations on any product of vital interest to the less developed countries. Indian spokesman pointed out that-

"Both in course of the negotiation with the community and with other industrialised countries, for example, U.S.A., we have been greatly handicapped by the currently applied principle of

reciprocity".<sup>35</sup>

India further highlighted the position of the less developed countries. At each successive tariff negotiations the less developed countries had to make large concessions generally on manufactured goods in return for concessions on their export which primarily consisted of primary products. Reduction of tariffs in manufactured goods deterred those countries from establishing industries and diversifying their economies to the extent which their natural resources and man-power would justify.

In these circumstances, India and other less developed countries have little room for manoeuvre and cannot offer reciprocal concession for tariff reductions granted by the industrialised countries. It is only by offering what may be called one-way free trade facilities to the developing countries both in regard to primary products and in regard to semi-processed and processed goods that the industrialised nations could provide scope to the developing countries to achieve self sustained growth.<sup>36</sup>

In Committee I, discussions were held regarding negotiability of non-tariff measures. Less developed

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35. GATT, *Proceedings of the meeting of Ministers 27 to 30 November 1962* (Geneva, 1962), pp.101-102. Speech made by K.C. Reddy, Indian Spokesman on, "obstacles to the Trade of Least developed countries".

36. Ibid.



countries pointed out the various non-tariff measures like internal charges, subsidies and quantitative restrictions used by developed countries which practically nullify the benefits that could have been reaped by the less developed countries otherwise.

The delegations of Australia and India submitted a number of concrete proposals designed to be included in the negotiation rules, the negotiability of non-tariffs measures like quotas, subsidies, and internal taxes. The proposals were accepted after long discussions and the committee agreed to include the following measures for further discussion.<sup>37</sup>

- i) The protection offered through the operation of import monopolies;
- ii) Internal quantitative regulations as provided in paragraph 7 of Article III (Mixing regulations);
- iii) The level of screen quotas as provided in Article IV;
- iv) Import restrictions as provided in para 2 (c) of Article XI (i.e., quotas on agricultural products necessary to the enforcement of governmental measures which operate to restrict the quantities of the similar

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37. Gupta, n. 13, p. 71.

domestic product permitted to be marketed or produced.

- v) The level of subsidy which operates directly or indirectly to reduce imports.
- vi) Internal taxes.

Although India along with Australia was able to bring forth the issues of non-tariff measures for discussion but unfortunately nothing concrete could be achieved as some of the industrialised countries including the EEC taking the advantage of the "freedom of action" rule (under which any country can refuse to negotiate on any product) refused to enter into any negotiation in respect of non-tariff measures.

The above analysis shows that India made large number of concessions during the course of negotiations. Although the negotiations were conducted on a reciprocal basis India had to make large concessions to the Contracting Parties whom it entered into negotiations with, and this did not go

unnoticed in the Constituent Assembly. If one looks at the debates that took place in the Constituent Assembly and on the floor of the parliament later, it becomes crystal clear that much of the arguments and dis-satisfaction that were expressed against India's decision to participate and subsequently to become a member of the GATT, centered round the question as to why India conceded to offer concessions, particularly on some important items of exports. This issue cropped up again and again whenever India entered into new round of negotiations and as such, concerns were expressed whether by doing so India would lose ~~its~~ freedom of actions and whether concessions offered by India would adversely affect the economy and result in loss of revenues.

For the first time, the issue figured in a big way in 1949, when India sought to amend the Indian Tariff Act of 1934 in order to give effect to the tariff concessions that it undertook to offer to the **CONTRACTING PARTIES** by signing the protocol of Provisional Application.

Shri R.K. Sidhva, a distinguished member of the Constituent Assembly, expressed the view that, he fully appreciates the view of the Government that to encourage the export trade India should offer better concessions since the country was not in a position to bargain being a backward

country. What he was unable to understand was that why India agreed to offer concession on items like Jutes, Mica, Chilly or Spices, in which India enjoys a monopoly or near monopoly position. To quote him,

"These are essential articles which, even if we do not make some concessions in the duties, foreign countries which are industrially advanced have to import from this country. Having made concessions in the export to these countries I do not know whether we have in any way increased our export trade."<sup>38</sup>

He further mentioned that even without this kind of concessions being given, the export of these articles had always been in the increase as far as statistics of export-imports suggested.

The second line of arguments concentrated on the fact that instead of importing items like cheese, ham and bacon (which come from Netherlands) and perfumery and toilet requisites (which come from France) and reducing duties, the government should see that indigenous units which produce the same should be upgraded. If facilities are forthcoming then these products would be of international standard. Scathing attacks were also made by eminent members against T.T. Krishnamachari's observation that reductions made by

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38. India, debates, n.4, p.73.

India account to only small quantum from five per cent (in most cases) to ten per cent.<sup>39</sup> Almost all the members expressed anguish over such observation. To Sidva it was no small concession if one converts the same into figures.

To M. Ananthasayanam Ayyangar, another distinguished member of the Constituent Assembly, -"Five Pies to one who gets only ten pies is a very big sum, though five rupees to one who has five million is nothing."<sup>40</sup>

B. Das, another eminent member of the Constituent Assembly, while speaking on reducing duties on important items of export opined that "this little reserve pocket money in the hands of the Finance Minister have been taken away from him... through this multi-lateral agreement."<sup>41</sup>

Some members like K.T. Shah, an eminent economist, expressed the view that a complicated subject like the GATT and India's accession to it should have been given greater consideration by a special body like select committee.<sup>42</sup>

Some other members expressed the concern that in such

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39. Ibid, p. 71.

40. Ibid., p.79

41. Ibid., p.76.

42. Ibid., p.84.

multi-lateral trade negotiations, where the gain or loss of a country depend upon the economic status, India would never be able to gain an upper hand. Because with the partition, the privilege, once enjoyed by India, of being a monopoly over items like jute, hides and skins, has disappeared. Major jute producing areas fell to East Pakistan, and areas specialising in offering good quality skin & hides fell to West Pakistan as a result of partition. Therefore in such multi-lateral trade negotiations, whatever would be the outcome would never act in favour of India as in ultimate terms, it was the economic status that matters in deciding the profit or loss of a country. Therefore, with dwindling monopolistic position, it would be very difficult to say the last words.

Such concerns were expressed on the eve of India's decisions to give effect to the concession, it exchanged with other CONTRACTING PARTIES..

K.C. Neogy, the Minister of commerce, on his part, with good measure of justification, defended India's participation in trade negotiations under the auspices of the GATT and narrated the factor that had guided the Indian delegation in selecting the several items for which concessions were granted. He explained that the interest of

India was never compromised. To quote him -

"The interest of India had to be safeguarded and whoever was to present the interests of India at the subsequent discussions (that took place in London, Geneva, New York or Havana) was expected to bear in mind certain fundamental questions for the purpose of safeguarding India's interest".<sup>43</sup> He further elaborated that although the negotiations were ultimately to result in the generalisation of benefits on a multi-lateral basis, for practical convenience the negotiations were conducted on selected commodity by commodity basis with countries which happen to be the principal suppliers of the same.<sup>44</sup>

In selecting items, he mentioned, Indian delegation was guided by three sound principles which form the core of the policy of the Government of India while granting any concessions. These are -

- i) concessions should be such as are demonstrably in the interest of the national economy or are not injurious to the national economy.
- ii) concessions should not relate to products which are protected or in respect of which a claim to protection is likely to be made during next three years.
- iii) Concessions should not result in an excessive loss of revenue.<sup>45</sup>

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43. Ibid., p.86.

44. Ibid., p.59.

45. ibid., n.8.

Speaking on the nature of concessions he elaborated that there are three sets of concessions as under.

- (1) Reduction in the existing rates of duty
- (2) Binding against future increase of duty and
- (3) Reduction or elimination of preferences which India has granted to other countries.

The principal commodities in respect of which concessions have been offered were - Food Products such as butter, milk, fresh fruits etc. Raw Products like wool, zinc, lead etc: chemical, machinery, motor cars and optical instruments etc. In return for these, concession have been obtained mainly on Jute and Jute manufactures, cashew nuts, sports goods, spices, tea, cotton manufactures, mica, coir matting, carpets etc. To clear doubts he further explained the manner in which the tariff concessions negotiated had been implemented. In those cases, where a positive reduction in the rates of duty has been agreed upon, such duties, even if preferential have been substituted for the existing rate. In cases where only a reduction in the margin has been negotiated, the reduction has been secured invariably by leaving the standard rate untouched and by raising to the required extent the preferential rate.<sup>46</sup>

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46. *ibid.*



Coming to the criticism that were levelled against concessions being exchanged by India with other Contracting Parties, K.C. Neogy asked the honourable members to bear in mind the character and composition of India's export trade.

#### **THE SIXTH TARIFF CONFERENCE (KENNEDY ROUND) AND**

#### **THE SEVENTH TARIFF CONFERENCE (TOKYO ROUND)**

No reciprocal concessions were demanded from India in the Kennedy Round by any negotiating country. But as Dinesh Singh the Minister of Commerce said, "we were expected to make contributions in the light of our trade and development needs. Our contributions has taken the form of offering to reduce the import duties on unmanufactured Tobacco, binding the effective rate in respect of a small number of some British products the preferential advantage which we have been providing in the Indian market."<sup>47</sup>

The Kennedy Round negotiations had two main consequences for India. In the preferential market, Indian exporters faced a stiffer competitions in respect of products on which preferential margins had been reduced or eliminated. In the non-preferential market, trading opportunities in respect of certain products had been improved. Specially the products of which India had been

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<sup>47</sup> India, Debates, Vol. 7, no. 14, Fourteenth Session, 20th July, 1967.

substantial supplier like Tea, Jute and Coir etc.<sup>47</sup>

In the Sixth rounds of negotiations held before the Tokyo Round, tariffs formed the negotiations as we have seen. In the Tokyo Round also a good part of the attention was devoted to tariffs but the non-tariffs measures assumed greater political importance. The bulk of the major controversial issues like 'subsidies', countervailing duties, customs valuations, safeguards and changes in the GATT framework to provide for special and differential treatment for less developed countries, however remain unresolved. Tariff negotiations, as declared before were held separately for Tropical Products, agriculture products and industrial products in accordance with the objectives of the Tokyo Declaration.

