

**EVOLUTION OF INTERNATIONAL
INSTITUTIONAL ARRANGEMENT FOR WORLD
TRADE MANAGEMENT**

*Dissertation submitted to Jawaharlal Nehru University
in partial fulfilment of the requirements for
the award of the Degree of*

MASTER OF PHILOSOPHY

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INDIA
1995**



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JULY 20, 1995

C E R T I F I C A T E

This is to certify that the dissertation entitled,
"Evolution of International Institutional Arrangement for
World Trade Management", submitted by ANUSHA SHRIVASTAVA
in partial fulfilment of the requirement for the award of the
degree of MASTER OF PHILOSOPHY of this University has not
been submitted for any other degree of this University or
any other University. This is her own work.

We recommend that this dissertation be placed
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PREFACE

The establishment of institutions to formulate rules and regulations whose implementation provides a stable and predictable world economy has been a major endeavour of governments all over the world. In this, the removal of restrictions to world trade and the provision of institutional facility having capacity to design these rules and implementing them with appropriate safeguards has been aimed at.

It is very important to understand the efforts made by member governments in this direction as well as the hurdles encountered in the establishment of institutions with specific mandates.

The purpose of this dissertation is to study this effort on the part of the governments in the post war period.

I wish to thank Professor Sumitra Chishti of the School of International Studies, Jawaharlal Nehru University, for guiding me in writing this thesis. It is only because of her patience and firmness that the work is completed.

I would also like to thank my family for supporting me wholeheartedly all through the past two years and especially my husband, Apurva Varma, without whose active co-operation I may never have been able to write this thesis.

Any discrepancies or shortcomings in the thesis are solely my fault.

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INTRODUCTION

In the post war world there has been tremendous expansion of trade flows and investments among countries. Globalisation of national economies wherein markets are playing the most important role in determining the course of trade expansion and technology transfer. Hence there is a need to reduce obstacles to these across national boundaries . The need to build a set of rules for international trade has become imperative. The post war period has witnessed a continuous endeavour on the part of governments to frame these rules.

As a result, the General Agreement on Tariffs and Trade was formulated which was expected to build a set of rules and regulations endeavouring to reduce tariffs among trading nations. The GATT was an international legal document whose primary purpose was to promote free multilateral trade. In the GATT, as in such other postwar economic organizations as the International Monetary Fund and the World Bank, the broad objective was to help maintain regimes to promote trade and investment flows.¹

Although the GATT was not an institution, having come initially as a makeshift arrangement before the International Trade Organization came into being, it has, nevertheless, functioned over the decades to liberalize trade. It has tried to enforce a non discriminatory multilateral trading regime.

Despite this, it was found that the GATT was an inadequate protocol and could not be relied upon exclusively. It lacked solid institutional basis and omitted major areas of interest to developing countries. With its excessive preoccupation with the reduction of trade barriers among the industrialized market economy countries, it assumed equality and reciprocity among unequal trading partners. There was also a virtual lack of consideration of the place of the socialist countries of Eastern Europe in the GATT system.²

This arrangement by the world trading nations left out issues from multilateral negotiations including those on trade in services, intellectual property rights and trade related investment measures. When the eighth round of negotiations began in the Uruguay Round under the auspices of the GATT, all these issues were brought up. A significant aspect of the discussion was the need to have a World Trade Organization to increase non-discriminatory trading agreements and an effective dispute settlement mechanism as this was a major shortcoming of the GATT.

¹ Peter Oppenheimer (ed.) , *Issues in International Economics, Oxford International Symposia*, Vol. V, London, Oriel Press, pp. 82 -93.

² *The History of UNCTAD 1964 -1984*, UN Publication, New York, 1985.

The purpose of this dissertation is to study the evolution of the efforts made by the trading nations to establish an organization to ensure multilateral trade agreements with an effective and suitable dispute settlement mechanism.

In the first chapter, a brief overview of the developments leading to the establishment of international institutions like the International Monetary Fund and the World Bank has been discussed. The need for and effort towards establishing an international trading organization on similar lines has also been discussed. The outcome of the Havana Conference embodied in the Havana Charter has been described briefly.

In the second chapter, an attempt has been made to examine the hopes of the trading nations to establish a body whose jurisdiction would include trading matters. The chapter discusses briefly the main features of the Havana Charter and the International Trade Organization as suggested in the Havana Charter.

This chapter also examines the important reasons for the failure of the establishment of the International Trade Organization, primarily the US position which finally led to the trading organization not being formed .

The third chapter deals with the compromise arrangement made by the participants of the Havana Charter wherein trade liberalization would be taken care of without the International Trade Organization having come into existence. It discusses the principles of the General Agreement on Tariffs and Trade, its functioning and achievements.

This trading organization as it evolved, was considered inadequate by the developing countries as their concerns were not duly reflected in its functioning.³ It was thought necessary to build an alternative arrangement whose primary task would be to enable the developing countries to find a favorable trading and economic environment recognizing the special requirements of the developing countries. Thus the United Nations Conference on Trade And Development was formed in 1963 under the auspices of the United Nations.

Chapter IV is devoted to highlighting the endeavour of the developing countries to build an alternative organization to further their trading concerns. It traces the eight rounds of the UNCTAD and examines its diminishing importance over the years. From an organization which represented and reflected the hopes and aspirations of the developing countries, it has now been relegated to the position of an advisory body.

³Anwarul Hoda, *Developing Countries in the International Trading System*, (Allied Publishers, New Delhi, 1987), pp. 30-32.

The fifth chapter deals with the World Trade Organization formed four decades after the attempt to create an International Trade Organization failed. It examines in detail the causes of dissatisfaction with the GATT system,⁴ the need to establish the World Trade Organization, its structure, decision making powers and the dispute settlement mechanism.⁵ It also highlights in brief the fear of the developing countries that the new trade organization with its all-encompassing mandate and cross-retaliation provisions might not protect their interest.

The last chapter provides briefly the conclusions of this dissertation.

⁴Robert E. Baldwin, *GATT Reform: Selected Issues, Protection and Competition in International Trade*, (Basil Blackwell, New York, 1987), pp. 205-213.

⁵*GATT Agreements, Final Text of the Uruguay Round, 1994*, (MVIRDC, World Trade Centre, Bombay, 1994), pp. 3-10.

"We have realized that politics includes economics, and that the consequences of a world market are the settlement in common of those matters of common concern which arise from the fact of a world market. Since, that is to say, matters like the supply of raw materials, or tariffs, or emigration, affect the world as a whole, no State can be a law unto itself in laying down the rules which obtain in relation to them. International control of some kind and degree is postulated wherever a given a State-function directly impinges the common life of States."

- Harold Laski, 'A Grammar of Politics', p. 587

CHAPTER 1

Demand and Need for an International Trade Organization

The international monetary system is a set of arrangements, rules, practices and institutions under which payments are made and received for transactions carried out across national boundaries. Having evolved over time, it has got fine tuned as per the demands of the global scenario and is ever changing. The international monetary system involves the management of three processes:

1. The adjustment of balance of payments positions, including the establishment and alteration of exchange rates.
2. The financing of payments imbalances among countries by the use of credit or reserves.
3. The provision of international money.¹

These may be attempted through the establishment of international institutions as has been done by the Brettonwoods twins, the International Monetary Fund and the World Bank, and the other specialized agencies of the United Nations.

From the 16th to the latter part of the 18th century, a State dominated system of mercantilism pervaded the economic system of the Western world. A favourable balance enabling states to enhance their national treasuries was the major objective of international trade. Economic freedom became the demand in the latter part of the mercantilist era and in fact, the American Revolution was essentially a reaction against Great Britain's narrowly restrictive trade and tax policies. The philosophy of laissez faire dominated the new liberalism and fostered the development of an international trading system embracing the concept of free trade.

The rebirth of nationalism in the 20th century signalled the ending of a long period of relatively free trade and general economic multilateralism. World War I created further economic dislocation and rivalry, undermining the efforts of political and economic leaders to return to the relatively stable period of the 19th century. Attempts to regain stability centred on restoring the unity formerly provided by the gold standard and the British pound sterling. Neither effort was wholly successful; Britain failed during the 1920s to regain her economic strength wasted during the war, and the gold standard functioning out of the London money market reflected this weakness. Some semblance of free trade was regained by the latter part of the decade, however, and monetary stability

¹ R. Solomon, *The International Monetary System-1945-76*, (Harper and Row, New York, 1977), pp. 5-6.

appeared within grasp by 1928', opine Plano and Riggs². The American stock market crash in 1929 dealt a death blow to hopes of restoring the stability of the prewar period. Domestic and international economic institutions received a traumatic shock.

The League of Nations which was on the path of decline at this time was unable to deal effectively with the crisis for it was unable to make any immediate or decisive contribution to coping with it. The League sought an orderly monetary system, a revived foreign investment within a secure framework of world policy, a more liberal commercial policy, and safeguards of the public interest in large scale industrial organization, but economic stability and development as objectives of a comprehensive long range policy of economic expansion lay beyond its scope.³

In the period before the Great Depression, international economic cooperation was overshadowed by reparations, war debts and inflation, which the League of Nations could not deal with. Though it played a pioneer role in the financial reconstruction of countries like Austria and Hungary, it could not avert the collapse of the financial and economic structure of Germany.⁴

Authorities responsible for regulating the economy through the League of Nations had national interests though the area they were trying to regulate was worldwide. This resulted in a clash between the development of economic enterprise independent of national limits.

Compounding the institutional inadequacy was the limited vision of the policies pursued. National interests superseded international goals. Policies had not reached effectively into the global sphere.

The world of 1930s was one poised on the brink of revolution- economic, social and political. The natural reaction of most leaders was to protect the national economy from foreign competition and to open bigger foreign markets to absorb surpluses resulting from insufficient domestic demand. The neo-mercantilist practices of governments resulted in high tariffs, quota restrictions, currency depreciation, subsidies for domestic producers, state licensing of importers, barter agreements and preferential trade arrangements. These were seen as 'beggar-thy-neighbour' policies and retaliation became the guiding principle for state economic policy. Free trade, as postulated by Adam Smith remained as an ideal for a future world economy.⁵

² Jack C. Plano, Robert E. Riggs, *Forging World Order, The Politics of International Organization*, (The Macmillan Co., New York, 1967), pp. 457-459.

³ Sir A. Salter, *Recovery: The Second Effort*, (Bell, London, 1932), pp. 290-296.

⁴ C. Wilfred Jenks, *The World Beyond the Charter in Historical Perspective* (George Allen and Unwin Ltd., Great Britain, 1969), pp. 55-84.

⁵ Jack C. Plano, Robert E. Riggs, *Forging World Order, The Politics of International Organization*, (The Macmillan Co., New York, 1967), pp. 457-459.

The end of World War II provided a challenge and an opportunity to its survivors for it had 'demolished an old order and created space on which a new one might be built on more progressive and stable principles'.⁶ Six years of war had shattered the political and economic relationships of the world economy of 1939, 'the productive power of Europe had been destroyed or curtailed while that of the US had been enhanced; debtor or creditor relationships had been fundamentally altered; direct controls on the passage of goods and the exchange of currencies had replaced the old regime of convertible currencies and multilateral trade'.⁷

Four main tasks demanded attention. Reconstruction and rehabilitation was topmost on the agenda. With the solving of the immediate physical requirements, restoring stable currencies and trade relationships for trade expansions would become important. The task of establishing and maintaining the international payments equilibrium came next.

Earlier systems of adjustment had required that domestic income and prices should be varied in the interests of balance of payments. Countries were now demanding the right to stabilize income and prices at optimum levels with full employment of resources.

Stable employment was a requisite to prevent the spread of recession from one country to another.

The problem of establishing a stable structure of world trade loomed large. This was a sine qua non if a catastrophe like the Great Depression was not to recur. There was a general recognition of the need to seek solutions to these problems by means of international co-operation rather than by unco-ordinated unilateral action.

Several reasons were responsible for the realization of the need to co-operate. The daunting tasks could never be completed by any of the countries on their own. Stop-gap measures would be futile. The US was discarding its policy of isolationism and it was felt that it was becoming conscious of her economic leadership and responsibilities. Economic planning was becoming more acceptable - even in competitive economies like the US, large sectors of the economy were under the control of the government or governmental agencies.

Economic knowledge per se had increased. 'Income analysis had thrown light upon the forces determining the level of income and employment; the dynamics of the business cycle was better understood ; the relationship of the balance of payments to domestic income and prices was established and the processes of

⁶ E.A. Brett, *The World Economy Since the War*, (Macmillan, UK, 1985), p. 62.

⁷ W.M. Scammel, *International Monetary Policy*, (Macmillan, London, 1964), Introduction.

international adjustment were being subjected to scrutiny.¹⁸ There was wide agreement on the necessity of stable employment, removal of fluctuations in exchange rates and the inappropriateness of the gold standard.

There was, despite these, no explanation regarding the reconciliation of national interests with international policies. Most extreme inequalities in economic and military power existed at the end of the war. The US controlled 70% of the world's gold and foreign exchange reserves and more than 40% of its industrial output. The Third World contained less than 1% of the world's industrial capacity. A liberal international trading system built on such a base would worsen inequalities and lead to instability prevalent in the 1930s.⁹ The immediate post-war period involved the practice of protectionism and managed trade while institutional mechanism to sustain a long term transition to one based on free trade were to be established.

The post war economic debate was one between the US representing the interest of the strong surplus countries on the one hand and the rest of the world on the other. The US view suggested a world governed by a central, regulative agency which maintained a system of open competition and resisted attempts by national governments to adopt protectionist policies destroying its openness and integration. The deficit countries required an agency capable of guaranteeing the defence of their weaker industries from overseas as competition and an effective redistributive mechanism for providing them with direct financial assistance while they were building their industrial capacity. The reconciliation of these two produced the institutions that were created at this time - the IMF and the World Bank. A third organisation, International Trade Organisation, to supervise the trading system was sought to be set up. This would prevent a recurrence of the 1930 tragedy in two ways :

1. It would be a world trading organisation providing an orderly , systematic means by which states could carry on their trading activities and devise common policies.
2. It would foster a cycle that would move the trading world toward freer commercial conditions.

THE HAVANA CONFERENCE

The US took the initiative in promoting the first objective of a world trade organisation by working out a preliminary blueprint for the organisation and circulating these ideas in a pamphlet entitled 'Proposals for Expansion of World Trade and Employment'.

⁸ Ibid., pp. 6-9.

⁹ E.A. Brett, *The World Economy Since the War*, (Macmillan, UK, 1985), p. 65.

On February 18, 1946, the ECOSOC of the UN, following a proposal submitted by the representative of the US, resolved to convene an International Conference on Trade and Employment. The aim of the Conference was to devise ways and means for the expansion of the production exchange and consumption of goods. The Council simultaneously decided to establish a Preparatory Committee composed of one representative each of Australia, Canada, China, Cuba, Belgium, Chile, Brazil, Czechoslovakia, France, India, New Zealand, Lebanon, Union of South Africa, Luxembourg, Netherlands, the erstwhile USSR, USA and UK, to prepare for the consideration of the Conference an agenda and a draft convention for an international trade organisation. The government of the erstwhile USSR left subsequently on grounds of poor preparation and so the remaining eighteen nations accepted membership of the Committee and designated representatives.

The Preparatory Committee held its first series of meetings in London between October 15 and November 26, 1946. The Committee had before it a 'Suggested Charter for an International Trade Organisation', published by the US Government in September 1946. This was an elaboration of the 'Proposals' made public by the US Department of State on December 6, 1945. This document was the outcome of financial and trade discussions between the UK and the US.

An Indian commentary on the US proposals, a UK memo on employment policy, a draft charter for an international trade organisation given by Brazil and such other documents of other delegations were considered by the committee. The first Draft Charter for the International Trade Organisation was based on all these proposals.

A Drafting Committee was established by the Preparatory Committee at its London session. Its work was reviewed and revised by the Preparatory Committee during its second session in Geneva between April 10 and August 22, 1947.

The Draft Charter finally adopted by the Preparatory Committee formed the basis of the work of the UN Conference on Trade and Employment (Havana Conference) which met at Havana from November 21, 1947 to March 24, 1948.¹⁰

At the various conferences held, the American insistence on economic liberalism in respect of Western governments came up against stiff resistance. Strong opposition to the liberal position was voiced in favour of the use of direct quantitative restrictions on imports (quotas) notably by India, while the Australians led a general campaign in favour of the use of protectionism as a means of guaranteeing industrialization and full employment.

