GATT AND DEVELOPING COUNTRIES WITH SPECIAL REFERENCE TO 50s AND 60s

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PREFACE

The General Agreement on Tariffs and Trade (GATT) was drawn up at Havana in October 1947. However, the GATT was intended to be an interim arrangement pending the coming into existence of an International Trade Organisation (I.T.O.). Unfortunately, I.T.O. could not come into force due to its non ratification by the United States Congress and subsequently the GATT became the principal body regulating world trade.

I have dealt the GATT in the context of the less developed countries (LDCs) limiting my work to the decades of the fifties and the sixties. In my work I have used "less developed countries" for the developing countries, underdeveloped countries and the Third World countries. This has been done because the GATT language uses LDCs for developing countries, underdeveloped countries and the Third World countries. The study of the GATT in relation to the LDCs assumes significance, as no provision was found in the GATT concerning the LDCs and the GATT was known as a rich man's club.

However, as the years passed by, the LDCs made successive attempts to reform the GATT so as to take into account their trade and development needs and secure additional benefits for them in international trade.

Their efforts did produce fruitful results. In the decades of the fifties and the sixties some provisions were incorporated in the GATT which took note of the aspirations and needs of the LDCs.

This indeed was a positive development from the point of view of LDCs, though there is also no denying the fact that some of the expectation of LDCs, were not fulfilled because of the reservations by the developed countries.

The introductory chapter deals with the need of an International Trade Organisation following the precarious economic situation in the inter war period. This chapter also throws light on the endeavours of the developed countries, notably the United States and the United Kingdom to establish an international trade organisation to facilitate world trade.

The following chapter deals with the coming into force of the GATT following the failure of the I.T.O. It also examines if the GATT comes in the category of international organisation or not.

The third chapter focusses on the efforts of the LDCs to secure for them special status in the GATT.

The fourth chapter, contains provisions as developed in the decades of the fifties and the sixties for the LDCs in the GATT.

The last chapter gives conclusion and evaluations.

In completing my work, I have relied on both the primary sources to the extent possible and the secondary sources. For primary sources I have consulted the GATT documents and the United Nations documents, while various books and articles constitute the secondary sources.

However, I acknowledge the responsibility of all errors and ommissions, if any.

CONTENTS

CHAPTER I

TOWARDS AN INTERNATIONAL TRADE ORGANISATION

There is much truth in the claim that war is the ultimate experience of and justification for protectionism. The First World War left a heavy legacy of increased protectionism. Not only did protectionism of industrial products increased, even Britain which had been a traditional leader of free trade made a breach accepting protectionism largely on the grounds of defence considerations.[1]

The foundations of the economic liberalism badly shaken by the First World War, were all but demolished by the 'Great Depression'. The gold standard disappeared, currencies were thrown into chaos and exchange rates were subject to national control. In other words, it was the protectionism which was given top most priority by the respective governments.

However, the United States of America, which emerged from the First World War, in the position of an industrial leader that Britain had previously occupied and should have been moving towards free trade, enacted the Hawley Smoot Tariff Act in May 1930,[2] and through it, adopted a much stronger protectionist policy than it had previously practised. As per this, the import duties were raised to the highest levels in the history.

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1. Harry G. Johnson, The World Economy at Crossroads (London, Oxford University Press, 1968), p.16.

2. Robert E. Hudec, The GATT Legal System and World Trade Diplomacy (New York, USA, Praeger Publishers, 1975), p.5.

In the next few months after the Act, tariffs were raised in Canada, Cuba, France, Mexico, Italy, Spain, Australia and Newzealand. Quantitative restrictions and exchange controls were imposed by twenty six countries by the end of 1931. The United Kingdom abandoned free trade and adopted a general tariff in February 1932. The nations of the British commonwealth meeting in Ottawa in the following summer established the system of imperial tariff preference.[3]

Far more serious for the world economy than the rise of protectionism, was the failure to reestablish a sound international monetary system. Yet a series of unsuccessful efforts were made by the leading countries including the United States to establish the gold standards, ultimately the gold standard had to be abandoned

Intensive economic nationalism marked the rest of the decade. All the weapons of commercial warfare were brought into play. Currencies were depreciated, exports subsidized, tariffs raised, exchanges controlled, quotas imposed and discriminations practised through preferential system and barter deals.[4] Each nation sought to sell more and buy little. A vicious restrictionism produced a further deterioration in world trade.

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3. Ibid.

4. Ibid., p.5, Quoted from Clair Wil Cod, A Charter for World Trade (New York, Arno Press Inc. 1949), pp.5-9.

This period manifested in giving two lessons for the commercial policy officials. The first lesson of course, was the conclusion, that the policy of trade restriction and discrimination had for once and for all, been proved wrong. Governments, in their desperation had experimented, with many new and generally worse forms of trade restrictions. Secondly, lessons were also drawn from the institutional failure of international cooperation. It was clear that, the League of Nations, which had sponsored world economic conferences had failed to inspire the required confidence, which was needed to promote mutual reduction in trade barriers.

Thus, it was obvious that the future efforts would have to abstain from the empty rhetorics and get down to operating details and the commitments would have to be looked after by more permanent institutions.

A need was recognised for international economic institutions to prevent the type of begger my neighbour policy that has been so disastrous to world trade and economies during the inter war period. The Atlantic Charter of August 1941,[5] contained clauses stating that the United States and the Great Britain desired to bring about the fullest collaboration, between all nations in the economic field, with the object of securing for all, improved labour standards, economic development and social security.

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5. K.R. Gupta, A Study of General Agreement on Tariffs and Trade (Delhi, S. Chand & Co., 1967), P.2.

During the war the United States policy makers, entertained the view, that the international cooperation in the international monetary and trade field, was an important objective of the immediate post war period. Speeches of the leaders of the United States stressed the importance of economic cooperation in the preservation of peace.

Under Secretary of State Sumner Welles in the 1941 speech, entitled Post War Commercial policy said:

> Nations have more often than not, undertaken economic discriminations, and raised up trade barriers, with complete disregard for the damaging effects of the trade, and livelihood of other peoples, and ironically enough with similar disregard for the harmful result and effects upon their world trade.

The 'Bretton Woods' Conference was held in 1944 to draft a Charter for the International Bank for Reconstruction and Development (IBRD) and the International Monetary Fund (IMF).[6] IMF was to supplement the world's inadequate gold supply by credit facilities and in various ways to assist countries to cope with the balance of payments crises and maintain exchange rate. IBRD was to channelise long term international capital to international investments in a more regular way than private capital markets had previously provided.

At this Conference it was also recognised that complete attainment of the purposes and objectives cannot be achieved through the instrumentality of Fund alone. This Conference, therefore, recommended ways and means to reduce obstacles

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6. Jackson, World Trade and Law of GATT, (The Bobbs Merrill Company, Inc. 1969), p.37.

that hamper international trade, and in other ways promote mutually advantageous economic relations in the international arena.

During this time the United States had been working on a proposal for a comprehensive organisation for facilitating international trade. In 1945, it published a draft of a proposal for such an organization. These proposals were partly the result of the United States and the United Kingdom discussions. Following from the general objectives of post war economic policy these proposals listed the specifics which were expected to be inclued in an International Trade Organisation (ITO) or a Reciprocal Trade Agreement.[7] These specifics were designed to attack four factors that inhibited internationl trade. They were as follows:

1. Restrictions imposed by the governments;
2. Restricitions imposed by the private companies;
3. Fear of disorder in the markets for certain primary commodities; and
4. Irregularities or the fear of unemployment.

In December 1945, the United States Department of State announced that it has invited a number of other nations to enter into multilateral trade negotiations with a view to accomplish a multilateral trade agreement.

At this point of time the United Nations was beginning its work. The United Nations Economic and Social Council was established in the hope that it would become a major

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7. Ibid. p.40.

coordinating body for initiatives in international cooperation.[8] At the first session of Economic and Social Council (ECOSOC) in February 1946, the United States moved a resolution calling for the convening of the United Nations Conference on Trade and Employment with the purpose of drafting a charter for an international trade organisation and also to pursue negotiations for reduction in world wide tariffs.[9]

Persuant to this resolution a preparatory committee was also set up and the first meeting of the committee was convened in October 1946.

Before the preparatory committee was convened the United States published a suggested charter for an International Trade Organisation. This suggested charter formed the basis for negotiations, which culminated in the Havana Charter in 1948.

Four conferences were held in between 1946 and 1949, to draft the International Trade Organisation Charter. Three of these were preparatory committee meetings. The first session was held in London in October-Novemeber 1946, a meeting of the drafting committee of the preparatory committee was held at Lake Success, New York, in January-February 1947, and the second session of the preparatory committee at Geneva along with the General Agreement on Tariffs and Trade negotiations from April to October 1947.

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8. The United Nation Charter, Article 61.

9. The United Nation ECOSOC Res. 13, the U.N. Document E/22, 1946.

The Actual United Nations Conference on Trade and employment was the final culmination of these efforts and was held in Havana from November 1947 to March 1948.

The London session held in October-November 1946 was based on a second draft of a charter for International Trade Organisation published by the United States in September 1946.

It was quickly apparent, however, that important groups of nations had policies that were not adequately accounted for in the draft, and negotiations tended to focus in the quantitative restrictions in trade as related to post war recovery programmes and problems of less developed countries. This session produced a redraft of the Charter, and a resolution was adopted calling for multilateral trade negotiations at the second session at Geneva.

After the initial policy statements had been made by the various representatives, the London Conference was divided into committees, roughly corresponding with each of the major subjects of the United States draft i.e. the problem of full employment, general commercial policy, restrictive business practise, international commodity agreement and organisational provisions.

Committee two, [10] was assigned with formulating rules for commercial policy, and the deliberations of the committee are therefore more important for interpreting the General Agreement on Tariffs and Trade (GATT). Certain points of

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10. Jackson, n.6, p.42.

the commercial rule policy for the charter were left undecided, and a drafting committee was set up before the Geneva Conference, to clarify textual alternatives for the rule.

The Report of the London Conference outlined the procedures that would be followed for a multilateral tariff negotiations and suggested that the General Agreement on Tariffs and Trade would be necessary to safeguard the value of the tariff concessions and to include such other provisions as may be appropriate. Beyond that it was largely left to drafting committee, meetings at the Lake Success, to develop the details of the negotiating procedures, and to formulate a draft on the General Agreement on Tariffs and Trade.

The drafting committee met at Lake Success in New York from 20 January 1947 to 25 February 1947.

It was at this meeting, that a full draft of the General Agreement on Tariffs and Trade was developed, drawn primarily from the portions of the draft charter. Besides the General Agreement on Tariffs and Trade discussion at New York, those articles of the International Trade Organisation which were to be included in the General Agreement, were also dealt upon, as the London Conference had resolved. The articles of the International Trade Organisation draft charter, to be selected, were those, that were necessary for the protection of those tariff concessions that were to be negotiated. In addition, the committee at New York indicated three types of articles that would 'not' be included in the

General Agreement on Tariffs and Trade. These were namely as:

1. Articles involving purely domestic policy;
2. Articles that depended on the existence of International Trade Organisation and the
3. Articles that did not establish immediate obligations on International trade, but which would have come into play only after a period of grace.

The theory of the General Agreement on Tariffs and Trade was that it would be a specific trade agreement within the broadest institutional context of the International Trade Organisation Charter and that the International Trade Organisation would furnish the necessary organisational and secretariat support to the General Agreement on Tariffs and Trade.[11]

The Geneva Conference began on 10 April 1947, and consisted of two simultaneous endeavours. One, the completion of a preparatory draft of the International Trade Organisation charter, which would be the basis of a full United Nations conference on trade and employment, and two, the multilateral trade negotiations that were designed to result in a series of specific national commitment as to the maximum tariff on particular items. These tariff commitments were to be accompanied by the General Agreement, most of which were to be drawn from the provisions of the

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11. Ibid. p.43.

International Trade Organisation Charter, dealing with commercial policy.

The Geneva Conference was a complicated and elaborate one, with many things happening at once. The preparatory work for the International Trade Organisation Charter was carried primarily on by two major committees of the Geneva Conference, known respectively as Commission A and Commission B. Commission A was entrusted with most of the substantive provisions of the Charter while Commission B dealt with most of the procedural and organisational provisions of the draft charter. Tariff negotiations proceeded according to plan previously outlined at London. They were supervised by a Tariffs Negotiations Working Party.[12]

The United States in particular was anxious to confine General Agreement on Tariffs and Trade, within these limitations, because it was negotiating the General Agreement on Tariffs and Trade and intented to accept the General Agreement on Tariffs and Trade, under the authority of its current extensions of the Trade Agreements Act which only authorized to accept a foreign trade agreement.

The United States Executive Branch felt that it did not have the authority to enter into an agreement on an international organisation at this time and intended to submit the International Trade Organisation Charter to the United States Senate or to the entire congress at some appropriate time, in the future. Indeed the United States

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12. Ibid., p.44.

negotiators had been rendered even more cautious in their approach towards the General Agreement on Tariffs and Trade by a set of Congressional hearing that were held in between New York and Geneva.