India took part in the conference and exchanged tariff concessions with USA, EEC, Japan, Canada, Switzerland, Austria, Australia, Finland, Norway and Sweden.

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47. India, Debates, vol.7, no.14, Fourth Series, Fourteenth Session, 20th July, 1967.

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CHAPTER V

URUGUAY ROUND OF TALKS

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### URUGUAY ROUND OF TALKS

The Uruguay Round of multi-lateral trade negotiations was launched in September 1986 against a backdrop of protectionism and trade tension among the major industrial nations. It is one of the most ambitious attempts to revitalise and strengthen the multi-lateral trading system since the establishment of the GATT in 1947. It tackled both the weaknesses in the system itself (the operation of the GATT, updating and revision of trading rules) and the extension of the scope of and related GATT rules to new areas of trade.

The first step towards the launching of the new round of multi-lateral trade negotiations was taken at the meeting of the GATT Ministers in November 1982. The US call for a new round of negotiations was rejected by a large number of Less Developed Countries and industrialised countries. The communique released after the meeting summed up the sad state of affairs and the Ministers agreed to reduce trade frictions, overcome protectionist measures, avoid export subsidies inconsistent with the GATT, and promote the liberalisation and expansion of trade.

In September 1985, US again gave a call for a new Multilateral Trade Negotiations. This time the support from a large cross section of countries was immediately recieved and the senior trade officials of respective countries began preparation for the proposed MTN. Finally in September 1986. The Uruguay round of multi-lateral trade negotiations was launched by a ministerial meeting at Punta del Este in Uruguay.

#### **THE PUNTA DEL ESTE DECLARATION**

Over a hundred countries assembled at Punta-del Este and agreed to hold new rounds of talks that would aim at:

- a) Expansion and liberalisation of World Trade.
- b) Strengthening the role of the GATT.
- c) Increasing the responsiveness of the GATT to the changing inter-national environment.
- d) To strengthen the inter-relationship between trade and other economic policies affecting the growth and environment.

Thus the new round of MTN was launched. What distinguished the round from all other previous GATT negotiations was its scope. The agenda included, for the first time, Services, Trade Related Intellectual Property

Rights (TRIPS) and Trade Related Investment Measures (TRIMS). Since the list of issues to be discussed became quite long and difference of opinions almost led to a standstill situation, Arthur Dunkel<sup>1</sup> in order to break the impasse, put up a proposal for consideration of the Governments. The issues were to be broadly divided into seven areas. Namely (i) Market Access (ii) Agriculture (iii) Textiles (iv) GATT rules including TRIMS (v) TRIPS (vi) Services and institutional matters. It took almost seven years eventually to reach an agreement on various issues. Here only three new issues TRIPS, TRIMS and Services would be discussed in particular reference to India's appearance.

#### **THE NEW ISSUES AND INDIA'S INITIAL STAND**

When the 'new issues' of TRIPS, TRIMS and Services were brought on the proposed agenda of the eighth multi-lateral negotiations, the Government of India, as will be seen, tried to build up the viewpoint of the less-developed countries in association with countries such as Brazil, Argentina, Tanzania, Egypt etc. that could be taken during the negotiations. It may be mentioned here that in the GATT

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1. Director-General of GATT and chairman of trade-negotiating committees.

there is nothing like group 77 (group of seventy seven developing countries) to present the viewpoint of the less-developed countries. In its effort, the Government of India organised official and semi-official conferences to bring the less-developed countries together to forge an united approach to the various 'issues' that were expected to be discussed in the forthcoming eighth round of negotiations. To some extent the Government of India succeeded in either stalling the process of negotiations or endeavouring to achieve a special and differential treatment. This can be seen in the prolongation of the negotiation of the Uruguay round of multi-lateral talks and declaration of the less-developed countries which reaffirmed that special and differential treatment would be given to less developed countries. One would like to add here that the urge to confer a special treatment to the less-developed countries has been diluted substantially in the final act emanating from the Uruguay round of talks. Thus it could be far-fetched to argue that Indian efforts to build up a coalition of interest did not succeed in a major way because of three important developments which took place in the international economic situation:

- i) There had been a 'break' in the unity of the less-developed countries consequent on the serious international debt crisis faced by most of the less developed countries. This led most of them to seek help

from IMF and the World Bank which made the unity efforts a non-starter, as the dictates of these organizations loomed large on the national economies.

- ii) Collapse of the socialist system, and acceptance of the market philosophy led the less developed countries to consider the acceptance of the rules stipulated by the world monetary institutions. Therefore many less developed countries took the view that it would be best to ensure that their interest is considered in an eventual agreement rather than (a) allow a group of industrialised countries creating elaborate agreement confined to their interest, (b) be forced into unequal bilateral negotiations or confrontation with countries such as USA. and (c) risk losing out on the potential gains from trade liberalisation i.e., access to new technology and the possibility of exploiting their competitiveness in certain sectors. Thus dependence of some of the less developed countries on USA had also its own force in breaking the unity as seen in the reversal of stand of some countries like Brazil and Argentina.
- iii) The role of the Trans-National Corporations (TNCs) in <sup>the</sup> perusing building of an intellectual regime consistent



with their need. This has been a very important-component of Uruguay round of multi-lateral trade negotiation, for there has been apprehension among the TNCs that they would be losing their 'property rights' which has been their asset in keeping their market power in tune.

#### **TRIMS (Trade Related Investment Measures)**

Among the new issues of negotiation, TRIMS is one. Its inclusion into the agenda of the GATT, was initially opposed by India. But as we have seen, being left alone in the field India could not hold the inclusion of TRIPS (Trade Related Intellectual Property Rights) and TRIMS (Trade Related Investment Measures) in the formal agenda for long.

Since the conclusion of Tokyo Rounds there have been attempts specially by the USA to bring under the purview of the GATT a more focused consideration of TRIMS particularly those issues related to the use of local contents and export obligations. However the less-developed countries have resisted this attempt maintaining that the issue of foreign direct investment (FDI) is beyond the jurisdictional competence of the GATT. On the other hand the proponents of inclusion of TRIMS argued that such requirements have

effects clearly related to trade and they should be addressed by the CONTRACTING PARTIES. It is against this backdrop that the Uruguay round negotiations on TRIMS need to be viewed.

Much of the ground works for the negotiations has been carried out within the OECD. The USA was behind the moves to extend the scope of OECD initiatives to the less-developed countries by including investment issues in the new round of multi-lateral trade negotiations. Countries like India and Brazil were much criticised for imposing tough conditions on foreign investment which would distort international trade.

#### **AIMS OF THE URUGUAY ROUND NEGOTIATIONS ON TRIMS**

The negotiations concerned only those aspects which distort trade. They did not consider investment policy *per se*. The objectives of the negotiations were:

- a) to examine how existing GATT provisions apply to the trade-restrictive and distorting effects of investment measures.
- b) to elaborate as appropriate further provisions that may be necessary to counter adverse effects on trade.

This has been spelt out in the Punta del Este Ministerial Declaration.

Following an examination of the operation of GATT Articles related to the trade restrictions and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade.<sup>2</sup>

The mid term review decisions of the Trade Negotiations Committee held in Montreal in December 1988, articulated these objectives in a procedural manner in the form of a series of elements.<sup>3</sup>

- i) Further identification of the trade restrictions and distorting effects on trade that are to be covered by GATT articles.
- ii) Identifications of other such effects that may not be adequately covered by the GATT.
- iii) Development aspects that would require considerations.
- iv) Other relevant issues such as modalities and implementations.

#### ISSUES AND PROGRESS IN THE GROUP

The first phase of the negotiations was primarily concerned to identification of TRIMS and discussion of their

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2. UNCTAD Doc. ITP/10, Annex, P, 369. Ministerial Declaration on the Uruguay Round.

3. UNCTAD Doc. ITP/42, 'Uruguay Round : Further paper on selected issues', p.61.

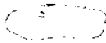
trade effects. Progress of discussions in this group had been over shadowed by continued disagreement between the US at one extreme and India at the other. The USA sought a comprehensive agreement to regulate the use of TRIMS, whereas India insisted that investment measures being a vital component of economic development and therefore the trade distortion they might cause, should not be given any prime concern. Other less developed countries followed suit and argued that the negotiations should be limited to the strict mandate of Punta del Este by considering trade related aspects only. India also argued against the measures to extend the creation of "international investment regime."<sup>4</sup>

The EEC maintained a low profile in the negotiations because they faced the difficulty in reconciling their interests with regard to investment in the EEC and to their investment interests outside the EEC. Nevertheless, It was agreed in Montreal conference that negotiations would continue to identify TRIMS and the application of the GATT disciplines. Participants were requested to submit detailed proposals in early 1989.

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4. *Mainstream*, December 2, 1989, P. 27.

The USA, the chief initiator of the debate, which did not produce any written detailed proposal to the negotiating group prior to mid-term review, now proposed that the twelve TRIMS<sup>5</sup> (Such as Local content requirements, Manufacturing requirements. Domestic sales requirements, Exchange restrictions, Product-mandating restrictions etc.) identified in the group discussions be subject to the GATT discipline. The U.S. (in a proposal submitted in July 1989) suggested that certain TRIMS such as Import restrictions, Restrictions on employment of expertise etc. should be banned. The debate in the USA was mainly dominated by concerns about US overseas investment. To quote Anna Murphy,

The US position must be viewed in connection with on-going bi-lateral trade disputes involving India and Brazil both of which were named as priority countries under 'Super 301' of the 1988 Trade Act. Restrictions on foreign investment were listed among the complaints  filed against these countries.<sup>6</sup>

India presented a detailed proposal to the negotiating group in 1989 incorporating apprehensions of the less

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5. UNCTAD Doc., n.3, p. 244.