THE HAVANA CHARTER

¹⁰ UN Yearbook, 1947-48, p. 973

'The Havana Charter which emerged from these discussions was therefore a compromise, retaining the US commitment to a general expansion and liberalisation of trade, but incorporating a number of clauses which justified the use of intervention both to deal with balance of payments and developmental problems without having to adopt orthodox deflationary measures' states E.A. Brett.¹¹

The Havana Charter represented the most extensive attack ever attempted on barriers to trade. Like the IMF and the World Bank, the new International Trade Organization was to function as a specialized agency within the overall framework of the UN.

The Havana Conference of 1948 was attended by representatives of 56 governments including those of Austria, China, Egypt, Canada, Australia, Czechoslovakia, France, India, Mexico, Pakistan, Switzerland, Lebanon and Venezuela.

Finland, Paraguay and the Allied Control Authorities for Japan sent observers to the conference. Representatives of some non-governmental organizations and inter-governmental organizations like the International Labour Organization, Food and Agricultural Organization and the IMF also attended.

The Conference prepared a charter for an International Trade Organization (to be officially known as the Havana Charter). This was submitted to the governments represented, and the text of the Charter authenticated in the Final Act, signed on March 24, 1948, by representatives of all but three- Argentina, Poland and Turkey- of the 56 participating governments and adopted six resolutions. Later, the government of Turkey also signed the Final Act.

The resolutions adopted referred to:

1. Establishment of an Interim Commission for the International Trade Organization.
2. Relation of the International Trade Organization and the International Court of Justice.
3. Chairmanship of the Interim Coordinating Committee for International Commodity Arrangements.
4. Study of international employment situation.
5. Role of the UN in the fields of economic development and reconstruction.

¹¹ E.A. Brett, *The World Economy Since the War*, (Macmillan, UK, 1985), p. 973.

6. Expression of gratitude to the Cuban government and others for their cooperation with the Havana Conference.¹²

The major principles embodied in the 106 article Charter dealt with four problem areas:

1. Commercial policy, by which members would agree to reduce their tariffs to eliminate all preferences and other barriers to trade to curtail discrimination in trade policies, and to refrain from using governmental subsidies as a means of gaining trade advantage.
2. Commodity agreements, which would permit member states under International Trade Organization rules to enter into agreements providing for an orderly production and marketing of those primary commodities subject to wide fluctuations in supply and prices, but allow for exceptions by under-developed states subject to International Trade Organization veto.
3. Restrictive business practices by which member governments would agree to encourage domestic policies favourable to freer international trade including the restraint of public and private cartels and monopolies and the development of fair labour standards.
4. Full employment policies, by which each member would agree to take action to achieve and maintain full employment and to encourage an expanding demand by measures appropriate to its political, economic and social institutions.¹³

The nine chapters of the Havana Charter deal with its purpose and objectives, employment and economic activity, economic development and reconstruction, commercial policy, restrictive business practices, inter governmental commodity agreements, the international trade organization, settlement of differences, and general provisions.

The purpose of the Charter was to promote the expansion of international trade by establishing a code of fair dealing that would preclude economic warfare and by encouraging countries to reduce artificial trade barriers thus establishing a multilateral, non-discriminatory trading system.¹⁴

The Havana Charter was to come into force sixty days after more than half the governments had deposited instruments of acceptance with the Secretary

¹² Ibid., p. 974.

¹³ Jack C. Plano, Robert E. Riggs, *Forging World Order, The Politics of International Organization*, (The Macmillan Co., New York, 1967), p. 463.

¹⁴ *Encyclopedia of the United Nations*, p. 366.

General of the UN. If this did not happen by March 24, 1949, it would become effective sixty days after twenty governments had deposited instruments of acceptance. Failing this, after September 30, 1949, the Secretary General of the UN would consult with those governments which deposited instruments of acceptance to see whether and on what conditions they wished to bring the International Trade Organization into being.

Fifty two of the fifty six governments represented at the Havana Conference approved a resolution establishing an Interim Commission for the International Trade Organization. This would convoke the first session of the International Trade Organization after the Charter had come into force, prepare its agenda, publish the reports of the main committees of the Havana Conference and consult with the International Court of Justice among other things.¹⁵

While early negotiations for the new International Trade Organization were on, several countries urged an immediate attack on trade barriers through an ad hoc conference to function as a stop gap arrangement. Twenty three nations met at Geneva in 1947 to work out a vast number of bilateral tariff concessions which were written into the General Agreement on Tariffs and Trade.

The Conference was an adaptation of the reciprocal trade agreement system inaugurated by Secretary of State Cordell Hull in 1934 and adopted by many of the world's trading nations. It provided for bilateral negotiations on a selective product by product basis, with all tariff reductions based on the principle of reciprocity. These were embodied in trade agreements incorporating the most-favoured-nation clause, thus making lower tariff rates applicable to all other nations participating in the programme as well as the most favoured nations that signed the agreement.

This made it an outward looking programme aimed at rebuilding a liberal trading system. The General Agreement on Tariffs and Trade conference would aid the expansion of this programme by providing for multilateral participation in a series of simultaneous bilateral bargaining sessions.

When, at the second session of the Preparatory Committee, negotiations were sponsored for the formulation of the General Agreement on Tariffs and Trade, it was thought that this would promote the objectives of the proposed International Trade Organization.

¹⁵ UN Yearbook 1946-47.

CHAPTER 2

The Havana Charter and its Failure

The Havana Charter prepared by the UN Conference on International Trade was the constitution of the International Trade Organization. Signed on March 24, 1948 in Havana by 47 countries, the Charter covered tariffs, export subsidies, quotas, exchange matters, customs formalities, cartels, commodity agreements, state trading, the international aspects of foreign investments and of employment, economic development and a procedure for the settlement of trade disputes. The purpose and objectives of the Havana Charter were set out in the first chapter as:

"

1. To assure a large and steadily growing volume of real income and effective demand to increase the production, consumption and exchange of goods and thus to contribute to a balanced and expanding world economy.
2. To foster and assist industrial and general economic development, particularly of those countries which are still in the early stages of industrial development, and to encourage the international flow of capital for productive investment.
3. To further the enjoyment by all countries, on equal terms, of access to the markets, products and productive facilities which are needed for their economic prosperity and development.
4. To promote on a reciprocal and a mutually advantageous basis the reduction of tariffs and other barriers to trade and the elimination of discriminatory treatment in international commerce.
5. To enable countries, by increasing opportunities for their trade and economic development, to abstain from measures which would disrupt world commerce, reduce productive employment or retard economic progress.
6. To facilitate through the process of mutual understanding, consultation and cooperation the solution of problems relating to international trade in the fields of employment, economic development, commercial policy, business practices and commodity policy."¹

The remaining eight chapters deal with employment and economic activity, economic development and reconstruction, commercial policy, restrictive business practices, inter-governmental commodity agreements, International Trade Organization, settlement of differences and general provisions.

¹ UN Encyclopedia, UN Publication p. 366.

These outline maintenance of high levels of employment and economic activity, especially in economically backward countries and reconstructing war devastated countries. Commercial policy, especially those affecting relations between countries, restrictive business practices, such as international cartels and inter-governmental commodity agreements are discussed in the next few chapters.

As for the International Trade Organization itself, chapter VII, VIII and IX deal with its structure and functions, procedures for settlement of differences between ITO members and general provisions affecting ITO members, such as their trading relations with non-members and security exceptions.

Article 73 states that the proposed ITO would consist of a Conference, composed of all ITO members; an Executive Board composed of eighteen members, eight of which were to represent nations or customs unions of chief economic importance, as determined by the Conference, having regard to their shares in world trade and to their representation of the different types of economies or degrees of economic development found among ITO members. Ten of these were to be elected by the Conference and such commissions as may be established by the Conference and a staff headed by a Director General.

In both, the Conference and the Executive Board, voting would be on the principle of one vote per member, and, except where otherwise provided in the Charter, decisions would be made by simple majority.

The Havana Charter further provided that the powers and duties of the ITO and the final authority to determine the policies of the ITO would be vested in the conference which may vote by simple majority to assign to the Executive Board any power or duty of the ITO except those specifically conferred or imposed upon the Conference by the Charter. The Conference could also, by a two-third majority, decide to waive, in exceptional circumstances, an obligation imposed upon a member by the Charter. It could prepare or sponsor agreements concerning any matter within the scope of the Charter and by a two third majority, recommend acceptance of such agreements.

It could also make recommendations to inter-governmental organizations on any subject within the scope of the Charter. The Conference would approve the budget of the organization and apportion the expenditures of the organization among members according to a scale of contributions to be fixed from time to time. It would determine the seat of the organization and establish such branch offices as it considered desirable.

The Executive Board, as per Article 1 of the Charter, would be responsible for the execution of the policies of the organization and would exercise the powers and perform the duties assigned to it by the Conference. It would also supervise

the activities of the commissions and take such action upon their recommendation as it deemed appropriate. The Board could also make recommendations to the Conference to intergovernmental organizations on any subject within the scope of the Charter.

The Conference would meet in regular session once a year and in extraordinary session as and when necessary. The frequency of Executive Board meetings would be agreed upon in the rules of procedure which the Board would adopt.

The 106 articles and 16 annexes of the Havana Charter thus pursued the objectives of a balanced, expanding world economy, promotion of industrial and general economic development of economically underdeveloped countries, access on equal terms by all countries to the markets, products and productive facilities requisite for their development and reduction of barriers through non-discriminatory international commerce practices.

Promotion of mutual understanding, consultation and co-operation to facilitate the solution of problems relating to international trade in the fields of employment, economic development, commercial and commodity policy was to be achieved through elimination of measures disruptive of world commerce, productive employment or economic progress.²

Prior to the coming into force of the Havana Charter and of the International Trade Organization, 52 of the 56 governments represented at the Havana Conference approved a resolution establishing an Interim Commission for the ITO composed of the 52 members which approved the resolution.

The functions of the Interim Commission were summarized thus

1. To convoke the first session of ITO after the Havana Charter entered into force.
2. To prepare the agenda of the first ITO session, including therein proposals concerning a plan of work for the first year of the Organization, the budget, the site of the ITO headquarters, relations with the UN, the specialized agencies and other inter and non-governmental organizations.
3. To publish the reports of the main committees of the Havana Charter.
4. To consult with the International Court of Justice concerning procedural matters arising out of the fact that, under the Havana Charter, the International Trade Organization may request advisory opinions from the Court.

² UN Yearbook 1947-48, p. 974.

5. To prepare for the first session of the ITO a report on the entire field of industrial and general economic development and post-war reconstruction with particular reference to the role of the UN, the specialized agencies and other organizations.
6. To consult with the Government of Switzerland concerning certain problems facing the Swiss economy in connection with the provisions of the Havana Charter.³

The Interim Commission held its first meeting in Havana on March 20, 1948. Max Suetens of Belgium was chosen as the Chairman. An Executive Committee with 18 members from Australia, France, Benelux, Greece, Canada, China, Egypt, India, Colombia, El Salvador, Italy, Czechoslovakia, UK, USA, Norway, Philippines and Mexico was elected by the Commission.

The Canadian representative, L. Dana Wilgress was elected chairman by the Executive Committee at its first meeting in Havana on March 24, 1948. Geneva was chosen as the seat of the Executive Committee which was entrusted with carrying out the tasks assigned to the Interim Commission.

The second meeting of the Executive Committee was held at Geneva from August 25 to September 15, 1948. It considered several procedural and organizational matters relating to items like the relationship of ITO, when established, with other specialized agencies and the expenses incurred during the meetings of the Preparatory Committee.

It was also decided at this meeting that the next meeting would not be held until the time twenty countries had accepted the Havana Charter or on September 30, 1949, whichever was earlier.

Due to the delay in receiving acceptances of the Havana Charter, the Executive Committee, at a special session held at Annecy, France, in August 1949, agreed to postpone its third meeting scheduled for September 1949, until a date when the entry into force of the Charter and the holding of the first International Trade Organization conference was more imminent.

At this meeting, the UK proposed that chapter VI of the Havana Charter dealing with inter-governmental commodity agreements be brought into operation in advance of the Charter as a whole. This proposal was referred to the fourth session of the Contracting Parties to GATT, but found no support and was withdrawn.

By the end of 1950, the Havana Charter had been accepted by Liberia. Australia would accept whenever the US and UK did. The Swedish Riksdag authorized

³ Ibid, pp. 975-976.

Sweden's adherence at the discretion of the Foreign Minister. However, by the end of 1950, no acceptance had been deposited with the Secretary General.⁴

On December 6, 1950, the US Department of State issued a statement of policy indicating that the Havana Charter would not be submitted again to the US Congress. It was then evident that the establishment of the International Trade Organization would be indefinitely postponed. Thus, the US which had first discussed the establishment of the ITO was the one which was ultimately responsible for destroying it.

This failure was not an accident but the outcome of the struggle between the dominant interest in the US and those in the deficit countries. The structure of the GATT, with its limited powers and liberal bias, reflected this directly.

The Havana Charter was, essentially, a compromise retaining the US commitment to a general expansion and liberalization of trade, but incorporating a number of clauses justifying the use of intervention, both to deal with balance of payments and developmental problems without having to adopt orthodox deflationary measures.

It placed very heavy emphasis on the maintenance of full employment and gave members the right to request the organization 'to furnish them with appropriate advice concerning plans for economic development or reconstruction and financing and carrying out of their programmes and to assist them in procuring such advice or study.'⁵

The American administration which had been involved in the negotiations was prepared to accept the compromise, but the dominant elements in the American capitalist class were not.

The US council of the International Chamber of Commerce attacked the Charter 'because it accepts practically all of the policies of economic nationalism, because it jeopardizes the free enterprise system by giving priority to centralized national government planning of foreign trade; because it leaves a wide scope to discrimination, accepts the principle of economic insulation and in effect commits all members of the International Trade Organization to State planning for full employment.'⁶

The 1948 US election returned a Congress that was Republican dominated while the Presidency remained in Democratic hands. Anticipating a strong rebuff President Truman did not submit the International Trade Organization proposal for ratification. Thus, despite strong administrative support, the Charter was not

⁴ UN Yearbook 1951, pp.962-3.

⁵ Article 10, 2b of the Havana Charter.

⁶ E.A. Brett, *The World Economy Since the War*, (Macmillan UK, 1985), pp. 74-76.

ratified by the US Congress and this meant that it failed to produce an organization which would be in a position to approach trade problems from a very different point of view than the GATT and IMF.

Among other concerns, Congress was fearful that establishing a strong international organization to deal with trade matters would lead to the destruction of many US industries as a result of increased imports. Numerous members of Congress and some of the groups they represented were also concerned about the increase in presidential power that the approval of such an organization might involve. They believed that the division of political powers among the legislative, executive and judicial branches of government had shifted excessively in favour of the executive branch as a result of the unusual problems created by the Depression and World War II and were, consequently, reluctant to extend new authority to the president, specially in an area specifically reserved for Congress under the constitution.⁷

Although other countries could have gone ahead, at the time the US was the pre-eminent economic power in the world, having emerged from the war largely unscathed, and no other country desired to enter an International Trade Organization which did not include the United States. The irony was that the US itself had taken the principal initiative to develop the International Trade Organization Charter in the first place.

⁷ Robert E. Baldwin, *Trade Policy in a Changing World Economy*, (Harvester, Wheatsheaf, UK, 1988), p 24.

CHAPTER 3

The Evolution of GATT and its Functioning

The history of the preparation of the General Agreement on Tariffs and Trade is intertwined with that of the preparation of the International Trade Organization charter. The 1947 Geneva meeting was actually an elaborate conference in three major parts, sometimes referred to as the 'three-ring circus'.

One part was devoted to continuing the preparation of a charter for a major international trade institution, the International Trade Organization. The second was devoted to continuing the negotiation of a multilateral agreement to reciprocally reduce tariffs. A third part concentrated on drafting the 'general clauses' of obligations relating to the tariff obligations. The second and third parts, together, constitute the GATT.¹

The general clauses of the draft GATT imposed obligations on nations to refrain from a variety of trade impeding measures. Many of these clauses had evolved in the US bilateral trade agreements and were seen as necessary to protect the value of any tariff-reducing obligations.

The GATT, however, was not intended to be an organization. US negotiators were criticized by committees of the US Congress in 1947 for tentatively agreeing to clauses which seemed to imply an organization. The US President and his negotiators recognized that an ITO charter would have to be submitted to Congress approval. But from the US point of view, the GATT was being negotiated under the 1945 extension of the trade agreements authority.

The Congressional committees pointed out that this 1945 Act did not authorize the President to enter into an agreement for an organization - it only authorized agreements to reduce tariffs and other restrictions on trade. So the negotiators returned to Geneva and redrafted the general clauses to avoid the suggestion of an organization. Thus, multilateral decisions under GATT are taken by the 'Contracting Parties acting jointly' and not by an 'organization'.