At the hearings, the congressmen and senators were very critical of the United States Executive branch which intended to commit the United States to the General Agreement under the authority of the Trade Agreement Act.

The Geneva draft of the Charter was completed by the end of the August 1947, but the tariff negotiations and the completion of the General Agreement continued on till the final Act of the Second Session of the Preparatory Committee was signed on 30 October 1947.

The Act authenticated the General Agreement on Tariffs and Trade and the Protocol of Provisional Applications entered into force on January 1, 1948 after the specified groups of countries had signed.

The Havana cofnference, formally the United Nations Conference on Trade and Employment, was covnvened at Havana, the capital city of Cuba on 20 November 1947 and lasted until 24 March 1948. At the conference, only the International Trade Organisation Charter was being considered although at the end of it the First Session of the contracting parties of the General Agreement on Tariffs and Trade was held here.

The Havana Conference at that time was considered to be the culmination of the years of preparation for drafting an international trade organisation charter, yet, there was an

acrimonious split of view points at the Havana Conference that almost defeated the tasks set for it. Primarily the split was between the developed and industrialised nations on the one hand, and the less developed countries on the other. Not only the clauses of the proposed International Trade Organisation draft charter were reviewed, and a number of them changed, but a new compromise formula was finally concluded in an attempt, to reconcile opposing viewpoints on international trade policy that may have been irreconcilable.

After a fierce debate on many issues, particularly those relating to economic development the Conference drew up the Havana Charter, for an International Trade Organisation and the Final Act authenticating the document which was signed by 54 countries on 24 March 1948.

The Charter was an ambitious instrument. It aimed at international cooperation in employment and economic activity, economic development and reconstruction, commercial policy, restrictive business practises and inter governmental commodity agreements.[13] The Charter also envisaged wide ranging obligations including those on fair labour standards, security of international investments, control of restrictive business practices, and inter governmental commodity agreements.

The organisation was given extensive functions such as studying the natural resources, and potentialities for

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13. A. Hoda, Developing Countries in the International System (New Delhi, Allied Publishes Pvt. Ltd., 1986), p.3.

economic development and assisting in the formulation of such plans for such developments. The chapter on Commercial Policy which constituted the core of the charter contained three basic obligations. These were to be firstly, strict adherence to the principle of non discrimination in all matters connecting with foreign trade, secondly, members were committed to progressively reducing tariffs on a reciprocal and mutual advantageous basis and thirdly, non-tariffs interventions in international trade such as quantitative restrictions and export subsidies were to be eliminated.

The Havana Charter was to enter into force on its acceptance by a majority of governments signing the Final Act of the UN Conference on trade and employment. In the event of the requisite number of signatories not accepting the Charter within the year of the signing of the Final Act, it was to enter into force upon the acceptance of at least 20 signatories.[14] But neither conditions was satisfied.

The fate of the Charter was finally sealed in December 1950 when the United States administration announced its decision not to seek approval of it from the Congress any further. At the end of the Havana Conference in March 1948, when the Final Act was signed authenticating the draft charter for the International Trade Organisation, a resolution was adopted establishing an interim commission for the International Trade Organisation, often called I.C.I.T.O.[15] The interim commission had the responsibility

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14. Ibid., p.4.

15. Jackson, World Trade and Law of GATT, p.49.

of preparing the administrative ground work for the coming into force of International Trade Organisation and was also given the responsibility of following up several matters of interpretation and information left incomplete by the Havana Conference. At the same time the first session of the Contracting parties of the General Agreement on Tariffs and Trade, met and arranged the secretariat services for the GATT.

The contracting parties met twice in 1948 and a number of changes were made pertaining to the language of Internattional Trade Organisation, into the corresponding clauses of the General Agreement on Tariffs and Trade. In the spring of 1949 the contracting parties organised the second major round of tariff negotiations at Annecy, France. In 1950, the contracting parties scheduled yet another, the third round of tariff negotiations at Torquay, England. By this time the chances of International Trade Organisation coming into force looked bleak, and it came to virtual nought when the United States Executive branch announced that it would not submit the International Trade Organisation Charter to the approval of Congress.

The Havana Charter provided that original membership[16] in the International Trade Organisation was open to all states invited to the United Nations conference on Trade and Employment, provided, their respective governments accepted the charter by 30 September 1949. Membership of other

16. Hugh B. Killugh and Lucy W. Killough, Economics of International Trade (McGraw Hill Co., Inc., 1948), p.328.

countries that accepted the provisions of charter was subject to approval by the organisation.

Organisational Structure of International Trade Organisation

The main outlines of International Trade Organisation shaped at an early stage of the negotiations. The International Trade Organisation was to be a United Nations organ open to the entire United Nations membership. It was to be staffed by a Secretariat aided by a large number of expert advisers and technicians.[17]

Plenary power would reside in a conference of all the members. The day to day executive functions would be managed by an eighteen member executive board. Later the organisation charter grew to include several lesser commission with executive responsibility for certain areas such as commodity agreements.

It was anticipated that the General Agreement on Tarrifs and Trade would be absorbed into the International Trade Organisation, as one of these commissions to serve as a forum for tariff negotiations.

Major economic powers, the United States, the United Kingdom, France, Canada the Benelx countries (Belgium, Netherlands and Luxemberg) and a few others formed the nucleus in the form of the directorate. The directorate clearly had the power to shape the charter to its own needs, and more telling it also had the power to prevent unnecessary

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17. Robert E Hudec, The GATT Legal System and World Trade Diplomacy (New York: Praeger Publishers, 1975), p.22.

dilution of the charter by the majority of smaller countries. It is significant that the Directorate's negotiators did not work very hard to institutionalise this power in the International Trade Organisations formal structure.[18] There were a series of proposals for a weighed voting including a United States proposal that would have given the six leading countries about 55 per cent of the votes, but the negotiators confessed afterwards, that weighed voting was not a major issue for them. In the end they were content with the provision of eight permanent seats on the Executive Board, two third voting requirements for certain of the escape provision and a much debated provision allowing the members of the General Agreement on Tariffs and Trade (that is those who had already exchanged tariff concessions) to deny the benefits of their tariff concession to other members of the International Trade Organisation who did not reciprocate. As for the rest, the members seemed satisfied that their position on the Executive Board would provide a sufficient handle on things to permit the effective exercise of their power informally.

Why did the United States not Ratify the Charter

The main opposition came from the business community. It opposed the charter on numerous grounds. The most important criticism was that the charter contained so numerous exceptions and escape clauses which almost nullified the basic principles and ideals for which it stood.

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18. Ibid., p.23.

It did not go far in removing trade restrictions. Any country could comply with the provisions of the Charter without removing trade barriers, under one or the other escape clauses. It permitted the countries to create balance of payments difficulties by adopting domestic programmes, for achieving full employment or for economic development and then to use restrictions for safeguarding the monetary reserves.[19]

It permitted the countries suffering from balance of payments deficits to discriminate between different products on the basis of essentiality and between different countries during the transitional period. It also permitted the old preferential trade arrangements to continue. It justified protective measures for economic development, and reconstruction. It permitted and also encouraged intergovernmental commodity agreements for restricting production and for raising prices.

All these were contrary to liberal trading principles and a purely competitive market economy. The business community held that the charter was nothing but a codification of malpractices, that practices which were not considered to be respectable and had been made sacred and lawful by being embodied in the charter. These criticisms were however unjustified.

Firstly, it focussed attention on the weakness of the charter and neglected all its good points, viz. the most

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19. K.R. Gupta, A Study of General Agreement on Trade and Tariffs (S.Chand & Co., 1967), p.6.

favoured nation treatment, reduction of trade barriers, and preferential arrangements, general elimination of quantitative restriction, freedom of transit, regulation of the administration of tariffs and the other changes on the imports and exports, national treatment of internal taxation and regulations, settlement of differences, provisions concerning full employment, etc.[20]

Secondly, the critics neglected the safeguards and limitations to which these escape and exception clauses have been subjected to. These minimised the chances of the misuse and abuse of exception and escape clauses.

Thirdly, it was not correct to assume that all the members would continue taking advantage of the exceptions and escape clauses for which they had fought. Many countries fought for these simply because they did not want to tie their hand. This has been well demonstrated by the working of the General Agreement. They knew that a right body of rules without any exception would not be acceptable to most of the trading countries. Less developed countries were not ready to accept any proposal prohibiting trade restrictions unless the infant industries were exempted.

A second American criticism was that the charter imposed one sided obligations on the United States. The criticism was based mainly on two points. Firstly, it was alleged that the tariff reductions made by the United States were to be effective, whereas the tariff reduction made by the developed countries, less developed countries or those

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20. Ibid., pp.6-7.

countries having a precarious balance of payment problem would be nullified by the quantitative restrictions to be applied under the exceptions and escape clauses of the proposed International Trade Organisation Charter.

Secondly, it was also feared that in the organisation the United States of America would be outvoted as it (ITO) did not possess, the weighed voting, and was based on the principle of one country and one vote.

Both these arguments though they contain an element of truth, but must be refuted. The escape clauses were of transitory nature[21] and would have been terminated eventually. As far as the voting pattern in the International Trade Organisation was concerned the fears of the Americans were illusory. There was however no basis to assume that the United States will always be outvoted. In fact the chances of a defeat were less for the United States because of her substantial influence over other countries in economic and political affairs. Further, most of the matters in I.T.O. would have been decided by consultation, investigation and cooperation. It was doubtful if voting would decide many issues. Voting has not played a very important role in deciding issues in IMF and GATT. There is no reason to expect the contrary in I.T.O. I.T.O. was bound to accept the decisions of the fund in all matters concerning financial aspects and the United States would have enjoyed a highly weighed vote in it. Further, even if the United

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21. Ibid., p.8.

States found itself repeatedly outvoted by a combine of other countries it could have withdrawn from the organisation giving six months notice.

Opposition came from the protectionists groups having vested interest in the protected industries who warned against the danger to American economy from a free import of low cost foreign goods. However, on the whole most of the criticisms of the Havana charter were from those sections whose vested interests were affected by it and did not have much justification, considered objectively. In fact, the government and disinterested sections of society were in favour of ratification of the charter by the United States. But business community having vested interests constituted a very influential and powerful lobby in the United States and the charter could not be ratified.

There are a number of reasons, why the I.T.O. failed and the GATT succeeded.

The GATT covered a narrower[22] sphere as compared with the I.T.O. The GATT dealt mainly with tariffs, and other matters related to it. While the ITO dealt with employment, commodity agreements, restrictive business practises etc. which were very closely related to the provisions of the agreement.

Secondly, participation[23] in the GATT did not required any specific legislation in most of the contracting parties.

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22. Ibid., p.9.

23. Ibid.

They could participate in the GATT as in any other commercial agreement just by executive authority, while participation in the ITO required legislative approval.

Thirdly, commitments[24] in the GATT were less binding than those in the I.T.O. A contracting party can withdraw from the Agreement by giving 60 days notice, while the I.T.O. charter required, six months notice for withdrawal from the I.T.O. This however had the disadvantage, that it creates an element of uncertainity. There was always the possiblity that a country may withdraw from the Agreement if it finds its immediate interests injured even if the continuation of membership may be in its long term interest.

These were broadly some of the factors which hampered the coming into being of a comprehensive I.T.O. Instead the GATT which was originally conceived as a stop gap arrangement pending the establishment of the I.T.O. was virtually established to regulate world trade.

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24. Ibid.

CHAPTER II

THE GENERAL AGREEMENT ON TARIFFS AND TRADE - ITS FUNCTIONS AND SCOPE

When the trade policy officials of the United States and the United Kingdom, began their discussion in the early forties on the shape of post-war economic policy, the experience of the Great Depression of the late 20s and the early 30s was fresh in their minds.[1]

As had already been discussed in Chapter I, those were the years during which economic nationalism had reigned supreme, protectionism and restrictionism were the order of the day. There was consensus at these discussions that the policy of protectionism and restrictionism in the international trade should be shunned. Expansion of world trade was considered necessary for achievement of the primary economic objectives of raising standards of living, promoting and maintaining high levels of employment and maximising world income.[2]

There was a widely shared concern to create conditions to facilitate expansion of world trade. The first major step in this direction was taken at Bretton woods in 1944, where in fact the foundation of today's international economic system were laid down. It was on 22 July 1944 the United Nation Monetary and International Conference adopted the Articles of Agreement of the International Monetary Fund.[3]

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1. Anwarul Hoda, Developing Countries in the International Trading System (New Delhi, Allied Publishers Pvt. Ltd., 1987), p.1.

2. Ibid., p.1.

3. Ibid., p.1

One of the main aims of the IMF Agreement was to facilitate expansion of international trade by promoting exchange stability, eliminating restrictions on current payments and making resources available, to members for financing deficits in the balance of payments.