6. Anna Murphy, *The European Community and the International Trading System*, vol. 1, p. 104.

developed countries. Since comprehensive paper emphasised that the group should focus on the adverse trade effects of investment measures. Elaborating the point, India made it categorical that some of TRIMS measures are extremely necessary from the point of view of economic development because in many cases the foreign investors are simply interested in selling in the domestic markets, resulting in tremendous outflow of resources; secondly, foreign investors are mainly interested in profit-making sectors which results in high profit remittances and neglect of the needy sectors. Therefore these measures although have distorting effects should not be banned. This was in sharp contrast to US proposal which made a distinction between TRIMS which should be prohibited and those which should be subjected to the GATT discipline. India argued that TRIMS could not simply be prohibited as they are in the heart of national sovereignty and economic policy. India further drew attention to the restrictive business practices of Trans-National Corporations which in its opinion should be considered by the group. Developed countries rejected this point on the ground that such issue was beyond the scope of the

negotiations.<sup>7</sup> India strongly expressed the concern that once the agreement was reached the government would not be able to impose phased manufacturing programme (PMP) or "local content" rules in India and that the government would not have the right to impose export obligations on foreign investors. India also expressed the apprehension that once the agreement is drawn as desired by the developed countries, specially the US, it would lead to a total freedom for foreign investors which would entail a disastrous consequence not only to India but all less developed countries.

Finally the agreement that was reached on the bases of debates and discussions and various Members' proposals was made to apply to investment measures related to trades in goods only. "It is a thin agreement."<sup>8</sup> All it specifies is that no country shall apply any TRIM that is inconsistent with the provisions of Article III (relating to national treatment) or Article XI (relating to quantitative restrictions) of the GATT. It also contains a list of few TRIMS that are not consistent with the spirit of Articles

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7. Ibid.

8. Ganeshan on TRIMS, p. 45 (in a seminar held on 23-7-94 at Bangalore University campus it was organised by Rajiv Gandhi Institute for Temporary Studies).

III and XI. They mainly relate to the compulsory use of domestic products or limitations on the use of imported products in relation to the value or volume of local production or exports. In a nutshell the agreement calls for foreign investors to be given the same treatment as national investors. There will be no obligations on them to use our domestic resources materials, technical skills and managerial personnel. While offering national treatment to external investors it would not place any obligation on them relating to export promotion, or other performance criteria on use of local-raw materials etc. Commenting on the effect on India A.V. Ganeshan opined that

None of the TRIMS envisaged is presently applied in India. In fact our current foreign investment policy does not stipulate any discriminatory performance requirements' and there is nothing in the TRIMS agreement which is contrary to our own policy.<sup>9</sup>

It has to be remembered that India already made some changes on FERA (Foreign Exchange Regulation Act.) to give effect to the agreement. Thus we see that although India could not stop the expansion of the GATT, it could with the

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9. Ganeshan, n.8, pp.45-46.



support of LDCs, at least thwart the attempt to go beyond the objectives of Punta del Este declaration.

### **TRIPS (Trade-Related Intellectual Property Rights)**

Trade-related intellectual property rights constitute one of the new subjects to emerge on the Uruguay Round Agenda. "US has been at the forefront of efforts to enforce intellectual property rights across the world and to stamp out counterfeiting."<sup>10</sup> There are numerous international and bi-lateral agreements on intellectual property. The largest being the world intellectual property Organization (WIPO), an UN agency. It aims to promote International Co-operation in drafting new agreements and updating domestic legislation on intellectual property. The main agreements concluded under WIPO are the Berne convention and Paris convention on industrial property. Even the original GATT contains provisions that deal with the subject although not in a direct fashion. For example Article II requires the co-operation of the CONTRACTING PARTIES to prevent trade names in such a manner as to misrepresent the true origin of the product.

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10. Murphy, n. 6, p. 97.

Sub-paragraph (c) of Articles XII relating of import restriction in case of balance of payment crisis provides that the import restrictions shall not "prevent compliance with patent, trade mark, copy right or similar procedures."<sup>11</sup>

The question arises if both the GATT and the WIPO deal with TRIPS, why US was equivocal in its stand to broaden the horizon of the GATT to this area. The answer is very simple. The main drawback of WIPO agreement is that they lack enforcement provision limited in scope and country coverage and as far as the GATT is concerned, only indirectly deals with IPRS and far from the objective of US design. The intention and objectives of US and developed countries are not far to seek. It is estimated that infringement of intellectual property rights and counterfeiting cost millions of dollars to business. "The US International Trade Commission (UITC) estimated that in 1986 alone, IPRS violations cost American industries a staggering sum of \$ 23.8 billion in lost domestic sales, exports and royalties."<sup>12</sup> Therefore it is no wonder that US with a view to do away

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11. "Government Notes on Dunkel Draft", *Third Concept*, February, 1992, p. 47.

12. UNCTAD Doc, n.3, p. 96.

with protections, brought the proposal of inclusion of TRIPS in the GATT agenda.

#### **AIMS OF THE URUGUAY ROUND NEGOTIATIONS ON TRIPS**

The main objective of the negotiations are

- (a) to clarify the GATT provisions regarding trade related intellectual property rights,
- (b) to elaborate appropriate new rules and disciplines,
- (c) To develop a framework of rules and principles dealing with national trade in counterfeit goods, and
- (d) to take account of the work already completed in the GATT and the WIPO.

#### **BACKGROUND FOR TRIPS**

Until late seventies, the protection of intellectual property was considered a trade barrier in the GATT context. We have already examined the GATT provisions on this subject. Discussions on the counterfeit goods took place for the first time during Tokyo MTN, but negotiations were limited only to 'infringement of trademarks'. Following the 1982 Ministerial meeting, contact was established between WIPO and the GATT, leading to the creation of an expert group to examine the issues. The main reason for

seeking an agreement in the GATT is that it is the leading international forum and it has dispute settlement procedures to regulate trade issues. Therefore US became anxious that negotiations in the Uruguay round should lead to the establishment of minimum standards and principles in a comprehensive agreement on TRIPS.

The scope of intellectual property protection covers patents, copyright, appellations of origin and new technologies. The question before the negotiators were

- i) how to ascertain adequate and fair level of protections, and
- ii) how to enforce the standards and rules.

Moves to include TRIPS in the Uruguay round met with a strong opposition from many less developed countries. The most vociferous among them were India and Brazil. They held that the issue should be negotiated in the WIPO framework. In their joint draft proposal they outlined that IPR protection must be considered alongside national development goals i.e., the promotion of domestic industry and health policy. "Patent protection, they argued, prejudices such goals by increasing costs. Till the Mid-Term review held in 1985 hardly any progress could be made and negotiations in this group ground to a halt when agricultural talks

stalled".<sup>13</sup> India refused to enter into any agreement on TRIPS because of the 'globality principle' which implies that all agreements must be accepted as one package.

#### INDIA'S POSITION

The pace of negotiation on TRIPS for a considerable period of time, remained slow. The principal reason was the resistance put forward by India and Brazil. Till Montreal mid-term meeting India and Brazil did not see any significant role for the GATT to deal with the intellectual property issue even though they backed down from their original position that only counterfeiting should be discussed in TRIPS negotiations. In April 1989, in a significant development, India agreed to include IPR in the GATT. In a comprehensive proposal India presented its case "for a pro-south IP regime."<sup>14</sup>

The change in Indian stance on TRIPS is rooted in the changing configuration of power play in the international system. The collapse of the USSR seemed to present a

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13. Murphy, n,6, p. 100.

14. J. Patnaik, "India and Trips issue : Some Notes on Uruguay Round Negotiations", *India Quarterly*, vol. 48. no.4, (October-December, 1992).

radical shift in international arena and had a great influence on India. India lost a powerful ally. Secondly India faced with a precarious balance of payment crisis which forced India to initiate a series of economic reforms with the aim of attracting foreign investments that would agree foreign capital as well as technology which would help India to evade the crisis. Therefore as Patnaik mentioned, "India had to have a gradual tilt towards the U.S. for the support to borrow from international financial institutions like the IMF and World Bank to meet depleting foreign exchange crisis".<sup>15</sup> It is therefore of little surprise that US judged the Indian context as correctly as affording the most opportunistic moment to pressurise India to fall in line with US proposal. US Trade Representative (USTR) Carla Hill's visit on October, 1991 could be seen against this backdrop. The purpose of the visit was to master India's support for US proposals at the on going Uruguay round MTN. Even the big business interests such as ASSOCHAM also favored the signing of the Paris convention by India to facilitate flow of foreign investment.<sup>16</sup> Not only U.S. but

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15. Ibid.

16. N. Swaminathan, "Going forward or moving backward?" *Southern Economist*, (Jan 15. 1992).

other developed nations also mounted pressure on India to attract a foreign investment and lastly India did not have any option left, as many of its strong supporters as Brazil, Argentina and Mexico backed out of the Group of Ten.<sup>17</sup> All these contributed towards Indias shift of position as far as the TRIPS negotiation under Uruguay round is concerned.

After deciding to participate in the TRIPS negotiation it submitted quite a few papers to Uruguay round of multi-lateral <sup>Trade</sup> negotiation (URMTN) in this area. Such as

- i) Enforcement of TRIPS,
- ii) Applicability of the Basic principles of the GATT and relevant international intellectual property agreements or convention.
- iii) Multilateral Frame work for international trade in counterfeit goods.<sup>18</sup>

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17. The Group of Ten Consisted of Argentina, Brazil, Cuba, Egypt, India, Nigeria, Peru, Tangania, Vietnam and Yougoslavia.

18. Respective Doc. Nos. of the three paper-MTN.GNG/NGII/W/41(1989), MTN.GNG/NGII/WS/39 (Sept.5, 1989), and MTN.GNG/NGII/W/41 (1989), Original Doc excerpts quoted in Auter Krishan Kaul, "Negotiating the Intellectual Property in International Trade and the Uruguay Round of Multilateral Trade Negotiation under GATT", *Foreign Trade Review*, vol.26, no.3, (Oct.-Dec., 1990).

At the beginning India was only in favour of discussing restrictive and anti-competitive practices of the owners of intellectual property rights that can be considered to be trade related because they alone distort or impede international trade.<sup>19</sup>

As the TRIPS has wide ranging implications for social economic and technological development aspects of the LDCs, any principle relating to TRIPS should be carefully tested against such aspect.

In essence the IPR system is monopolistic and confers exclusive rights on the owners. Patent protection is a mechanism for advancing certain industrial policies and thus the countries at different stages of development must retain the flexibility in their patent system to take into account disparities in their economic development.<sup>20</sup>

India further maintained that experience of LDCs clearly shows that a patent system can have serious adverse effects in sectors of critical importance to them such as food production, poverty alleviation, nutrition, health care and disease prevention. The patent system can also have a dampening effect on the promotion of domestic research and development and the building up of domestic technological capabilities. It is therefore imperative that the protection of the monopolistic rights of the patent holder is

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19. Autar Krishan Kaul, "Negotiating the Intellectual property in International Trade and the Uruguay Round of Multilateral Trade Negotiations under GATT." *Foreign Trade Review*, vol. 26, no. 3, (Oct-Dec, 1991).

