

GATT AND THE DEVELOPING COUNTRIES IN THE EIGHTIES

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CERTIFICATE

This is to certify that the Dissertation entitled "GATT and the Developing Countries in the Eighties", submitted by Ms. Aparna Bhargava in partial fulfillment of the requirements 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, carried under my guidance and supervision.

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To
MY GRANDFATHER

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INTRODUCTION

A comprehension of the variables involved in the relationship between GATT and the developing countries in the present context, is a task fraught with complexities and difficulties, influenced as it is by a complex mixture of economic, political and strategic forces that overlap, mesh and sometimes digress from each other. With the establishment of the World Trade Organization (WTO) under the Final Act, embodying the results of the Uruguay Round of trade negotiations, the relationship between GATT and the developing countries has undergone a metamorphosis.

Since the inception of GATT, the developing countries have accused it of being a vehicle in the hands of the industrialized nations to implement and regulate the framework of world trade and economy in accordance with their needs. In conjunction with the IMF and the World Bank it was seen as representing an arrangement reinforcing the dominance of the developed nations and hence inimical to the interests of the developing nations. But at the same time the developing countries, since the 1950s, have endeavoured through a series of initiatives inside and outside the forum of GATT, for the cognizance of their developmental and economic needs.

With the commencement of a new phase in the international power relations in the 1980s, where economics

and technology became the propelling forces, negotiations of a whole new series of international norms was undertaken. These included not only bilateral or regional arrangements but also multilateral initiatives taken under GATT. In the face of turbulent changes, the developed countries sought to enhance their economic and technological dominance through GATT and endeavoured to renegotiate the international trade norms which were supposedly inadequate and not in pace with the rapid technological and economic developments. The Uruguay Round of Negotiations thus launched went beyond the traditional theme of trade liberalization and ventured into new areas like services, trade related intellectual property rights and trade related investment measures. These new issues reflected policy concerns traceable to pursuit of developed countries to enhance their comparative advantage in international trade. In these new areas the developed nations pursue specific national development and protectionist policies. On the one hand the developed countries pursued protectionist policies in the areas of high technology, agriculture and textiles, on the other hand consolidated pressure was exercised by them on developed countries to open up their markets in trade and investment. This put the developing countries in a critical predicament.

The negotiations in the Uruguay Round thus reflected largely the concerns of the developed countries with the vital interests of the developing countries relegated to

the background. The initiatives rested with the technology leaders, while the developing countries were put in a bargaining position. Thus for any analysis of the relationship between GATT and the developing countries in the eighties a critical discussion of the Uruguay Round becomes imperative.

This dissertation, in an attempt to evaluate the dynamics of the relationship between GATT and the developing countries, would focus primarily on the GATT, Uruguay Round of Negotiations. The magnitude of the threat and opportunities for the developing countries, unleashed with the conclusion of the signing of the Final Act and embodying the results of the Uruguay Round would be examined here.

It is impossible to evaluate all issues of importance to the developing countries, negotiated in the Round. Only some selected issues would be dealt with. Issues of agriculture, TRIPs and TRIMs in relation to the developing countries are highlighted and discussed in detail. The evaluation of the implications of these issues on developing countries is based on the analysis of the Final Act, embodying the results of the Uruguay Round as agreed upon in December 1993 by the contracting parties.

The dissertation is divided into, five chapters spanning more than three decades, the first chapter is a

historical overview dealing with the establishment of GATT as a multilateral agreement and attempts to trace the evolution of GATT's policies towards the developing countries. It traces the history of the special and differential treatment accorded to the developing countries which finally culminated in the incorporation of the enabling clause in the GATT in the Tokyo Round of Negotiations. It simultaneously examines the participation of the developing countries in the previous rounds of GATT negotiations until the Tokyo Round.

The second chapter gives a broad overview of the Uruguay Round and deals with the launching and conclusion of the Uruguay Round and its implications with particular reference to the developing countries. It highlights the world economic situation in the eighties in relation to the developing countries and in the process illustrates the consequences of the protectionist policies followed by the developed countries on the trade and development of the developing countries. Dealing with the general implications of the Uruguay Round on the developing countries it highlights the issues of importance to the developing countries negotiated in the Round.

Chapters three, four and five are issue based and examine the subjects of Agriculture, TRIPs and TRIMs, as dealt with under the negotiation in the Uruguay Round, from the perspective of developing countries. These chapters

highlight the consequences and implications of the Agreements reached on these issues in the Final Act.

The conclusion attempts to place the implications of the Uruguay Round on the developing countries in a broad economic, political and social context. The conclusion involves a certain degree of speculation and discusses the pitfalls and the advantages of the recently concluded Uruguay Round of multilateral trade negotiations.

CHAPTER I

GATT AND THE DEVELOPING COUNTRIES : A HISTORICAL OVERVIEW, 1948-1979

"The General Agreement on Trade and Tariffs (GATT) represents an effort without precedent to liberate world trade from the morass of prohibitions, restrictions and more, since the war".¹ It was an effort to regulate international trade and was intended as a worldwide operation designed to cover and benefit all types of economies. Though this was the intended purpose, the less developed countries (LDCs), since the inception of GATT, saw it as a "rich mans club" biased against them.

This chapter attempts to trace the evolution of GATT's policies towards the LDCs, since its formulation, giving a back ground to the Uruguay Round, which is the focus of this dissertation. Understanding the dynamics of contemporary position of the LDCs, as it exists today, within the GATT framework and their role in the just concluded Uruguay Round of Multilateral Negotiations involves the necessity to develop a legal-historical perspective. A backward glance at the post war years of trade liberalization under GATT, would

1. GATT, "The Attack on Trade Barriers". A Progress Report on the Operation of GATT, (Geneva, January 1948-August 1949). p.7.

offer valuable insights into the relations between GATT and LDCs paving the way for analysis of future developments. Potentials and problems in the relationship cannot be understood without reference to the historical background. Thus any appreciation of the situation of LDCs in the Uruguay Round requires an understanding of the principles of GATT and the working of GATT in relation to LDCs, following the post second World war period.

But before venturing forth into history it is important to briefly dwell upon the question of the relative importance of international trade to the economies of LDCs. According to Gottfried Harbeler, a prominent economist, free trade is extremely desirable from the point of view of LDCs. But, he does not overestimate the potential of international trade to lessen the existing degree of inequality. He concedes to the fact that 100% free trade policy is not necessarily conducive to development of the LDCs. He draws the conclusion that "marginal interferences with free flow of trade, if properly selected may speed up development."² Thus he is not an advocate of unhampered free trade. Therefore, accepting the premise that international trade plays

2. Gottfried Harbeler, International Trade and Economic Development, (Sanfrancisco), 1988, p.22.

quantitatively an important role in the LDCs, GATT's activities in relation to LDCs become important.