The Geneva negotiators in 1947 thus pursued the goal of preparing a draft ITO charter to be completed at Havana in 1948, and also negotiating elaborate schedules of tariff reductions appended to the general clauses of GATT. These schedules consisted of thousands of individual tariff commitments applied to all GATT members through the most favoured nation obligation.

¹ John H. Jackson, *The World Trading System*, (The MIT Press, Cambridge, Massachusetts, 1994), p. 32.

Since the GATT was designed to be merely a multilateral treaty, not an organization, it would be similar to the bilateral treaties which preceded it, but designed to operate under the umbrella of the ITO when that organization came into being.

The general clauses of GATT were the same as those in the chapter of the draft ITO charter which was devoted to trading rules, and that in turn had been heavily influenced by clauses in bilateral trade treaties. Once the ITO Charter was completed, the corresponding GATT clauses were to be revised so as to conform with those of the ITO Charter.²

The GATT came into being before the Havana Charter, but in accordance with the draft Charter for the ITO that was being discussed at the time. It was originally envisaged as the first of a number of agreements that were to be negotiated under the auspices of the ITO. When it became clear that the Havana Charter would not be ratified by the US, the General Agreement became the underpinning of an international institution.

Thus GATT is not technically an organization of which countries become members but a treaty with contracting parties. Nevertheless it has assumed the commercial policy role that had been planned for ITO without incorporating the wider provisions of the Havana Charter on restrictive business practices, commodity agreements, economic development and full employment policies. It mainly deals, in contrast, with the reduction of tariffs on trade in manufactures.³

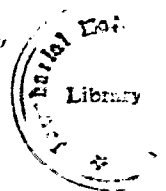
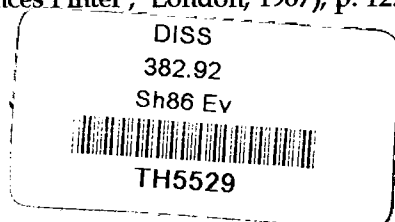
Many negotiators felt that the GATT should be brought into force before the ITO, for several reasons. First, although the tariff concessions were still secret, the negotiators were aware that their content would begin to be known. World trade patterns could thus be seriously disrupted if a prolonged wait occurred before the tariff concessions came into force.

Second, the US negotiators were acting on the authority of the US trade legislation which had been renewed in 1945 and under which they would not need to submit the GATT to Congress. There was a strong motivation on the part of the US to bring the GATT into force before this act expired in mid 1948. It was unlikely that this could be done if the participants in these events waited until after the 1948 Havana Conference and the completion of the ITO Charter.

On the other hand there were several problems involved in the enforcement of the GATT. Some could be handled by amending the GATT at a later date to make it conform with the results of the later Havana Charter. Some nations,

² John H. Jackson, *Restructuring the GATT System*, (The Royal Institute of International Affairs, Pinter Publishers, London, 1989), pp. 11-12.

³ Diane Tussie, *The Less Developed Countries and the World Trading System, A Challenge to the GATT*, (Frances Pinter, London, 1987), p. 12.



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however, had constitutional procedures under which they could not agree to parts of the GATT without submitting this agreement to their parliaments. Since they anticipated the need to submit the final draft of the ITO charter to their parliaments shortly afterwards, they preferred to take both agreements to their legislatures as a package.

The original GATT text contains three parts - Part I deals with the obligations of non-discrimination and tariff commitments and includes the schedules of tariff concessions, Part II embodies provisions relating to general commercial policy and non-tariff measures, and Part III contains mainly organizational matters. Part I of GATT contains the Most Favoured Nation and tariff concession obligations, while Part III is mainly procedural. Part II (Article III to XXIII) contains most of the major substantive obligations, including those relating to customs procedures, quotas, subsidies, anti-dumping duties and national treatment.

The US faced difficulties in view of the domestic legislative changes entailed by certain commitments on non-tariff measures, which Part II contained.

The solution agreed upon was the adoption of the 'Protocol of Provisional Application'. By this protocol, eight nations agreed to apply the GATT 'provisionally on and after January 1, 1948', while the remaining 15 members would do so soon after.

The signatories undertook to apply provisionally on or after January 1, 1948:

1. Parts I and III of the General Agreement on Tariffs and Trade, and
2. 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. 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 GATT would soon be absorbed in the larger framework of the ITO.

Despite the commitment to unconditional MFN treatment, the GATT did not exclude all discriminatory trade policies. Notwithstanding Anglo-American agreement on the principle of non-discrimination, British Imperial Preferences were a stumbling block. On British insistence, a 'grandfather clause' permitting continuation of existing preferential arrangements was written into the GATT. Each GATT Contracting Party was entitled to 'grandfather rights' for any

provision of its legislation existing when it became a party and which was inconsistent with a GATT Part II obligation.⁴

These 'grandfather rights' or the 'existing legislation' exception of the Protocol of Provisional Application solved for most countries the problem of executive authority to agree to GATT. This exception allowed most governments which would otherwise have needed to submit the GATT for legislative approval to approve the Protocol of Provisional Application by executive or administrative authority without going to the legislature. It was contemplated that after the ITO charter was ready to submit to legislatures, the GATT would also be submitted for definitive application.

In the meantime, GATT Contracting parties could deviate from those GATT Part II obligations which they could not adhere without legislative authority. They must accept fully the MFN obligation of Article I of GATT and the tariff cuts of Article II incorporating the tariff schedules, but in most cases the executive had authority to do this. Governments which later joined the GATT did so on treaty terms which incorporated the same 'existing legislation' exception.⁵

The tariff negotiations were held at Geneva from April 10 to October 30, 1947, when the participating countries signed a Final Act which authenticated the text of GATT. The Final Act of the second session also authenticated the Protocol of Provisional Application. The GATT, as applied by this Protocol, entered into force on January 1, 1948, after eight signatories of the Final Act had signed it before November 15, 1947, as specified in the Protocol.⁶

The countries which completed tariff negotiations at Geneva in 1947 and subsequently became Contracting Parties to GATT were Australia, Canada, Belgium, Chile, Brazil, China⁷, France, India, Burma, Ceylon, Cuba, Lebanon⁸, Czechoslovakia, Luxembourg, the Netherlands, Pakistan, Southern Rhodesia, New Zealand, Norway, Syria, the Union of South Africa, UK and USA.

Although Pakistan, Syria⁹, Burma, Ceylon and Southern Rhodesia were not members of the Preparatory Committee, these countries participated in the tariff negotiations owing to their close economic connections with certain members of the Committee. In the tariff negotiations, Benelux took part as a Customs Union

⁴ Richard Pomfret, *Unequal Trade - The Economics of Discriminatory International Trade Policies*, (Basil Blackwell Ltd, Oxford, UK, 1988), p. 61.

⁵ John H Jackson, *Restructuring the GATT System*, The Royal Institute of International Affairs, Pinter Publishers, London, 1989), pp. 12-14.

⁶ Anwarul Hoda, *Developing Countries in the International Trading System*, (Allied Publishers, New Delhi, 1987), pp. 1-3.

⁷ The National Government of China withdrew from GATT in May 1950.

⁸ Lebanon withdrew from GATT in February, 1951.

⁹ Syria withdrew from GATT in August, 1951.

as did Lebanon and Syria. During 1950, Indonesia became a Contracting Party in its own right.

The Geneva tariff conference was the first of eight, the two following it taking place in 1949 at Annecy, France and in 1950-51 at Torquay, England.

In the first series of tariff negotiations at Geneva in 1947, a total of 123 bilateral sets of negotiations were completed among the 23 participating countries. They covered more than 45,000 tariff items.

The second series of tariff negotiations, held at Annecy from April 11 to August 27, 1949, was on a smaller scale and resulted in the completion of 147 bilateral agreements covering 5000 items and the accession to GATT during 1950 of a further nine countries : Denmark, the Dominican Republic, Finland, Greece, Haiti, Italy, Liberia¹⁰, Nicaragua and Sweden. Uruguay, which negotiated at Annecy but did not subsequently accede, became a Contracting Party to GATT in December 1953.

The third series of tariff negotiations, held at Torquay from September 28, 1950 to April 21, 1951, followed the same pattern, except that, in addition to negotiations between the Contracting Parties and the following six governments - Austria, the Federal Republic of Germany, the Republic of Korea, Peru, the Philippines and Turkey, there were also renewed negotiations among the Contracting Parties for additional concessions. Some 8,700 concessions were negotiated at Torquay. By the end of 1952, the above countries had acceded except the republic of Korea and the Philippines.¹¹

The rounds following these were the Geneva, Dillon, Kennedy, Tokyo and Uruguay Rounds which will be discussed later in the chapter.

STRUCTURE OF GATT

GATT is founded on the doctrine that free trade allows consumption beyond an economy's productive capability and promotes specialization in the production of goods in accordance with comparative advantage. This results in an efficient allocation of all productive resources which implies that world output is maximized.

Free trade implies that goods must be bought in the cheapest market and sold in the dearest. This leads to a fundamental principle of non-discrimination and multilateralism which is embodied in GATT.

¹⁰ Liberia withdrew from GATT effective June, 1953.

¹¹ UN Yearbook, 1953, p. 836.

Other obligations of GATT are aimed at suppression of obstacles to international trade: some have been prohibited, others restricted and yet others envisaged to be progressively reduced¹².

Tariff concessions resulting from tariff conferences are incorporated in the Schedules of the GATT. The Agreement contains provisions to protect the tariff concessions, that is, to prevent them from being nullified by trade restrictions imposed by governments to protect their national trade and payments.

These provisions include rules regulating the use by the parties to the Agreement of quantitative import and export restrictions, internal taxes and so on, as well as arrangements for consultation and for joint discussion and settlement of differences arising out of the Agreement.

The obligation accepted by the Contracting Parties to the Agreement provide an agreed set of rules governing their commercial relations, and the sessions attended by their representatives provide a forum for the discussion and settlement of complaints and other problems in the commercial field.

Governments which became Contracting parties applied the agreement provisionally. These legal instruments enabled the Contracting Parties to bring the new tariff rates into effect, to establish MFN treatment among themselves and to follow the commercial policy rules laid down in the general provisions of the Agreement.

Contracting Parties which applied the Agreement provisionally were not required to amend existing legislation or to promulgate new legislation in order to adhere more closely to the Agreement. They were expected, however, not to enact any new legislation inconsistent with it.

In signing the Protocol of Provisional Application or the following Protocols, a Contracting Party accepted a commitment to apply Part II of the Agreement (which represented approximately the commercial policy chapter of the Havana Charter) 'to the fullest extent not inconsistent with existing legislation' and in addition, undertook to observe the principle of the Havana Charter 'to the fullest extent of its executive authority'¹³.

GATT AS AN ORGANIZATION

Since the ITO did not come into being, a major hole was left in the fabric intended for post World War II international economic institutions : the 'Brettonwoods System'. It was thus natural that the institution which did exist -

¹² Anwarul Hoda, *Developing Countries in the International Trading System* (Allied Publishers, New Delhi, 1987), pp. 10.

¹³ *UN Yearbook*, 1953, pp. 836-837.

the GATT- would find its role changing dramatically as nations turned to it as a forum to handle an increasing number of problems of their trading relationships. More countries became Contracting parties, sometimes in groups (9 in 1949 and 4 in 1951), sometimes individually.

The contracting Parties met almost every six months, usually for several weeks and discussed a wide range of problems including disputes about the implementation of GATT rules.

'Because of the fiction that GATT was not an 'organization', there was considerable reluctance at first to delegate any activity even to 'a committee', states John H Jackson. Gradually that reluctance faded and soon there was even an 'Intercessional Committee' which met between sessions of the Contracting Parties.

No secretariat existed for the GATT. At their First Session, at Havana in 1948 during the conference to prepare the last draft of the ITO charter, the Contracting Parties adopted Rules of Procedure which included a rule stating :

'The usual duties of a secretariat shall, by agreement with the Interim Commission for the International Trade Organization, be performed by the Executive Secretary of the Interim Commission on a Reimbursable Basis.¹⁴'

A small staff was assembled to prepare the ground for the ITO and this staff serviced the needs of the GATT. As years passed and it became clear that the ITO was never to come into existence, this staff found that all of its time was devoted to the GATT and it became de facto the GATT secretariat, technically as a kind of 'leased' group whereby the GATT 'reimbursed' the Interim Commission for the International Trade Organisation for the costs of the secretariat.

The origins of GATT under the shadow of the ITO that failed to materialize and legislative restrictions on the authority of the Executive of the principal instigator of GATT and the ITO - the United States - inhibited not only the development of the Contracting Parties and their sub-bodies but also the development of a Secretariat. Yet the effective operation of the General Agreement clearly required some professional staff and, since the initial framework of using the ICITO staff was already established, this framework simply continued. An attempt to establish another international organization in 1955-56 (the Organization of Trade Co-operation) with express authority for a

¹⁴ GATT Documents: GATT/1/1; GATT/1/SR. 1,3,4 (1948) as quoted in John H. Jackson, *World Trade and the Law of GATT*, (The Bobs Merrill Co. Inc., USA, 1969) p. 145.

secretariat also failed, assuring the continuance of the ICITO- GATT Secretariat relationship¹⁵ .

The original General Agreement of 1947 and 1948 not only failed to mention a Secretariat but also an Executive Secretary or other official for GATT. The Secretary General of United Nations was mentioned at a number of places, primarily in connection with depositing multilateral agreements and calling the initial meeting of the Contracting Parties. However, the resolution adopted at the Havana Conference establishing an Interim Commission for the ITO provided that 'the Commission shall elect an Executive Secretary who shall be its chief administrative officer'.¹⁶

Rule 15 of the initial Rules of Procedure adopted by GATT in 1948 established that the duties of a Secretary would be performed by the Executive Secretary of the Interim Commission. This position became recognized as the Executive Secretary of GATT.

Protocols of amendment drafted in 1955 and coming into force in 1957 changed a number of references in the General Agreement itself from the Secretary General of the United Nations to the 'Executive Secretary to the Contracting Parties'.¹⁷ The position of Executive Secretary for GATT is consequently officially established in the General Agreement.

At the Twenty second session of the Contracting parties, a decision was taken changing the title of the chief officer of GATT to 'Director- General'. Under the General Agreement itself, he has the power, in Article XXVI, to act as depository of GATT Agreements. In addition, a number of GATT decisions , as well as Rules of Procedure adopted by the Contracting Parties, refer to the Executive Secretary or Director General, authorizing him to take certain actions. As in all other such posts, the personality of the individual holding the office affects the work performed.

A number of permanent subsidiary bodies apart from the secretariat came into existence over the years. The most important of these was the Council of Representatives¹⁸ which performed virtually all the functions of the Contracting Parties between its annual sessions, except on such matters as waivers and accession of new contracting parties in which the Decisions of Contracting Parties are obtained by postal ballot or at their special or regular sessions.

¹⁵ John H Jackson, *The World Trading System*, (The MIT Press, Cambridge, Massachusettes, 1994), p. 32.

¹⁶ GATT Doc. ICITO / 4, p.70 (1948), as quoted in John H Jackson, *World Trade and the Law of GATT*, (The Bobs Merrill Co. Inc., USA, 1969), p.148.

¹⁷ Protocol amending the Preamble and Parts II and III of the GATT, 1955 (Agreement no. 33 in App. C); see GATT Articles and paragraph nos. XVIII;12 (e).Ibid, p.148.

¹⁸ GATT BISD 9th supplement, p. 8, as quoted in Anwarul Hoda, *Developing Countries in the International Trading System*, (Allied Publishers, New Delhi, 1987), p. 9.

The Tokyo Round of Multilateral Trade Negotiations (1973 - 79) resulted in a number of non-tariff and sectoral agreements which have each established a standing body. Besides serving as a forum for consultations, the Committee on Trade in Civil Aircraft, Technical Barriers to Trade, Government Procurement, Subsidies and Countervailing Measures, Customs Valuation and Anti- Dumping Practices have also been assigned responsibilities for conciliation and dispute settlement between signatories.

In addition to the standing committees, the Contracting parties also set up from time to time Working Parties to study specific problems and to advise them.¹⁹

MANDATE OF GATT

In discussing the basic principles and mechanisms of the GATT, two inter-related levels must be considered. First, the GATT brought together a body of principles. It was an international, contractual agreement by which each signatory or contracting party committed itself to treat all other signatories according to the Most Favoured Nation standard.

Secondly, the GATT was a forum where countries negotiated tariff reductions according to the legal framework provided by the agreement.

In GATT, member countries were not required to abolish tariffs automatically. Rather, tariffs were the negotiable item; countries made specific agreements to reduce particular tariffs in exchange for a reciprocal reduction from a trading partner. In the absence of such an agreement, a Contracting Party was not obliged to make a reduction.

The Preamble to the GATT presented goals of the Contracting Parties - that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods and to contribute to these objectives 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 discriminatory treatment in international commerce.