20. Ibid.



adequalety balanced by the social, economic and technological needs of the country.

Speaking on *scope of patentability* India insisted to exclude areas like pharmaceutical , chemicals and food products from the patent talks. These areas are of vital importance for India's developmental efforts. The purpose is to ensure the cost effectiveness of the products. The cost of some of pharmaceuticals is so high that it would not be within the reach of the common man in LDCs. It has been suggested that it is fruitless to protect the patent of a product that the majority of the people can not afford to buy. For this reason there is emphasis on process patent as opposed to the product patent. The intention behind arguing for process patent is to keep the option open for alternative research method for manufacturing a product. The India's position was stated as follows.

The basic rationale behind process patent is that the same product can be manufactured by totally new and different process. The grant of product patents will inhibit the discovery of more efficient and economical process for the manufacture of the same product.<sup>21</sup>

The main argument of the Government of India is that patents have nothing to do with trade and that it would not

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21. Quoted from "GATT: Submission from India", see Jagdish K. Patnaik, "India and the TRIPS : Some Notes on the Uruguay Round Negotiations", *India Quarterly*, vol.48, no.4, (Oct-Dec.1992), p.34.

be rational to stipulate any uniform criteria for non-patentable inventions applicable alike to industrialised and developing countries or to restrict the freedom of LDCs to exclude any specific section from patentability.

Speaking on *compulsory licencing* India's contention was that particularly in cases of non-work, and especially for "Licensers of Right" in areas such as food, pharmaceuticals, and chemicals where the conduct of the patent owner will not be in issue, i.e. licences will be automatically granted without judicial review. The law of the host country would be used with reference to licences of right to fair compensation and there should not be any uniform patent term on the grounds of developmental disparities.

Commenting on *Terms of Patent* India argued that foreign trade marks may adversely affect the allocation of resources with the national development objectives. Whether a trade-mark is well known should be determined on a country to country basis. Trade secrets cannot be regarded as intellectual property and should be dealt with civil and contract laws. India expressed the view that Burne Convention was more than adequate to deal with copy right law.

Thus we see that India presented a comprehensive view on all possible harmful effects of any sweeping change in

the GATT in this area. One closer look to India's point of view specifies that bone of contention, however, is the distinction drawn between process and product patents and alleged intention to include both in the TRIPS. There has been a formidable effort on part of many intellectuals as well as lobby groups representing pharmaceuticals, biotechnology and food-industries, India lobbied behind the government to fore stall any new legislation that would make any alteration of India's position on patent. As many as two hundred and fifty members of parliament and several prominent citizens urged the government to resist any far reaching developments that would force a change in the Indian Patent Act.

This was the stand taken by India although it was diluted considerably because of pressures applied by the USA and on being named under section 301 of the Omnibus Trade and Competitiveness Act of 1988 of USA. India therefore accepted the principle of polishing TRIPS within the GATT. But at the same time it was made clear that it was referring to the measures that might be implemented within national borders and not to the negotiations of uniform intellectual property norms.

Finally the agreement that was arrived at, covers seven categories of intellectual properties namely, Copyright,

Trade Marks, Geographical Indications, Industrial Designs, Patents (includes micro-organism and plant varieties), Integrated Circuits and Trade Secrets. Following this agreement India has to make changes to the Indian Patents Act of 1970. Major divergencies lie in the following areas -

Indian Law	GATT Agreement
(a) Does not Provide "Product" Patents in food, pharmaceuticals and chemical sectors. In this areas the Indian law provides only "Process" patent.	Requires Product Patent to be provided in all Branches of Technology.
(b) The duration of a Patent is 7 years in case of food and pharmaceuticals sectors and 14 years in case of Other sectors.	Provides for a duration of twenty years for all patents.
(c) Provides for automatic Compulsory licences in case of food, Pharmaceuticals and chemical sectors. This means licences would be available to anybody in these sectors without the patent holder being heard	Permits Compulsory Licences on the merits of each case, but the patent holder will have to be heard.
(d) There is no System for protection of plant varieties in India.	It requires an effective <i>sui generis</i> system of protection to all plant varieties
(e) Does not allow patenting of life forms	Requires micro organism to be patented
(F) Importation does not amount to working of the patent	It does not permit discrimination as between imported and domestic products.

These are the point of divergences between the Indian patent Act and the GATT agreement on TRIPS and basically this created unprecedented stir in India. In conclusion it could be said although initially India wanted the discussion only in counterfeit product, ultimately it had to deal comprehensively with much wider aspects of TRIPS. So far as India is concerned it is mainly in the area of 'Patents' that the norms and standards of protection envisaged in the GATT are significantly different from our own policies, laws and regulations.<sup>22</sup>

#### SERVICE SECTOR

During the eighties, the service sector has attracted considerable interest not only in the context of international negotiations for further liberalisation of trade , but also its role in the economic development. But prior to the Tokyo Round, the question of extending the GATT framework to include trade in services rarely came up. The first sign of change appeared in 1974. In the passage of the Trade Act, service industries persuaded the US Congress to

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22. The entire section on TRIPS is based on two articles. One by J.K. Patnaik (see n.13) and the other by Autar Krishan Kaul (See n.18). Both the articles were enriched by quotations from original documents (see n. 17).

redefine trade to include services as well as goods. Despite the definition, services were not addressed at the Tokyo Round of Multi-lateral Trade Negotiations. After the Tokyo Round US Service Sector began mobilising opinion to press the US government to give services parity with goods in US Trade policy. An important step in this regard was the formation of a service industry group in 1982. The coalition of service industries (CSI) (which represent some of largest and best known service companies in fields such as insurance, engineering, construction banking and finance) in a close co-operation with the office of the US Trade representative (USTR), had identified Services Trade as a priority issue. USTR in order to build a wider consensus on services among developed countries used the OECD forum. OECD (Organization of Economic Co-operation and Development) under US guidance committed themselves to "persue efforts to reduce or abolish obstacles to the exchange of goods and services."<sup>23</sup> Although the OECD's accomplishments were significant, USTR felt the OECD forum not broad enough to successfully integrate 'service' into world trade regime.

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23. William Brock, "A Simple Plan for negotiating Trade in services", *World Economy* (London), vol.5, no. 3. November 1982, p. 238.

The next and the best forum for them was the GATT, which is a body of international rules and regulations, and has worldwide membership as well, and would ensure best coverage. At the ministerial meeting of the GATT in November 1982, therefore, the US placed the proposal to include 'service' in the GATT Negotiations.

In the preparatory negotiation the USA proposed GATT work programme which would include the following.

- (a) Document and analyse barriers to international services trade including problems of market access.
- (b) Examine the applicability of basic GATT principles and procedures to trade in services. This would include consideration of issues such as national treatment, non-discrimination, due process and the "importance of basic national objectives which may conflict with commercial policies and practices".<sup>24</sup>

As mentioned above, USA was able to count on considerable support from the Government of the other developed countries whose service sector was also lobbying

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24. Preparation for the GATT Ministerial Meeting, (Washington D.C. : Office of the U.S. Trade Representatives 1982," in Hans Singer and others (ed) New protectionism and Restructuring Part II, p 717.

actively for the liberalisation of service trade. Britain, in particular, has been the leading ally of US in this effort. Although US succeeded in getting support from Britain, Japan and most of the OECD countries, the reaction from other members were considerably less. As USA had hoped for, its delegation met with considerable opposition from less developed countries and EEC and specially from less-developed countries who viewed the U.S. initiative with a mixture of suspicion and hesitation. "Many of the governments considered the service issue a fig leaf over the controversial question of direct investment".<sup>25</sup> Others were interested in protecting their own fledging service industries from competitions.

Before going to trace the track of negotiations in the Uruguay Round in this regard; two issues needs attention. First, what do we imply by service and second, why the developed nations happened to be the main protagonists behind the inclusion of the service section in the GATT agenda.

To deal with the first issue, it is not very easy to define service. Here one comes across the greatest

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25. UNCTAD Doc., n.2., p.718.



difficulty as rightly mentioned by Sumitra Chisti, " The first issue that confronts one while discussing service is that of a definition and the scope of services.<sup>26</sup>

The attempt to classify, systematise and define services as a distinctive category owes much to the pioneering work of Colin Clark.<sup>27</sup> Clark sub-divided the capitalist universe essentially into three categories, Primary : (mainly agriculture) Secondary (mining and manufacturing) and Tertiary or The service Sector : commerce, transport, communications, the gamut of financial services, insurance, government and professional services.

Very often 'Services' has been distinguished from goods "simply by contrasting them with merchandise such as immateriality, non-storability and simultaneity of production and consumption."<sup>28</sup> But this concept underwent sea changes owing to technological developments. A more

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26. Sumitra Chisti "Services and Economic Development of Developing countries : Liberalisation of International Trade in Services and its Impact" *Indian Journal of Social Science*, vol.2, no. 2 (New Delhi), April-June 1989.

27. Colin Clark : *The conditions of Economic progress*, (London 1940).

28. Chisti, n. 23, p. 110

precise definition has been provided by Hill.<sup>29</sup>

A service can be defined as an act which is the result of a productive activity and whose effect is to change the status or position of a beneficiary. The service output is not distinguishable from its production process and the result of effect of the service is inseparable from its beneficiary and cannot form the subject of new transaction. Accordingly, services have to be classified as activities and not as products.

One of the reasons for tremendous growth of services in the developed countries is the technological advancement which resulted in the emergence of new services in the field of information, data processing, and tele-communication. Of late it is generally believed that the growth and progress of manufacturing and agricultural sector (which are regarded key to economic development) is directly linked with production oriented 'services'. Hence the efficiency of this service sector is vital to the efficiency of the overall economy, so to say. Now it is clear why services has assumed so much importance and why it is regarded 'key to development' but what is surprising is the enthusiasm and determination with which the U.S. insisted on the inclusion of 'services' in the GATT agenda. It is not really

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29. T. P. Hill, "The Economic significance of the Distinction between goods and services", *Trade and Development Report* (Geneva 1988), p. 138.

surprising if one looks at the composition of services in US economy. The role of the services in the economy of the United States has been growing.