However, the Bretton Woods Conference had recommended that additional mechanisms were needed for lowering barriers to international trade. This led to the proposal by the United States in 1945 for the establishment of an I.T.O.[4] The I.T.O. would deal with the real side of trading relations. It was envisaged that I.T.O. would help to create a liberal system of regulations governing world trade and it would in the long run be the vehicle that carried the world towards a system of free trade.

In February 1946, the Economic and Social Council (ECOSOC) Nations at its first meeting at the initiation of the United States passed a resolution, calling for an international conference on trade and employment to consider the question of establishing an I.T.O.[5]

However, alongwith the developments, when the Charter of International Trade Organization was in course of preparation, the members of the preparatory committee decided to proceed with tariff negotiations among themselves instead of waiting for the organization to come into existence, and

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4. Ibid

5. General Agreement on Tariffs and Trade, Basic Instruments and Selected Documents (Geneva, 1949), vol.1, pp.9-10.

thereby promoting one of the most important objectives of International Trade Organization (I.T.O)[6].

It should be mentioned that the discussion of the the GATT took place in accordance with Article 17 of the International Trade Organization Charter providing for negotiations aimed at reduction of tariffs and other barriers to trade.

The Preparatory Committee also sponsored the discussion which led to the formulation of the GATT. The tariff negotiations were held at Geneva from 10 April to 30 October 1947 when the twenty-three participating countries signed a Final Act which authenticated the text of the the GATT.[7] The countries which completed tariff negotiations and became contracting parties to the the GATT were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czeckoslovakia, France, India, Lebanon, Luxemberg, netherland, Newzeraland, Norway, Pakistan, Southern Rhodesia, the Union of South Africa, the United Kingdom and the United States.[8]

Although Pakistan, Syria, Burma, Ceylon and Southern Rhodesia were not members of the preparatory committee these countries participated in the tariff negotiations owing to their close economic connection with certain members of the Committee.[9]

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6. UN Year Book, 1952, p.912.

7. Ibid, p.913. at Geneva in 1947 and subsequently became

8. UN Year Book, 1952, p.913.

9. Ibid.

In the tariff negotiations, Benelux (Belgium, Neitherland and Luxemberg), took part as customs union as did also Lebanon, and Syria.[10] In 1947, the General Agreement was considered to be a temporary arrangement pending the establishment of I.T.O. with wider and more positive objectives than those of the the GATT.

It was thought that the concrete results of the the GATT would facilitate the negotiation of I.T.O.. The Preparatory Committee set up by the Economic and Social Council of the United Nations, expected that the "task of the world conference would be facilitated if concrete actions were taken by the principal trading nations, to enter into reciprocal negotiations directed to the substantial reduction of tariffs and to the elimination of preferences on a mutually advantageous basis....". It was envisaged that the the GATT would be finally merged into international trade organization".[11] as envisaged in article XXIX.

Article XXIX lays down:

1. The contracting parties undertake to observe to the fullest extent of their executive authority the general principles of Chapter I to VI inclusive and of Chapter IX of the Havana Charter, pending their acceptance of it in accordance with their constitutional procedures.

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10. Ibid

11. Gupta K.R. A Study of General Agreement on Tariffs and Trade (S. Chand & Co., 1967), p.5.

2. Part II of this Agreement shall be suspended on the day on which the Havana Charter enters into force.

Unluckily, the Havana Charter could not come into existence. The controversies which the Charter aroused in the United States caused its ratification to be postponed until 1951, when the government announced its intention not to resubmit the Charter for the approval of the Congress.[12] Most of the other countries also did not ratify the Havana Charter. They did so because they did not want to create an organization without the cooperation of the United States of America.[13]

We have already discussed in the previous chapter the reasons which led to the failure of International Trade Organization, and instead the GATT which was intended to be a stop gap arrangement came into being. So it is appropriate not to go deep in these propositions.

The original GATT texts consists of three parts: Part I deals with the obligations of non-discrimination and tariff commitments and includes the schedules of tariff concessions.[14]

Part II embodies provisions relating to general commercial policy and non-tariff measures,[15] and

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12. Ibid, p.5.

13. Ibid., p.6.

14. Anwarul Hoda, Developing Countries in the International Trading system (New Delhi: Allied Publishers Pvt, Ltd., 1987), p.2

15. Ibid., p.2.

Part III covers mainly organizational matters.[16]

During the Geneva Conference there was a general keenness among delegations for the the GATT to enter into force immediately, but certain governments, notably the United States, faced difficulties in view of the domestic legislative changes entailed by certain commitments on non-tariff measures which Part II contained. To overcome this difficulty the mechanism of the Protocol of Provisional Application was devised. By this Protocol, signatories undertook to apply provisionally on or after 1 January 1948: (a) Part I and III of the the GATT, and (b) Part II of that Agreement to the fullest extent not inconsistent with existing legislation.

The protocol served the purpose of exempting signatories from any specific obligation contained in Part II which was at variance with pre-existing legislation.[17] The unequal impact of such a provision on the balance of rights and obligations of the contracting parties was apparent, but it was tolerated as the general expectation was that the GATT would soon be absorbed in the larger framework of International Trade Organization. The final Act of the second session also authenticated the Protocol of Provisional Application. The the GATT as applied by the Protocol, entered into force on January 1948, after eight of the signatories of the Final Act, had signed it before 15 November 1947, as

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16. Ibid

17. Ibid.

specified in the Protocol.[18]

The governments which have become contracting parties by succession are deemed to have applied the the GATT through the Protocol of Provisional Application. Other governments which have acceded to the GATT by negotiations have also done so by Protocol, which apply Part I and Part III provisionally and part II to the extent not inconsistent with the legislation existing on a certain date.[19]

Only one country Haiti has accepted the GATT definitively but before the GATT can enter into force definitively a certain minimum number of contracting parties have to accept it in this manner. A remarkable feature of the the GATT is that it is being applied provisionally even after 45 years of its operation.

An important characteristic of the GATT is its contractual nature. Important consequences follow from this nature of the GATT.

Firstly, each contracting party has to accept precise commitments. It is held that certain countries cannot become parties to the the GATT because they are unable or unwilling to accept firm commitments. Such countries will like an organization in which all countries can join to discuss world trade problesm, without accepting any specific commitments.

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18. Ibid

19. Ibid, p.7.

Secondly, the new members can be admitted only if the agreement is reached between the two-thirds members regarding the terms of admission. In contrast, in most of the international organizations, the accession of the new members is semi-automatic. Once a member is ready to accept the basic objectives and principles, and to pay the annual dues, it is not difficult for it to get admission in the organization. Any country acceding to the GATT automatically obtains all the concessions exchanged between different contracting parties. The contracting parties can therefore agree to accession only if the applicant is ready to grant equivalent concessions so that a balance is maintained between the concessions granted and received by the old and new contracting parties.[20]

Thirdly, the organization has no independent or autonomous role in enforcing the provisions of the Agreement. Action regarding any infringement of the provisions of the Agreement can be taken only at the initiative of the affected contracting party. This has several benefits. It leaves to the judicious judgement of the contracting party whether in any particular case it is worthwhile to take any action. The automatic action by the organization in each and every case may not always be in the interest of the contracting parties.[21] This also makes possible for the contracting

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20. Ibid, p.19.

21. Ibid., p.20.

parites to settle their disputes 'out of court' through mutual consultation which is a very desirable course. At the same time, this has the disadvantage that many countries particularly the weak countries or the countries having differences with the influential countries hesitate to take initiative to invoke the the GATT machinery and they would like the organization to take action of its own accord.

A fourth consequence of the contractual nature of the General Agreement, is that the sanctions available for the non-compliance with the provisions of the the GATT are very weak. The only sanction at the disposal of the contracting parties is to release the injured party of its obligations towards the defaulting party which may lead to retaliation. This is not of much value to the injured party which is insterested in the fulfilment of the contractual obligations.[22]

A second outstanding characteristic of the GATT is that it is multilateral agreement. As such it possesses several advantages over the bilateral agreements.

More often it is not the monetary burden of tariffs but the rules and regulations governing the administration of tariffs which are a great obstacle to foreign trade. Tariff concessions exchanged in multilateral agreements are more stable than those obtained in bilateral agreements. Under a

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22. Ibid.

multilateral agreement the tariff concessions agreed to by the country can only be withdrawn only by arrangement with a large number of countries.

Under a bilateral agreement agreed rates can be increased by making arrangements only with the party with whom the tariff rates were agreed. Further violation of bilateral agreements is easier than that of multilateral agreements.[23] Under a bilateral agreement the violating country has to face the oppostion of only one country, whereas under a multilateral agreement it has to face the opposition of several countries. Under the bilateral arrangements the country obtaining concessions through the Most Favoured Nation (MFN) clause has no guarantee about the continuance of the concession. If the country terminates the agreement, it loses the concessions automatically. Under the GATT, A contracting party making a concession in the tariff or binding a low tariff is bound to all other contracting parties to the Agreement and not only with the party with whom it negotiated the concession. Each contracting party obtains all concessions exchanged between any pair of contracting parties to the Agreement as a direct and independent right. To withdraw a concession, the country has to seek the consent not only of the party with whom it was negotiated but also of the other parties. Thus the modifications or withdrawal of tariff concessions is much

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23. Ibid., p.21.

more difficult in multilateral agreements. Bilateral agreements cannot provide a forum, of the type provided by the GATT for the settlement of international trade disputes. Under bilateral agreements a country cannot buy in the cheapest market and sell in the dearest market. The country may not be able to buy in the cheapest country because it has no trade agreement with it. Multilateral trade agreement ensures that a country imports from the cheapest market and exports to the dearest markets.[24]

Bilateral trade agreements increase the dependence of the partners on each other. This provides an opportunity to the stronger partner to take an undue advantage of the dependence of the weaker party unit. Thus bilateral trade has often led to the exploitation of the weaker countries by the stronger countries. Multilateral trade, of course is possible only in a world of convertible currencies. The problem of the restoration of the convertibility lies outside the jurisdiction of the GATT. In a world of inconvertible currencies, wherever multilateral trade is not possible, bilateral trade, if possible, should be conducted. Bilateral trade, however, should supplement and not supplant multilateral trade.[25]

These were some of the characteristic features of the GATT, and some plausible reasons, which led countries to

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24. Ibid., p.22.

25. Ibid., p.23.

join the GATT, as it was advantageous in many ways to enter into a multilateral trade agreement for trade related issues.

Before dealing with the objectives of the GATT, we shall examine if the GATT happens to be an international organization or not.

Indeed it can be argued that there is no such thing as the GATT, but rather that there is merely a multilateral agreements the General Agreement, which provides in Article XXV: for joint action of its contracting parties to give effect to its provisions and to further its objectives. When the contracting parties take joint action the action is designated as action of the "CONTRACTING PARTIES". Nothing in the General Agreement refers to the GATT as an organization or to the concept of membership.[26] In fact the only institutional body originally provided for in the General Agreement was the contracting parties.[27]

The word contracting parties has been used in two senses. Firstly, these words refer collectively to the member nations, acting in their individual capacities, and secondly, they designate when printed in all capitals as

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26. Kenneth W. Dam, "The GATT as an International Organization", Journal of World Trade Law, July-August, 1969, p.374.

27. GATT, Article XXV, para 1.

"contracting parties" the contracting parties acting jointly.[28]

The unusual legal status of the GATT developed out of the peculiar circumstances in which the General Agreement came into existence. Since the General Agreement was to be only a stop gap set of rules, pending the coming into effect of the Havana Charter, no thought was given to institutional problems. Although the General Agreement contained substantive provisions essentially similar to those of the Havana Charter on Commercial policy, the permanent institution was to be the I.T.O. The Havana Charter contained elaborate provisions in Chapter VII, for a Conference, an executive board, Commissions, a director general and a staff.

Chapter VII provided for a relatively elaborate system for dispute settlement. The General Agreement on the other hand, was innocent of institutional provisions and so far as dispute settlement was concerned contained relatively modest procedures.[29]

Because of this background, fiction was maintained for a number of years that the GATT was not an international organization. The development or rather lack of development

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28. John H. Jackson, World Trade and the Law of GATT (The Bobbs Merill Company, 1969), inc., p.119.

29. Kenneth W. Dam, "The GATT as an International Organization, Journal of World Trade Law, July-August 1969, p.375.

of a secretariat for the GATT was also influenced by these circumstances, as the Interim Commission for International Trade Organization (ICITO), constituted by the Havana Conference, headed by an Executive Secretary was expected to perform the functions of the GATT pending the final establish ment of ITO. To this day the legal status of the Secretariat remains the same.[30] The Rules of procedure still provide for the secretariat functions to be performed by the Executive authority.[31] of the ICITO and privileges and immunities are still granted to the ITO and not to the GATT generally.

In addition contracts of employment made by the GATT, Secretariat to individuals specify the employing party as ICITO. Finally, dealings of the Swiss government, including a loan to the GATT to enable it to build additional office buildings are made with the ICITO as the legal entity.