MOST FAVOURED NATION TREATMENT

The key principle of the General Agreement was the MFN clause contained in Article I. This imposed on the Contracting Parties the obligation to grant each

¹⁹ Anwarul Hoda, *Developing Countries in the International Trading System* (Allied Publishers, New Delhi, 1987), p. 8-10.

other equality of treatment - '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 originating in or destined for the territories of all other Contracting Parties.'

With the MFN, a contracting party did not only have to treat all other contracting parties equally, but had to extend to each of them the best treatment it accorded to any trading partner. An important element of the obligation was that extension of any concession or favour to all contracting parties had to be immediate and unconditional.

The clause was specifically designed to outlaw preferential arrangements and as a corollary, to prevent the struggle to obtain and secure such arrangements. The widespread use of discriminatory trade and currency arrangements was believed to have contributed to the political tension of the 1930s and ultimately to war.

GATT adopted the traditional MFN principle of non-discrimination with two innovations. The first was that negotiations for tariff reductions in GATT took place simultaneously. The second innovation was the safeguarding of these reductions against future rises.

While Article I ensured that tariff concessions were to be extended to all contracting parties, Article II provided future stability for these concessions. The agreed rates were 'bound' and put together in 'schedules' for each country. Once 'bound', these rates could only be raised after renegotiation with the country holding the 'initial negotiating rights' (Article XXVIII), that is, the country that had bargained and 'paid' for the concession in the first place, as well as those that might have become the principle supplying countries since that time.

Concessions thereby became the collective right of the contracting party to GATT, regardless of which country had negotiated them. A contracting party that wished to raise a bound tariff would have to be prepared to offer compensation or risk retaliation (Article XIX).

Given that legally bound tariffs were an integral part of the General Agreement, a newcomer automatically benefitted from the cumulative effect of all concessions negotiated prior to its arrival. The newcomer was expected to pay an 'entry fee' on accession; it would have to enter into tariff negotiations with established Contracting Party before becoming a full member.

The general thrust of activities in GATT were to maintain a balance of concessions.²⁰

TARIFF CONCESSIONS

GATT was designed mainly as a tariff agreement and it contained elaborate provisions with regard to tariff concessions. These were in the form of commitments on the ceiling of the levels of tariff to be applied on specific items on products imported from other contracting parties.

A number of specific obligations were laid down in Article II with the aim of protecting the value of tariff concessions. Contracting parties were mandated not to impair the value of their concessions by altering the methods of determining dutiable value, or of converting currencies, or by tariff reclassification. The protection afforded by the operation of State monopoly for import of any product, subject to a tariff commitment, had to be limited to the level provided in the schedule²¹.

NATIONAL TREATMENT OF INTERNAL TAXATION AND REGULATION

GATT prohibited differential application on imported and domestic products of internal taxes and laws, regulations and requirements affecting internal sale, offering for sale, purchase, transportation, distribution or use of product and mixing requirements. This obligation applied equally to all products, irrespective of whether the product was covered by a tariff concession or not.

QUANTITATIVE RESTRICTIONS

GATT banned quantitative restrictions both on imports and exports. However, the ban did not extend to export prohibitions or restrictions applied temporarily to prevent or relieve critical shortages of foodstuffs or other essential products. There was also a balance of payments exception, which permitted imposition of quantitative restrictions on imports for safeguarding the external financial position of a contracting party.

ANTI - DUMPING PRACTICES

GATT permitted the imposition of anti-dumping duties if imports of dumped products caused or threatened material injury to domestic industry or materially retarded its establishment.

²⁰ Diane Tussie, *The Less Developed Countries and the World Trading System, A Challenge to the GATT*, (Frances Pinter, London, 1987) pp. 12-17.

²¹ Anwarul Hoda, *Developing Countries in the International Trading System*, (Allied Publishers, New Delhi, 1987), p. 13.

One of the results of the Kennedy Round was the Anti - Dumping Code, which interpreted the GATT clauses and elaborated rules for their application. It allowed the use of alternative criteria for comparison of export price or with the cost of production, not only in the absence of domestic sales but also when, because of the particular market situation, such sales did not allow proper comparison. At the Tokyo Round, these provisions were updated and revised.

SUBSIDIES AND COUNTERVAILING DUTIES

GATT rules envisaged imposition of greater discipline on export subsidies than on production subsidies. Irrespective of the level of obligation relating to subsidies, GATT authorized contracting parties to levy countervailing duties when subsidized products imported by them caused or threatened material injury to domestic industry or materially retarded the establishment of an industry.

The agreement also provided for special and differential treatment of developing countries.

CUSTOMS VALUATION

To ensure that valuation methods did not have additional protective effect, GATT obligated contracting parties to base the valuation of imported merchandise for customs purposes on its actual value, not on the value of merchandise of national origin or on arbitrary or fictitious values. In order to provide a fair, uniform and neutral system of valuation of goods for customs purposes, the Customs Valuation Code was negotiated at the Tokyo Round. This Code obligated the signatories to accept the transaction value as the customs value, except under defined circumstances such as when the buyer and seller are related.

STATE TRADING ENTERPRISES

Contracting parties were required to ensure that all State enterprises carried out their activities in a manner consistent with the general principle of non-discriminatory treatment.

BALANCE OF PAYMENTS

GATT allowed a contracting party to impose quantitative restrictions with a view to safeguarding its external financial position and its balance of payments, subject to the condition that the level of restrictions was commensurate with the criticality of the monetary reserves situation. The test for the level of restrictions being commensurate with the seriousness of the monetary reserves situation was less rigorous for the developing countries.

SAFEGUARDS

GATT permitted contracting parties to place curbs on imports for limited durations, so that an orderly transition was achieved and the burden of dislocation costs equitably distributed.

If a sudden and large increase in the imports of a product caused or threatened injury to domestic producers, contracting parties were permitted on a temporary basis to take safeguard measures such as imposition of quantitative restrictions or enhancement of import duty above the bound level.

One of the important requirements in regard to the nature of safeguard action was that it should be non-discriminatory. Inability to conform to this requirement led many developed countries to circumvent the safeguard provision of GATT and limit imports from particular exporting countries on the basis of bilateral agreements for 'voluntary' export restraint or orderly marketing arrangement. In the case of textiles, a multilateral framework was adopted in derogation of GATT rules for imposition of discriminatory restrictions.

DISPUTE SETTLEMENT

Although several articles of GATT dealing with specific obligations contained a provision for resolving differences, GATT also contained a central dispute settlement machinery. A contracting party could take recourse to this machinery when it considered that any benefit accruing to it under GATT was being nullified or impaired or if the attainment of any objective of GATT was being impeded.

The disputants were expected first to enter into consultations on the basis of a written representation by the aggrieved party. If differences persisted, a reference could be made to the Contracting Parties, who had the obligation to investigate the matter and make appropriate recommendations to the Contracting Parties concerned. If the recommendations were not complied with and the case was a serious one, the Contracting Parties could authorize retaliatory action by the affected Contracting Party.

Whenever a dispute was raised, the Contracting Parties referred it to a panel consisting of 3-5 members appointed with the consent of the parties to the dispute. The panels followed a quasi judicial procedure in finalizing their findings and recommendations and the Contracting Parties generally adopted their reports. These elements of the procedure evolved gradually and were codified in the Agreed Description of the Customary Practice of the GATT in the Field of Dispute Settlement annexed to the Tokyo Round Understanding regarding Notification, Consultation, Dispute Settlement and Surveillance.

CUSTOMS AND FREE TRADE AREA

At the time of the preparatory conferences on GATT, the full economic implications of a customs union or free trade area were dimly understood. GATT rules permitted interim arrangements leading to the formation of customs union and free trade areas, envisaging progressive reduction of trade barriers between constituent territories and in the case of customs union, progressive harmonization of external trade regimes.

GENERAL EXCEPTIONS

Several measures taken by governments in pursuance of important aspects of national policy which restricted international trade were excepted from GATT obligations, subject to the condition that measures were not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries or a disguised restriction on international trade. Some related to protection of public morals, protection of human, animal or plant life or health, securing compliance with laws and regulation and protection of national treasures. GATT provided for security exceptions as well.

WAIVER

In exceptional circumstances, the Contracting Parties were empowered to waive an obligation imposed by GATT on a contracting party. Such a waiver required approval by two-thirds majority of the votes cast as well as of more than half the total number of contracting parties.²²

In contrast to the International Monetary Fund and the World Bank, where a system of weighted voting operated, in GATT each country was entitled to one vote. Voting rules varied according to the subject under discussion.

An amendment to Part I (containing the obligation to grant MFN treatment) and to Articles XIX (safeguard action in import) and XXX (amendments) could only be passed if it was unanimously agreed upon. Amendments to the other parts became effective once they were accepted by a 2/3 majority, but were effective only among those who had agreed to them. This highlighted the contractual rather than mandatory role of GATT.

Equally, a 2/3 majority was required to grant a waiver to a government wanting to take measures that were incompatible with its obligations, for example, an import surcharge. All other decisions were taken by a majority of votes cast.

A 2/3 majority was required for the accession of new members. No one country could exercise the power of veto. Majority rule was preferred over unanimity to

²² Ibid., pp. 11-30.

obviate a situation in which the accession of a country might be impeded by a member with little interest in its market or by a country competing with it.

However, member countries which had not assented to the accession of a particular country were not obliged to apply the provisions of the Agreement vis-a-vis the new member (Article XXXV). In other words, membership did not automatically force a country to grant equal treatment to all participating countries, although this was the desired end result.

These provisions aimed to establish as open and liberal a system as possible that would allow trade to increase global efficiency. The GATT aimed to codify a system which was thought to be more realistic than absolute free trade.

The drafters and the founding members considered absolute free trade the best policy but acknowledged that it would not be politically feasible to enforce it at all times regardless of domestic employment levels.

The GATT was regarded as a pragmatic compromise, a 'second best', by which domestic interests were offered some protection from the international market, but foreign suppliers would be allowed to compete for a share of the domestic market.

With the creation of an appropriate institution, there would, moreover, be a framework for collective discipline. With such collective rules it was hoped that the international trading system would be strengthened in order to avoid strains similar to those of the 1930s which resulted from the scramble for self-protection²³.

GATT AND DEVELOPING COUNTRIES

At the time of the preparatory conferences, the developing countries were anxious to ensure only that the commercial policy obligations of the ITO Charter did not bind their hands too much in adopting measures needed to safeguard their economic development. They wanted in particular that 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.

No automatic rights were granted for deviation from Charter obligations for providing governmental assistance to economic development and reconstruction to the disadvantage of developing countries.

²³ Diane Tussie, *The Less Developed Countries and the World Trading System, A Challenge to the GATT*, (Frances Pinter, London, 1987), pp. 12-17.

One of the casualties of the ITO's death was its special provisions for development inspired trade policies ; the original GATT contained only one article (XVIII) on economic development and it was sharply circumscribed. Developing countries were reluctant to become contracting parties to the GATT and their main concern was to retain commercial policy autonomy, including the flexibility to increase trade barriers in order to protect infant industries²⁴ .

Between 1948 and 1955, the developing countries participated in tariff negotiations and other aspects of GATT activities as equal partners. They took their GATT obligations seriously and obtained release from these obligations when necessary²⁵ .

At this time, the GATT Contracting Parties decided that it would be necessary to review the GATT and to amend it so as to better prepare it for its developing role as central international institution for trade.²⁶

The Contracting Parties ninth regular session, scheduled for 1954-55, was designated a 'review session'. At this session, among other things, extensive protocols were prepared to amend the GATT, one for those parts of the GATT requiring unanimity to amend, another for the other parts requiring only 2/3 acceptance.

Ultimately the latter protocol came into effect, amending portions of Part II of GATT, but the protocol requiring unanimity never came into force and was withdrawn in 1967.

The review of GATT to prepare it for its role as central international institution for trade in the light of seven years' experience resulted in :

1. Reaffirmation of the basic objectives and obligations of GATT
2. A recommendation to continue to prolong the stability of the tariff rates of duty bound under GATT from July 1, 1955 to December 31, 1957 and the introduction of the principle of automatic rebinding thereafter for successive periods of three years, subject to opportunities for renegotiating individual items

²⁴ Richard Pomfret, *Unequal Trade- The Economics of Discriminatory International Trade Policies*, (Basil Blackwell Ltd., Oxford, UK, 1988), p. 83.

²⁵ Anwarul Hoda, *Developing Countries in the International System*, (Allied Publishers, New Delhi, 1987), pp. 30-32

²⁶ John H. Jackson, *The World Trading System*, (The MIT Press, Cambridge, Massachusetts, 1994), pp. 36-38.

3. The strengthening of the basic principle that quantitative restrictions for balance of payment reasons must be eliminated when no longer justified and the introduction of a system of annual consultations to this end
4. A temporary waiver, subject to the concurrence of the Contracting Parties, to help member countries to resolve problems arising from so-called 'hard core' import restrictions
5. A new and more flexible approach towards the needs of countries in early stages of development to modify tariff concessions and to apply quantitative restrictions on imports.

Other important changes were proposed in connection with export subsidies and the liquidation of agricultural surpluses. A waiver was given to the US allowing it to impose import restrictions where the US Government is required to take such action under Section 22 of the Agricultural Adjustment Act. This protection militated against the interests of the poor countries, many being heavily dependent on exports of agricultural products which were competitive with the agricultural sectors of developed economies. The protection afforded to agriculture in industrial countries restricted exports from the developing countries in two ways : increased prices reduced total consumption and domestic consumption was substituted for imports.²⁷

The UK was given a waiver providing that, subject to prior concurrence of the Contracting Parties in each case, it could grant increases in preferences for the exclusive benefit of colonial products which were largely dependent on the UK market.

The Contracting Parties drew up an agreement which, when it came into force would establish an Organization for Trade Co-operation. The agreement contained the basic provisions relating to the structure and functions of the organization. There would be an Assembly, an Executive Committee and a secretariat headed by a Director General. The main function of the organization would be to administer the General Agreement. In addition, the organization would be able to sponsor international trade negotiations and to serve as an inter governmental forum for the discussion and solution of other questions relating to international trade.

The agreement would enter into force and the organization would be established among the governments that had accepted it after it had been accepted by governments whose territories accounted for 85% of the total external trade of the territories of the governments which comprised the Contracting Parties.²⁸

²⁷David Wall, *Trade Strategy for Rich and Poor Nations*, (Ed. Harry G. Johnson, George Allen and Unwin Limited, UK, 1971), pp. 32-33.

²⁸ *UN Yearbook* 1954, pp. 554-556.

The Organization for Trade Co-operation was to be established to provide the institutional framework for the developing organizational role of GATT. This short treaty agreement was much less elaborate than the ITO but even it failed to get the approval of the US Congress and the OTC also died still-born.

A GATT resolution at the 1955 Session stressed the need for increased capital flow to less developed countries and noted that such flow 'would facilitate the objectives of the General Agreement by stimulating economic development of these countries whilst at the same time rendering it less necessary for them to resort to import restrictions.' The resolution recommended that contracting parties 'use their best endeavours to create conditions calculated to stimulate' that flow.²⁹

This new attitude towards the problems of developing countries 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 developing countries 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 GATT obligations for the promotion of industry, the requirement of prior sanction of the Contracting Parties was relaxed to some extent. The developing countries desirous of taking such measures in respect of products in which no tariff commitment had been made were only required to inform the Contracting Parties and are free to implement the measure after thirty days of the notification if no consultation was requested and after ninety days if consultation was requested but concurrence not given.

A significant feature of the new version of the provision was that recourse to it could only be had by the developing countries and to a limited extent by primary producing countries like Australia and New Zealand which were regarded as being in the process of development. The Review Session amendments thus applied for the first time the concept of differential treatment of developing countries.³⁰

By the late fifties it was felt that the developing countries were not benefitting equitably from the expansion in world trade brought about by liberalization. At the Ministerial Session of the Contracting Parties in 1957 it was decided to constitute an expert panel to examine the trends of international trade with

²⁹ GATT, 3d Supp. BISD 49 (1955), as quoted in John H. Jackson, *World Trade and the Law of GATT*, (The Bobs Merrill Company, Inc., USA, 1969) p.641.