This chapter is divided into four sections. The first section briefly outlines the economic and political situation of the LDCs in the aftermath of the Second World War. The origin and inception and principles of GATT in relation to LDCs is examined under the second section. The third section attempts to chart out briefly the history of special and differential treatment as accorded to the LDCs under GATT, simultaneously in the previous rounds of GATT multilateral trade negotiations. It details the events starting from the Review Session carried on in 1955 and the overhauling of Article XVIII, to the recommendations of the Harbeler Report, incorporation of part IV finally culminating in the inclusion of the Enabling clause under the Tokyo Round. Assessment and impact of these important developments in the successive rounds of multilateral trade negotiations upto the Tokyo Round has been carried in the fourth section.

1. LDCs in the Post Second World War Scenario

The post Second World War scenario witnessed the dispensation of the shackles of colonialism by a number of colonized nations. The strength of these new independent nations lay not in their respective political or economic resources but in their numbers. Their problems both on the

economic and the political front were phenomenal. Centuries of economic exploitation had eaten its way into the core of their economic base, subsequently impoverishing them. Unemployment, expanding population, and inflation were rampant, further compounding the already existing problems. Largely being primary producing economies, the declining as well as fluctuating prices of these commodities relative to industrial products, tended to affect their terms of trade adversely as against the developed countries. They depended on the exports of agricultural commodities for the vitally needed foreign exchange. They were incapacitated to control these cyclical fluctuations and its disastrous effect on their economies, since they had little control over foreign demand.

Economic development being primal on their agenda, the LDCs not only needed financial aid for their development and reconstruction, but also required favourable conditions conducive to expansion and stabilization of their foreign trade, on which a large chunk of their revenue depended since, their size of the irrespective domestic markets were too small. Aid not being a long term solution to their economic problems, as debt services and loan repayments would further cause depletion in their already dismal foreign exchange earnings, these countries needed trade, to

supplement the aid. The LDCs demanded adequate freedom to foster their industrial and economic development and enlargement of access to world markets for the manufactured and primarily non-processed goods.

The LDCs enthused with the spirit of their new founded freedom, wanted to actively participate in all forums and work towards their economic needs and aspirations.

2. GATT and the Developing Countries

When the discussions began in the early, forties, on the shape and structure of the post war economic policies, the representatives of the developed nations were still reeling under the ruinous effect of the Great Depression, coupled with the ill effects of the war. The period of Depression was marked by the prevalence of economic nationalism and reigning trade restrictions. The world trade was stunted and smothered leading to a stagnation of economies and a general decline in the standard of living. The representatives participating in the deliberations, mainly comprising the US and European officials, were more preoccupied with the reconstruction of the economically derailed and war torn Europe. The prevention of circumstances, marking the Great Depression assumed focal importance in the following discussions, and there was a general consensus amongst the participants that policies of discrimination and

restriction practiced in International trade, be avoided. This resulted in little empathy for the problems of the LDCs.

For the amelioration of unhealthy economic conditions and for the achievement of maximization of world income, gainful employment, and high standards of living expansion of world trade was considered necessary.

1.1 ORIGIN and INCEPTION OF GATT

Hence, there was a crying need for an organization of governments capable of grappling with major problems of international trade for example bilateral deals, blocked payments quantitative restrictions, licences and discrimination. Thus, inspired by the ideals of free trade, the plans for post war reconstruction envisaged not only an International Monetary Fund (IMF) and International Bank for Reconstruction and Development but also an International Trade Organization (ITO). The IMF principles also envisaged the expansion of international trade and facilitate its expansion "by promoting exchange stability, eliminating restrictions on current payments and making resources available to members for financing deficits in the balance of payments".³ However, certain additional mechanisms were recommended for

3. Anwarul Hoda - Developing countries in the International Trading System. (Delhi, 1987) Allied Publications, 1987, pg.1.

lowering barriers to International trade by the Bretton Woods Conference. This led to a proposal by the US, in the Atlantic Charter and the Mutual Aid Agreement in 1945, for establishment of an International Trade Organization.⁴

The ITO Charter was doomed from the beginning. After a protracted debate, the United Nation Conference on Trade and Employment, convened by the Economic and Social Council (ECOSOC), drew up the Havana Charter for the proposed ITO. It was rejected by the US Congress, which refused to ratify the Charter, thereby sealing its fate⁵.

While extensive debating was going on in the three Preparatory Conferences preceding, the final UN Conference on Trade and Employment on the ITO Charter, several countries felt that whatever the final resulting institutional arrangements, some tariff reductions were desirable immediately. It was, however decided that important discussions

4. GATT, "The Attack on Trade Barriers". A Progress Report on the Operation of GATT, (Geneva, January 1948-August 1949), pg.7.

5. All governments waited for US to ratify the ITO charter. The congress balked partly because the many substantive compromises in the charter managed to offend both sides - too liberal for the protectionists and too exception ridden for advocates of free trade. After seeking Congressional ratification for over 2 years, the Administration gave up late in 1950 and withdrew the charter from consideration. See William T. Diebold, "The End of ITO" Princeton Essay in International Finance, no. 16, Princeton: Princeton University, 1952. As cited in Robert E. Hudec-Developing Countries in the GATT Legal System, (London ; 1987), pg. 10.

and solutions must await the formation of ITO.⁶ Therefore, in accordance with the resolution adopted at the first Session of the Preparatory Committee of UN Conference on Trade and Employment, 23 countries initiated negotiations between their representatives at Geneva in 1947.⁷

The negotiations were directed towards the reduction of tariffs and other trade barriers. Elimination of preferences on a reciprocal and mutually advantageous basis was also discussed. This resulted in the framing of GATT and of a Protocol of Provisional Application. The text of GATT was finalized at the Second Session of the Preparatory Committee, held in 1947.⁸ The final act of the Second Session, authenticated the text of GATT along with the schedule of tariff commitments and the Protocol of Provisional Application. Requirement under Protocol of Provisional Application entailed that amendments to the pre-existing legislations, at variance with specific obligations contained in Part II of GATT, were not required by the contracting parties.⁹

6. GATT, "Attack on Trade Barriers". A Progress Report on the Operation of GATT, (Geneva, January 1948-August 1949), pg.8.

7. GATT, Basic Instruments and Selected Documents (B.I.S.D.) Volume I, pg. 11.

8. Ibid.....pg.11.

9. Anwarul Hoda - Developing Countries in the International Trading System. (Delhi : 1987), p.3

However any new legislations inconsistent with the text of GATT should be avoided by the contracting parties.