Despite this fiction, the GATT has all the essential characteristics of a meaningful definition of international organization. It utilizes a secretariat, it contracts with states, and it make decisions which are expected to be adhered by the contracting parties.[32] In early years, the GATT could not develop useful institutions to carry out its work. But as the years passed the GATT gradually evolved its

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30. Jackson, World Trade and the Law of GATT (The Bobbs Merill Company, 1969), pp.145-6.

31. Rule 15, GATT, 12th Supplement, BISD (1964).

32. John Jackson, n. 30, p.121.

series of committees and working parties into an institutional scheme. Perhaps the most significant of the institutions developed was the Council.

Apart from institutions the GATT has also broadened the scope of its attention and became a policy body for a wide variety of subjects touching on international economics and trade. These subjects include not only matters that are dealt with in the General Agreement, but other matters that are important to international trade, such as international investment flows, restrictive business practises and commodity problems.[33]

The Joint UNCTAD/GATT international trade centre was established in pursuance of a General Assembly Resolution (2297 (XXII)) of 12 December 1967 and the decisions of the contracting parties to the the GATT of 22 November 1967.

It was established at Geneva which assists the less developed countries to formulate and implement trade promotion programmes, provide information and advice on export markets and marketing techniques, helps to develop export promotion and marketing institutions and services and transnational personnel.

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33. Ibid.

As regards the finances the contracting parties to the GATT participate financially in accordance with a scale of contributions, assessed on the basis of country's share in the total trade of the contracting parties, and associated government.

Now we come to the most important part of the GATT, as to the objectives of General Agreement on Tariff and Trade. The contracting parties to the General Agreement aim at contributing to the objectives given below, by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade, and to the elimination of discrimination in international trade.[34]

1. Raising standards of living;
2. Ensuring full employment and large and steadily growing volume of real income and effective demand;
3. Developing the full use of the resources of the world;
4. Expansion of production and international trade.

These objectives are very general in nature. The arrangements aim at indirectly contributing towards these objectives through the promotion of free and multilateral trade. It does not aim at directly achieving these objectives. The Articles for instance contain no provision for the direct achievement of full employment.

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34. Preamble of the GATT.

The contribution of the GATT towards the achievement of full employment lies in so far as the promotion of trade expands employment. Many other domestic and international measures will be necessary for the achievement of full employment. Similarly many other measures other than the expansion of trade are necessary for raising the standard of living, developing of the full resources of the world, and expansion of production.[35]

In fact, the main objective of the GATT reflect the desire of the founding members to prevent a recurrence of the protectionism of the 1930s, which they believed deepened the great depression and helped give rise to World War II.

First the GATT embraced non-discrimination or most favoured nations treatment to prevent the cycle of selective reltaliations and counter measures fostered by discriminatory trade.[36]

The main provision establishing the rule of non-discrimination is contained in Article 1, (as given in Appendix-I) known as the most favoured nation clause. This Article requires that in all matters connected with imports or exports including customs duties and similar charges, international transfer of payments, methods of levying such duties and charges and regulations affecting internal sale,

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35. K.R. Gupta, n. 11 , p.24.

36. Preamble of the GATT.

purchase, distribution, transportation and use of imported products, any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded immediately and unconditionally to the like product for the territories of all other contracting parties.[37]

Thus a contracting party does not have to treat all other contractging parties equally but has to extend to each of them, the best treatment it accords to any trading partner. An important element of the obligation is that extension of any concession or favour to all contracting parties has to be immediate and unconditional.[38]

Faith in the MFN (MFN) clause was supported by powerful economic and pragmatic arguments. The goal of maximisation of world income required international trade to be free of all obstacles. Till that ideal was achieved, the best course was to have equal barriers for all, so that the most efficient foreign producer was favoured.[39]

Besides this, adoption of the MFN principle was seen as a pre-requisite for establishing stable and predictable trading conditions without which expansion of international trade could not take place.[40]

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37. Anwarul Hoda, Developing Countries in the International Trading System (New Delhi: Allied Publishers, 1987), p.11.

38. Ibid., p.11.

39. Ibid., p.41.

40. Ibid.

In the absence of an unconditional MFN obligation it would also have been difficult to stimulate the process of reduction of tariff by exchange of tariff concesions, as they fear that a tariff concession obtained by a trading partner would be nullified by a greater concession secured by another supplier would have inhibited such exchange. Politically, as well equal treatment of all countries appeared to be the most feasible proposition, specially to the smaller nations.[41]

Further the GATT provides a framework for reduction of tariff through successive rounds of multilateral tariff negotiations, of which to date seven have been held so far.[42] The first of such rounds was held at Geneva in 1947, and the current one is going on known as Uruguay Round, initiated in 1986.

Central to the negotiating framework of the GATT for reduction of tariff is the principal of reciprocity. Reciprocity implies that during rounds of negotiations for reduction of tariffs each country will make equivalent tariff concessions. The genesis of this principle can be traced back to the mercantalist notion that reduction of tariff involves a national sacrifice.

The economic justification for seeking reciprocity in trade negotiations arises from the effects of tariff on employment, balance of payments and terms of Trade.

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41. Ibid., p.42.

42. GATT, Article XXVIII envisages periodic rounds of negotiations.

Tariff affords protection to domestic industry and shields it from competition from the more efficient foreign producers. Increased imports resulting from tariff reduction may lead to contraction of the import substitute industry, thereby releasing the resources (labour and capital) employed in it.

If there is a simultaneous increase in the export opportunities arising out of reciprocal tariff reduction, secured from a trading partner the export sector can absorb the labour and capital released from the import substitute industry, thus limiting adverse effects to transitional unemployment.

A similar adjustment is achieved in regard to the balance-of-payments problems. Unilateral reduction of tariff may cause a balance of payments disequilibrium as imports rise and exports remain at the pre-existing level. Reciprocal exchange of tariff concessions helps to ensure that increased imports are offset by increased exports and the overall balance-of-payments remains unaffected.

The principle of reciprocity is also based on political or domestic policy arguments. It is widely observed that there is often less appreciation of resistance to trade, because the beneficial effects of cheaper imports are too thinly spread, over the entire population, while the harmful effects are concentrated on a particular segment.

Similarly, in democratic countries, the political influence of producer interests is often more than commensurate with their economic importance. A government contemplating import liberalization finds it necessary, therefore to appease producer interests with a view to winning public support for such measures.

One of the ways for doing this is to provide increased opportunities for export sector which reciprocal concessions bring about.

Once a tariff commitment is made, it may be modified or withdrawn only through renegotiations again subject to reciprocity. There are however provisions for the renegotiations in the context of economic development requirements of less developed countries, the formation of customs union, the withdrawal from GATT membership of a contracting party or any other special circumstances.

These are the main objectives of GATT, broadly speaking, however in the subsequent chapters these objectives will come into focus once again when they would be dealt in connection with the efforts, needs and provisions (as mentioned in the Agreement) of the less developed countries.

CHAPTER III

NEED FOR SPECIAL STATUS FOR LESS DEVELOPED COUNTRIES IN THE GATT

In the immediate post war period, the world witnessed the emergence of a large number of countries, as independent nations. These countries, which were formerly the colonies of metropolitan powers had remained underdeveloped.

All of them had few characteristic features.

1. The per capita income was very low.
2. The rate of growth of their Gross Domestic Product (GDP) was often less than the growth of their population.
3. Their savings were far less than required for high investments.
4. Many of these countries were dependent on export of primary products and imports of manufactured goods and also experienced adverse balance of payments position because of decline in prices of primary products, and also instability in prices and volume of primary products traded by these countries.

It was slowly recognised that these countries can develop by the active support of the governments of these colonies and international support. This was accepted internationally.

The GATT conceived along with International Monetary Fund (IMF) and International Bank for Reconstruction and Development (IBRD) at Bretton Woods in 1944, was a forum where the contracting parties would meet from time to time to discuss and solve their trade problems. The main objective

behind the GATT was to prevent war time shrinkage of trade, recession, imposition of quantitative restrictions on imports, (in order to expedite export on the basis of quid pro quo), high import duties, most favoured nation policy, or protectionism and non-parity of concessions given or received.[1] The GATT was in favour of a universal 'most favoured nation' policy based on the equivalence of mutual trade concessions.

But 'none' of these principles suited the newly emerging independent countries of Asia, Africa and the developing states of Latin America. In the negotiations for the General Agreement, and in the Review of the GATT, the LDCs urged for the recognition of their need for special concessions for facilitating their economic development. They contended that their economic development was in the ultimate interest of the developed countries and it was the best method of promoting the objectives of the GATT. The development of the LDCs would expand world trade.

In fact one of the disquieting phenomenon of post World War II international economy was the crawling pace of economic development in the non-industrialized nations of the world.[2] Exploding population tended to neutralize the effect

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1. Anurag Gangal, New International Economic Order (A Gandhian Perspective) (Delhi: Chanakya Publications, 1987), p.2.

2. John H. Jackson, World Trade and Law of GATT (The Bobbs Merill Co., Inc., 1969), p.625.

of any aggregate increase in production. It was also alleged that declining as well as fluctuating prices of primary products, relative to industrial products tended to turn the terms of trade adversely against the developing nations.[3] Added to this it was argued that since much aid was given in the form of loans, debt service payments have been creeping up, taking a increased percentage of foreign exchange earnings that the LDCs vitally needed for importing capital goods to further development plans.

However, in searching for causes of these economic phenomenon, LDCs pointed an accusing finger at the trade, rules of the GATT which they say were slanted against them.[4] They contended that they be accorded a "special status" in the GATT. They urged a revision of the GATT rules towards a policy of trade not aid, to increase the foreign exchange earnings of the LDCs so that such earnings could be used to accelerate their growth and development.

The success of any move, in the direction of free trade, depended mainly on how far, the existing national economic orders were consistent with the GATT concept, and how flexible the latter was to allow for accommodation of interests and needs of all countries participating in the international trade system.[5] Important in the latter respect

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3. Ibid., p.626.

4. Ibid., p.627.

5. Tigani E. Ibrahim, "Developing countries and the Tokyo Round", Journal of World Trade Law, January-February, 1978, p.2.

were LDCs which were committed to the economic developement through a system of fair play rules and equitable opportunities. The question which was of vital interest to the LDCs was how far the rules of the GATT were compatible with their interests, needs and aspirations. In fact there was not special provision in the GATT for less developed contracting parties. The GATT envisaged that all countries should trade under rules and regulations, which treat contracting parties equally. The newly independent LDCs did not find this conducive to their developement. Therefore in the initial years, the member of LDCs did not become contracting parties to the GATT and it came to be known as a rich man's club.

Non-discriminatory free trade apart from maximizing world income is also thought to favour, the small and poor countries, through its distributional effect causing a reduction in income gaps.[6] However, the existence of unequal economic strength among partner trading nations often leads to neutral or even negative distributional conseqeunces in a regime of unhindered trade. If trade is to supplement financial aid, a general case exists, for allowing the developed countries to discriminate in favour of imports from LDCs in all aspects of the trading rules, the acceptance of which was demanded by them in the GATT negotiations. At the time of the preparatory conferences, such a generalized

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6. Anwarul Hoda, Developing Countries in the International Trading System (New Delhi: Allied Publishers Ltd., 1987), p.30.

approach towards the problems of LDCs has not taken shape. The LDCs were anxious to ensure that the commercial policy obligations, of the ITO Charter needed to safeguard their economic development. They wanted in particular that the members of the ITO should have the right to impose quantitative restrictions, on their imports and exports, if such measures were warranted by the exigencies of economic development.[7]

An issue over which a bitter controversy arose both at Geneva and Havana was whether prior permission of the organization was necessary before a member would impose such restrictions. The LDCs demanded this as an automatic right, while the developed countries felt that each case should require specific and prior permission.

The LDCs were incensed by the fact that no limit had been imposed in the Geneva draft on subsidy which was a protective device tailored for rich countries, while the protective measure of quantitative restrictions, which they felt was suitable for the LDCs, was banned. Further they resented denial of exception to the rule, against the use of quantitative restrictions for economic development purposes, when such an exception had been secured mainly for the benefit of the developed countries in respect of agricultural products.[8]

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7. Ibid., p.31.

8. Ibid.

The final outcome of these debates was the provision in the Havana Charter entitled Government Assistance to Economic Development and Reconstruction.[9]

If the economic development provisions of the Havana Charter were weak, this was so because representatives of the developed countries who steered the course of discussion were basically unsympathetic to the development needs of the LDCs. The records of the debates at Geneva and Havana bear ample testimony to this.

In fact, most of the representatives of the developed countries had still the spirit of the colonial times, and were preoccupied with their anxiety to ensure an open market for their manufactured products in the LDCs as well as an uninterrupted supply of raw materials from them. The industrial development of LDCs was then regarded by them as inconceivable in the near future. Any meaningful special provision for LDCs was therefore out of question.