³⁰ Anwarul Hoda, *Developing Countries in the International System*, (Allied Publishers, New Delhi, 1987), pp. 31-32.

particular reference to 'the failure of the trade of less developed countries to develop as rapidly as that of industrialized countries, excessive short term fluctuations in prices of primary products and widespread resort to agricultural protectionism.'³¹

The panel was headed by the eminent economist Gottfried Haberler. The Haberler report was completed in October, 1958. The study concluded that the underdeveloped primary producing countries were being discriminated against and the highly industrialized countries had used protective policies against them. The experts also tackled the problems of agricultural protectionism in the industrialized countries, stability of commodity prices and the effect of regional trading blocs.³²

On the basis of this report, the GATT Contracting Parties at the 1958 session (Thirteenth) which was held at Geneva from October 16 to November 22, 1958, decided to initiate an 'action programme' that was to embrace three principal topics:

1. The possibilities of further negotiations for the reduction of tariffs.
2. Problems arising out of the widespread use of non-tariff measures for the protection of agriculture, or in support of the maintenance of incomes of agricultural producers.
3. Other obstacles to the expansion of trade, with particular reference to the importance of maintaining and expanding the export earnings of the less developed countries.³³

At the Ministerial Meeting held in November 1961 for launching the Dillon Round, a Declaration on the Promotion of Trade of Less Developed Countries was adopted. This Declaration called for reduction of tariff and non tariff barriers in the developed countries on products of interest to the developing countries and recommended that in negotiations for reduction in barriers to the export of the developing countries, 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 programmes of action for progressive reduction and elimination of barriers to the exports of the developing countries.

³¹ GATT BISD, 6th supplement, p. 18, as quoted in A. Hoda, *Developing Countries in the International System*, p. 33.

³² Haberler Report, Supra Note 6, pp. 318-40, as quoted in John H. Jackson, *World Trade and the Law of GATT*, p.643.

³³ GATT, 7th Supp., BISD 28 (1959) as quoted in Ibid p. 643.

The move for special action in favour of the developing countries gathered further momentum at the Ministerial meeting held at Geneva in May 1963. The Ministers authorized the establishment of a Committee to examine the need for an adequate legal and institutional framework to enable the Contracting Parties to discharge their responsibilities in connection with the work of expanding the trade of less-developed countries' and of a working group to study the proposals for preferential treatment to the products exported by the developing countries.

Another major step was taken when, in the principles laid down by the Ministers for the Kennedy Round, it was explicitly recognized that in exchange of concessions the developed countries could not expect to receive reciprocity from the developing countries. In pursuance of this decision, a chapter on Trade and Development was finalized at a Special Session of the Contracting Parties and was added as part IV of GATT an amending protocol and came into effect on June 27, 1966.³⁴

Part IV of GATT had left the structure of GATT rights and obligations unchanged. In a joint statement made by the participating developing countries at the conclusion of the negotiations, they maintained that the most important problems in the field of trade had remained unresolved. Preferential treatments were introduced by the developed countries in the form of Generalized System of Preferences through the mechanism of a waiver from the MFN obligation. For most developing countries, this was not a satisfactory solution.

Even after the Tokyo Round, the developing countries were dissatisfied. First, there was a lack of protest in the area of safeguards. Secondly, the non tariff agreements had been negotiated principally among the developed countries and only at a late stage a few developing countries were associated with the drafting of portions of the text relating to special and differential treatment of these countries. This lack of adequate consultation led to a situation in which most of them did not have either interest or confidence to accede to these agreements.

The liberalizing effects of the Tokyo Round were soon lost as the world economy sank into a deep and prolonged economic recession in the years that followed. Import restrictions increased manifold, production subsidies were increased and export subsidization of agricultural products by some of the developed countries touched new peaks.

Towards the end of 1981, within two years of the conclusion of the Tokyo Round, the multilateral trading system created by GATT was under a grave threat. The Ministerial Conference of November 1982 was convened to attempt to curb protectionism and rekindle faith in a multilateral trading system.

³⁴ Anwarul Hoda, *Developing Countries in the International System* (Allied Publishers, New Delhi, 1987), pp. 34-37.

Towards the close of 1983, Japan and USA gave a call for a new round of multilateral trade negotiations. It was apparent that they wanted to broaden the mandate of GATT so as to cover new areas, particularly trade in services. Many developing countries were opposed to the proposal as trade in services was not covered by GATT and its rules were not designed to deal with the problems of the sector.

In sum, it may be stated that trade liberalisation among the major trading countries was successful in putting these provisions into practice. Trade liberalization among them was accomplished through removal of quantitative restrictions as convertibility of their currencies was restored and through a series of multilateral trade negotiations in GATT.³⁵

³⁵ Diane Tussie, *The Less Developed Countries and the World Trading System, A Challenge to the GATT*, (Frances Pinter, London, 1987) pp. 12-17.

CHART 1

DUTY REDUCTIONS SINCE 1934 UNDER THE US TRADE AGREEMENTS PROGRAMME.

GATT Conference	Proportion of Dutiable Imports Subjected to Reductions	Average Cut in Reduced Tariffs	Average Cut in Duties	Remaining Duties as a Proportion of 1930 Tariffs
Pre - GATT, 1934-47	63.9%	44.0%	32.2%	66.8%
Geneva, 1947	53.6%	35.0%	21.1%	52.7%
Annecy, 1949	5.6%	35.1%	1.9%	51.7%
Torquay, 1950-51	11.7%	26.0%	3.0%	50.0%
Geneva, 1955-56	16.0%	15.6%	3.5%	48.9%
Dillon Round, 1961-62	20.0%	12.0%	2.4%	47.7%
Kennedy Round, 1964-67	79.2%	45.5%	36.0%	30.5%
Tokyo Round, 1974-79	n.a	n.a	29.6%	21.2%

Source: Robert E. Baldwin, *Trade Policy in a Changing World Economy*, (Harvester Wheatsheaf, UK, 1988), p.20.

CHAPTER 4

UNCTAD and its Functioning

The United Nations Conference on Trade and Development is a permanent organ of the UN General Assembly. Its main purpose is 'to promote international trade with a view to accelerating economic development, to formulate principles and policies on international trade to initiate action for the adoption of multilateral trade agreements and to act as a centre for harmonizing trade and development policies of governments and regional economic groups.'¹

It aims at restructuring the international financial and monetary system to make it more responsive to the needs of developing countries, concentrating on four key issues - relieving the external debt burden of the developing countries, meeting the large payments deficits that they continue to experience, providing them with an adequate long term flow of financial resources and reforming the international monetary system to make its effects on different groups of countries more uniform as well as more universal in membership.

On August 3, 1962, the Economic and Social Council of the United Nations at its 34th session, by its resolution 917 (XXXIV) convened a conference on trade and development and decided that its agenda and documentation should be considered by a preparatory committee.

This resolution recognized that 'the developing countries have in recent years suffered from the drop in prices of primary products and the worsening of their terms of trade with industrialized countries and that the losses arising therefrom have hampered and delayed the implementation of their long-term development programme and that measures to impart stability in international commodity markets at remunerative levels are vital for the development of Least Developed Countries, so an UNCTAD should be convened.'

On December 8, 1962, the General Assembly of the UN at its 17th session, by its resolution 1785 (XVII) endorsed the decision of the ECOSOC to convene an UNCTAD and recommended that the latter should meet not later than early 1964.

On November 11, 1963, the General Assembly at its 18th session, by its resolution 1897 (XVIII) noted 'with appreciation the work done by the Preparatory Committee and the Secretary General of the Conference and welcomed a Joint Declaration of the Developing countries with regard to this Conference.'

¹ Edmund Jan Osmanczyke (ed), *Encyclopaedia of The UN and International Agreements*.

75 developing countries including Afghanistan, Brazil, Burma, Ethiopia, India, Pakistan, Yemen and Syria opined that 'the UNCTAD should represent an outstanding event in international co-operation conducive to the development of their economies and to the integrated growth of the world economy as a whole'.

They were very optimistic and this was manifest in their hopes that 'international trade could become a more powerful instrument and vehicle of economic development not only through the expansion of the traditional exports of the developing countries, but also through the development of markets for their new products and a general increase in their share of world exports under improved terms of trade. The volume of trade of the developing countries should be increased and its composition diversified; the prices of their exports should be stabilized at fair and remunerative levels and international transfers of capital should be made more favourable to those countries so as to enable them to obtain through trade more of the means needed for their economic development.'²

Prior to the opening of the Conference, its Secretary General Raoul Prebisch published a report entitled 'Towards a New Trade Strategy for Development', presenting the principal issues with which the Conference was confronted and suggesting an integrated programme of measures to assist governments in considering ways and means of dealing with these issues.³

Dr. Raoul Prebisch called for international commodity agreements to give less developed producers of primary products the same sort of price support and price stabilization assistance as were enjoyed by farmers of the developed countries, preferential access for exports of manufactures and semi-manufactures from developing countries to the markets of the developed countries, to enable them to compete on equal terms with the manufactures of those countries and preferential arrangements among developing countries, falling short of the free internal trade arrangements which are the only exception allowed to the GATT rule of non-discrimination, to permit them to gain the advantages of specialization in a large market.⁴

The decision to set up UNCTAD did not come about easily or smoothly. Western powers which had rejected the ITO proposal and had the strongest objections to the creation of and new UN machinery in the field of trade and development.

² UN Yearbooks, 1962, 1963.

³ UNCTAD : Basic Documents on its Establishment and Activities, UN Publication, pp 1-26.

⁴ Harry G Johnson, *Trade Strategy for Rich and Poor Nations*, (George Allen and Unwin Ltd, London, 1971), p 13.

With the ITO dead, UNCTAD had to struggle for recognition as an institution because GATT already existed as a contractual framework of rights and obligations and had the full support of the major trading countries.

UNCTAD stressed the development approach whereas the GATT promoted a liberal international trading system. There were areas of overlap as well as non-overlapping areas of work but the independent and distinctive co-existence of the two institutions was recognized as necessary and inevitable.⁵

The Western powers gave in only in the last resort as compromise arrangement between a non-existent International Trade Organization on the one hand and an already established GATT on the other.

The years since the establishment of the UNCTAD have witnessed profound changes in the international economic and political setting. Four phases may be identified - up to the early 1970's, mid-70's to the end of the decade, the 1980's and the early 90's.

The first ten years may be described as years of relatively high rates of growth of income of developed market economy countries and of world trade. At the political level, these years were characterized by a relative absence of high international tension, thereby leading to détente in an ambience of super power rivalries and regional conflicts.

The second phase saw the start of the erosion of the multilateral trading system, the slowdown of growth rates and rise in the emergence of structural rigidities and maladjustments and the recrudescence of protectionism, the emergence of the energy problem as a significant component of world economy, the OPEC and its economic and financial impact, and the increased interdependence of countries as well as of production, trade, money and finance. All these factors led to a halting and hesitant part acceptance by the leading Western countries of the inadequacy of the institutional and policy instruments to deal with them in an integral and co-ordinated manner.

Parallel to these developments and both contributing to as well as resulting from them, other significant forces were at work: the shift in the balance of economic forces among the developed market economy countries towards Western Europe and Japan, with some diminution of the US dominance in world trade and money, the near completion of the economic integration of Western Europe, at least of its current possibilities and its process of internal consolidation and realignment; the increased pervasiveness of TNCs in the world economy- in production, technology, trade, finance, marketing, distribution, communications

⁵ R Krishnamurti, '*UNCTAD as a Negotiating Instrument on Trade Policy: the UNCTAD - GATT Relationship*', in M Zammit Citajar (ed) '*UNCTAD and the South-North Dialogue, The First Twenty Years*', (Pergamon Press, 1985), pp. 33-70.

and information systems etc., the vastly increased role of private international commercial finance ; a steady increase in developing countries' share in world output and trade, even in an adverse milieu, with the significant rise of the new industrial exporters among them and significant rates of growth of trade among developing countries.

The beginning and steady progression of the economic crisis had predictably highly adverse consequences on the growth rates and development programmes of developing countries with depressed commodity prices, restarted export markets, high interest rates relative to inflation rates, reduced flow of ODA and limited access to international capital markets, aggravation of the external debt problem and the like.

The third phase saw the aggravation and deepening of the world economic crisis, manifest in the stronger operation of all the adverse elements and leading to a grim situation for the world economy as a whole and particularly for the developing countries.⁶

ORGANIZATIONAL STRUCTURE

The organizational structure included a permanent secretariat headed by a Secretary General who was an appointee of the UN Secretary General in confirmation with the General Assembly. He would help the UNCTAD in assisting the UNCTAD intergovernmental machinery by preparing the necessary studies and by putting forward new and innovative ideas, approaches, policies and proposals with regard to the myriad issues within UNCTAD's competence, in providing technical assistance and in offering mediation and good offices.⁷

A Trade and Development Board, a permanent organ of the UNCTAD, was set up to ensure the continuity of the conference and to take appropriate action for the implementation of recommendations, resolutions and other decisions.⁸

Membership of the UNCTAD would be universal and would not discriminate on the basis of any particular economic or social system. Apart from the countries of the South, not only the developed countries but also the socialist economies were welcomed in UNCTAD. Each member was to have one vote and the decisions of both the Conference and the Board were to be taken by a simple majority of those present and voting.

The time lag between the two conferences was set at three to four years.

⁶ The History of UNCTAD, 1964-1984, UN, New York, 1985, p 10.

⁷ *Ibid*, p 23.

⁸ International Trade and Development: Selected International Documents, IIFT Publication, 1972, pp 6-7.

UNCTAD I

The institutional structure and the new organization's role and functions were established at UNCTAD I held at Geneva between March 23 and June 16, 1964 under the slogan 'trade not aid'.

The conference began with a controversy on whether UNCTAD should be an organ of the General Assembly or Economic and Social Council. The developing countries preferred the former since the ECOSOC membership was limited and unrepresentative. Its efforts relating to Least Developed Countries' problems were seen to be marginal and ineffective.

Finally it was established as a principal subsidiary organ of the General Assembly and its functions specified.

1. To promote international trade, especially with a view to accelerating economic development, particularly trade between countries at different stages of development, between developing countries and countries with different systems of economic and social organization taking into account the functions performed by existing international organizations.
2. To formulate principles and policies on international trade and related problems of economic development.
3. To make proposals for putting the said principles and policies into effect and to take such other steps within its competence as may be relevant to this and having regard to differences in economic systems and stages of development.
4. Generally to review and facilitate the co-ordination of activities of other institutions within the UN system in the field of international trade and related problems of economic development and in this regard to co-operate with the General Assembly and the ECOSOC with respect to the performance of their responsibilities for co-ordination under the Charter of the UN.
5. To initiate action, where appropriate in co-operation with the competent organs of the UN for the negotiation and adoption of multilateral legal instruments in the field of trade with due regard to the adequacy of existing organs of negotiation and without the duplication of their activities.
6. To be available as a centre for harmonizing the trade and related development policies of government and regional economic groupings .
7. To deal with any matter within the scope of its competence.⁹

⁹ H.D.Shourie, *UNCTAD II : A Step Forward*, (IIFT Publication, 1968), p 23.

In institutional terms, UNCTAD I produced two epochal results -

- a) the establishment of UNCTAD itself as a permanent institution and
- b) the emergence of the Group of 77 as a united force of the developing countries.

The G 77 nations comprised a coalition of the world's Least Developed Countries banding together for the first time, forging common positions and proposals and seeking to apply concerted leverage so as to increase their bargaining power in the negotiations vis-a-vis the industrialized nations.

The 1964 UNCTAD was a substantial success in calling the manifold grievances of the developing countries in the field of international trade policy, and to a lesser extent aid policy, forcibly to the attention of developed countries.

UNCTAD II

The second UNCTAD was held in March, 1968 and was beset with organizational difficulties, both in setting up and staffing the institution itself and in preparing for the conference. This delay was extremely unfortunate from the point of view of interests of the South as during the interim period the commitment of the North to the assistance of the developing countries declined. This was due to the rapid worsening of the US balance of payments position, the deterioration of the British position culminating in the devaluation of 1967, an increasingly unstable international monetary position and increasing preoccupation of the developed countries with their internal affairs.

Even so, by its resolution 21 (II) of March 26, 1968, a Generalized System of Preferences was set up. The System was based on three main principles - the tariff preferences granted under the system were to be generalized, non-discriminatory and non-reciprocal.¹⁰

The developed importing countries were not required to pay any import duty on the products or goods imported by them, under this system, from developing countries, to increase the flow of the latter's export trade and allow them to adopt an outward looking trade strategy.

GSP laid trade agreements between a grantor State and a beneficiary State could be dismantled at any time at the discretion of the grantor state.¹¹

¹⁰ '*Operation and Effects of the GSP*', Sixth Review, Selected studies submitted to the Special Committee on Preferences at its 10th session, Geneva, May 11-27, 1981, UN Publication.

¹¹ S.K. Chatterjee, '*Forty Years of International Action for Trade Liberalization*,' Journal of World Trade, (Volume 23 (4), August, 1989) pp 56 -58.

The developing countries were thus given special trade measures in their favour without any reciprocal obligations. The review, monitoring and improvements of the GSP was a major preoccupation of the UNCTAD during the 1970's. Thus, the basic concept of special and differential treatment was accepted.