The General Agreement was based on the commercial policy chapter of the much debated ITO and was expected to lapse when the latter was ratified. Thus, with the non-ratification of the ITO Charter, with minor amendments GATT became, the principle instrument of commercial policy and came into being on 1st of January, 1948.

1.2 NATURE, OBJECTIVES AND PRINCIPLES OF GATT AND LDC'S

GATT was founded on the classical doctrine of free trade which called forth for specialization in production of goods in accordance with the principle of comparative advantage. The Contracting Parties to the GATT had set as their goal restoration of multilateral trade. This aim was realized in the statement of objectives set forth in the Preamble to the Agreement where the contracting Parties recognized that "their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, and ensuring full employment and a large and steadily growing volume of real income and effective demand developing the full use of resources of the world and expanding the production of goods, and promoting

progressive development of the economies of all contracting parties".¹⁰

In order to achieve this aim the Contracting Parties affirmed their desire to enter into "reciprocal and mutually advantageous arrangements directed to the reduction of trade barriers and to the elimination of discriminatory treatment in international commerce".¹¹

This called forth the principle of non-discriminatory free trade and multilateralism. In theory non-discriminatory free trade required not only the maximization of world income, but also reduction in income gaps between nations through its distributional effects. But in practice with a large number of LDCs with unequal economic clout, unhindered free trade regime could lead to a negative distributional effect causing further impoverishment.

Moreover developed nations imbued with the colonial spirit, were more anxious to price open and expand their markets for their manufactured products in the LDCs. Amongst the developed nations, there prevailed large scale apathy to the development needs of LDCs. Thus, right from the start, the LDCs felt that the GATT rules were slanted

10. BISD, Vol.IV, 1969. pg.1.

11. Ibid.....pg.1.

against them. During the GATT/ITO preparatory work there was a bitter conflict existing between the developed countries and the LDCs over the issue of quantitative restrictions.¹² The disagreement at the drafting stage between the developed countries and LDCs marked a trend for decades to come. The deep chasm which existed between them during the preparatory stage has continued ever since and has been further reinforced with the conclusion of the Uruguay Round of Negotiations.

The underlying principles of GATT are the Most Favoured Nation (MFN) principle, reciprocity and exclusive use of customs tariffs for protection of domestic industries, subject to progressive reductions. Use of quantitative restriction and other commercial measures should be refrained from except as specified under GATT. Moreover, procedure of consultation should be used directly with a Contracting Party or collectively amongst Contracting Parties to solve disputes and to avoid damage to one another trading interests.

12. At the 1947 Geneva Conference, a major Debate took place between the LDC's & the developed countries on the issue of quantitative restriction. For further details please see John H. Jackson-The World Trading System Law and Policy of International Economic Relation. (Kansas: 1969), pp.629-638.

The Most Favoured Nation (MFN) principle, envisaged in Article I, forms the corner stone of the GATT agreement. It states that "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."¹³ However, there are many exceptions to this equal application to MFN rule that are made for certain preference systems in Article I and Annexures A to G.¹⁴ One of the major exceptions to the MFN rule is the formation of free trade areas or customs union under article XXIV.

Reciprocity, though not defined in the General Agreement, forms an important principle of GATT. The means to achieve it have been developed informally, and keep changing as situation demands but its centrality has never been questioned. Reciprocity implies that during the rounds of negotiations for reduction of tariffs each country shall make equivalent tariff concessions. "This attitude reflects national mercantilist view of the effects of reduction in

13. B.I.S.D. Vol.IV, 1969, pg.2.

14. B.I.S.D. Vol.IV, 1969, pp. 58-60.

trade barriers".¹⁵ The negotiations between developed countries were based on the principle of full reciprocity between concessions granted and received. The LDCs though, found it difficult to transact in international trade on the principle of equal reciprocity, as their economic disabilities did not allow them to offer equal reciprocal concessions. They had to keep their tariffs higher due to fiscal reasons. The developing countries were agitating for the recognition of principle of non-reciprocity in international trade negotiations. It was during the Kennedy Round of negotiations that the principle of non reciprocity was finally recognized and incorporated in PART IV of the General Agreement, added in 1965. However, in actual transactions between the LDCs and developed nations a degree of reciprocity was maintained in trade transactions. The developed nations also criticized the principle of non reciprocity which according to them led to a passive stance of the LDCs in trade negotiations, and called for a active participation by the LDCs.

"Elimination of quantitative restriction" as covered under Article XI, is another important feature of GATT. As mentioned before, during the preparatory stage their existed

15. Kathyryn Mortin & Peter Tulloch ed. Trade & Developing Countries, (London: 1977), pg.56.

a bitter conflict between LDCs and developed countries over quantitative restrictions. The LDCs wanted that they should have automatic right to impose quantitative restrictions if needed for the furtherance of the economic development and stabilization of their economies. The conflict was whether prior permission was needed before the imposition of quantitative restrictions. The developed countries felt that each case should require specific and prior permission from the Organization. The net results of the Geneva drafting negotiations was a new compromise but it still preserved the idea that with a few exceptions, deviation from GATT rules for development purposes required prior GATT approval. The use of quotas was still banned without prior permission. But a special exception was granted allowing protective measures such as quantitative restrictions to be imposed temporarily when a sudden increase in imports caused adverse effects on developmental plans. The LDCs were dissatisfied with the compromise.

GATT prohibits the application of quantitative restrictions and mentions that regulation of imports and exports should be carried out only through tariff mechanisms and their progressive reductions through successive rounds of negotiations. However, there are a number of exceptions to the rule. These have a number of implications for the LDCs

and they can take recourse to quantitative restrictions under these exceptions (particularly under Article XVIII (b)).

The exceptions state that the ban does not extend to export prohibitions applied temporarily "to prevent or relieve critical shortages of food stuffs or other products essential to the exporting contracting party".¹⁶ Another exception states that the import restrictions could be imposed on agricultural and fishery products in order to assist governmental measures to regulate marketing on domestic production¹⁷. But this restriction could only be carried out by respective governments, if only restrictions were also imposed on domestic production or marketing. But one of the most important exceptions from the rule of prohibitive quantitative restrictions is the balance of payment exception stated in Article XII, and Section B of Article XVIII added later specially keeping in mind the special problems of the LDCs. Under Article XII, the exception permits the use of quotas on imports for preventing adverse effect on its balance of payment position by a country. Before the addition of Section B to Article XVIII, "most developing countries found in the early years of GATT that

16. B.I.S.D Vol. IV, 1969, pg.17.

17. B.I.S.D. Vol. IV, 1969, pg.17.

rather than apply for a release under Article XVIII it was easier to justify quotas as necessitated by Balance of payment considerations"¹⁸ under Article XII.