The Services sector accounts for over half of the GDP and two-thirds of non-farm private employment showing a commensurate growth in international trade in services. USA is today the largest exporter of services. US exports of services collected US Dollars Ninty Three billion in 1980 yielding a balance of service surplus of US Dollars twenty eight billion.<sup>30</sup>

This has necessitated for increased need of market access. Owing to the very nature of services, many governments regulate various aspects of services which are considered critical to socio-economic goals specially in less-developed countries where 'services' are still in their nascent stage. Similarly UK, the second largest exporter of services, appropriated a surplus of nearly ten billion in 1986. The emurgence of Japan as a major service exporter, "Only indicate the inter-imperialist battles in the service sector."<sup>31</sup> Therefore its no wonder that these are countries which vociferously supported for inclusion of services in GATT.

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30. Ibid.

31. Frederick. F. Clairmonte "Global Services : Shifting Galaxy of Imperialism", *Economic and Political Weekly*, (New Delhi February 23, 1991), p. 421.

Must we be surprised, therefore, that the handful of imperialist powers and their TNC spearheads that dominate international trade in services, are precisely those who are the most vociferous advocates of services liberalisation in GATT?<sup>32</sup>

So far we examined the concept of services, its importance in the economic development and finally the motive behind the inclusion of services on the agenda of the GATT. Coming back to the progress of developments. It could be traced that it was easy to the developed nations to have a smooth sail to the negotiation round because until Tokyo Round, little considerations had been given to anything but tariffs. Suddenly the agenda was wide open. Therefore many countries even the developed ones found the document (US proposal) falling well short of precise understanding and secondly the lack of studies and statistics were discovered to be a great handicap to enter into negotiation. In this regard therefore the majority of countries specially the EEC countries made the demand to have more time for decisions. A group of less-developed countries under the leadership of Brazil and India remained resolutely opposed to GATT negotiations on the subject. They feared that development of indigenous service industries might be sacrificed to multi-

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32. Ibid, p. 422

national interest, and that industrialised countries might make their agreement to liberalisation of services conditional upon the removal of barriers to trade in goods. Secondly they pointed out that the knowledge and understanding of the issue was scant. Moreover they were disillusioned with the pace of progress in GATT's traditional area of competence, where their real interest lie. By branching off into new areas they feared, the industrialised countries would be less likely to attend to outstanding traditional issues. Therefore they expressed their reservation against such move.

India from the very beginning opposed the inclusion of not only services but also TRIPS and TRIMS as we have seen. Initially India was not in favour of new round of multi-lateral Trade Negotiation and first official confirmation of stiff resistance to the expansion of the GATT to new areas, specially the 'services', came in form of a statement made by the then Minister of finance, V.P. Singh at meeting with Swedish Minister of Foreign Trade Mr. Mats Hailstorm on March 21, 1985.<sup>33</sup>

The Indian delegation (included Steel and Mines

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33. *Times of India* (New Delhi), March 13, 1985.

Minister Mr. K.C. Pant, and the Commerce Minister Mr. Braham Dutt to the Punta del Este meeting) was led by V. P. Singh himself. He called for phasing out of all protectionist measures. warning that they would damage global trade. He further refused to combine this issue with negotiations on services. He maintained that "the GATT is designed to deal only with trade in merchandise. It cannot be stretched to areas alien to it."<sup>34</sup> The primary reason behind India's opposition to include "services" in the negotiation was that the GATT was not the competent forum to discuss international trade in service for it could discuss under the Articles of Agreement only the merchandise trade. The discussion on services should therefore be left to other international institutions and fora which deal with services. The point India tried to make was the legality of institutional arrangements under which such a negotiation could takes place. This was in direct opposition to the US demand that services, intellectual property and investments should all be included in the GATT system. The US delegation had indeed warned that their government was 'prepared to defend its interests in its own way if other parties did not

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34. *Patriot* (New Delhi), October 3, 1986.

pay heed to its call. It was after this offensive statement that our minister of finance, decided to counterattack. In his words,

It is India's beliefs, developing countries putting their signatures to linkages between goods and services will be putting their signatures to crippling economic relation which they can hope to word off by composing national policies to the ditches of mightier economic powers... Are we to forge this destiny for ourselves ? Do you present these shackles when we go home to our countrymen?<sup>35</sup>

The Indian delegation was not content with merely making speeches and rhetories. India was daily charing a meeting of less-developed countries to find the maximum ground of agreements on various subject. This led to a situation where the American spokesman at a press briefing complained that India's position was not hopeful to achieve a consensus. Despite US bullying tactics India remained firm in its stance though US had a measure of success with a number of less developed countries like Pakistan, Bangladesh and Yugoslavia. Brazil took more or less the same stand as that of India.

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35. Ibid.

Further explaining the point Finance Minister described the particular situation that existed in almost all less developed countries (LDCs). He feared that LDCs cannot sustain free flow of services which are linked to export of goods. In India, for example, service sector is used to achieve socio-economic goal of self-sufficiency. To open the service sector would imply that the goal would be badly hit.

At the Punta del Este meeting, three draft texts for a new round of negotiations were presented to the assembled GATT CONTRACTING PARTIES.<sup>36</sup> A joint Swiss-Colombian text included service on the agenda with widest support. A second paper from Brazil and India representing the interest of the less-developed countries, exempted the new areas of services, intellectual property rights and investment. A third paper, from Argentina suggested that negotiations on services be separated from those on goods in a dual-track approach. Colombia during the meeting presented a compromise on the lines that closely resembled the fruits of EEC mediation with India and Brazil.<sup>37</sup> When the continued opposition from the Group of Ten<sup>38</sup> and other like minded members frustrated the launch of the Uruguay round, leading

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36. Murphy, n. 6, P. 147.

37. *Financial Times*, September 18, 1986.

38. See, n.16.



to a threat of retaliation by the USA, a compromise formula was reached at. It was finally decided that the negotiation on services would be conducted in the Group of Negotiations on Services (GNS) which was not formally connected to the GATT. This would be separate from the main body of negotiations on trade in goods, conducted under the auspices of the Group of Negotiations on Goods (GNG). Negotiations on services, it was decided, were to be entered into by the Ministers of the Sovereign Governments and by the CONTRACTING PARTIES.

This distinction means that negotiations on goods and services are not formally linked under the GATT although they run simultaneously. Hence the principle of globality does not apply to the services and, in theory, progress in one group is not conditional upon the outcome in the other. The only formal link between the groups is in the Trade Negotiations Committee which oversees progress in negotiations. This compromise enabled negotiations to get under way. "The skillful brokerage of the EC was an important factor in winning the agreement of the developing countries hard-liners to embark on negotiations in services".<sup>39</sup>

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39. Murphy, n. 6, p. 137

The outcome of the compromise once again vindicated the stand of India and a distinction was drawn between goods and services. It is true that the point India strived hard to make, that of the legal separation between the trades in goods and service, ultimately saw the victory when the two track negotiation approach was adopted but could it really be regarded as victory ? Particularly, when India was totally against its inclusion in the beginning. Speaking on the outcome, the government of India specified that India was fully agreed and satisfied with the outcome and no longer against discussing services, so long as they were not placed under the GATT, which covered goods only. It is important to note that Mr. Michael B. Smith head of the U.S. delegation told the Washington Post : "We won. It is as simple as that. We have a committment to discuss everything and that includes services."<sup>40</sup> Refering to the two tracks negotiations another American representative said, ".... both would be held under same negotiation committee.... they will be the same people wearing different hats."<sup>41</sup>

The above analysis establishes the point beyond doubt that there was clear shift in India's stand as finally it agreed to be a party to the negotiation on services' but it

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40. *Times of India* (New Delhi), December 1, 1985.

41. *Patriot* (New Delhi), October 9, 1986.

has to be remembered that basically India was against the discussion of 'services' within the GATT forum and this stand was met partially although not fully since ultimately the same Trade Committee had to supervise both the issues. But most important revelation is that there was no united efforts on part of LDCs, their approach was not uniform and even Brazil which was a staunch opponent of the Western and Japanese move to accord GATT recognition to trade in services until a meeting of Latin American countries at Brasillia in May 1986, suddenly changed its stance and gave the indication of having second thoughts on the same and apparently softened its opposition.. In the same meeting Chile and Colombia also cleared their support for inclusion of services in the forthcoming Uruguay round. The shift has considerably weakened the position of not only India but the LDCs as a whole. India became isolated in the battle over the service issue.

Although India made a positive response to the negotiation on services but it decided to continue to oppose the inclusion of banking, accountancy, informatics etc. under the GATT.

Once the Punta-del declaration was made, it was decided that in the initial phase of negotiations five elements were to be taken for consideration.

- i) definational and statistical issues
- ii) broad concepts on which principles and rules for trade in services including possible disciplines and rules for individual sector, might be based,
- iii) coverage of the multi-lateral frame work for trade in services,
- iv) existing international disciplines, and
- v) measures and practices contributing to or limiting the expansion of trade in services.

Negotiation in these area shall aim to establish a multi-lateral frame work of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors with a view to expansion of such trade under conditions of transparency and progressive liberalisation and as a means of promoting economic growth of all trading partners and the development of less developed countries. Such framework shall respect the policy objectives of national laws and rgulations to services and shall take into account the work of relavant international organisations.

In the course of negotiations in the area, spread over nineteen Meetings, the GNS received large number of

submission and statements by delegations. On the basis of these proposals various issues and rules and principles were identified for further discussions.