UNCTAD III

At the time of the third UNCTAD at Santiago de Chile in 1972, the developing countries and the developed countries could not meet on the basis of the common idea that trade was the central engine for development. The industrialized countries accepted that trade barriers and protectionism should be combatted.

The developing countries were seen as heavily under industrialized and for the sake of development and equity, it was primordial that a larger part of the world's total industrial production should take place in the developing parts of the world.

In line with this industrialising approach, specific emphasis was laid on questions of technology transfer and the related costs. The multinationals were criticized for profiting from their monopolistic position in general and specifically from their monopoly on selling technology to developing countries.

At UNCTAD III, it was decided that technical assistance should be provided in the new round of multilateral trade negotiations, the Tokyo Round. A technical co-operation programme was set up in 1973 which assisted the developing countries in having their interest clearly reflected in language written into the Tokyo Declaration adopted in September 1973.

The services offered by the programme included the provision of computerized data on trade flows, tariffs and non-tariff barriers, requests and offers made in multilateral trade negotiations and provision of technical notes for meetings of MTN negotiating groups and provision of documents.

Although the early documents of UNCTAD spoke a relatively clear language, the conferences up to 1972 were not politicized as they would be at a later stage. The economic crisis had not yet struck the developed capitalist countries. The ideas of equity and development were not resisted as their concrete implementation would be in later UNCTAD conferences.

Up to 1973 and the oil crisis, the way from general resolutions to concrete changes in trade regulations, in legislation for transnational corporations - actually real changes in the relations of strength - seemed long.

After UNCTAD III, a certain politicization and militancy was palpable in the conference proceedings.

The developing countries had begun to realize that they were poor despite the UN Development Decade of the 1960s and in the face of continuing economic growth and trade among the developed countries. This was evident from the fact that while trade expanded during the 1960s from 6.4% to 8% , the share of LDCs decreased from 31.2% to 19.1%.¹²

It was clear that their problems required structural changes rather than mere capital and technology transfers.

The proposed structural changes included new ground rules to regulate the trade of the developing countries in primary products.

UNCTAD IV

At UNCTAD IV in Nairobi, Kenya, in 1976, the proposal for an integrated programme for commodities was adopted, the lynchpin of which was a Common Fund, jointly financed by producers and consumers, that would help stabilize price fluctuations in all major commodity items.

The integrated programme for commodities comprised five basic elements -

1. the establishment of internationally owned stocks covering a wide range of commodities
2. the establishment of a common financing fund that would make resources available for the acquisition of stocks
3. the institution of a system of medium term to long term commitments to purchases and sell commodities at agreed prices
4. the institution of more adequate measures than were at the time available to provide compensatory financing to producers to cover shortfalls in export earnings
5. the initiation of an extensive programme of measures to further the processing of commodities by the producing countries themselves.

¹² H D Shourie, *UNCTAD II, : A Step Forward*, (IIFT Publication, 1968), pp 7-8.

The proposals met with a positive response and through resolution 93 (IV), the Integrated Programme on Commodities was adopted without dissent.

It was expected that the agreements to be negotiated under the programme would be more multi-dimensional in character than had been the case in the past. The programme laid down well-defined procedures and a time-frame for implementation. It identified 18 commodities of export interest to developing countries which together accounted for a little over 60% of their exports of commodities, excluding petroleum. It also specified a process for the negotiation of a central commodity financing facility, the Common Fund.¹³

The fund was given three functions - to finance buffer stocks through the so-called first account, finance other measures through the second account and promote co-ordination and consultation through its second account, thus providing a commodity focus.

The second account was designed to play second fiddle to the first account whose role in financing international buffer stocks and internationally co-ordinated national stocks was the main reason for the fund's existence.

The fact is that the first account which was to receive \$400 million to begin with, has remained inoperative.

The reason why the Common Fund is a largely ineffective body is that the leading advocates of free markets - notably the US, Germany and Great Britain, have won converts from among both the developed and developing countries to their view that the use of buffer stocks to stabilize prices is both ineffective and an unwarranted intervention in the free play of market forces.¹⁴

UNCTAD V

Held in 1979, UNCTAD V was a damp squib. No decisions were taken on any of the areas of neglect regarding the developing countries. Rather, resolutions were adopted authorizing the secretariat to carry out a number of studies in regard to the areas like compensatory financing and processing of primary products.

Until the sixth session of the Conference, work proceeded on these studies in parallel with continuing effort in regard to the establishment of the Common Fund.¹⁵

¹³ The History of UNCTAD, 1964-1984, UN, New York, 1985, p 63 -65.

¹⁴ The Economic Times, Hopes on UNCTAD Programme for Commodities Dashed, July 13, 1993.

¹⁵ The History of UNCTAD, 1964 - 1984, UN, New York, 1985, pp 67-68.

UNCTAD VI

UNCTAD VI held between June 6 and July 3, 1983 at Belgrade confirmed the imbalance in the relations of strength between, on the one hand, a heterogeneous and crisis struck Third World and on the other, a fairly unified developed world.

Though the latter has also been hit by the crisis, yet it remains convinced that the solution will come as a result of recovery in the Northwestern hemisphere and not by the introduction of a new international economic order.

The propositions of the two Brandt reports, based on the idea of a fundamental interdependence and community of interest between the rich and the poor countries, were astonishingly absent from the UNCTAD VI discussion and final resolutions. Furthermore, the symbolic decision of the US to dissociate itself from the final statement of the Conference, highlighted the actual policy of the Reagan administration towards the Third World.

UNCTAD VI confirmed that the North-South dialogue had reached an impasse. There was the same lack of progress and concrete action and there was a repetition of the rejectionist attitude as shown during the eleventh Special Session of the UN on Development in 1980.

UNCTAD VII

UNCTAD VII was held in Geneva between July 9 and August 3, 1987. This was a damp squib as developed countries made every effort to dismount it. It reduced UNCTAD to a marginal status and developing countries realized the futility of direct confrontation.

Noting that the UNCTAD had lost ground in the discussion and negotiation of key issues, it was insisted that the main focus of UNCTAD VIII at Cartagenas de Indianas in February 1992 should be able to restore the organization's credibility and relevance.¹⁶

UNCTAD VIII

This institutional reform of UNCTAD overshadowed discussions in other substantive areas at UNCTAD VIII. The western buzzwords about institutional reform was that UNCTAD should become the 'OECD of the South'.¹⁷ In effect that meant focussing UNCTAD mainly on study and analysis and reducing or eliminating its capacity to undertake trade negotiation.

¹⁶ UNCTAD Bulletin, September - October 1991, p 9.

¹⁷ Bhaskar Menon, UNCTAD VIII Breaks New Ground, The Times of India, March 5, 1992.

The US and Britain wanted to achieve this end by doing away with all existing committee structures under the Trade and Development board and replacing them with ad hoc and expert groups having two year renewable mandates.

Standing committees were formed in 1990. Each committee would be operational for four years. Committees were on poverty alleviation, co-operation in the services sector, technology and comparative understanding of privatization.

Five working groups were established for two years each. They dealt with investment and development finance, privatization, trade, technology transfer and trade efficiency.

The refocussing of UNCTAD was clear at Cartagenas de Indianas where its aims were listed anew as partnership for development, global interdependence, paths to development and sustainable development.

New issues were introduced into the UNCTAD agenda including poverty alleviation and environmentally sustainable development. Western nations wanted the former to focus on national policies while the developed countries stressed international poverty alleviation programmes.

The Conference also set in place a process of 'maturing' issues that were to be brought before UNCTAD. This is to consist of study, analysis and expert consultations and must precede any attempt at negotiations. A criteria to decide when negotiations could be initiated were also agreed to, thus achieving the western objective of keeping UNCTAD out of the path of the GATT.

The breakthroughs were possible primarily because of the dissolution of the Group of 77 which for nearly three decades had offered to take the lead in defining country positions on economic and social issues in negotiation with the developed countries.

At Cartagenas de Indianas, the Latin Americans showed greater affinity with the US, while support from the Europeans was for the Africans. The Asians were too riven with conflicts to be very cohesive.

The marginalization of the Group was apparent in the introduction of new criteria of economic assessment - human rights, democratization, a preference for free markets, cuts in military budgets, efficiency and good government - all of which only a couple of years ago would have been rejected by the Group of 77 as interference in the domestic affairs of developing nations.

The analytical report of the UNCTAD secretariat to the Conference points out the trends in world trade in the last decade. "The 1980s witnessed the emergence

of a more integrated global economy driven by rapid technological progress. The performance of world trade improved as the decade unfolded....By the end of the decade, the pace of export expansion decelerated again together with a slowdown in the growth of world output.'

Further, it states, 'if the growth of world trade in the 1990s is to remain buoyant and if its benefits are to be more widely spread, a strengthening of the multilateral system is required through measures covering

1. Further trade liberalization through the dismantling of barriers, particularly non tariff barriers, in particular those facing the exports of developing countries' goods and services.
2. Special measures in favour of commodity exporting countries
3. Assistance to developing countries in building supply capabilities in manufacturing and modern services.
4. The deepening of trade and economic reforms in developing countries, in particular, innovative policies towards foreign investment and the development of a multilateral framework to govern foreign investment
5. Improved market access to technology for developing countries
6. Fuller integration of the counties of Central and East Europe in the multilateral trading system.¹⁸

The LDCs today recognize and accept the harsh reality that they cannot ask for the support and co-operation of the international community while maintaining that such a programme can be exclusively their affair and cannot be subject to ratification or review in any international institution including the UNCTAD.

With the exacerbation of the economic crisis afflicting the developing countries, they have had to increase their dependence on institutions like the World Bank and the IMF, with the result that UNCTAD has been sidelined.

The developing countries would do well to heed the words of Julius Nyerere who during UNCTAD VI commented, 'We have been making the mistake of acting as if negotiation is exclusively a matter of reason and morality, which has nothing to do with the strength of the participants. The truth is that we need the power to negotiate. '¹⁹

¹⁸ UNCTAD VIII: Analytical Report by the UNCTAD Secretariat to the Conference, UN Publication, p 44.

¹⁹ Quoted in Inga Brandell's Article, *UNCTAD VI: Impasse in North-South Relations*, Bulletin of Peace Proposals, Volume 20, number 3, 1989.

In May 1994, the Trade and Development Board carried out a mid-term review of the work programme of UNCTAD's intergovernmental machinery and of its technical co-operation activities. The feeling among member states was that the policy and institutional reforms undertaken by UNCTAD VIII had proved beneficial and the organization's work had become more relevant to their needs.

The exchange of national experiences on such issues as privatization, trade efficiency, investment and financial flows had proved particularly valuable and had had a direct impact at the national policy making level.

The Board went on to draw some important lessons from the post-UNCTAD VIII experience: both the structure of its subsidiary bodies and their working methods needed further streamlining in view of resource and calendar constraints; the concerns of some countries, particularly the LDC's, needed to be better reflected in UNCTAD's work and their participation at meetings facilitated and finally, reflecting the concern referred to above, more attention needed to be given to making the outcomes of intergovernmental deliberations more action-oriented.

Acting upon these findings, the Board decided that the existing ad hoc working groups should be wound up. Five such groups had been established by UNCTAD VIII with a two-year life-span and it was decided to now limit these to three.

These will deal with trade, environment and development, trading opportunities in the new international trading context and the role of enterprises in development.²⁰

Thus, the UNCTAD in its diminished and new found role is to be an advisory body. For instance, acting on the recommendations of the report of a group of independent experts to UNDP (Kalderen Report), UNDP, UNCTAD and the World Bank established, in 1991, a joint programme to provide technical co-operation in debt management to developing countries.

The core of UNCTAD's technical co-operation programme consists of helping developing countries surmount their organizational and managerial difficulties by:

1. Improving their capacity to define and select appropriate external borrowing strategies.

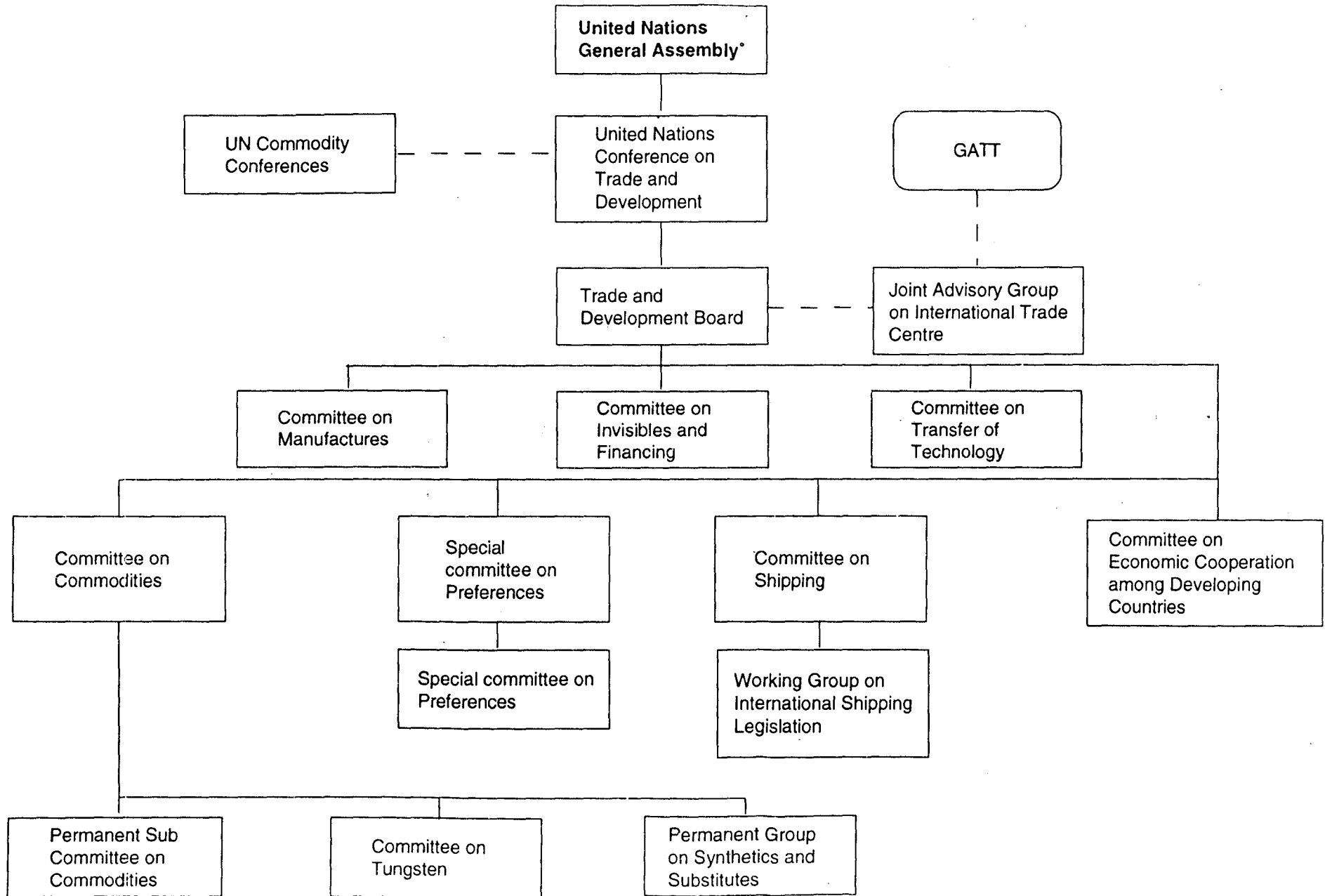
²⁰ UNCTAD Bulletin, number 26, May-June, 1994, pp 5-10.

2. Assisting them in developing appropriate structures for more effectively managing external debt, including the legal, institutional and administrative aspects.
3. Assisting the debt management units in the Ministry of Finance and Central banks to operate more efficiently through the strengthening of their technical capacity and, more generally, their staffing and other resources.
4. Promoting a better understanding among developing countries of all aspects of effective debt management.²¹

²¹ Trade and Development Report, UN Publication, New York, 1993.

CHART 2

INSTITUTIONAL MACHINERY OF THE UNCTAD



CHAPTER 5

The World Trade Organization

Due to the general dissatisfaction in the developing and developed countries with the operation of the global trading regime, it was thought necessary to change the functioning of the GATT system. The issue of organizational restructuring was raised in the Uruguay Round of multilateral trade negotiations for the first time since the failure to establish the International Trade Organization .

The objectives of the Uruguay Round of Negotiations included bringing about further trade liberalization and expansion of world trade, strengthening the role of GATT, improving the multilateral trading system based on the principles and rules of GATT, increasing the responsiveness of the GATT system to the evolving international economic environment through facilitating necessary structural adjustment, enhancing the relationship of the GATT with the relevant international organizations and taking account of changes in trade patterns.¹

The GATT mechanism set up in place of the International Trade Organization in 1948, was unable to prevent a significant increase in the use of non-tariff trade-distorting measures in recent years and more and more trade policy actions were being taken outside the GATT framework. An estimate revealed that 27.1 per cent of the total imports of the industrial countries were covered by non-tariff barriers.