3. THE DEVELOPING COUNTRIES AND THE GATT NEGOTIATIONS.

This section attempts to chart out briefly the important developments which took place within the framework of GATT until the Uruguay Round of negotiations and had an important bearing on the LDCs. It endeavors to examine the role of developing countries in prohibit of this objective to better their terms of trade and development within the framework of GATT negotiations.

Between 1948 and 1955 the LDCs, which were members of GATT participated in tariff negotiations and other aspects of GATT activities and took their obligations seriously. But in the early fifties, a degree of disenchantment set in amongst the LDCs with the working of GATT as they felt that they were not benefiting equitably from the world trade liberalization as propounded by GATT. They felt that attention should be focussed on the recognition of their developmental needs and sought alterations and modifications within the GATT framework. The early fifties thus saw the

18. John. H. Jackson - The World Trading System Law of International Economic Relations, (Kansas: 1969), pg. 639.

LDCs endeavoring towards the induction of a development oriented approach within the GATT framework.

A question that generated a great deal of heat was whether the rules of international trade were conducive to the development of trade of the LDCs or put them at a disadvantage. According to John. H. Jackson the tariff rates of industrialized countries operated in a manner as to discourage development of certain processing industries in less developed countries¹⁹. Moreover other forms of national protectionism such as quotas, voluntary or otherwise, for e.g. in cotton textile operated in a manner that impinged on some less developed countries in an unfair way.²⁰

3.1 ADDITION OF SECTION B, TO ARTICLE 18 OF GATT

The addition of Section B, to Article 18 reflected for the first time the recognition of the problems faced by the LDCs. The GATT Review Sessions was held in 1955 and provided an occasion for LDCs, which were contracting parties to GATT, to renegotiate the GATT/ITO compromises on legal policy. Moreover, the negotiating stage in 1954-55 was different from the days of the inception of GATT. According

19. John. H. Jackson - The World Trading System Law of International Economic Relations, Kansas: 1969), pg. 664.

20. ibid.....pg.664.

to Hudec much of the developing world was still outside GATT and the US wanted an universal organization. The onset of 'cold war', with competition for influence in the developing world was an added factor. "LDCs within GATT were thus in a position to do serious damage by declaring GATT as unsatisfactory."²¹ Hence, cognizance had to be taken of the fact that LDCs needed additional flexibility with regard to GATT obligations in order to be able to implement their programmes of economic development. It was recognized that

a) Developing countries required a greater degree of flexibility in their tariff structure to assist their development and to raise revenue.

b) That use of tariffs to afford protection to nascent domestic industries was not always feasible. The LDCs may, therefore, require other measures such as quantitative restrictions to assist their nascent industries.

c) The implementation of developmental programmes could increase the demand for imports, thereby causing distortions in the economy. Hence the LDCs may need a greater recourse to quantitative restrictions to protect their balance of payment.

21. Robert E. Hudec - Developing Countries in the GATT Legal System, (London : 1987), pg.26.

When GATT was reviewed in 1954/55, keeping into account the special problems of LDCs, Article XVIII was thoroughly overhauled. The introduction to Article 18 was revised, expanded and given a more positive tone. The new introduction stated that economic development furthers the objectives of GATT, thus making clear that trade barriers authorized under Article XVIII, were not derogations from GATT policy, but instead were entirely legitimate measures in complete conformity with GATT policy.

The structural nature of the balance of payment problems of LDCs was recognized and a new Section B was introduced in Article XVIII (Governmental Assistance To Economic Development).²² This Article dealt with the balance of payment problems of LDCs. Though the provisions resembled Article XII it had certain additional features. For one, additional flexibility was granted to LDCs to impose restrictions for balance of payments reasons. It also provided for the relaxation of the requirement of annual consultations and the LDCs maintaining restrictions had to hold consultations once every 2 years. In regard to measures which led to a departure from the GATT obligations, the requirement of prior sanction of contracting parties was

22. For details of the provision of Section B, Article XVIII, please see B.I.S.D. Vol. IV, 1969, pp.30-33.

relaxed: to some extent "a significant feature of the new version of the provision is that recourse to it can be had only by LDCs and to a limited extent by primary producing countries like Australia and Newzeland which were regarded as being in the process of development"²³ Thus for the first time, the concept of special and differential treatment of LDCs was considered at the review session.

2.2 HARBELER REPORT AND ESTABLISHMENT OF COMMITTEE III

In the years following the Review Session, the question of the GATT's relationship to LDCs continued to grow in importance. A number of colonized nations became independent and as mentioned earlier, the cold war competition for the loyalty of these emerging countries intensified. Situation became critical when Soviet Union began to press for the creation of a global trade organization within United Nation, that would provide an alternative to the western dominated GATT.²⁴

This increased the bargaining power of LDCs to some extent. The trade policy concerns of the LDCs had also begun to change. They realized that development could not

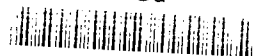
23. Anwarul Hoda - Developing Countries in International Trading System - (Delhi, 1987), pg.32.


24. Robert E. Hudec - Developing Countries in the GATT Legal System. (London,1987), pg.39.

only be achieved by import substitution and creation of barriers. More emphasis was laid on exports and enlargement of export earnings. As the focus shifted to export earnings it was seen that the export performance of LDCs was declining. An initiative had to be taken to increase the export earnings. The increasing urgency of trade and economic problems of LDCs was recognized by the trade Ministers at the meeting held in 1957-58.²⁵

A panel headed by Harbeler an eminent economist was set up to look into the problems of the LDCs and the panel submitted its report in October 1958. The panel stated that the present rules and conventions of the commercial policies were relatively unfavourable to the LDCs and supported the general perception that the export earnings of most LDCs were unsatisfactory in terms of the resources needed for economic development. The agricultural exporting countries found strong support for their concerns in Harbeler's report, which laid particular stress on the effects of agricultural protectionism and restriction on the markets for raw material. It further expressed the view that the Havana charter rule for negotiations of revenue duties should be

25. GATT, The Role of GATT in Relation to Trade and Development, (Geneva, March 1964), pg.20.

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made applicable to GATT negotiations and procedures.²⁶

Following the 1958 Trade Ministers Meeting, the Programme for Trade Expansion was inaugurated by the contracting parties. The contracting parties did "to initiate an immediate consideration of a coordinated Programme of Action "directed to a substantial advance through further reduction of barriers ...," with, "particular reference to the importance of maintaining and expanding the export earnings of LDCs".²⁷ The trade development programme dealt with 3 issues and 3 committees were established to deal with each issue, and implement the programme.

Committee III had the sole task of considering the problems of LDCs and it was concerned with " the question of achieving an expansion in the export earnings of LDCs and the development and diversification of their economies" ²⁸ Extensive studies made by Committee III on trade difficulties of LDCs garnered much sympathy in their favour but no concrete action was taken.