In fact, the issue at Geneva in 1947, seem to be free trade versus protectionism or internationalism versus national sovereignity. Each of the groups in the debate desired international control of some things and not of others. Both sides desired to use certain types of trade protective measures but wanted to limit or restrict others. The controversy seemed to be, over which trade, restriction would be subjected to greater international control, and

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9. Ibid.

over which not.[10] From the point of view of LDCs, the developed countries wanted freedom to use those restrictions that only they were most able to use effectively while banning those restrictions that LDCs felt they were more able to use. As things turned out, however, the LDCs were able to use quantitative restrictions, with much freedom and without prior approval because they could easily qualify for the balance of payment exceptions.

The crises at Geneva resulted in compromised ITO Charter draft articles relating to the LDCs which were carried into the GATT as Article XVIII.[11] These provisions maintained that the prior consent was required for deviation from the GATT trade rules in order to assist LDCs with certain exceptions.

In addition, a separate article carried into the GATT Article XVIII gave both 'developing nations' and 'reconstructing nations' a grandfather exception to maintain their existing measures including quotas inconsistent with the GATT trade rules, provided other countries were notified of these measures before they decided to become bound by the GATT.

This compromise was not satisfactory, and it immediately began to attract criticism. Delegates of India, China and Lebanon had reserved their position on this

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10. John H. Jackson, n.2, p.636.

11. Ibid., p.638.

compromise. At the Geneva Conference, and at the Havana Conference which opened on 21 November 1947, the question of LDCs and of quantitative restrictions again came into focus engendering a new and even more serious crisis.

This time a special high level committee,[12] was set up to try to arrive at a compromise, and its report was finally adopted by the conference. Among other things this resulted in a rather complete overhaul of the Charter development provisions, and this overhaul was translated into a new Article XVIII for the GATT by amendments, made at the second session of the contracting parties in September 1948.

This change added still more clauses to Article XVIII - it now had fourteen paragraphs, compared to the original (seven) in October 1947, and the (three) paragraphs in the London draft of the GATT. It still preserved, however, the basic idea with few exceptions, that deviation from the GATT trade rules, for development purposes required prior GATT approval. However, the balance of payment exceptions in Article XII and XIV, did not require prior GATT approval, and as a practical matter a LDC could usually make a case for balance of payment. Under Article XVIII it was easier to justify quotas as necessitated by balance of payment considerations.[13]

In fact between 1948 and 1955 the LDCs participated in tariff negotiations and other aspect of the GATT activities

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12. Ibid., p.639.

13. Ibid.

as equal partners. They took their GATT obligation seriously and obtained release from these obligations wher necessary. However, by the time the Review session was hel in 1954-55 the realisation had deepened that the LDCs needed additional flexibility with regard to the GATT obligations, in order to be able to implement their programmes of economic development.[14]

This new attitude, towards the problems of less developed coutries resulted in a complete overhaul at the Review Session of the provision on Government Assistance to Economic Development and Reconstruction. The structural nature of their balance of payments problems was recognized, and the liability of LDCs maintaining balance of payments restrictions to hold annual consultations with the contracting parties was reduced to once in two years.

In regard to measures deviating from the GATT obligations for the promotion of industry, the requirement of prior sanction of the contracting parties was relaxed to some extent.

The LDCs desirous of taking such measures in respect of products on which no tariff commitment has been made only required to inform the contracting parties and were free to implement the measures after thirty days of the notification, if no consultation is requested and after ninety days if

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14. Anwarul Huda, Developing Countries in the International Trading System (Allied Publishers Pvt. Ltd., 1987), p.32.

consultation is requested but concurrence not given.[15]

A significant feature of the new version of the provision is that recourse to it can be had only by the LDCs and to a limited extent by primary producing countries like Australia and New Zealand which are regarded as being in the process of development. The Review Session amendments thus applied for the first time the concept of differential treatment of the LDCs.

Now we come to the conclusion that the General Agreement was drafted primarily with the interests of the developed countries in view, and adequate consideration was not given to the needs of LDCs. These countries had therefore been expressing disenchantment with the provisons of the GATT rules, as they were loaded in favour of the developed countries. As the years passed by their disillusionment further arose. This necessitated modifications in the provisions of the GATT. Some progress towards the appeasement of the LDCs was made at the ninth session when the General Agreement was reviewed. It was seriously felt that the LDCs be accorded a special status in this trade forum. This, however, did not satified them and they continued to express their dissatisfaction.

Further progress was made at the ministerial meeting held in May 1963 when with a view to liberalising imports from LDCs, the contracting parties adopted the eight point

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15. Ibid.

"programme of action" put forward by the LDCs.[16]

At the meeting, the ministers recognized the need for an adequate legal and institutional framewrok to enable the contracting parties to discharge their responsibilities in connection with the work of expanding the trade of the LDCs, and agreed that a committee should be set up to examine all aspects relating to trade and development of these countries. The committee submitted a draft chapter on "Trade and Development". On 26 November 1964, the text of the New Chapter was adopted and submitted for the approval of the government. The new chapter incorporated some of the principles advocated by the LDCs at the UN Conference on trade and development.[17] On 8 February 1965, at the conclusion of a special session, the contracting parties took formal action to add the New Chapter as Part IV of this General Agreement.

Part IV consists of three articles and the most important provision in this Article relates to admission by the developed contracting parties not to expect reciprocity from the less developed contracting parties. These three Articles would be examined in detail in my fourth chapter. Along with Part IV, Article XVIII, Heberler Report, and other provisions which are associated with the LDCs would also figure in the following chapter.

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16. Gupta, K.R., A Study of the General Agreement on Tariffs and Trade (S. Chand & Co., 1967), p.185.

17. Ibid.

CHAPTER IV

PROVISIONS CONCERNING LESS DEVELOPED COUNTRIES IN THE GATT AS DEVELOPED IN THE FIFTIES AND SIXTIES

Following the Second World War the world witnessed the emergence of a large number of countries from their colonial status, as independent countries which are now variously called developing or third world countries. Their political independence provided to them a source of confidence in their ability to forge independent economic relations with the world economy, on the one hand and the collective strength to reconstruct the world economic system and relations consistent with their needs and aspirations on the other.[1]

The initial enthusiasm of the LDCs can be attributed to various factors. The developed countries most of which had been the former colonial powers endeavoured to assist these LDCs partly to accomplish their self interest and partly as a gesture establishing their sense of enlightenment. This was reflected in their attempts to provide official development assistance and bilateral technical assistance.[2] Their initiative was also accompanied by the development of some multilateral institutions like World Bank' and International Development Association (IDA) to provide concessional loans to the newly independent countries. This development however, was contrary to the expectations of LDCs which had sought economic assistance programme channeled through UN in which they have a majority in the decision making set up. The

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1. Sumitra Chishti, Restructuring of International Economic Relations, (New Delhi, Concept Publishing House, 1991), p.15.

2. Ibid

effective aid programme thus came to be promoted through bilateral channels as well as multilateral institutions in which the donor developed countries had kept their choices, preferences and objectives linked to their respective national interests.

As discussed in the previous chapter, the LDCs urged for the recognition of their need for special concessions for facilitating their economic development. They contended that their development is in the ultimate interests of the developed countries.[3] While the establishment of International Trade Organization which included within its scope of its functioning issues of direct relevance to economic development of LDCs, was aborted by the non-ratification of the agreement by the US Congress, the successor arrangement General Agreement on Tariffs and Trade (GATT) had neither incorporated the special status of LDCs in the world economy nor focussed its attention on the problems of LDCs[4]. As has already been stated, in the fifties attempts were made to amend some of the articles of the General Agreement on Tariffs and Trade. The most important amendment was effected by permitting the use of Quantitative Restrictions. Article XI which imposed a general prohibition on quantitative restrictions on imports and Article XII and XVIII that lay down the conditions under which QRs may be

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3. K.R. Gupta, A Study of General Agreement on Tariffs and Trade (S. Chand & Co., 1967), p.148.

4. Sumitra Chishti, n.1., p.18.

justified under the General Agreement on Tariffs and Trade. This was the result of the realization that a special need for QRs for LDCs to their balance of payments position existed. This recognition of the special need of the LDCs led to the introduction in continuation of Article XVIII (Section B). The introduction of this section implied that LDCs might need to take "Protective or other measures affecting imports" in order to implement" policies and programmes of economic development designed to raise the general standard of living of their people.[5] Thus Article (XVIII (B) was introduced whose provisions was to apply only to LDCs with two fold objectives.

(1) To meet the needs arising from development efforts; and

(2) to tackle problems arising from external instability as exhibited by instability in prices of exports of these countries.

Now the special concessions granted to underdeveloped countries in Article XVIII of the General Agreement dealing with Governmental Assistance to Economic Development would be dealt in detail. This would be followed by Heberler Report, the establishment of United Nations conference on Trade and Development (UNCTAD), and Chapter IV (Development Chapter) of the GATT introduced in 1964.

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5. Ibid

ARTICLE XVIII

Article XVIII is the longest of all the articles, in the Agreement. It was specifically designed for the LDCs and as established in its final 1955 form, this article provides a wide range of flexibility for using protectionist devices to assist developing industries.

It is available to only two types of contracting parties:

(1) A Contracting Party "the economy of which can support only low standards of living and is in the early stages of development", and

(2) A contracting party, "the economy of which is in the process of development but which does not come within"(1) above.[6]

The first type has the right to utilize section A, B and C of Article XVIII. The second type country can have recourse only to section D of Article XXIII.

The logical starting point to an analysis of Article XVIII is the question of who is entitled to invoke it and this turns on the definition of the type (1) country quoted above. This language is obviously intended to reach what is normally called the "less developed country" or "developing country". It is interesting to note that the issue of what

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6. GATT Art. XVIII, para 4.

nations can come, within the term "less developed" is a fairly common one in international organizations today. United Nations financing has for instance involved a discrimination in favour of the less developed country, as have the programmes of a number of organizations that lend or give aid to LDCs.[7]

The GATT definition is embellished by two Interpretative Notes as follows:

(1) When they consider whether the economy of a contracting party "can only support low standards of living" the contracting parties shall take into consideration the normal position of the economy and shall not base their determination on exceptional circumstances such as those which may result from the temporary existence of exceptionally favourable conditions for the staple export product or products of such contracting party.

2. The phrase "in the early stages of development is not meant to apply only to contracting parties which have just started their economic development but also to contracting parties the economies of which are undergoing a process of industrialization to correct an excessive dependence on primary production.[8]

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7. John H. Jackson, world Trade and Law of GATT (The Bobbs Merill Co., Inc., 1969), p.650.

8. GATT, Article XVIII, para 1 and 4.

The expression 'low standard of living' and early stages of development are very vague and can be interpreted differently by different parties. The agreement does not specify any level of per capita income, to determine whether or not a country is having a low standard of living. Similarly, the Agreement does not prescribe any criteria whether or not a country is in the earlier stages of development.[9]

In one application of this article, a panel judged that Ceylon qualified under both criteria. The Panel (appointed in 1958) measured the standard of living by the gross national product per head of population.[10] It estimated gross national product per captial for Ceylon in 1955 at $ 128, although this figure is higher than the GNP of countries such as Burma and India, it is less than the corresponding figure for Greece, Cuba and Dominican Republic and very below the figure of industrialized countries in Western Europe.

For deciding whether or not a country was in the early stages of development, the Panel took as a general indication, the share of manufacturing, mining and construction in the gross national product.[11] In the case of Ceylon, the share was about 10%, which was lower than that in

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8. GATT Article XVIII, para 1 and 4.

9. K.R. Gupta, n. 3, p.149.

10. GATT, Basic Instruments and Selected Documents, Sixth Supplement (Geneva, 1958), p.13.

11. Ibid., p.13.

Burma, and Greece and substantially lower than that in industrial countries.

A country that meets these two criteria i.e. the "eligible state", has the option of recourse to section A, B or C of Article XVIII.

Section A of Article XVIII: Tariff Renegotiations

Under this section an eligible country can raise tariffs even when the tariff is bound in its schedule and of course it can raise tariffs that are not bound. The pre-requisites it must meet to do this are, as follows: it must consider the tariff increase desirable:

(a) "in order to promote the establishment of a particular industry (which by interpretative note can mean a branch of an industry of a substantial change in an existing industry) &

(b) with a view to raising the general standard of living of its people;[12] and

(c) it must notify the "contracting parties" to the effect and enter negotiations' with.

(d) the party with which such concessions are negotiated, and

(e) any other having a substantial interest.[13]

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12. GATT, BISD, 3rd Supplement, 1955, pp.132-33.

13. GATT, Article XVIII, para 7(a).

When these criteria have been fulfilled and if the negotiations lead to agreement, tariffs can be raised, according to the agreement; if no agreement is reached the matter may be referred to the "contracting parties" which may authorize tariff increase in certain circumstances.[14]

In practice this section of Article XVIII, has never been invoked since the 1955 amendment. This may be due partly to the fact that general renegotiation authority exists in Article XXVIII which could in most cases serve adequately any purposes desired under Article XVIII section A and the fact that other General Agreement on Tariffs and Trade exceptions including those of Article XVIII Section C could also be utilized to raise tariffs. In one instance however the "contracting parties" noted that the country was eligible to utilize section A.[15]

Section B: Balance of Payments Restrictions:

During the first few years of the operation of the General Agreement on Tariff and Trade, the experience of the LDCs with their programmes of economic development, brought out the deficiencies of the rules relating to balance of payments restrictions. The tight lease on which the import restrictions for balance of payments reasons were held under Article XII assumed that the problems would be temporary, whereas the large volume of imports required to implement the

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14. Ibid, para 7 (b).