Four general areas of dissatisfaction with the GATT system were identified.

1. The unconditional most-favoured nation principle was being breached and needed to be changed or reasserted. Countries were reluctant to reduce trade barriers because of the free-rider problem associated with the unconditional MFN principle.
2. Existing GATT rules, especially those covering 'fair' trading practices were not stringent enough and needed to be altered. For instance, countries like the US were demanding a 'level-playing ' field as they felt their markets were more open than markets in Japan and the European Community. The developing countries justified their protectionist stance on the basis of infant industry arguments and imperfectly operating private domestic markets. A

¹ S K Chatterjee, *Forty Years of International Action for Trade Liberalization*, Journal of World Trade, p 56.

comprehensive subsidies negotiation was needed such that particular subsidies were phased out gradually and the incentive for each country to follow this would be to reduce their own subsidy and also the threat of carrying out the countervailing duty actions permitted under GATT rules.

A number of governments wanted the provisions of GATT covering agricultural products changed to prevent export subsidization in this sector while others wanted to terminate the Multifibre Arrangement and make the textile and apparel sectors subject to the usual GATT rules.

3. There was a need for the GATT rules and agreements to be extended to cover such matters as services trade, trade-related investment requirements and the protection of intellectual property rights. It was difficult to leave out the growing services trade from an international framework of 'good' behaviour like the GATT.

A specific GATT code dealing with trade-related performance requirements imposed on foreign investors was being demanded to halt the spread of trade-distorting regulations and to eliminate existing ones.

The rapid expansion of trade in such items as computer software increased the pressures from most technologically advanced countries for rules to provide greater protection for intellectual property rights and prevent counterfeiting of trademarked commercial goods. A code to prevent counterfeit trade in trademarked merchandise was tentatively agreed on in the Tokyo Round of negotiations by the major trading nations but it was not put into effect owing to the opposition of the developing countries. These countries argued that the matter should be considered in the World Intellectual Property Organization rather than in GATT.

4. GATT mechanisms for settling disputes, reaching decisions and dealing with the developing countries were ineffective and unfair and needed to be revised. It was alleged that the panel of experts appointed to render non-binding decisions in a dispute were influenced by political pressures by the disputants, particularly the major trading powers, and thus were not objective enough.

Some countries blocked the adoption by the Contracting Parties as a whole of a panel's decision when this decision was unfavourable to them. Even when a decision was adopted by the group, some countries ignored it and continued the condemned practice.

An obvious drawback of the dispute settlement procedure was the appointment of officials representing the GATT governments that may later be involved in a dispute. There would be a natural tendency for decisions to be influenced by possible decisions and actions on unrelated disputes in the

future. It was suggested that a permanent roster of experts who were not at the time representing any government and in whom members had confidence should be appointed for resolving disputes.

It was clear that the only way to make the dispute settlement process effective was to restore confidence that the rules worked to the advantage of all countries in the long term.²

Other reasons for considering changes included the growing concern about the relationship between some of the Tokyo Round codes to the GATT system, the admittance of new or potential new members like China whose economies are structured on the basis of principles other than market principles and the inability of the traditional GATT system to keep up with the series of new trading problems and structures.³

Some institutional problems also existed. The fundamental treaty structure of the GATT was flawed as GATT rules did not apply as binding international treaty obligations.

The amending provisions of the basic treaty structure were such that it was rarely possible to amend the GATT. The delay required by the treaty acceptance process, the difficulty of obtaining the required amount of acceptances, the shift in bargaining power involved under the amending procedure in the context of a large membership and the fact that even when an amendment was effective in GATT, it would not apply to countries which did not accept it, caused a certain rigidity and inability to develop rules to accommodate the new developments of international trade.

The relationship of the GATT treaty system to domestic law in a number of GATT member countries was unclear. The power of the contracting parties defined in the GATT agreement was very ambiguous. The decision making process was also considered to be dissatisfactory.⁴

A group on Functioning of the GATT System was set up to discuss these issues. Two alternative approaches emerged as a result. The first was on how to improve the existing GATT system and the second was on how a new organizational set-up could be established.

IMPROVEMENT OF THE GATT SYSTEM

² Robert E Baldwin, *GATT Reform : Selected Issues*, 'Protection and Competition in International Trade', (ed) Henryk Kierzkowski, (Basil Blackwell, New York, 1987), pp 205 - 213.

³ Sumitra Chishti, *Restructuring of International Economic Relations*, (Concept Publishing House, New Delhi) 1991, pp 124-127.

⁴ John H Jackson, *Restructuring the GATT System*, The Royal Institute of International Affairs, (Pinter Publishers, London, 1989) pp 45-47.

This referred mainly to an enhanced surveillance in the GATT through periodic reviews and transparency in domestic decision making. Stress was to be laid on institutional reinforcement of the GATT and increasing the contribution of the GATT to a greater coherence in the global economic policy.

The US was keen to change the decision-making structure of the GATT as it felt that decision-making in the GATT had been hindered by the lack of an executive group within the organization. A management board at the ministerial level within the GATT could serve as a forum for discussion on trade issues of common concern, assist in the development of agendas, take primary responsibility for developing an outline for consideration by the contracting parties of a successor organization to the GATT and to guide co-operation between the GATT and the international financial institutions.

The US thought that the management board would have limited decision-making powers delegated to it by the contracting parties, the Council of Representatives or any other GATT bodies or take up issues on its own.

The US proposal suggested that the board should consist of eighteen members, distributed among contracting parties thus:

- Four seats to be reserved for contracting parties undergoing biennial review under the Trade Policy Mechanism
- Eight seats to be reserved for contracting parties undergoing review under the Trade Policy Review Mechanism every four years, within this set of contracting parties, one half would serve in alternative years
- Six seats to be reserved for contracting parties undergoing review under the Trade Policy Review Mechanism every six years. Within this set of countries, annual rotation shall be enforced and participation shall be representative of the broad geographic areas to which members belong.
- Only contracting parties that have fulfilled their TPRM obligations will be eligible for participation.

The board would meet as needed, specially in emergencies, but not less than twice a year.

ESTABLISHING A NEW ORGANIZATION

The Economic and Social Council in its 36th Plenary meeting on July 26, 1990 requested the Secretary-General to report to the General Assembly at its forty-

sixth session, through the Economic and Social Council at its second regular session of 1991, on institutional developments related to the strengthening of the international organization in the area of multilateral trade, taking into account the provisions of paragraph 32 of the Declaration on International Economic Cooperation, in particular realization of economic growth and development of the developing countries, adopted by the Assembly at its eighteenth special session.⁵

The Final Draft Act of the Uruguay Round provided for an administrative infrastructure for the international implementation of the Uruguay Round results. It also considered desirable the establishment of a new multilateral trade organization.

The Canadian representative presented Canada's proposal for a world trade organization. The proposal emphasized that a credible multilateral alternative to unilateral action was a requisite considering the cataclysmic changes in the international economic environment. Canada proposed that the substantive obligations of the GATT and other existing agreements, including the Uruguay Round Agreements would not be changed. The World Trade Organization would provide an institutional framework and formal legal status for the overall, multilateral trading system.

It would provide the institutional capacity and credibility for the new GATT trading system to engage in more sustained and effective cooperation with the IMF and the IBRD.

The European Economic Community also submitted a comprehensive proposal for a Multilateral Trade Organization. The MTO would administer the Multilateral Trade agreements as also any other multilateral trade agreement negotiated under the auspices of GATT or the MTO. It would adopt and administer an integrated dispute settlement mechanism and a Trade Policy Review Mechanism.

It would launch negotiations in areas relevant to the purposes of the Multilateral Trade Agreements and no decision or other action of the MTO shall have the effect of imposing on a member any new substantive obligations which the member has not specifically agreed to undertake.

The proposal gave a detailed description of the structure of the proposed MTO which was to have a General Council, a Goods Council and a Services Council.

⁵ Economic and Social Council T/1990/IMF/8, August 15, 1990, quoted in Sumitra Chishti, *Restructuring of International Economic Relations* (Concept Publishing House, New Delhi) 1991, p. 132-133.

The General Council would consist of members of the MTO and carry out its functions. It could establish subsidiary bodies and its own rules of procedure while approving rules of procedure of the Goods and Services councils and subsidiary bodies.

The Goods Council would exercise the functions of contracting parties of the GATT and of the Uruguay Round Agreements on Trade in Goods.

The Services Council would exercise the functions of the parties of the general Agreement on Trade in Services.

The Secretariat would consist of a Director General as chief administrator of the MTO and his powers, duties, conditions and term of office would be confirmed by the regulations approved by the General Council. He or his representative would be entitled to participate in all meetings of the General Council though without the right to vote. The Director General would appoint the members of the staff and fix their duties and concessions of service in accordance with regulations approved by the General Council.

The responsibilities of the Director General and other staff members would be exclusively international in character such that they would not receive instructions from any government or authority other than the MTO.

Each member of the MTO would be entitled to one vote and decisions of the General Council would be taken by a majority of votes cast unless provided for otherwise. The General Council would endeavour to decide on the basis of consensus.

The Director General would be the authority to present to the General Council the annual budget estimates and financial statement of the MTO which would then approve it. The General Council would apportion the expenditures of the MTO among the members in accordance with a scale of contributions to be fixed by the Council. A member could lose his vote if the arrears due exceeded the amount of contributions due in respect of the preceding two financial years.

The MTO would be a legal personality enjoying in the territory of each of the members such legal capacity, privileges and immunities as may be necessary for the exercise of its functions. The representatives of the members would also enjoy such privileges and immunities as may be necessary for the independent exercise of their functions in connection with the MTO.

The MTO could make suitable arrangements for consultation and cooperation with non-governmental organizations concerned with matters within the scope of the MTO and decisions of amendments could be taken by two-thirds of the members.

There were some suggestions outside the Uruguay Round, too. The Italian foreign trade minister suggested transformation of the GATT into a full-fledged international trade organization with regulatory power and close links with the International Monetary Fund and the World Bank. ⁶

Ratification of the Uruguay Round was being opposed by different countries on different grounds. Like their counterparts in the developing countries, the opponents of the Round in the US were worried about a loss in sovereignty but for diametrically opposite reasons. While the developing countries believed that the World Trade Organization would strengthen US domination, American opponents believed that the WTO would lead to a decline in US influence. American opponents believed that the one-country-one-vote principle along with the institutionalization of voting would give the developing countries a distinct edge in the WTO.

Despite this fear, the effort to develop an integrated and durable multilateral trading system finally led to the signing of the Marrakesh agreement on the fifteenth of April, 1995, establishing the World Trade Organization with status equal to the International Monetary Fund and the World Bank.

The main elements of the Final Act included countries pledging to cut tariffs on industrial and farm goods by an average of about 37%, four billion dollars worth of annual trade in services were brought under rules as was agriculture. Import quotas on textiles and clothing are to be phased out over ten years. The treaty toughens protection for patents, copyright, rights of performers and producers of sound recordings, trademarks and labels of origin. ⁷

The agreement consists of sixteen articles and four annexes. It reiterates the objectives of the GATT like raising standard of living and incomes, ensuring full employment, expanding production and trade and recognizing the need for positive efforts designed to ensure that developing countries secure a better share of growth in international trade. The scope of the WTO encompasses provision of a common institutional framework for the conduct of trade relations among its members.

GATT 1947 - GATT 1994

GATT 1994 is an updated version of GATT 1947. It contains :

1. The provisions of the legal instruments that have entered into force under the GATT 1947 before the date of entry into force of the World Trade Organization, including protocols and certifications relating to tariff

⁶ Ibid, pp 127 - 140.

⁷ Financial Express, 16.5.95.

concessions, protocols of accessions, waivers granted under Article XXV and other decisions of the Contracting Parties to GATT 1947.

2. Seven understandings reached in the Uruguay Round on the interpretation of GATT provisions dealing with schedules of concessions (Article II: 1 (b)), state trading enterprises (Article XVII), balance of payments provisions (Articles XII and XVIII B), customs unions and free trade areas (Article XXIV), waivers (Article XXV), modification of GATT schedules (Article XXVIII) and non-application of the General Agreement (Article XXXV).
3. The schedules of commitments.⁸

STATUS OF THE WTO

The WTO has legal personality and is to be accorded by all its members such legal capacities, privileges and immunities as are necessary for the exercise of its functions.

The officials of the WTO and the representatives of the members shall also be accorded such privileges and immunities as are necessary for the independent exercise of their functions in connection with the WTO.

MEMBERSHIP

The contracting parties to the GATT 1947 as of the date when the Agreement entered into force and the European Communities which accepted the Uruguay Round Agreement and the Multilateral Trade Agreements are original members of the WTO. The least developed countries recognized as such by the United Nations are only required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

Any state or separate customs territory possessing full autonomy in the conduct of its external commercial relations may accede to this Agreement on terms to be agreed between it and the WTO. Decisions on accession are to be taken by the Ministerial Conference which will approve the agreement on the terms of accession by a two-thirds majority of the members of the WTO.

STRUCTURE OF THE WTO

There is a Ministerial Conference composed of representatives of all the members which is to meet at least once in two years. This Conference is to carry out the functions of the WTO and has the authority to take decisions on all matters under any of the Multilateral Trade Agreements.

⁸ GATT Document, *'The results of the Uruguay Round of Multilateral Trade Negotiations'*

There is a General Council composed of representatives of all members which is to meet 'as appropriate'. It will carry out the functions of the Ministerial Conference in the intervals of the latter's meetings. It will also meet to discharge the responsibilities of the Dispute Settlement Body and the Trade Policy Review Body which may both have their own chairman and could establish such rules of procedure as they deems fit for the fulfillment of those responsibilities.

The General Council has to make arrangements for effective cooperation with other intergovernmental organizations that have responsibilities related to those of the WTO.

It may also make arrangements for consultation and cooperation with non-governmental organizations concerned with matters related to those of the WTO.

There is a Council for Trade in Services , a Council for Trade in Goods and a Council for Trade-Related Aspects of Intellectual Property Rights which shall operate under the general guidance of the General Council. These Councils are to carry out the functions assigned to them by their respective agreements and by the General Council. They can establish their respective rules of procedure subject to the approval of the General Council. Membership in these councils is open to all members and they can meet as necessary to carry out their functions.

They can also establish subsidiary bodies as required. These subsidiary bodies can establish their respective rules of procedure subject to the approval of their respective councils.

The Ministerial Conference shall establish a Committee on Trade and Development, a Committee on Balance of Payments Restrictions and a Committee on Budget, Finance and Administration, which shall carry out the functions assigned to them by the multilateral trade agreements and any additional functions assigned to them by the General Council and may establish such additional Committees with such functions as it may deem appropriate.

As part of its functions, the Committee on Trade and Development shall periodically review the special provisions in favour of the least developed countries and report to the General Council for appropriate action. Membership in these committees shall be open to representatives of all members.

The bodies provided for in the Plurilateral Trade Agreements⁹ shall carry out the functions assigned to them under those Agreements and shall operate within

⁹ Plurilatera Trade Agreements are a part of the larger WTO Agreement. Unlike Multilateral Trade Agreements, they are not binding on all members. They apply only to those members who have agreed to accept them. '*GATT Agreements, Final Text of Uruguay Round 1994,*' (MVIRDC

the institutional framework of the WTO. These bodies shall keep the general Council informed of their activities on a regular basis.

There is an established Secretariat of the WTO headed by a Director General. The Ministerial Conference will appoint the Director General and adopt regulations setting out the powers, duties, conditions of service and terms of office of the Director General.

The Director General is to appoint members of the staff of the Secretariat and determine their duties and conditions of service in accordance with regulations adopted by the Ministerial Conference.

The responsibilities of the Director General and the staff of the Secretariat are exclusively international in character and they shall not seek or accept instructions from any government or authority external to the WTO. They are to refrain from any action which might adversely reflect on their position as international officials.

FUNCTIONS OF THE WTO

The WTO is to provide the forum for negotiations among its members concerning their multilateral trade relations and a framework for the implementation of the results of such negotiations.

It shall administer the Understanding on Rules and Procedures governing the Settlement of Disputes. The Dispute Settlement Body is to help in securing dispute resolution. It requires a member to enter into consultations within thirty days of a request for consultations from another member. If after sixty days from the request for consultations there is no settlement, the complaining party may request the establishment of a panel. Where consultations are denied, the complaining party may move directly to request a panel. The parties may voluntarily agree to follow alternative means of dispute settlement including good offices, conciliation, mediation and arbitration.