At the ministerial meeting held in November 1961 which launched the Dillon Round of negotiations a "Declaration on

26. GATT, The Activities of GATT 1959/60, (Geneva, May 1960), pg.10.

27. B.I.S.D. 7th Supplement, pg.28.

28. B.I.S.D. 7th Supplement, 1959, pg.29.

the Promotion of Trade for Less Developed Countries" was adopted.²⁹ This Declaration called for the adoption of an accommodating attitude on the question of reciprocity and also reduction of tariff and non tariff barriers on products exported by the LDCs. It was stressed upon in the declaration that aid cannot be a substitute for trade and in the final analysis the LDCs will have to pay for their own development from the revenue earned.

In spite of all these lofty goals stated, the outcome of the Dillon round with regard to LDCs was rather dismal. Out of 4,400 tariff concessions made in the Dillon Round of negotiations only 160 concessions were considered to be on the items of interest to LDCs³⁰. Even more serious was the discrimination against LDCs export on basis of origin and degree of processing.

The "Programme of Action", previously considered in Committee III, was adopted at the important Ministerial Meeting held in Geneva from 16 to 21st May 1963, and 21 LDCs sponsored and supported this programme.³¹ Once again the

29. The Role of GATT in Relation to Trade & Development, Geneva, March 1965, pg.47.

30. Colleen Hamilton and John Whalley, "A View from the Developed World", in John Whalley ed - Dealing with the North: Developing Countries and the Global Trading System, (London & Ontario, 1987), pg.28.

31. The Role of GATT in Relation to Trade & Development . (Geneva, March 1964), pg.34.

LDCs had reiterated their old demands to which the developed countries were not open too. Hence, it was not surprising that the programme was not adopted. The programme ³² was an ambitious one and entailed a standstill on trade barriers in the developed countries on the export trade of any LDCs. It also called forth for "elimination" of quantitative restriction on imports from LDCs, inconsistent with the provisions of GATT within a period of 1 year. Duty free entry for tropical products into industrialized countries was to be granted by 31st December, 1963. Elimination of custom tariff by industrialized nations on primary products important to LDCs was also mentioned. It also called forth for the reduction of present duties by at least 50% phased over 3 years.

To sum it up, inspite of the efforts made by Committee III to alleviate the problems of LDCs the developed countries undertook no precise commitments. They wanted to maintain "quid pro quo" as a principle of negotiations and LDCs were unable to exert any bargaining power.³³

32. For details & provisions of the programme please see the conclusions adopted at meeting of ministers, May 1963, as cited in the Role of GATT in Relation to Trade & Development, (Geneva, March 1964), pp.34-38.

33. Kathryn Mortan & Peter Julloch ed - Trade and Developing Countries. (London, 1977), pg.56.

2.3 KENNEDY ROUND OF NEGOTIATIONS AND THE PRINCIPLE OF NON RECIPROCITY

One of the premier objectives of the LDCs in this period was to gain acceptance for the principle of non reciprocity and therefore alter the existing status quo. For the first time in the Kennedy Round of negotiations this principle gained ground. It formed one of the ground rules in tariff negotiations. Kennedy Round was, by far, one of the most ambitious round held in comparison to the previous rounds. Its Ministerial Declaration proposed a "linear cut in tariffs with alternative (but common) provisions for higher tariffs, non reciprocity for LDCs, special attention for the exports of developing countries. the inclusion on non tariff barriers and negotiation on agriculture."³⁴

Though, the principle of non reciprocity was accepted some form of contribution from LDCs was expected. In the Kennedy Round one of the rules laid down regarding LDCs stated, "..... the contribution of LDC to the overall objective of trade liberalization should be considered in

34. L. Alan Winters - " The Road to Uruguay". The Economic Journal no.100, Dec. 1990. pg 1292.

the light of the development and trade needs of those countries."³⁵

The stance of the developed countries was that they were willing to make concessions, extending only to those, prepared to make some contributions to the negotiations. Therefore, though unwritten some measure of reciprocity was maintained. Moreover, the developed countries offered the concessions arbitrarily in a "take it or leave it" manner, limiting the scope of the LDCs to bargain.

In the Kennedy Round, the tariff reduction on agricultural products was also disappointing. Agricultural products, in general, were excluded from the negotiations due to the rift between EEC and US. There was also proliferation of non-tariff barriers applied to the LDCs exports. Thus apart from the non reciprocity principle which was finally incorporated in Part IV, subsequently decided in 1965, the LDCs had nothing much to gain from the Kennedy Round. Even success in regarding the incorporation of the non-reciprocity principle was qualified.

2.4 INCLUSION OF PART IV IN THE TEXT OF THE GATT

Part IV was introduced in 1965, while the Kennedy Round was in progress. The inclusion of Part-IV in the GATT, though not a major triumph, was a recognition, nevertheless,

35. B.I.S.D. 13th Supplement, 1965, p.3.

by the developed countries that the trade problems of the LDCs were different from theirs. The incorporation was the culmination of a series of initiatives taken by the developing countries inside and outside the GATT forum, in particular United Nations Conference of Trade and Development (UNCTAD). Infact in the early 60's, GATT relation between developed countries and LDCs had become almost centered around UNCTAD. The creation of UNCTAD in 1962 under UN was an indication of the dissatisfaction of the LDCs with the current global institutions specially GATT. The UNCTAD threat considerably augmented the bargaining power of LDCs and developed countries believed that a bloc decision not to participate in GATT would previously damage western interests.³⁶

In the 1963 ministerial conference "the ministers recognized the need for an adequate legal institutional framework to enable the contracting parties to discharge their responsibilities in connection with the work of expanding the trade of LDCs ".³⁷ A Committee on the "Legal and Institutional Framework" was established to pursue this goal. In March 1964, this Committee adopted a "Chapter on

36. Robert E.Hudec - Developing Countries in the GATT legal system, (London, 1987). p. 39.

37. B.I.S.D 14th Supplement, 1966, pp.16-17.

Trade and Development" for inclusion in GATT. A Special Session of the contracting parties was held from 17th November to 8th February 1965, which finalized the text of chapter and the amending protocol which was opened for acceptance.³⁸ When the amending protocol was opened for signatures in 1965, "Declaration on De facto implementation was opened for signatures too. This was for those countries who desired to implement Part IV on a "de facto basis to the extent allowed by the existing constitutional and legal possibilities".³⁹

The chapter came into effect in June 1966 and had 3 Articles, XXXVI, XXXVII, XXXVIII..lm6

(i) Article XXXVI entitled 'Principles' put forward the principle of non reciprocity in tariff negotiations between developed countries and LDCs.⁴⁰