15. Cuba was judged eligible. Report is in the GATT, 6th Supplement, BISD, 27 (1958).

programmes of economic development in the LDCs made their problems long term in nature.[16] At the Review Session therefore, the LDCs strove to get recognition of the structural nature of their balance of payments problems.

As a result of these efforts a new section B was introduced in Article XVIII (Government Assistance to Economic Development) dealing with the balance of payments problem. The provisions were modelled on Article XII, but it had certain additional features also. It recognised the special characteristics of the problems of the LDCs and gave them a modicum of additional facility in imposing restrictions for balance of payments reasons. It also relaxed the requirements of annual consultations and the LDCs maintaining restrictions have to hold consultations only once every two years.[17]

The 'Contracting Parties' recognise that the contracting parties coming within the scope of paragraph 4(a)[18] of this Article, tend to experience balance of payments problems. Keeping this in view, they permit a contracting party coming within the scope of paragraph 4 (a) of the article to apply quantitative import restrictions, for safeguarding its external financial position and for ensuring

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16. Anwarul Hoda, Developing Countries in the International Trading system (New Delhi: Allied Publishers Ltd., 1987), p.229.

17. Ibid

18. Paragraph 4(a) applied to the 'contracting parties' the economics of which can support low standards of living and are in early stages of development.

adequate reserves for the implementation of the development programmes.

The LDCs can also apply quantitative restrictions when the monetary reserves are inadequate to their development plans, while the developed countries can do so only when their monetary reserves are very low. The import restrictions instituted maintained or intensified shall not exceed those necessary to forestall the threat of or to stop, a serious decline in its monetary reserves, or to achieve a reasonable rate of increase in reserves in case of a contracting party with inadequate monetary reserves.[19] In appraising the reserves of a contracting party, due regard shall be paid to any special factors which may be affecting the reserves or the need for reserves available to it and the need to provide for the appropriate use of such credits or resources. Import restrictions are almost indispensable for underdeveloped countries. If the import of luxury and inessential goods is not restricted, the few rich in these countries will spend a large part of their income, on the importation of such goods.[20] This will lead to a flowing away of the precious foreign exchange, resources on luxury and inessential goods. Restrictions on the importation of luxury goods are essential if the limited foreign exchange resources are to be used, for the importation of machinery, technical knowhow and

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19. K.R. Gupta, n. 3, p.152.

20. Ibid.

essential raw materials which are required for the development programme.

In compliance with the provisions of Section B of Article XVIII, the LDCs applying quantitative restrictions have to hold consultations with the 'contracting parties' every two years. In these consultationsw they endeavour to justify the import restrictions in the light of their overall developmental needs and requirements.

However, any contracting party instituting new restrictions or substantially intensifying the existing restrictions is required to consult immediately both the 'contracting parties' as to the nature of its balance of payments difficulties, the available alternative methods, of correcting these, and the possible effect of these on the economies of other contracting parties. If the circumstances permit, the 'contracting parties' should consult before applying the measures.[21] The provisions of the Agreement Supplemented with the additional facilities provided for in Sections A and B of this Article will normally be sufficient to enable the 'contracting parties' to meet the requirements of their economic development. Special procedures are provided in Section C and D of this Article to deal with cases, in which no measure, consistent with those provisions in practicable to permit, a 'contracting party' in the process of economic development to grant governmental

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21. GATT Article XVIII, para 12.

assistance required to promote the establishment of particular industries with a view to raising the general standard of living of its people.[22]

Section C: Other Deviations from General Agreement on Tariff and Trade:

Section C is at the same time broader and narrower than section B which authorizes quantitative restrictions to alleviate balance of payments problems. It is broader in the paragraph 13 of Article XVIII, as it authorizes almost any measure necessary but narrower in that the measures must be used to promote the establishment of a particular industry, just as in section A.

Section C lists the following pre-requisites for its invocation:

(1) A funding by the invoking party "that governmental assistance is required".

(2) "to promote the establishment of a particular industry".

(3) "with a view to raising the general standard of living"

(4) "no measure consistent with the provisions of this Agreement is practicable to achieve"that objective;

(5) a notification to General Agreement on Tariff and Trade of the specific measure, its plans to introduce;

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22. GATT, Article XVIII, para 3.

(6) a wait of 30 days (if no request to consult is required) or 90 days (if request to consult is received and the 'contracting parties do not release the invoking party). The 'contracting parties' will request consultations if any contracting party whose trade would be appreciably affected" desired it;

(7) the measures must be non-discriminatory (i.e. cannot violate Article 1 or Article XVIII and must follow Article XVIII, paragraph 10".

(8) If the measures affect imports of a product in the invoker's schedule than the measures can only be invoked upon agreement, with interested 'contracting parties' or if the 'contracting parties' grant a release (which they must do if certain criteria are met).[23]

The actual wording of Article XVIII, Section C, paragraph 13 through 21, contains many interpretative pitfalls and the interpretative notes of Annex 1 relating to this section are extensive. For instance the establishment of an industry covers also the establishment of new branches of productions within an established industry and the transformation or substantial expansion of the industry. When must the measures be applied to take advantage of section C. Paragraph 14 of Article XVIII implies that it must be

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23. GATT Article XVIII, para 13 for item 1-4; para 14 for item 5; para 14-17 for item 6; para 20 for item 7; para 18 for item 8.

applied at the time of "promoting the establishment" but an Interpretative Note states that a contracting party may need a reasonable period of time, to assess the competitive position of the industry concerned, and reasonable time has been recognized to be two years. Where Section C measures have not been used, within a reasonable time, after the establishment of an industry because other measures such as balance of payments restrictions were tried first, section C may still be invoked to protect an industry under the provisions of Article XVIII paragraph 19.

In 1958, the Intersessional Committee approved a questionaire for the guidance of "contracting parties" submitting "information to accompany notifications under Section C and D of Article XVIII.[24] Release since 1955 have been granted to Ceylon and Cuba under Section C although earlier releases under the previous version of Article XVIII were also granted to India and Haiti.[25] Under Article XVIII paragraph 6, an annual release is held of measures applied pursuant to Sections C and D.

Section D: Facilities for more-developed countries:

If any contracting party coming within the scope of sub-paragraph 4(b) of this Article wants, for the development of its economy to introduce a measure of a nature described in paragraph 13 of this article for the establishment of a

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24. GATT, 7th Suppl. BISD 85 (1959).

25. GATT, 14th Suppl. BISD 216-17 (1966).

particular industry may apply to the 'contracting parties' for approval of such measure.[26]

At the receipt of application, the 'contracting parties' are required to consult, promptly with such contracting party. In reaching their decision, they shall be guided by the considerations laid in paragraph 16. If the contracting parties agree to the proposed measure the contracting party concerned shall be released from its obligations under the relievant provisions of other Articles of this Agreement to the extent necessary to permit it to apply the measure. If the proposed measures affects a product which is the subject of a concession the provisions of paragraph 18 shall be applied. The contracting parties are required to review annually all measures under Section C and D of this Article.[27]

The contracting parties recognize that the export earnings of 'contracting parties' coming within the scope of paragraph 4(a) and 4(b) of this Article, and which depends on exports of a small number of primary commodities may be seriously reduced by a decline in the sale of such commodities.[28] If the measures, introduced by another

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26. Article XVIII, paragraph 22.
Note: The type of country coming under scope of paragraph 4(b) is one that although supporting relatively high standards of living still depends heavily on the marketing of primary products.

27. GATT, Article XVIII, para 6.

28. GATT, Article XVIII, para 5.

contracting party seriously affects the export of primary commodities by such a contracting party, it may resort to the consultation provision of Article XXII of this agreement.

HABERLER REPORT

The problems of the LDCs were too difficult to be solved by Amendments to Article XVIII of course. A General Agreement on Tariff and Trade resolution at the 1955 session stressed the need for increased capital flow to LDCs and stressed the need for increased capital flow and the noted that such flow 'would facilitate the objectives of General Agreement by stimulating economic development of these countries whilst at the same time rendering it less necessary for them to resort to import restructions". The resolution recommended that contracting parties use their best endeavours to create conditions calculated to stimulate that flow.[29]

At the Twelfth Session of the "contracting parties (November 1957), these problems were examined at a ministerial meeting. The formation of European Economic Community (EEC) then taking place was another worrisome event added to a series of other troubles with which the less developed countries were faced.

At this session it was decided to constitute an expert pannel to examine the trends of international trade with particular reference to the failure of the trade of less

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29. GATT, 3rd Supp. BISD, 49 (1955).

developed countries which has failed to develop as rapidly as that of industrialised countries, and in these countries there was excessive short term fluctuations in prices of primary products and they also resorted to agricultural protectionism.[30]

The panel was headed by the eminent economist, Gotefried Haberler. In its report submitted in October 1958 the panel came to the principal conclusion that there is some substance in the feeling of disquiet among primary producing countries and that the present rules and conventions about commercial policies are relatively unfavourable to them.[31]

It also is examined the short term and long term trends in commodity prices and the factors influencing them. It found that the problems of the primary producing countries was exacerbated by high levels of agricultural production in industrialized countries. The panel advocated the adoption of stabilization policies for limiting short term fluctuations in prices, including the establishment of buffer fund and buffer stock mechanisms. It also called for moderation of agricultural protection in industrialized countries to help the producers of LDCs of such commodities as tobacco, cotton, sugar, and oil seeds. In particular it recommended a reduction in the level of taxation on such primary products as coffee, tea and tobacco on which revenue duties in some

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30. GATT, 4th Supp. BISD, 18, (1956).

31. Anwarul Hoda, Developing Countries in the International Trading System (Allied Publishers Pvt. Ltd., New Delhi, 1987), p.33.

industrial countries were sufficiently high to act as a major restraint on consumption and import demand.

The Haberler Report gave the signal for a series of initiatives by the less developed countries for improvement of the opportunities for them to increase their share of international trade. They sought not a reform of General Agreement on Tariff and Trade rules but special action by the developed countries to lower the trade barriers in products of export interest to the less developed countries.

As a sequel to the considerations of the Haberler Report the contracting parties established three committees.[32] Of the three committees, committee one was charged with arranging further rounds of tariff negotiations, committee two, was concerned with special problems of trade in agricultural products; and committee three was to examine the particular difficulties which face the expansion of trade of less developed countries.[33]

Extensive studies made by committee three on the trade problems of the less developed countries generated much sympathy in their favour, and at the ministerial meeting held in November 1961, (for launching the Dillion Round), a Declaration on the promotion of Trade of less developed countries was adopted.[34]

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32. GATT, BISD, 7th Suppl., p.27.

33. UN Year Book, 1958, p.502.

34. GATT, BISD, 10th Supp., p.28.

The declaration called for reduction of tariff and non-tariff barriers in the developed countries on products of interest to the less developed countries and recommended that in negotiations for reduction in barriers to the export of LDCs, contracting parties should adopt a sympathetic attitude on the question of reciprocity.

Following the ministerial meeting the contracting parties agreed in principle to the establishment of specific programme of action for progressive reduction and elimination of barriers to the exports of less developed countries.[35]

ESTABLISHMENT OF UNCTAD:

Haberler Report was followed by the introduction of "development Chapter" (Chapter IV) in the General Agreement on Tariff and Trade in 1965, which also reiterated the basic objective of raising the standard of living and progressive development of economies of contracting parties.

However, it must be admitted that the introduction of Chapter IV as a part of the General Agreement on Tariff and Trade articles was in a way caused by the decision of the United Nations to establish the United Nations conference on Trade and Development (UNCTAD). It would be desirable to speculate on certain short comings of the General Agreement on Tariff and Trade, which led to the formation of UNCTAD as a permanent organ of the General Assembly in spite of the reluctance of developed countries to the proposal for its formation.

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35. Ibid.

A basic factor in the circumstances leading to the establishment of UNCTAD was the lack of any international framework, for dealing with the problems of trade and development. Though General Agreement on Tariff and Trade established as a stop gap arrangement till the coming into force of an International Trade Organization (I.T.O.) was one such institution but there was little doubt left that its functioning was not conducive to the needs and aspirations of less developed countries.