Where a dispute is not settled through consultations, the DSU requires the establishment of a panel, at the latest, at the meeting of the DSB following that at which a request is made, unless the DSB decides by consensus against the establishment.

The DSU also sets out specific rules and deadlines for deciding the terms of reference and composition of panels. Standard terms of reference are to apply unless the parties agree to special terms within twenty days of the panel's establishment. If not, this can be decided by the Director General.

Panels would consist of three persons of appropriate background and experience from countries not party to the dispute. A panel would complete its work within

six months or in case of urgency within three months. Panel reports may be considered by the DSB for adoption twenty days after they are issued to members. Within sixty days of their issuance, they will be adopted, unless the DSB decides by consensus not to adopt the report or one of the parties notifies the DSB of its intention to appeal.

The Appellate Body is composed of seven members of which three will serve on any one case. An appeal will be limited to issues of law covered in the panel report and legal interpretations developed by the panel. Appellate proceedings shall not exceed sixty days from the date a party formally notifies its decision to appeal. The resulting report shall be adopted by the DSB and unconditionally accepted by the parties within thirty days following its issuance to members, unless the DSB decides by consensus against its adoption.

Once the panel report or the Appellate Body report is adopted, the party concerned will have to notify its intentions with respect to implementation of adopted recommendations. If it is impracticable to comply immediately, the party concerned shall be given a reasonable amount of time. This time period is to be decided either by agreement of the parties and approval by the DSB within 45 days of adoption of the report or through arbitration within 90 days of adoption. The DSB will keep the implementation under regular surveillance until the issue is resolved.

Within a specified time frame, parties can enter into negotiations to agree on mutually acceptable compensation. Where this is not agreed upon, a party to the dispute may request authorization of the DSB to suspend concessions or other obligations to the other party concerned. The DSB will grant such authorization within thirty days of the expiry of the agreed time-frame for implementation. Disagreements over the proposed level of suspension may be referred to arbitration.

In principle, concessions should be suspended in the same sector as that issue in the panel case. If this is not practicable or effective, the suspension can be made in a different sector of the same agreement. In turn if this is not effective or practicable and if the circumstances are serious enough, the suspension of concessions may be made under another agreement.

One of the central provisions of the DSU reaffirms that members shall not themselves make determinations of violations or suspend concessions but shall make use of the dispute settlement rules and procedures of the DSU.

The DSU contains some provisions taking into account the specific interests of the developing and the least-developed countries. It also provides some special rules for the resolution of disputes which do not involve a violation of obligations under a covered agreement but where a member believes nevertheless that benefits are being nullified or impaired.

It is to administer the Trade Policy Review Mechanism. Trade policy reviews will be carried out by the Trade Policy Review Body. The trade policies and practices of all members will be subject to periodic review. The impact of individual members on the functioning of the multilateral trading system, defined in terms of their share of world trade in a recent representative period, will be the determining factor in deciding on the frequency of reviews. The first four trading entities so identified will be reviewed every two years. The next sixteen will be reviewed every four years. Other members will be reviewed every six years except that a longer period may be fixed for least developed country members.

For greater coherence in global economic policy-making, the WTO is to cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies.

BUDGET AND CONTRIBUTIONS

The Director General is to present to the Committee on Budget, Finance and Administration the annual budget estimate and financial statement of the WTO. The Committee shall then review the annual budget estimate and the financial statement presented by the Director General and make recommendations thereon to the General Council which would have to approve the annual budget estimates.

The Committee would propose to the General Council financial regulations which shall include provisions setting out

- a) the scale of contributions apportioning the expenses of the WTO among its members and
- b) the measures to be taken in respect of members in arrears.

The financial regulations were to be based as far as practicable on the regulations and practices of the GATT 1947.

The General Council was to adopt the financial regulations and the annual budget estimates by a two-thirds majority comprising more than half the members of the WTO.

Each member is to contribute to the WTO its share in the expenses of the WTO in accordance with the financial regulations adopted by the General Council.

DECISION MAKING

The WTO is to continue the practice of decision-making by consensus followed under the GATT 1947. If a decision cannot be reached through consensus, the matter at issue will be decided by voting. At meetings of the Ministerial Conference and the General Council, each member of the WTO will have one vote. Where the European Communities exercise their right to vote, they shall have a number of votes equal to the number of their member states which are members of the WTO. Decisions of the Ministerial Conference and the General Council are to be taken by a majority of the votes cast unless otherwise provided in the Multilateral Trade Agreements.

The Ministerial Conference and the General Council are to have the exclusive authority to adopt interpretations of the Multilateral Trade Agreements. The decision to adopt an interpretation shall be taken by a three-fourths majority of the Members.

In exceptional circumstances, the Ministerial Conference may decide to waive an obligation imposed on a member by any of the Multilateral Trade Agreements, provided that any such decision shall be approved by three-fourths of the members.

A request for a waiver concerning the Uruguay Round Agreement would have to be submitted to the Ministerial Conference for consideration pursuant to the practice of decision-making by consensus. The Ministerial Conference is to establish a time period which shall not exceed ninety days to consider the request. If consensus is not reached during the time period any decision to grant a waiver shall be taken by three fourths of the members.

A decision by the Ministerial Conference granting a waiver would have to state the exceptional circumstances justifying the decision, the terms and conditions governing the application of the waiver and the date on which the waiver would terminate.

Waivers granted for a period of more than one year are to be reviewed by the Ministerial Conference not later than one year after they are granted and thereafter annually until the waivers are terminated. On the basis of this annual review, the Ministerial Conference may extend, modify or terminate the waiver.

AMENDMENTS

Any member of the WTO may initiate a proposal to amend the provisions of the Uruguay Round Agreement by submitting such a proposal to the Ministerial Conference. Until ninety days after the proposal is submitted, any decision by the Ministerial Conference to submit the proposed amendment to the members for acceptance is to be taken by consensus. If consensus is reached, the Ministerial Conference is to submit the proposed amendment to the Members for

acceptance. If not, the Ministerial Conference shall decide by a two-thirds majority of the members as to whether to submit the proposed amendment to the members for acceptance.

If, after the acceptance of the amendment by two-thirds majority, any member decides not to accept it, the apex ministerial body of the WTO may decide by a three-fourths majority that any amendment made is of such a nature that any member which has not accepted it within a specified period shall be free to withdraw from the WTO or to remain a member only with the consent of the apex body.

Any member accepting an amendment to this agreement is to deposit an instrument of acceptance with the Director General of the WTO within the period of acceptance specified by the Ministerial Conference.¹⁰

THE NEW REGIME

While there is general euphoria at the establishment of the WTO, there have been several criticisms as well. One author, for instance, states that ' the major economic powers have succeeded in creating a new international regime where the profits and the dominance of their transnational corporations will be the decisive considerations. This regime will legitimize the process of progressive erosion of the sovereign economic space of the third world countries.....The new system will provide a built in, coercive mechanism of cross-retaliation through which the major powers will be able to intrude into and occupy such economic space in the third world.'

He argues that areas like agriculture, intellectual property protection, services and investment illustrate this clearly. The autonomy of national policies in regard to agricultural management and development would be subject to a rigorous, far-reaching and quantified international discipline. The intrusion into sovereign economic space is more blatant, deeper and far-reaching with regard to intellectual property rights as transnational corporations would define adequate protection and constitute the basis for national legislation.

As for the World Trade Organization, he opines that while the GATT operated largely at the technical level of trade experts, the WTO will work at a political level as important decisions will be taken at the level of ministers.

Secondly, the establishment of a common dispute settlement mechanism providing for cross-retaliation across different agreements will extinguish the potential veto vested in each contracting party in the GATT by virtue of its Article I which ensured equal treatment for traded goods of each and every

¹⁰ *Ibid*, pp 3-10.

contracting party at the borders of another contracting party without discrimination and could not be amended except with unanimous approval.

Thirdly, the amendment procedure provided in the WTO agreement will greatly facilitate the process of bringing new issues within its competence. New agreements seeking to impose fresh obligations on the members can be incorporated by a decision of a two-thirds majority. Any member refusing to accept such decision will face the penalty of expulsion at the hands of a three-fourths majority. Under the GATT, a single contracting party could legitimately challenge, resist and stop such imposition of new obligations.¹¹

The power wielded by the WTO is also something to be wary of. In co-operation with the International Monetary Fund and the World Bank with their weighted voting, it would virtually control all the smaller countries. With the bureaucracies of these institutions dominated by the principal providers of finance, it will virtually rule the world in economic matters.

The lobbying power of the transnationals with the bureaucracies will be much greater than that of the developing countries. With the new issues of trade related intellectual property rights, investment measures and trade in services, the clout of the transnationals is likely to increase enormously with social issues being pushed into the background.¹²

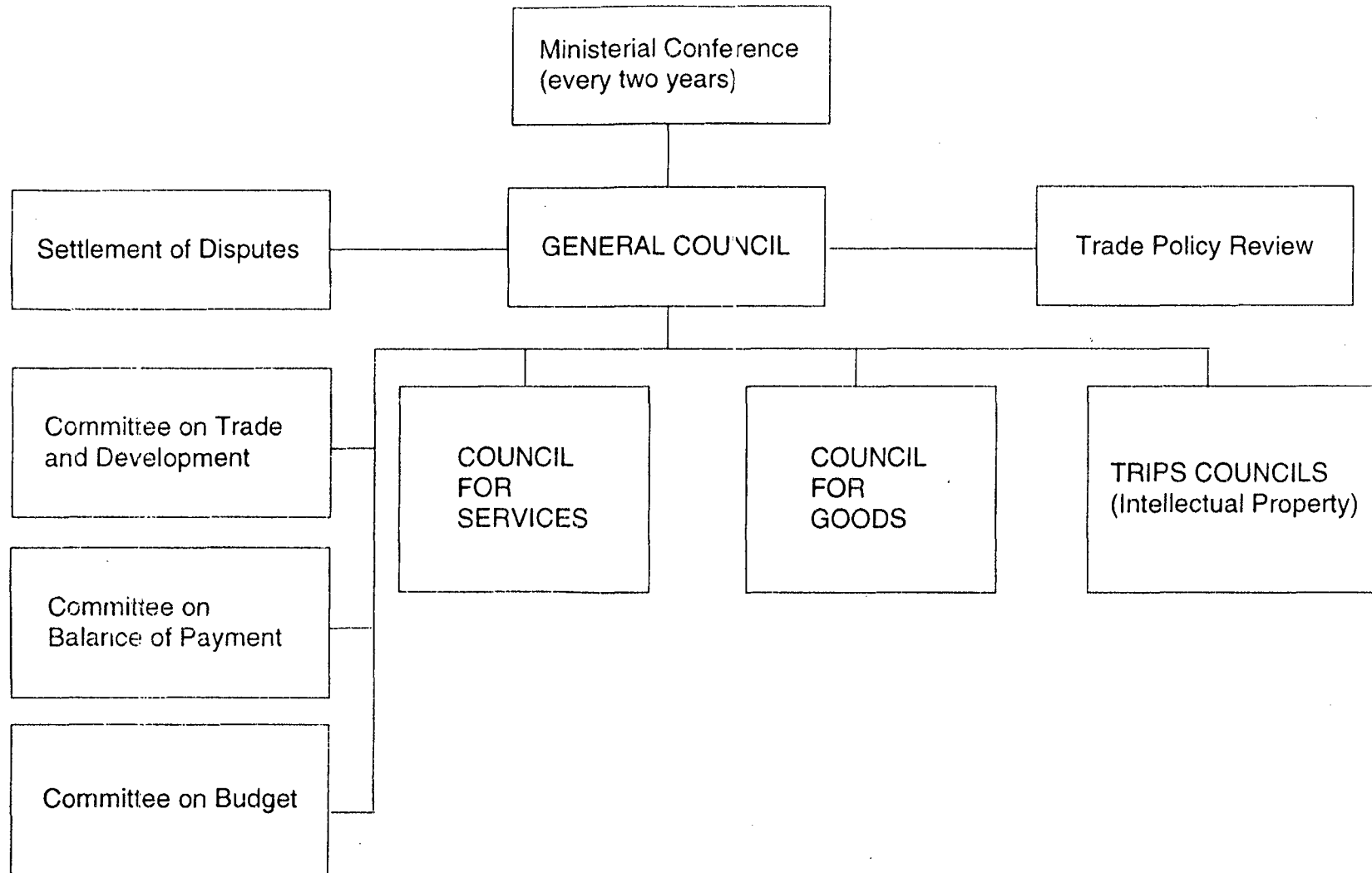
Be that as it may, the fact is that the World Trade Organization is an open-ended body, capable of taking up all issues related with trade and is likely to be used by the trading countries extensively. Though it is too early for any predictions about its success, during the first six months of its existence itself, two major issues have already been brought before it - the trade dispute between the US and Japan and the issue of opening up the financial services sector.

¹¹ S P Shukla, '*Resisting the World Trade Organization, Agenda for Marrakesh*', Economic and Political Weekly, March 12, 1994, pp 589 - 592.

¹² S R Sen, '*From GATT to WTO*,' Economic and Political Weekly, October 22, 1994, pp 2802 - 2804.

CHART 3

STRUCTURE OF THE WTO



CONCLUSION

Since World War II, an attempt has been made to build an institutional arrangement to look after trade so that countries can co-operate to avoid developments of the inter war period. The Brettonwoods Conference for inter governmental institutional arrangements led to the creation of the International Monetary Fund and the World Bank. The third institution for trade, the International Trade Organisation, was not created because even though it was envisaged, no consensus was reached for it.

It fell to the lot of the United States under the auspices of the UN to build an International Trade Organization. The Havana Conference of 1948 gave birth to the Havana Charter which was the Charter of the International Trade Organization. This was to look into commodity specialization among other things.

The only country to ratify the Havana Charter was Lebanon. The Charter was held up by the US for reasons of its own. President Truman suspected that the US Congress would not ratify it. This apprehension led to a compromise solution being reached wherein the US moved the proposal to have the General Agreement on Tariffs and Trade. This GATT could have been incorporated into the International Trade Organization when that institution come into being.

Twenty eight countries were asked to participate and GATT became the international instrument of trade liberalization for the world's trading governments.

Until 1955, attempts were made to see that the ITO got ratified while GATT existed in its place. After this, it became apparent that with the US failure to ratify it, it died a premature death.

Though the GATT came in as a protocol and not as an organization, it developed into a type of an organization. It was able to initiate trade agreements and did succeed in reducing tariffs.

It was considered inadequate as it was merely a protocol, looked into too few issues and dealt only with merchandise. The major developments of international trade did not come under the GATT.

The developing countries were unhappy with the GATT as it was not mandated to look at developing countries, the principles of reciprocity was considered as making unequal equals and the negotiating approach to assert for the developed countries left out the developing countries.

Thus, in 1957, article XVIII(b) was included, providing the developing countries special and differential treatment and exemptions to put quantitative restrictions on imports to correct their balance of payments problems.

The Haberler Committee report of 1958 pointed out that the primary producing countries had special problems and market access should be given to them.

At the same time, the developing countries decided to use the UN to achieve their objectives and therefore set up an institution to solve the problems of the developing countries. This was the United Nations Conference on Trade and Development.

The US did not approve of the establishment of the UNCTAD as it had an underlying principle of one country -one vote. The UNCTAD, however, came into existence with tremendous public response.

UNCTAD was, however, unable to exert enough pressure on the developed countries which wanted to negotiate in the IMF, World Bank and GATT. UNCTAD's role declined as philosophical changes made the role of the market more important.

The developed countries were not in a position to help the developing countries as they were undergoing recession and stagflation themselves. They were not in an expansive mood and did not want to use the collective approach for problem solving.

In the eighties, with the collapse of the socialist regime and the apparent victory of liberal market forces, the UNCTAD became even less popular.

Matters came to such a head that it was not certain that an UNCTAD VIII would be held in 1990. Eventually it was held and the UNCTAD was downsized and restructured. Its mandate changed and it became an advisory body. The initial hope of the developing countries was thus killed.

During this period, several countries became members of the GATT. In its Eighth round, the Uruguay Round, new issues were taken up which were not in the GATT mandate. These included trade related investment measures and intellectual property rights.

It was recognized that international institutions should handle the Uruguay Round issues such as services. An open-ended institution was required which could allow any issues to be taken up. This would have the capacity to collaborate with other institutions.

This time, unlike in the case of the establishment of the International Trade Organization, the US co-operated and the World Trade Organization came into existence on the first of January 1995 as a part of the Marrakesh Agreement.

It is based on the one country -one vote principle and though it is too early to determine whether it will succeed or not, its mandate is vast and open-ended. It has a dispute settlement mechanism which provides for cross retaliation and it can examine social clauses and environmental issues.

It is on test on a number of issues like the US - Japan dispute on automobile imports and the opening of the financial services sector . At the time of writing, no agreement had been reached on either.

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