(ii) Article XXXVII entitled 'Commitments formed the core of PART IV and touched upon the sensitive issues concerning internal policy of industrialized countries. The industrialized contracting parties were supposed to refrain from "Imposing new fiscal measures" and accord high priority" to

38. Ibid..., p.17.

39. B.I.S.D., 14th Supplement, 1966, pp.16-17.

40. GATT, B.I.S.D. Vol IV, 1969, pp. 53-54.

the reduction and elimination of tariff barriers" on products of interest to LDCs. But this Article was considerably diluted by the insertion of qualifications. Paragraph 3 of the article which enlists the undertaking of commitments on part of the developed countries to aid the LDCs, begins with a qualifying phrase in each of its subsidiary clause. Each clause begins with a qualifying phrase like "make every effort.....", "give active consideration to.....", "have special regard to.....".⁴¹

(iii) Article XXXVIII is called "Joint action" and entails the collaboration of the contracting parties, to further the objectives set forth in Article XXXVI.⁴².1m1

These articles also lay stress on stabilization of commodity prices, greater access to markets of industrialized nations, and collaboration of the international lending agencies on matters of financial assistance.

But the new chapter set forth basically principles and objectives rather than legal obligations. Not only the provisions were in the nature of guidelines but they also left the "structure of GATT rights and obligations un-

41. *ibid.*..., p.65.

42. *ibid.*..., p.57.

changed"⁴³ The importance of Part IV added nothing to the existing legal relationship between developed countries and LDCs. Part IV was merely a slightly more impressive statement of the urgent but non-binding texts that the "Action Programme had been issuing over the preceding 5 years giving them a permanent form in the text of GATT.

In the opinion of LDCs their problems to a large extent remained unresolved, inspite of the inclusion of Part IV. The only comforting factor was that for the first time a major exercise on this scale, taking into cognizance the difficulties of LDCs was carried out and given a legal basis though a soft one.

2.5 GENERALISED SYSTEM OF PREFERENCES

The LDCs were not placated with the incorporation of Part IV in GATT and its soft legal obligation and they began to apply pressure for unilateral trade concessions. The Generalized System of Preferences (GSP), introduced following an UNCTAD initiative in 1968 under a GATT waiver, represented a response on the part of developed countries to this pressure.⁴⁴ GSP was given a 10 years waiver from the MFN

43. Anwarul Hoda - Developing Countries in the International Trading System (New Delhi, 1987). p.37.

44. Bela Balassa & Constantine Michal Opoulous, "Liberalizing Trade between Developed and Developing countries". Journal of World Trade, (Geneva), vol. 20, no.1, Jan.-Feb.1986, pg.7.

obligation. Though under GSP non agricultural products were provided free entry it excluded products groups of principle interest of LDCs such as steel, textiles, clothing and shoes. While tariff reductions negotiated under GATT rules were "bound", developed countries could unilaterally modify or withdraw GSP and which was not negotiable.⁴⁵

For most LDCs this was not a satisfactory solution because without the basic change in GATT framework of rules, the deviation from MFN obligation was not feasible, and GSP was a temporary waiver limited to tariffs alone.

2.6 INCORPORATION OF SPECIAL AND DIFFERENTIAL FREQUENT FOR LDC'S AND THE TOKYO ROUND

The inadequacies of Kennedy Round and deficiencies in the GSP schemes called for a more active role of LDCs in the Tokyo Round of negotiations. The demand for preferential treatment in the 60's had given in to the demand for special and differential treatment in the 70's. The objective of LDCs was to enlarge area of preferential treatment for their products. Their campaign peaked in 1970's for a more equitable and just economic order, outside GATT and two historic UN resolutions were passed New International Economic Order

45. Ibid.....pg.7.

(NIEO) and Charter of Economic Rights and Duties.⁴⁶ Thus when the Tokyo Round rules were being formulated the LDCs were ready with their own reform agenda. Thus a major objective of the LDCs in the Tokyo Round was to seek improved stable conditions for diversifying the range of products for export. They also demanded an improved framework for the conduct of international trade, which took into account their developmental, financial and trade needs and special and differential treatment inclusive of special treatment of least developed countries.

The Tokyo Round the Ministerial Declaration stated "the importance of application of differential measures to developing countries in ways which will provide special and more favourable treatment for them in areas of negotiations where this is feasible and appropriate".⁴⁷ In order to provide a broad legal basis for special and differential treatment the LDCs sought the establishment of an exception to MFN clause.

In 1976, the Framework Group was established with special and differential treatment, accorded priority on its agenda. One of the result of the deliberation in the Frame-

46. Robert E. Hudec - Developing Countries in the GATT legal system, (London, 1987) p. 73.

47. GATT, "The Tokyo Round of Multilateral Trade Negotiations", Report by the Director General, (Geneva, 1979).

work Group, was the Framework Agreement entitled 'Differential and More Favourable Treatment, Reciprocity and Fuller participation of Developing countries'. This was better known as the Enabling clause. The Enabling clause made deviations from the MFN clause possible for LDCs, thereby establishing exceptions, to extend special and differential treatment to them. It covered or tariff preferences accorded under GSP. It also covered non tariff measures. Tariff and non tariff preferences granted amongst the developing countries to each other in global and regional trade frameworks was also covered. It also recognized the least developed countries need for special and differential treatment.⁴⁸

But the Enabling clause contained one contentious principle favouring the developed countries point of view. This was the 'celebrated' principle of graduation. this principle assumed a prominent place in debate on special and differential treatment and became a focus of bitter controversy. It required fuller participation of the LDCs with subsequent progress in their economies, in the framework of rights and obligations under GATT. In other words LDCs would be gradually deprived of preferential treatment as

48. *ibid.*...., p. 149.

they developed. In the debates and differential treatment the developed countries had also demanded 'product specific graduation'.⁴⁹

Amongst the other results⁵⁰ of the Tokyo Round, though the LDCs were beneficiaries of non reciprocal concessions in tropical products, the achievement of concessions in their industrial products was lacking. Products like textiles and leather had been either exempted from the listed of non reciprocal concessions offered by the developed countries to the LDCs on "subjected to lower than formula cuts. The trade in textile and some other products of interests which were subjected to restrictions outside the framework of GATT like the Multi Fiber Agreement(1973), was not dealt with.

As a result the LDCs made many objections to the outcome of Tokyo Round of Negotiations. They argued that no liberalization of existing quantitative import restraints or import quotas was achieved. Moreover the prevalence of measures like Voluntary Export Restraints (VERs) and Orderly Marketing Arrangements (OMA), taken outside the GATT frame-

49. Product specific graduation implies that as the LDC's achieve economic progress and acquired competitive strength, individual sectors of this industry should be phased out from eligibility for preferential treatment.