These are transparency, progressive Liberalisation, national treatment, Most-Favoured Nation treatment, market access, and increasing participation of developing countries.<sup>42</sup>

When India's decision to participate in the negotiation on services was final, an one day seminar (at the instance of Ministry of Commerce) was organised in IIFT in 1987 as curtain raiser for thorough preparations of the multi-lateral trade negotiation under Uruguay round of talks. An important objective of the seminar was to identify as Minister of Finance and Commerce, N.D. Tiwari said, "those service sectors in which we are internationally competitive".<sup>43</sup> At the GNS meeting India expressed the fear that banking, insurance and basic telecommunication services would have to be opened to foreign service providers and this would be disadvantageous for of the domestic sectors,

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42. For detail discussion see, Prof. R. K. Pandey, *Mid tern Review of Uruguay Round*, IIFT Publication and P.S. Randhawa in *Journal of World Trade Law*. Vol. 21, no. 4, 1987, pp 163-75

43. N.D. Tiwari's Speech in the National Seminar on Indian Service : Economy in the 21st Century and International Trade in Services. IIFT (New Delhi, 1987).

besides having security implications in the basic telecommunications sectors.<sup>44</sup> At the meeting (India was represented by its Commerce Secretary, Amarnath Varma), many diplomats expressed regret about a change of policy in New Delhi. A careful reading of the speech made by Mr Amarnath Varma, comparing it with the past Indian pronouncements, shows that India considerably mellowed down its voice. No reference was made, for example, to the failure to abide by the standstill and rollback commitments. One thing is to be noted that post Punta-del Este declaration witnessed a lull after a period of great activities. India was slow to table proposals in the negotiating group. This could be attributed to various domestic and international factors that slowly drifted away the position of leadership from India's mantle. On domestic front India faced instability and political turmoil. The fall of Rajiv Gandhi's government, the short tenure of V.P. Singh's regime and the minority government of Chandrasekhar, the bofors issue, and Rajiv Gandhi's assassination to mention the important few. One incident after another hit it so badly that India could hardly pay attention to the on going discussions in Uruguay in a desired way. So much so that the post of permanent

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44. The Uruguay Round of Multilateral Trade Negotiations :  
*A Background Paper* (AICC, New Delhi, June 1994).

representative to GATT remained vacant for over five months during the year 1985.<sup>45</sup> Even most of negotiators were appointed on ad-hoc basis. It was not hopeful in the international scenario either. India was badly hit by the Gulf War. The external debt reached an all time high record.

Two other factors made New Delhi's position particularly vulnerable as (a) The U.S. decision not to put India on the super 301 list could be seen directly linked to the softening of India's stand. Failure to reach an accord would only renew the trade war between haves and have not, (b) The so called 'crack' in the unity of group of Ten.

Given the situation it was not an easy task to forge an unity and to safeguard the interest of the LDCs. Doubts were expressed from all quarters whether the minority government of C. Chandrasekhar would be successful in its horrendous task to safeguard India's interest.

Though India was slow in its initial response to the developments of post punta-del Este declaration, but once the countdown began, it decided to hold a colloquium of Trade Ministers of less-developed countries in New Delhi in December, 1990 to discuss the course of action to be adopted at the final round at Uruguay in April 1991. The Indian initiative to convene the Trade Minister's conference could

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45. *Deçan Herald*, October 9, 1989.

be seen as a part of India's effort to build a common approach in international stand and to make sure that the text on 'services' do not push the LDCs 'back to square one'. At the meeting it was decided that an approach should be taken on the line of proposals made by Mexico and Argentina.<sup>46</sup> The proposal emphasised that the objectives of the negotiation should concentrate on improving market access for less-developed countries and transfer of technology and that Labour mobility should be an integral part of the agreement.

#### **GENERAL AGREEMENT ON TRADE IN SERVICES (GATS)**

Finally after protracted negotiations and much debates and discussion. During a seven year Span GATT members reached at an agreement (Marakkesh Agreement by nomenclature) which envisaged among others a General Agreement on Trade in Services (GATS). A brief outline of the text could be helpful to ascertain the outcome of the Uruguay round discussion.

Many of the GATS provisions are modelled on the GATT. The GATS rest on MFN (Most favoured Nation) and National treatment principles and relies on a concept of market

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46. UNCTAD Doc. TD 13/B/1008/ Rev. 1 (Geneva UNCTAD. 1986).



access (which concerns market entry barriers and restrictions).

The MFN was sought to be a basic operating principle of general applicability. But any final agreement in this regard proved to be impossible due to stiff resistance from LDCs under the leadership of India. Therefore an exception of MFN has envisaged in the final text, where the signatories will record the sectors in which they will not grant MFN treatment. This could be regarded as ray of hopes amid encircling gloom as at least the LDCs would now be in a position to bargain rather than to make the entry of TNCs wide open.

The concept of national treatment is a novel in GATS

The primary determinant of foreign access to the domestic market for services is often the degree to which national treatment is provided (where establishment rights or physical presence is required to supply a service), so in GATS national treatment is an objective, not a principle.<sup>47</sup>

Participants are to make sector specific commitments that will specify the applicable national treatment and market access conditions.

"The Indian position is that some areas of the services section could be opened up in return to access to overseas

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47. Patric Low, *Trading Free : The GATT and U.S. Trade Policy*, (New York, 1993), p. 202.

markets on a reciprocal basis."<sup>48</sup> India does not have much to gain in sectors like banking, telecommunication. It has edge over labour-intensive sectors. But access to overseas markets in these areas is related to the freedom for movement of personnel. Now it is too early to say what would be the effect of this negotiation but it is expected that major sectors where India would sought liberalisation and opening up professional services like accountancy, auditing, taxation, engineering, medical and dental services, data processing, health related service and tourism. Considered in conjunction with the offers already made by the government of India, it will not be wrong to conclude that the country will be providing access to foreign service enterprises across the board.

Mr. Chidambaraam, Minister of Commerce, answering Kamal Morarka in Parliament during question hour on January 10, 1992 remarked that Government has already requested access from all participating countries in the negotiations in professional services relating to installation of computer hardware business services, investigations and security services, education services, social services and transport

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48. Deepak Nayyar, "The Uruguay round : Status Paper on issues Relevant to Developing Countries", *Foreign Trade Review*, vol. XX VI, no. 3, (October-November 1991), p. 151.

services by Railway etc. The sectors in which India has made an offer are.

- Engineering Services;
- Computer related services.
- Technical treating and analytical services, value added telecommunications, construction of roads and bridges. hospital services, hotels and other lodging services, motion picture and video distribution services; travel agency and tour moderator services and International freight transportation by air.

The Minister stated that opening up of the Indian services sector to foreign countries was only to secure access to labour intensive services. But given the nature of the agreement specially the national treatment clause leaves little room for a nation to exercise control over its service sector which is regarded to be a prime component of economic development.

Finally it could be said that the less-developed countries lost an opportunity to bargain a strong position as far as labour intensive services are concerned. All that they could manage was just a reciprocal provision on the issue of labour services and labour mobility across the national border. At the plenary session of Brussels meeting it was India who raised the point but

only through brief general remark on labour services. The provision in this regard relate only to temporary movement of persons performing particular services. They do not apply to individual job seekers and should not affect national laws and regulations regarding citizenship.<sup>49</sup>

#### INDIA JOINS WTO

India formally became a Founder Member of the World Trade Organisation (WTO) when its ambassador to the GATT, S.Narayanan, signed the WTO agreement on December 30, 1994 and deposited the instrument of ratification signed by the President of India. Pranab Mukherjee the Minister of Commerce, had signed in March at Marakkesh (Morocco) the Final Act agreeing to transmit the results of the Uruguay Round to the government for its final approval. The presnet signature as well as the handing over of the ratification signifies the Government's formal acceptance of the Uruguay Round and agreements and creation of WTO. The decision taken by the Union Cabinet to ratify the act for the establishment of the WTO was a logical step coming in the wake of the Government's endorsement of the Uruguay Round of negotiatioos.

"The WTO is essentially an umbrella agreement for

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49. Binod Khadria, "GATT, GATS and Ethnocentricity in MNCs", *Economic and Political Weekly*, (January 19, 1991), emphasis added.

implementation and servicing of all the Uruguay Round agreements; it has no substantive provisions, all the latter flow out the agreements in the WTO Annex."<sup>50</sup> The WTO provides for a common or integrated dispute settlement system (DSU) and any disputes arising out of the WTO and its annexed agreements as well as the provisions of the DSU itself are all subject to the DSU jurisdiction. The WTO is to provide the common institutional framework for trade relations of its Members (Article II.1). Its supreme governing body will be the Ministerial Conference to be held every two years, with a General Council (with representatives of all member countries) acting in between the Ministerial Conference. Under the General Council will be Council for trades in Goods, TRIPS and GATS. There are other committee and subordinate bodies also (see Appendix V).

The (Article X) of WTO is to continue the practice of decision making by consensus followed in the GATT 1947. While a footnote lays down what is meant by 'consensus' in the WTO:-

The body concerned shall be deemed to have decided by consensus on a matter submitted for its consideration, if no

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50. C. Raghavan, "India and WTO" , *Mainstream*, vol. XXXII, no.41, (New Delhi, August 27, 1994), p.26.

Member present at the meeting when the decision is taken formally object to the proposed decisions. But where a consensus cannot be reached, the decision is to be by voting. Any Member of the WTO can propose an amendment to the provisions of the WTO and multi-lateral agreements in its Annex I by submitting a proposal to the Ministerial Conference which for a period of 90 days from submission has to decide by consensus, and there after by a two-third majority on submitting the amendments to Members for acceptance.

A two year period has been envisaged for transition to WTO. According to an interpretation given by the GATT secretariat, all the present members of the GATT-1947 have three alternatives to choose from.<sup>51</sup>

- i) Withdraw from the GATT 1947 once they join the WTO  
or
- ii) Remain a GATT 1947 member without being a WTO member  
or
- iii) Remain a GATT 1947 member and also join the WTO.

Thus the GATT 1947 (The General Agreements of 1947 as amended, modified, or expanded by various multilateral

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51. S.R. Sen, "From GATT to WTO", *Economic and Political Weekly*, vol.29, no.43, (October 22, 1994), p.2803.

agreemtns) annexed to the WTO (in the area of trade in goods) will not be amending GATT. "The WTO and its GATT 1994 will be a new agreement, not a successor or ammendment to the GATT 1947."<sup>52</sup>

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52. Raghvan, n.42, p.25.