The unconditional application of the most favoured nation principle on which General Agreement on Tariff and Trade was based, appeared justified only as between countries of similar economic structure and levels of development and possessing equivalent bargaining power. Since the markets of developed countries were much more important to the less developed countries than those of Less developed countries were to the developed countries, the GATT was inevitably weighed on one side. Consequently the principle, whereby there was no obligation to negotiate on any particular product, was used by developed countries to exclude from negotiations, a wide range of goods of vital interest to the less developed countries.[36]

However, the fact that less developed countries were rarely principal suppliers of the products on which they were seeking concessions meant that they were receiving only the

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36. Cutajar Michael Z, UNCTAD and the N.S. Debate, Programme, New York, 1985, p.22.

indirect effects of concessions negotiated between the industrial countries. Nor were they able to obtain significant concessions with respect to non-tariff barriers on products of much interest to them and this negated any tariff concessions that might otherwise have been applicable. The lack of a solid institutional basis for General Agreement on Tariff and Trade was also a serious disadvantage for LDCs particularly in relation to their efforts to secure recognition for new principles of international trade that would take their special circumstances and weak bargaining power into account. A fully fledged international trade organization involving treaty obligations on the part of its members would have meant the incorporation of charter provisions into the national legislation of every member country. An agreement such as the General Agreement on Tariff and Trade presupposed on the contrary that national legislation took priority over General Agreement on Tariff and Trade commitments so that the members were able to continue to apply previously introduced commercial policy measures even if they were inconsistent with the letter and spirit of the General Agreement on Tariff and Trade. Moreover, there was no sanctions for failure to comply with the provisions of the General Agreement on Tariff and Trade, other than the authorization to injured members to retaliate - a useless safeguard for low income countries.[37]

The inadequacy of the legal basis for General Agreement on Tariff and Trade also had the effect of putting a premium

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37. Ibid., p.23.

on flexibility in the interpretations of the General Agreement on Tariff and Trade provisions as a means of finding progmatic solutions to the problems of the major trading countries. This led to a tendency to place the exceptions to the General Agreement on Tariff and Trade above the rules, and to legitimize the granting of permanent waivers despite the clear incompatability of such waivers with the spirit of General Agreement on Tariff and Trade. The shortcomings of the General Agreement on Tariff and Trade were primarily the result of the framework within which it had been conceived and created, and of the fact that its objectives were mainly those of the developed country governments that dominated it.

Once UNCTAD was set up, the atmosphere in General Agreement on Tariff and Trade changed, and efforts were made to correct the imbalance in its affiars, though even then with only limited practical effect. It was in this way that General Agreement on Tariff and Trade missed the opportunity, presented to it to head off the creation of a rival institution.

It was in 1962 the UN Conference on problems of less developed countries in Cairo attended by delegates of 36 states led to the establishment of the UNCTAD, which was expected to tackle the problems of trade and development of LDCs. The UNCTAD was established as a permanent organ of the General Assembly, and it was to this institution (General Assembly) that UNCTAD was made directly responsible than to

the economic and social council. The establishment of the UNCTAD also led to the acceptance of the principle of collective bargaining by the Group of 77 comprising LDCs which came into existence within the UNCTAD.[38] The UNCTAD-I (1964) enunciated a number of principles expected to govern world economic relations which were voted by a majority vote, with the developed countries either voting against or abstaining.

DEVELOPMENT CHAPTER

In fact it won't be an exaggeration to say that it was the establishment of UNCTAD which led to the introduction of development chapter in the GATT. This development chapter was known as part IV of the GATT. It was 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. It was finalized at a special session of the contracting parties held from 17 November 1964 to 8 February 1965. This chapter was added as Part IV of General Agreement on Tariff and Trade by an amending protocol and came into effect on 27 June 1966, after the acceptance of the amendment by two kinds of the contracting parties. At the time the amending protocol was opened for signature, several contracting parties declared their intention to implement the

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38. Sumitra Chishti, Restructuring of International Economic Relations (New Delhi, Concept Publishing Company, 1991), p.20.

declared their intention to implement the amendments on a defacto basis, to the extent allowed by existing constitutional and legal possibilities.[39]

The new chapter consists of three articles. The first article bearing the title "Principles and Objectives" spells out the general principles and objectives of the contracting parties in relation to the trade and economic development of the less developed countries. The Article recognizes that rules governing international trade should be consistent with the need to promote rapid and sustained expansion of the export income of less developing contracting parties. In this context, it stresses the importance of both of favourable conditions of excess by LDCs, and the need for ensuring stable, equitable and remunerative prices for such products. The Article equally emphasizes the importance of promoting the diversification of the economies of less developed countries through the opening of markets to the exports of processed and manufactured products.[40]

The most important provision in this Article is that the developed countracting parties should not expect "reciprocity" for commitments made by them, in trade negotiations to reduce, or remove tariffs and other barriers to trade of less developed countries.

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39. GATT, BISD, 13 Suppl., p.10.

40. K.R. Gupta, n.3, p.186

A further paragraph elaborates on this by stating that "the less developed contracting parties should not be expected in course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs taking into considerations past trade developments".

The principle of reciprocity however just it may be when the developed countries are in question is untenable in the relations between them and the less developed countries. The need to deviate from reciprocity when the less developed countries are in question was observed on a world wide scale.[41] It also found its place in the recommendations of United Nations Conference on Trade and Development.

The second article headed Commitments set out certain undertakings by the developed and less developed countries in pursuance of the agreed principles and objectives. Except when compelling reasons make it impossible the developed countries would agree not to increase barriers to exports of products of special interest to the less developed countries and to give priority to the reduction of existing barriers. High priority would also be given in any adjustment of fiscal policies to the reduction of elimination of fiscal taxes which hamper consumption of products exported by less developed countries. A procedure for consultation has also been envisaged to deal with any difficulties which may arise

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41. Ibid, p.187.

with the implementation of these commitments. This procedure which is an integral part of the commitments in the New Chapter is aimed at securing mutually satisfaction solutions for such difficulties on the basis of individual and joint action by the contracting parties.

The third article entitled "Joint Action" provides for appropriate collaboration by "contracting parties" in promoting measures aimed at improving world markets for primary products in facilitating a clear understanding of export potential and market prospects for LDCs and in the action required to realise such export potential and prospects as well as in furthering the expansion of the trade of less developed countries through the international harmonization and adjustment of national policies and regulations and the provision of facilities for export promotion.[42] The contracting parties will also collaborate with the United Nations institutions and other international agencies active in the field.

A Committee on Trade and Development was also appointed within the General Agreement on Tariff and Trade administration for the purpose of getting the New Chapter's objectives realised and to devise measures to ensure their effectiveness.

The New Chapter was thus an important step in solving the trade problems of less developed countries. It could have

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42. Ibid, p.188.

helped in removing to some extent the impression that General Agreement on Tariff and Trade is essenrtially a club of rich nationsl, devised to promote trade among the developed countries. However, the chapter was not without limitations. It had certain inconsistencies. These weaknesses would be taken into account in the following chapter when General Agreement of Tariff and Trade would be evaulated in the context of LDCs.

These were some of the provisions (as dealt in the chapter) which were developed in the fifties and the sixties and embodied in the GATT in the context of less developed countries. However, there were some more provisions which also found place in the agreement in 1970s and 1980s which have been deliberately omitted since this goes beyond the scope of the work.

CHAPTER V

CONCLUSION

Having examined the various provisions of the General Agreement as developed in the fifties and the sixties in the previous chapters, we now proceed with an evaluation of its functions.

As we have already discussed that it was the perilous economic situation in inter-war period that gave an impetus to the establishment of a World Trade forum.

The initiative was taken by the United States of America which first proposed the establishment of an International Trade Organisation in 1945.

The proposed International Trade Organisation was very comprehensive and was to sort out the trade related problems afflicting the world. However, due to non-ratification of the I.T.O. by the USA it could not come into force and instead the GATT which in 1947 was intended to be a stop gap arrangement came into force. It was the GATT which later on became the trade forum to solve trade related problems.

It should be mentioned here that the GATT was confronted with numerous problems at the time of its inception. It had no organizational structure worth the name. It did not possessed the secretariat. But as the time went by it slowly and steadily adjusted to the international environment, and functioned as an international organisation, in the real sense of term and the institutional weaknesses at the time of its coming into being were done away with.

Now we come to the evaluation of the GATT's role in the context of less developed countries. Since our work is defined till the decade of 1960, so here our endeavour would be to examine the functioning of General Agreement taking into account the problems of less developed countries and their efforts in securing the recognition of their special status in the GATT in the first twenty years.

It won't be an exaggeration to say that the international economic organisation conceived at the Bretton Woods in 1944 were mainly devised by the developed countries notably the United States of America in such a way so as to suit primarily their interests. It was mainly to perpetuate their economic interests that the developed countries devised the international economic organisation so that their economic interests stay paramount.

In fact, little attention was paid to the aspirations and economic wishes of the less developed countries. In fact, the less developed countries in the period immediately following the Second World War were caught in a system which denied them any relief as most of the countries were still the colonies of the western world and some of the state though had achieved political independence but as far as their economic independence was concerned they had perforce to rely on the whims and caprice of developed countries. Hence the less developed countries could have a very little say in this sort of an international economic system.

As per the provisions of the GATT the less developed countries were in for disappointment.

There was in fact no special provisions pertaining to less developed countries in the GATT. The GATT was called by them as a rich man's club. This led to the disenchantment among the less developed countries. Soon realization dawned upon them. They argued that in case of their economic development, ultimately the beneficiaries would be the developed world. They put forth the theory of an interdependent world, where by the development of one country would ultimately lead to the development of other country. They contended that they be accorded a special status within the GATT which would facilitate and support their economic development.

The efforts of less developed countries at reforming the legal framework of world trade as embodied in the GATT was aimed at achieving principally two objectives, viz. adequate freedom for themselves in applying commercial policy instruments to foster their industrial and economic developments and enlargement of access in world markets for the manufactured goods exported by them.

Some of the countries which were colonies like India and some less developed countries from Latin America attempted to focus attention of the negotiators to build in the GATT system some special provisions. But their efforts met with limited success. However, after the signing of the

GATT, the less developed countries which became the contracting parties endeavoured to sustain their efforts to get special provisions incorporated in the GATT.

Their efforts yielded dividends. Fifties was the decade, when some provisions were incorporated in the GATT to accommodate the aspirations of the less developed countries. The pressure of the less developed countries led to the introduction of Article XVIII (B). The importance of the article lied in the fact that the less developed countries could take recourse to this article and use quantitative restrictions to correct their balance of payments deficits. This was indeed a positive development from the point of view of the less developed countries.

Now we come to the principle of reciprocity in trade negotiations, which is one of the basis features of the GATT system. Reduction of tariff could take place during rounds of negotiations at which contracting parties made concessions on individual products only if the principal and substantial suppliers of the products in question were willing to make concessions in return. The less developed countries found themselves severely handicapped in participating in such reciprocal exchanges of tariff concessions because for reasons of industrialisations and budgetary consideration. This meant that they could not reciprocate tariffs concessions.

As early as Dillon round in 1961, some developed countries voluntarily declared that they would not seek reciprocity from the less developed countries. At the Kennedy round (1962-67) it was stated that the principle that reciprocate concessions should not be sought from the less developed countries which infact formed a part of the ground rules for tariff negotiations. And finally the concept of non-reciprocity was formaly incorporated in part IV of the GATT in 1964-65.

The acceptance of non-reciprocity in the multilateral trade negotiations under the auspices of the GATT in the early sixties can be considered as an achievement.

It won't be an exaggeration that it was the establishment of UNCTAD that led to the introduction of development chapter in the GATT in the early sixties (1964). The development chapter was known as part IV of the GATT.

The development chapter was an important step as it exclusively dealt with the provisions in the context of LDC's.

The new chapter recognised 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 contracting parties. It also recognised the importance of promotion of diversification of the economies of less developed contracting parties through the opening of

markets for the exports of processed and manufactured products of the developed countries.

The most important provision in this Part IV of the GATT is that the developed contracting parties should not expect reciprocity from the less developed contracting parties. Thus the GATT which was fundamentally committed to the principle of non-discrimination, has been especially allowed to cater to the needs of the less developed countries.

The new chapter was thus an important step towards solving the trade problems of the LDC's. It helped in removing to some extent the impression in many LDC's that the GATT was essentially a club of rich nations, devised to promote trade among the developed countries.

However, the limitations of 'Development Chapter' should also not be ignored. Most of the provisions of this chapter remained in words only they could hardly come up to the expectations of the less developed countries, as the chapter only provided guidelines for the developed countries in the formulation of policies for the purpose of extending assistance to the less developed countries in the field of export promotion. Hence the new chapter did not adequately met the needs and requirements of the less developed countries though its incorporation in the GATT was an important step in the right direction.

In the subsequent decades also some postive development took place. In 1979 for example was incorporated the

enabling clause which provides special and differntial treatment for less developed countries.

Now the GATT consists of 108 members of which two third members are less developed countries. This shows the acceptance of the GATT by the less developed countries. There is no denying the reality that provisions like reciprocity, ARticle XXIII (B) etc are under threat from the developed countries, but it is sincerly hoped that with the increased integration of the world, the less developed countries would present a united front and would help themselves by turning the GATT into an organisation which would take note of their aspiration, needs and genuine problems.