50. For further details of results of the Tokyo Round as pertaining to LDC's please see, "The Tokyo Round of Multilateral Trade Negotiations" Report by the Director General, (Geneva, 1979), pp. 154-179.

work, were not dealt with and no limitations were imposed upon their utilization. With the respect of Framework Agreement, the introduction of the 'graduation' principle enabled the developed countries to arbitrarily discriminate amongst the LDCs and deprive them of preferential market access.

4. CONCLUSION

If we assess the developments in the successive multilateral trade negotiations under the auspices of GATT, since its inception, the options available for LDCs, to expand and improve their trade, provides a rather dismal picture. The GATT was principally designed to deal with tariffs, envisaging the conversion of all other barriers into, 'transparent' tariff barriers, which would subsequently be reduced during negotiations. The developmental needs of a special problems of the LDCs were not catered to. Hence it was not surprising that difficulties arose in negotiations involving the problems of LDCs, because trade restrictions at issue were not common to developed and developing countries. A wide chasm existed between the understanding of developed nations and LDCs.

Interestingly 11 out of the 23 original signatories were LDCs⁵¹ and yet GATT was not largely reflective of concerns of LDCs, excluding issues of major importance to them from the negotiating agenda. As the LDC membership rose in GATT the cleavage between developed countries and LDCs became more prominent with the developed countries attempting to uphold simultaneously the principles of MFN and reciprocity, while LDCs claimed exemptions from GATT rules foreconomic development, in effect asking for benefits of MFN treatment without offering full reciprocity. The LDCs strove to get acceptance for the principle of non-reciprocity, special and differential treatment from the developed countries. The developed countries were not enthusiastic about these demands. But because of the reigning cold-war they tried to concede to these demands, "to keep large number of LDCs in GATT and to offer a constructive alternative to UNCTAD".⁵²

Moreover, most LDCs are "characterized by restrictive payment regimes of one type or another..." and "this sub-

51. Anwarul Hoda - Developing Countries in the International Trading System- (New Delhi, 1987), p.30.

52. Gerard & Victoria Curzon - "Non Discrimination & Material Reciprocity" ; Journal of World Economy, January 1990, pg. 484.

stantially restricts trade inflows"⁵³ Severe debt problems are faced by the LDCs and according to Whalley these "problems are of such severity that the bargaining leverage through linkages between debt and trade, is central to these countries, as is their perceived inability to liberalize because of the debt overhang".⁵⁴ These impediments to LDCs have been largely neglected.

Therefore, in the GATT framework. that is an objective analysis of the activities of LDCs have to be done in the context of this background. The objective of the LDCs was to desire for adequate freedom to use the commercial policies to their maximum advantage and catering to their developmental needs. And as a corollary to this objective an enlargement of access to world markets for their semi processed and manufactured goods was required. In this pursuit to protect their terms of trade they got freedom and flexibility to a large extent to protect their domestic industries to a large extent. "In this direction tariff rules did not pose a major problem as most tariff related problems stemmed from commitments made voluntarily during negotiations".⁵⁵ As far as the

53. John Whalley - "Introduction", In John Whalley eds Dealing with the North : Developing Countries and the global Trading System". (London & Ontario, 1987), p. 3

54. Ibid.... p.3.

55. Anwarul Hoda - Developing Countries in the International Trading System : (New Delhi, 1987), p. 298.

use of quantitative restrictions go, the LDCs maintained restrictions almost indefinitely for balance of payment reasons as specified under the amended Article XVIII. Moreover, under the review session and then the Tokyo round the requirement of prior permission to use quantitative restrictions was released.

But the efforts of the LDCs regarding the expansion of their markets in the developed countries has not been successful. There are too many impediments in the realization of their objective. Although the principle of non-reciprocity and differential treatment were incorporated within GATT the developed countries lacked a will to implement them. Moreover exchange of concessions was a voluntary exercise and the developed countries in recent negotiations (for eg Kennedy and Tokyo Rounds) tended to exclude areas vital to LDCs from the scope of their offers. Whatever the LDCs stood to gain from the incorporation of the GSP scheme in theory, was to a large extent negated by the actions and policies of the industrialized nations. The GSP schemes of most developed countries, according to Anwarul Hode covers only a negligible proportion of imports from the developing countries. The application of the principle of graduation specially product specific graduation has further eroded the significance of benefits accruing to a LDCs for example from GSP schemes.

Growing protectionism in the developed countries has further circumscribed the scope of expansion of markets abroad by LDCs. Agricultural protectionism practiced by developed countries over several years has made the markets of industrialized countries highly inaccessible for the agricultural beginning with the Short Term Agreement on cotton products of LDCs. In addition textiles in 1962, trade restrictions on both garments and fabrics have grown and spread through 5 subsequent rounds of negotiations. All these agreements are now enshrined in the Multi Fiber Agreement, which entered into force in 1974⁵⁶ and was renegotiated in 1986. This resulted in a restrictive regime covering a large proportions of exports of the LDCs, which is an absolute contravention of the GATT spirit.

Utilization of safeguard measures like VERs and OMA's have set forth a dangerous trend and have neutralized whatever benefits which have accrued to LDCs through liberalization of trade in manufactured goods, under the auspices of GATT. LDC,s have acquiesced partly because of the of discrimination under the utilization of the threat safeguard measures by the industrialized nations. Thus the inherent

56. Dilip K. Das - "Dismantling the Multi Fibre Arrangement-" Journal of World Trade Law, Vol. 19, no.1, Jan. - Feb. 1986, pg. 70.

preferential status."⁵² The question that was faced in the Uruguay Round, according to Baldwin, was "not so much whether the developing countries- will assume more traditional GATT responsibilities but how this will be done".⁵³

The developed countries wanted to integrate LDCs more fully into the traditional framework of GATT and wanted LDCs to gradually assume some legal responsibility in GATT as the developed countries. This meant relinquishing such special treatment as tariff preferences, non-reciprocity in trade negotiations and protection of 'infant industry' under balance of payment grounds. They were also expected to open their markets and reduce their various subsidies on goods exported by them. The whole quest for reciprocity by LDCs as mentioned earlier was to make LDCs open up their markets.

In the Uruguay Round, the approach of the LDCs was to defend special and differential treatment wherever possible and to seek its extension to where the new areas were concerned. But special and differential treatment was not their

52. *ibid*...p. 710

53. Robert E. Baldwin, "Fashioning a Negotiating Package between Developing and Developed Countries", Conference on GATT and the Developing World. East-West Centre, Honolulu, 24-26 June. 1987, mimeo, p.15, as cited in, H.W Arndt, "GATT and the Developing World : Agenda for a new Trade Round", Review of World Economics, vol.123, no.4, 1987, p.710

sole negotiating objective in the round to the exclusion of other areas.