## CONCLUSION

[The economic system at a given time either of the national or international level is closely linked with the power-play. It is essentially a reflection of the prevailing distribution of power] The contemporary international economic system that emerged from the Brettonwood Conference, is characterised by the existence of industrially advanced countries as producers of manufactured goods on one hand and the existence of the less-developed countries as primary producers on the other hand. This division originated in the early advent of Industrial Revolution in the west and perpetuated by the political force of imperialism. The imperial west continued to progress at the behest of colonialisied east. But the system witnessed the first symptom of breakdown following the World War I. The aftermath of the World War I, saw a deterioration in the economic scenario as excessive protectionism led to a halt of economic progress. This further worsened as the economic nationalism following the great depression only resulted in an aberration in the system. Vigorous international action was considered to be the remedy to correct the situation. Therefore the efforts of the west



concentrated on organizing the post-world war international economic relation. Needless to say, their efforts were guided by their own perception and interest. World economic advancement was expected to result from full employment which in turn would be realised through promotion of world trade and investment.

The prescribed policy framework was institutionlised in the form of IMF, IBRD and the GATT. Originally ITO was to take shape to take care of post-world war international trade scenario but failure on part of the US to ratify the ITO Charter led to the coming up of the GATT. The GATT is the result of a web of international actions ranging from the US proposal to the convening of the three sessions at London, Geneva and Havana. As outlined in the begning, the GATT was drafted keeping in view primarily the interest of the developed countries without giving adequate consideration to the needs of less developed countries that either became independent or were on the threshold of independence. Therefore it was expected that India would take the leadership of the less developed countries which virtually lacked voice. At the London conference India's sound external economic position and the fact of her not

being a signatory to Article VII of the Lend-Lease Agreement enabled her to launch an unfettered criticism against the western proposals with regard to post war world economic order. India pointed out that the western scheme presented a case on the problem of economic development of the later countries. Liberalised international trade and the free flow of foreign capital were weak instruments to rely upon for triggering off the process of economic growth in these countries. These nascent economies cannot be expected to stand at par with most advanced economies. Though the basic character of the GATT as it emerged from, underwent little changes, India's voice at least provided the first signals of rumblings against discrimination.

[India became the Founder Member of the GATT. It was a gift to the work it had done both at the League of Nations] as well as the role played in the Brettonwood conference. India's accession to the GATT is in consonance with her policy of international co-operation which it almost made the cornerstone of its foreign policy.

[Almost since the inception of the GATT, India began her efforts to involve in its work of economic development of less-developed countries.] It was on India's effort that Article XVII pertaining to governmental assistance for

economic development was drafted and inserted in the GATT.

India's effort received a strong support base when in 1960's, a number of less-developed countries emerged in the international arena shaking the power configuration a bit. It emerged as a powerful block and therefore the effort of these countries got a strong foothold. Their efforts at reforming the legal framework of world trade as embodied in the GATT aimed at achieving (a) adequate freedom for themselves in employing commercial policy instrument to foster their economic development and (b) enlargement of access to the world market. Their endeavors saw the first positive result when the GATT was reviewed for the first time in 1955. Although the review session achieved too little benefits for the LDCs, it at least legitimised their grievances, when Haberler report echoed the same sentiment as expressed by the LDCs. A feather to cap was further won when part IV was inserted to the GATT and <sup>it</sup> outlined the fact that the developed countries should not expect reciprocity from the LDCs. Finally, the LDCs won their battle when GSP (generalised system of preferences) were granted to them. This formed the core of efforts of the LDCs. In both the review session as well as in drafting the new part IV, India

played a great constructive role. India's role is marked by both consistency and steadiness. From the very beginning it made the 'economic development' as the basic point of argument and whatever demand it made, be it on quantitative restrictive measures or reciprocity measures, all were directed to achieve only one goal-the need to have special rights for the LDCs. India made it clear that economic assistance should not be understood as a 'gesture of charity' but as to provide an environment which would help in self-sustained growth.

As it is clear from the debates that shook the parliament, [India joined the GATT since the basic objective of the GATT, 'the non-discrimination,' was the cardinal principle of Indian polity. Similarly India honoured her commitments by offering concessions on various items.] India took part in all the tariff negotiations except the fourth one and made valuable contribution towards easing the protectionism and liberalisation of trade to achieve the coveted goal of 'development': While offering concessions India kept in mind the interest of the nation also. It is not as if to win the international acclaim it overlooked national interest.

Coming to the Uruguay round, India could not play the

role as desired by many. First India opposed to having negotiations in the area of new issues but finally gave in as already elaborated. The national and international problems were so daunting that these left little scope for India to play a constructive role. But once the fate of negotiation was decided i.e. it became clear that India could no longer hold<sup>up</sup> the inclusion of the new issues, it made straight forward jump to the field. A colloquium of trade Ministers from thirty less developed countries was held in Delhi to develop a line of action. India also used the Harare summit of NAM with the same objective in mind. Moreover various seminars were also organised.

All these could be seen as a part of India's endeavour to build a common approach and consensus at the international level. Unfortunately, [the group of 77 was not there within the GATT and this considerably diluted and weekend India's position]. For example, the general opposition to negotiation on trade in services was not fully shared by all less-developed countries. South Korea differed, partly because it has made considerable progress in construction services and has strong interests in shipping and data processing. As the negotiation progressed,

the national perceptions of other less-developed countries also changed, as we have already seen, due to various internal and external constraints . Though India could not succeed in its opposition to the inclusion of services, at least India's stand was vindicated when it was recognised that trade in goods is different from trade in services. As for other two issues, it is true that the changed stance of the Group of Ten put a serious question mark on the capabilities of India to individually withstand the pressures of the developed countries to expand the agenda of the GATT to new areas in a way to benefit their interests. The debt crisis, too played it's role in weakening its position. But it is also true that in the beginning India relied too much on the collective strength of the Group of Ten, which was totally opposed the expansion of the GATT to new areas. It became crystal clear that the GATT is going to open its mandate on new areas. India was somewhat slow in responding. This became evident in its keeping the post of permanent secretary vacant for about half a year at this crucial juncture of negotiations. [It was too late to draw a completely new battle line.]

Now what would be the implications or effects of the GATT agreements, it is too early to say. But it could be

seen that the west, particularly the USA brought the new issues with the sole purpose of keeping the Governments away from controlling the economy. The 'Withering away' of the Government control would create a favourable ground for free play of market forces and TNCs, and the west would reap the dividend as it has witnessed tremendous research and development progress. The position of the LDCs would become more vulnerable at the onslaught of TNCs and would only become strong if they are able to make progress in Reserach and Development. Many believed that the position of India would be less vulnerable as with large expertise and tremendous progress in science and technology, at least it is in better position to protect its interest. Coming back to India's role although India could not stop the expansion of the GATT it successfully aborted the attempt to include social clause and environmental concern on the trade agenda.

Looking back at the role, it could safely be said that, though India could not arrest the sinister move of the west many a time, with the tenacity of its demand and vigorous defence of the interest of LDCs it created a new political niche and solidarity among the LDCs and almost single handedly provided a kind of common plank to pursue

economic development of less developed countries. Summing up it could be said that the speech which T. T. Krishnamachari made after the review session, some twenty years ago, still holds the content. [The speech records, "The revised GATT is not by any means a perfect instrument. *No international agreement ever is.* Inevitably it is a compromise between the interest and interest and between ideals and realities".]

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## APPENDIX I

### IMPORTANT CONFERENCES/MEETINGS

Particulars	Period	Place	Purpose
First Meeting of the Ecosoc	February	Geneva	To consider the establishment of the ITO
First session of the Preparatory Committee	October 15- November 25 1946	London	To prepare the draft Charter
Meeting of the New York Drafting Committee	1947	New York	To edit the London Text for Clarity and Consistency. It was also entrusted with the work of preparing a detailed draft of the GATT.
Second session of Preparatory Committee	April- November	Geneva	To complete the work of preparing the draft charter for the establishment of ITO. The first tariff negotiations was held in this session as part of the establishment of the GATT
Conference on World Trade and Employment (also known as Havana Conference)	21st November March 1948	Havana	To establish the ITO.
Second Tariff negotiations Conference under the GATT	1949	Annecy	To facilitate the extension of the GATT
Third Tariff negotiations Conference under the GATT	1950-51	Torquay	To facilitate the extension as well as to conduct tariff negotiations to reduce tariffs
The fourth Tariff negotiations Conference	1956	Geneva	To reduce Tariff barriers
The fifth Tariff negotiations Conference (Dillon)	1960-61	Geneva	The first phase concerned with renegotiation with the EEC as it decided to adopt a common tariff for the community

Round)			as a whole. The objective of these negotiations was to compensate the CONTRACTING PARTIES affected by such modifications. The second phase concerned with the tariff reduction as well as it examined the question of reciprocity.
The sixth Tariff negotiations conference (Kennedy Round)	1964-67	Geneva	To liberalise trade, further tariff negotiations to be continued on MFN basis. It not only considered Tariff barriers but also Non-Tariff barriers, and all classes of products industrial and non-industrial including agricultural and primary products.
The Seventh Tariff negotiation conference (Tokyo Round)	1973-79	Tokyo	To achieve the expansion and ever-greater liberalisation of world Trade and to secure additional benefits.
The Eight Tariff negotiation conference (Uruguay Round)	1986-1994	Punta-del Este	To promote liberalisation and expansion of trade.
Trade negotiation Committee Meeting	December 1988	Montreal	To examine the operation of the GATT Article to trade restrictions and distorting effects of investment measures and to conduct a mid-term review of the progress made.
GATT Ministerial Meeting	April '94	Marakkesh	To revise the GATT Pact on the line of URMTN and to sign WTO.

## APPENDIX II

### Sequences of events that led to the formation of the GATT

Bretton wood conferences recommended that an additional mechanism other than IMF and IBRD is required to take care of post war growth of trade.

In 1945 United Nation prepared a proposal entitled 'Expansion of World Trade and Employment' and sent the copies to other governments for consideration

In February 1946 the ECOSOC passed a resolution calling for an international conference on Trade and Employment.

It (ECOSOC) established a Preparatory Committee consisting of nineteen members to consider the question of establishing an ITO.

The Preparatory Committee at the end of its First Session in London came to the conclusion that an Agreement should be reached in the direction to remove trade barriers, before the establishment of ITO as it would take time.

Following the decision a Drafting Committee was set up to draft the text of the General Agreement on Tariffs and Trade.

At the Geneva session the text of the GATT was finalised and the first tariff negotiations was conducted as part of the establishment of the GATT.