APPENDIX I

GENERAL AGREEMENT ON TARIFFS AND TRADE

ARTICLE 1

General Most-Favoured-Nation Treatment

1. With respect to customs duties and charges of any kind imposed on or inconnection with importation or exportation or imposed on the international transfer of payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rules and formalities in connection with importation and exportation, and with respect to all matters referred to in paragraphs 2 and 4 of Article III, any advantage, favour, privilege or immunity granted by any contracting party to any product orginating in or destined for any other country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

2. The provisions of paragraph 1 of this Article shall not require the elimination of any preferences in respect of import duties or charges which do not exceed the levels provided for in paragraph 4 of this Article and which fall within the following descriptions:

a. Preferences in force exclusively between two or more of the territories listed in Annex A, subject to the conditions set forth therein;

b. Preferences in force exclusively between two or more territories which on July 1 1939, were connected by common sovereignty or relations of protection or

suzerainty and which are listed in Annexes B, C and D, subject to the conditions set forth therein;

c. Preferences in force exclusively between the United States of America and the Republic of Cuba;

d. Preferences in force exclusively between neighbouring countries listed in Annexes E and F.

3. The provisions of paragraph 1 shall not apply to preferences between the countries formerly a part of the Ottoman empire and detached from it on July 24, 1923, provided such preferences are approved under paragraph 5 of Article XXV, which shall be applied in this respect in the light of paragraph 1 of Article XXIX.

4. The margin of preference on any product in respect of which a preference is permitted under paragraph 2 of this Article but is not specifically set forth as a maximum margin of preference in the appropriate Schedule annexed to this Agreement shall not exceed:

a. In respect of duties or charges on any product described in such Schedule, the difference between the most-favoure-nation and preferential rates provided for therein; if no preferential rate is provided for, the preferential rate shall for the purposes of this paragraph be taken to be that in force on April 10, 1947, and if no most-favorured-nation rate is provided for, the margin shall not exceed the difference between

the most-favoured-nation and preferential rates existing on April 10, 1947.

b. In respect of duties or charges on any product not described in the appropriate Schedule, the difference between the most-favoured-nation and preferential rates existing on April 10, 1947.

In the case of the contracting parties named in Annex G, the date of April 10, 1947, referred to in sub-paragraphs (a) and (b) of this paragraph shall be replaced by the respective dates set forth in that Annex.

Source : General Agreement on Tariffs and Trade. Basic Instruments and Selected Documents, vol. IV, 1969.

APPENDIX II

GENERAL AGREEMENT ON TARIFFS AND TRADE

ARTICLE XVIII

Section B

The contracting parties recognize that contracting parties coming within the scope of paragraph 4(a) of this Article tend , when they are in rapid process of development, to experience balance of payments difficulties arising mainly from efforts to expand their internal markets as well as from the instability in their terms of trade.

In order to safeguard its external financial position and to ensure a level of reserves adequate for the implementation of its programme of economic development, a contracting party coming within the scope of paragraph 4(a) of this Article may, subject to the provisions of paragraphs 10 to 12, control the general level of its imports by restricting the quantity or value of merchandise permitted to be imported: Provided that the import restrictions instituted, maintained or intensified shall not exceed those necessary:

a. to forestall the threat of, or to stop, a serious decline in its monetary reserves, or

b. in the case of a contracting party with inadequate monetary reserves, to achieve a reasonable rate of increase in its reserves.

Due regard shall be paid in either case to any special factors which may be affecting the reserves of the

contracting party or its need for reserves, including where special external credits or other resources are available to it, the need to provide for the appropriate use of such credits or resources.

In applying these restrictions, the contracting party may determine their incidence on imports of different products or classes of products in such a way as to give priority to the importation of those products which are more essential in the light of its policy of economic development; Provided that the restrictions are so applied as to avoid unnecessary damage to the commercial or economic interests of any other contracting party and not to prevent unreasonably the importation of any description of goods in minimum commercial quantities the exclusion of which would impair regular channels of trade; and Provided further that the restrictions are not so applied as to prevent the importation of commercial sample or to prevent compliance with patent. trade mark, copyright or similar procedures.

In carrying out its domestic policies, the contracting party concerned shall pay due regard to the need for restoring equilibrium in its balance of payments on a sound and lasting basis and to the desirablity of assuring an economic employment of productive resources. It shall progressively relax any restriction applied under this Section as conditions improve, maintaining them only to the extent necessary under the terms of paragraph 9 of this Article and shall eliminate them when conditions no longer

justify such maintenance; Provided that no contracting party shall be required to withdraw or modify restrictions on the ground that a change in its development policy would render unnecessary the restrictions which it is applying under this Section.*

Any contracting party applying new restrictions or raising the general level of its existing restrictions by a substantial intensification of the measures applied under this Section, shall immediately after insituting or intensifying such restrictions (or, in circumstances in which prior consultation is practicable, before doing so) consult with the CONTRACTING PARTIES as to the nature of its balance of payments difficulties, alternative corrective measures which may be available, and the possible effect of the restrictions on the economies of other contracting parties.

On a date to be determined by them*, the CONTRACTING PARTIES shall review all restrictions still applied under this Section on that date. Beginning two years after that date, contracting parties applying restrictions under this Section shall enter into consultations of the type provided for in sub-paragraph (a) above with the CONTRACTING PARTIES at intervals of approximately, but not less than, two years according to a programme to be drawn up each year by the CONTRACTING PARTIES; Provided that no consultation under this sub-paragraph shall take place within two years after the conclusion of a consultation of a general nature under any other provision of this paragraph.

If, in the course of consultations with a contracting party under sub-paragraph (a) or (b) of this paragraph, the CONTRACTING PARTIES find that the restrictions are not consistent with the provisions of this Section or with those of Article XIII (subject to the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV), they shall indicate the nature of the inconsistency and may advise that the restrictions by suitably modified.

If, however, as a result of the consultations, the CONTRACTING PARTIES determine that the restrictions are being applied in a manner involving an inconsistency of a serious nature with the provisions of Article XIV) and that damage to the trade of any contracting party is caused or threatened thereby, they shall so inform the contracting party applying the restrictions and shall make appropriate recommendations for securing conformity with such provisions within a specified period. If such contracting party does not comply with these recommendations within the specified period, the CONTRACTING PARTIES may release any contracting party the trade of which is adversely affected by the restrictions from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

The CONTRACTING PARTIES shall invite any contracting party which is applying restrictions under this Section to enter into consultations with them at the request of any

contracting party which can establish a prima facie case that the restrictions are inconsistent with the provisions of this Section or with those of Article XIII (subject to the provisions of Article XIV) and that its trade is adversely affected CONTRACTING PARTIES have ascertained that direct discussions between the contracting parties concerned have not been successful. If, as a result of the consultations with the CONTRACTING PARTIES no agreement is reached and they determine that the restrictions are being applied inconsistently with such provisions, and that damage to the trade of the contracting party initiating the procedure is caused or threatened thereby, they shall recommend the withdrawal or modification of the restrictions, If the restrictions are not withdrawn or modified within such time as the CONTRACTING PARTIES may prescribe, they may release the contracting party initiating the procedure from such obligations under this Agreement towards the contracting party applying the restrictions as they determine to be appropriate in the circumstances.

If a contracting party against which action has been taken in accordance with the last sentence of sub-paragraph (c) (ii) or (d) of this paragraph, finds that the release of obligations authorized by the CONTRACTING PARTIES adversely affects the operation of its programme and policy of economic development, it shall be free, not later than sixty days after such action is taken, to give written notice to the Executive Secretary1 to the CONTRACTING PARTIES of its

intention to withdraw from this Agreement and such withdrawal shall take effect on the sixtieth day following the day on which the notice is received by him.

In proceeding under this paragraph, the CONTRACTING PARTIES have due regard to the factors referred to in paragraph 2 of this Article. Determinations under this paragraph shall be rendered expeditiously and, if possible, within sixty days of the initiation of the consultations.

Source : General Agreement on Tariffs and Trade. Basic Instruments and Selected Documents, vol.IV, 1969.

APPENDIX III

GENERAL AGREEMENT ON TARIFFS AND TRADE

TRADE AND DEVELOPMENT

ARTICLE XXXVI

Principles and Objectives

* The contracting parties,

recalling that the basic objectives of this Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties:

considering that export earnings of the less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports;

noting, that there is a wide gap between standards of living in less-developed countries and in other countries;

recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties and to bring about a rapid advance in the standards of living in these countries;

recognizing that international trade as a means of achieving economic and social advancement should be governed

by such rules and procedures - and measures in conformity with such rules and procedures - as are consistent with the objectives set forth in this Article;

noting that the CONTRACTING PARTIES may enable less-developed contracting parties to use special measures to promote their trade and development;

agree as follows.

There is need for a rapid an sustained expansion of the export earnings of the less-developed contracting parties.

There is need for positive efforts designed to ensure that less-developed contracting parties secure a share in the growth in international trade commensurate with the needs of their economic development.

Given the continued dependence of many less-developed contracting parties on the exportation of a limited range of primary products*, there is need to provide in the largest possible measure more favourable and acceptable conditions of access to world markets for these products and wherever appropriate to devise measures designed to stablize and improve conditions of world markets in these products, including in particular measures designed to attain stable, equitable and remunerative prices, thus permitting an expansion of world trade and demand and a dynamic and steady growth of the real export earnings of these countries so as to provide them with expanding resources for their economic development.

Because of the chronic deficiency in the export proceeds and other foreign exchange earnings of less-developed contracting parties, there are important inter-relationships between trade and financial assistance to development. There is, therefore, need for close and continuing collaboration between the CONTRACTING PARTIES and the international lending agencies so that they can contribute most effectively to alleviating the burdens these less-developed contracting parties assume in the interest of their economic development.

There is need for appropriate collaboration between the CONTRACTING PARTIES, other inter-governmental bodies and the organs and agencies of the United Nations system, whose activities relate to the trade and economic development of less-developed countries.

The developed contracting parties do not expect reciprocity for committments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.*

The adoption of measures to give effect to these principles and objectives shall be a matter of conscious and purposeful effort on the part of the contracting parties both individually and jointly.

ARTICLE XXXVII

Commitments

The developed contracting parties shall to the fullest extent possible - that is, except when compelling reasons, which may include legal reasons, make it impossible - give effect to the following provisions:

accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to less-developed contracting parties, including customs duties and other restrictions which differentiate unreasonably between such products in their primary and in their processed forms*

refrain from introducing, or increasing the incidence of customs duties or non-tariff import on products currently or potentially of particular export interest to less-developed contracting parties; and

refrain from imposing new fiscal measures, and

in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures.

which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed from, wholly or mainly produced in the territories of less-developed contracting parties, and which are applied specifically to those products.

Whenever it is considered that effect is not being given to any of the provisions of sub-paragraph (a) (b) or (c) of paragraph 1, the matter shall be reported to the Contracting Parties either by the contracting party not so giving effect to the relevant provisions or by any other interested contracting party.

The Contracting Parties shall, if requested so to do by any interested contracting party, and without prejudice to any bilateral consultations that may be undertaken, consult with the contracting party concerned and all interested contracting parties with respect to the matter with a view to reaching solutions satisfactory to all contracting parties concerned in order to further the objectives set forth in Article XXXVI. In the course of these consultations, the reasons given in cases where effect was not being given to the provisions of sub-paragraph (a), (b) of (c) or paragraph 1 shall be examined.

As the implementation of the provisions of sub-paragraph (a), (b) or (c) of paragraph 1 by individual contracting parties may in some cases be more readily achieved where action is taken jointly with other developed contracting parties, succh consultation might, where appropriate, be directed towards this end.

The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further, the objectives of this

Agreement as envisaged in paragraph 1 of Article XXV.

The developed contracting parties shall:

make every effort, in cases where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties to maintain trade margins at equitable levels;

give active consideration to the adoption of other measures* designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international action to this end;

have special regard to the interests of less-developed contracting parties when considering the application off other measures permitted under this Agreement to meet particular problems and explore all possibilities of constructive remedies before applying such measures where they would afffect essential interests of those contracting parties.

Less developed contracting parties agree to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other less-developed contracting parties, in so far as succh action is consistent with their individual present and future development, financial and trade needs taking into account past trade

developments as well as the trade interests of less-developed contracting parties as a whole.

In the implementation of the commitments set forth in paragraphs 1 to 4 each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may arise.

ARTICLE XXXVII

Joint Actions

The contracting parties shall collaborate jointly, within the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI.

In particular, the CONTRACTING PARTIES shall:

where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to world markets for primary products of particular interest to less-developed contracting parties and tto devise measures designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products;

seek appropriate collaboration in matters of trade and development policy with the United Nations and its organs and

agencies, including any institutions that may be created on the basis of recommendations by the United Nations Conference of Trade and Development;

collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed and, in this connexion seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required;

keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate;

collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial

standards affecting production, transportation and marketing and through export promotion by the establishment of facilities for the increased flow of trade information and the development of market research; and

establish such institutional arrangements as may be necessary to further the objective set forth in Article XXXVI and to give effect to the provisions of this part.

Source : General Agreement on Tariffs and Trade. Basic Instruments and Selected Documents, vol.IV, 1969.

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