The provisional applications was given to the GATT on January 1, 1948.

### APPENDIX III

#### IMPORTANT BODIES HAVING INDIAN MEMBERSHIP

- Negotiating Group of on non tariff Measures (Tokyo Round).
- Negotiating Sub-Group on Quantitative Restrictions (Tokyo Round).
- New York Drafting Committee.
- Negotiating Group on Tropical Products (Kennedy Round).
- Non-Elective Seat on the Executive Committee of the Interim Organisation.
- Preparatory Committee.
- Sub-Committee on Tariffs Barriers and Special Problems of the LDCs (Kennedy Round).
- Sub-Group on Anti-Dumping Policies (Kennedy Round).
- Tariff Agreement Committee.
- Working Party on Tariff Negotiations.

## APPENDIX IV

### ARTICLE XVIII (Before revision)

Under Article XVIII, a country could take measures like import restrictions on products (i) the duties of which had been bound in tariff negotiations, and (ii) other than the above.

In the first case, the applicant country had to go through a time consuming process of direct negotiations with all other member countries or it might ask the CONTRACTING PARTIES to sponsor such negotiation under its auspices.

The second category of measures indicted above included import restrictions for the protections of infant industries based on indigenous primary commodities. In this case the procedure was simpler and if the CONTRACTING PARTIES were satisfied that such a measure is necessary.

"In order to achieve fuller or more economic use of (its) natural resources and manpower and in the long run, to raise the standard of living within its territory and is unlikely to have a harmful effect in the long run, on international trade".<sup>1</sup>

Then, they could relieve the applicant from the ban on

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1. India, Lok Sabha Debate, vol.7, session 10, (1955).

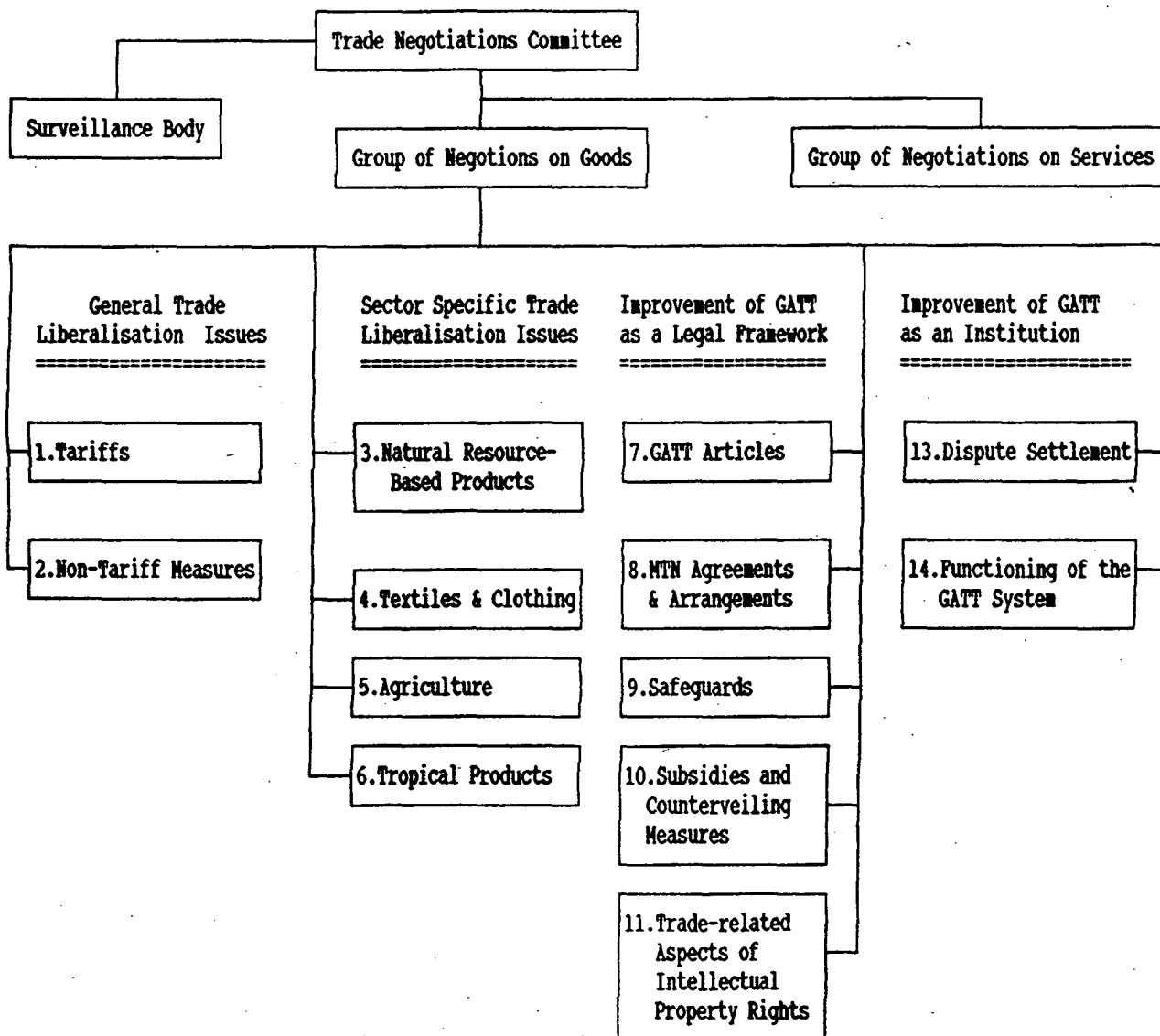
quantitative restrictions for a specified period of time without any preceding negotiations.

For applications which did not meet this general condition the procedure was more cumbersome and unduly long. Either the consultation machinery had to be used or the matter could be taken directly to the CONTRACTING PARTIES, who after consulting the Member states, had to decide whether a release should be granted or not.

Appendix V

THE URUGUAY ROUND OF MULTILATERAL TRADE NEGOTIATIONS

Organisational Chart

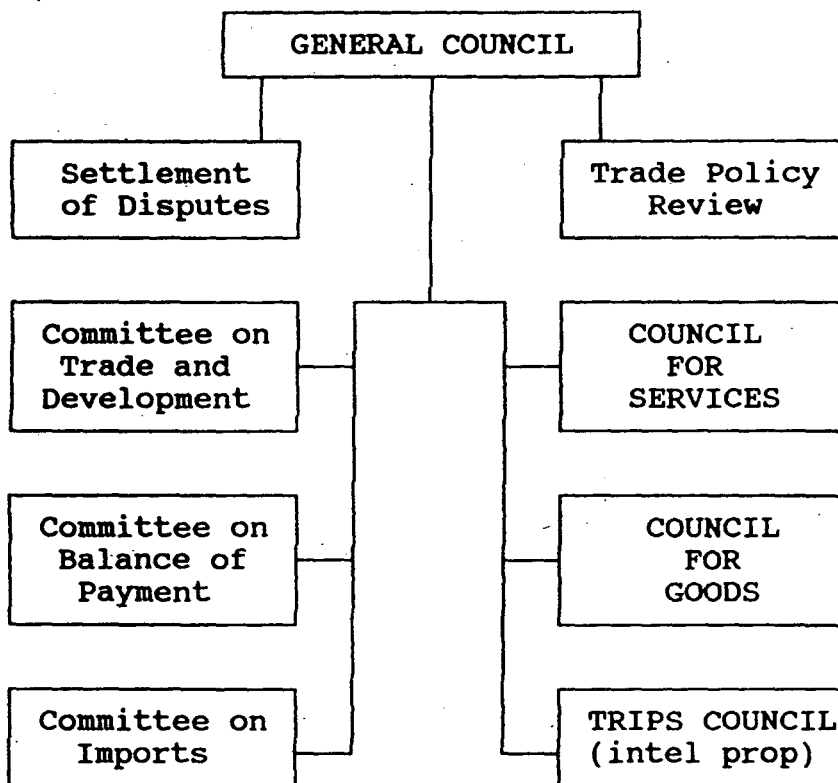


Source : GATT Secretariat  
 [As compiled in Anna Murphy's The European Community and the International Trading System : Volume I Completing the Uruguay Round of the GATT, (Brussels, March, 1990), p.45].



STRUCTURE  
OF  
WORLD TRADE ORGANISATION

Ministerial Conference  
(Every Two Years)



## Appendix VII

### Abbreviation

ASSOCHAM	-	Associated Chambers of Commerce
BISD	-	Basic Instruments and Selected Documents (of the GATT)
BOP	-	Balance of Payment
CSI	-	Coalition of Service Industries (of USA)
DSU	-	Dispute Settlement System
EEC	-	European Economic Community
EC	-	European Community
ECLA	-	Economic Commission for Latin America
FERA	-	Foreign Exchange Regulation Act
FDI	-	Foreign Direct Investment
FICCI	-	Federation of Indian Chambers of Commerce and Industries.
GNS	-	Group of Negotiations on Services
GNG	-	Group of Negotiations on Goods
GSP	-	Generation System of Preferences
GNP	-	Gross National Product
GDP	-	Gross Domestic Product
GATT	-	General Agreement on Tariffs and Trade
GATS	-	General Agreement on Trade in Services
IPRS/IPR	-	Intellectual Property Rights
IIFT	-	Indian Institute of Foreign Trade
IMF	-	International Monetary Fund
IBRD	-	International Bank for Reconstruction and Development
ITO	-	International Trade Organisation
LDC	-	Less Developed Country
MTN	-	Multilateral Trade Negotiations
MFN	-	Most Favoured Nation
NAM	-	Non Aligned Movement
OECD	-	Organisation of Economic Co-operation and Development
PMP	-	Phased Manufacturing Programme
TNC	-	Transnational Corporation
TRIMS	-	Trade Related Investment Measures
TRIPS	-	Trade Related Intellectual Property Rights
UITC	-	The US International Trade Commission
UK	-	United Kingdom
UN	-	United Nations
UNCTAD	-	United Nations Conference on Trade and Development
USA	-	United States of America
USSR	-	Union of Soviet Socialist Republics
URMTN	-	Uruguay Round Multilateral Trade Negotiations

USTR - United States Trade Representative  
UAR - United Arab Republic  
US - United States  
WIPO - World Intellectual Property Organisation  
WTO - World Trade Organisation

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