In fact a number of unilateral moves towards liberalizations of imports in a number of LDCs were made, whether under the structural adjustment programmes of IMF and the World Bank or otherwise. This change in attitude of a number of LDCs to reverse protectionism and follow a more export oriented strategy was also due to the economic growth of a number of NIC's like Singapore, Taiwan, Hongkong, South Korea who followed a more export oriented economic policy.⁵⁴ While it was accepted that with the industrial and the economic development of some NICs, they could assume greater obligations within the GATT system, the graduation issue presented a dilemma to the LDCs as a group.⁵⁵ The difficulty lay in determining the criteria for graduation.

Analysing the Final Act as agreed upon by the Contracting Parties in December 1993, the special and the differential treatment, envisaged in the Enabling Clause incorporated in the Tokyo Round, was limited to the least developed

54. For further details on the policies of NICs please see Henry R. Nau, "The NICs in a New Trade Round", in Ernest H. Preeg ed., Hard Bargaining Ahead : US Trade Policy and Developing Countries (New Brunswick and Oxford, 1985), pp.65-68

55. H.W Arndt, "GATT and the Developing World : Agenda for a New Trade Round", Review of World Economics, vol. 123. no.4, 1987, p.713

countries. For the other LDCs it was limited to granting them longer time frames to make adjustments to carry out the obligations as specified under the Final Act. As accorded to LDCs under the Uruguay Round in various issues has been discussed and analysed in subsequent paragraphs

a) Revision of Article 18 (b) Under the Uruguay Round - The scrutiny and consideration for amending articles relating to trade measures taken as a result of balance of payment difficulties (Articles XII, XIV, XV, XVIII) undermined the preferential treatment to the LDCs. Though these four articles are cited together the real target was section B of Article XVIII. This exercise was carried out keeping the objectives of the developed countries in view, i.e., the improvement of market access for developed countries in the LDCs markets.

According to the developed countries, the Section B of Article XVIII was involved for protective, rather than balance of payment reasons in some cases because of the easier surveillance procedures for actions under that section rather than under section C of the Article.⁵⁶ LDCs were of the opinion that Article XVIII (B) gave them flexibility

56. Francis Stewart "Proposals for a Review of GATT Article XVIII. An Assessment", UN, Uruguay Round: Further Papers on Selected Issues, (UNCTAD, 1989), p.34

which had to be maintained in face of persistent balance of payment problems.

The Final Act of the Uruguay Round though recognizing the right of LDCs to impose restrictions in case of balance of payment difficulties, the Agreement on the interpretation of the balance of payment provisions, favored the use of price based measures like import surcharges and import deposits rather than quantitative restrictions.⁵⁷ not only meant the incorporation of the views of the developed countries but also signified proscribing the right of LDCs to impose quantitative restrictions under balance of payment difficulties as provided for under Article XVIII (B).

b) Tariff - In the sphere of tariff negotiations inspite of the recognition of the principle of special and differential treatment accorded to LDCs, the developed countries stated that their final offers would depend on the degree of liberalization of import restrictions by LDCs. At the Brussels Ministerial Meeting in December 1990, the developed countries wanted a significant contribution from LDCs in the tariff negotiations including a much higher level of bind-

57. GATT, "The Final Act of the Uruguay Round 1994 : A Press summary", News of the Uruguay Round of Multilateral Trade Negotiations, 084, 5th April 1994. p.1

ing.⁵⁸ The LDCs were expected to contribute to the tariff liberalization process and most of them put forth some offers on the negotiating table. However, the LDCs were afraid that proposals in regard to tariff reductions were likely to erode existing preference margins and the conditionality of all the offers on tariff concessions.⁵⁹ To sum it up the negotiations on tariffs were marked by developed countries insistence on the principle of reciprocity.

c) Agriculture - The objective of the negotiations on agriculture was to establish a fair and market oriented agricultural trading system. In the Agreement on Agriculture only the least developed countries were not required to undertake any reduction commitments as regard, domestic support, export subsidies and market competition. Other LDCs were however accorded only flexibility to implement reduction commitments over a period up to 10 years in the sections of market access, export subsidies and domestic sup-

58. GATT, GATT Activities 1990, (Geneva, 1991) p.30

59. Madagascar's Trade Minister Georges Solofosem, Spokesman for African Countries, expressed these concerns on proposals in regard to market access at the Ministerial Meeting in Brussels Dec 4-10, 1990, as cited in, GATT, GATT Activities 1990, (Geneva,1991) p.25

port.⁶⁰ Details on the implications of the Agreement on Agriculture are dealt with in the next chapter.

d) Safeguards - Controversy over the issue of safeguards and frequent disregard of GATT rules in this area have been major factors undermining the credibility of the multilateral trading system. The question of safeguards was of primary importance for the current and future trade prospects of LDCs. LDCs have often been the target of the 'gray area' measures adversely affecting their interests. Thus the issue of safeguards not only related to actions taken under Article XIX but also gray and measures like VERA and OMA.

The Agreement on safeguards under the Final Act established a prohibition on 'grey area measures' by setting a "sun set clause " on safeguard action.⁶¹ The Agreement calls for the termination of safeguard measures taken under Article XIX of GATT, not later than 8 years after their applica-

60. The text of the Final Act as agreed upon in December 1993, as reproduced in N.K Chowdhary and J.C Aggarwal, Dunkel Proposals Vol. 11 : The Final Act 1994 Significance for India and the World Trade, (Delhi : 1994) pp.41-42

61. GATT, "The Final Act of the Uruguay Round 1994 : A Press summary", News of the Uruguay Round of Multilateral Trade negotiations, 084, 5th April. p.23

tion or 5 years after the date of entry into force of the agreement establishing the WTO, whichever comes later.⁶² The concessions given to LDCs were however qualified. The Agreement on Application of safeguard measures stated the safeguard measures would not be applied against a product originating in a LDC only if share of its product is not more than 3 percent in the importing country. The Agreement also states that LDCs with less than 3 percent import share should not collectively account for not more than 9 percent of the product concerned.⁶³ The LDCs all also given the right to extend the period of application of a safeguard measure for a period of 2 years more than the developed countries.

e) Subsidies and Countervailing duties - Regarding subsidies and countervailing duties the Final Act establishes 3 categories of subsidies, prohibited subsidies, actionable and non actionable subsidies. The prohibited subsidies include

62. N.K Chowdhary and J.C Aggarwal, Dunkel Proposals Vol.II; The Final Act 1994 : Significance for India and the World Trade, (Delhi : 1994), pp.41-42

63. *ibid...*p.196.

export subsidies.⁶⁴ Non actionable subsidies constituted specific on non specific subsidies involving assistance for industrial research activities and pre competitive developmental activity, assistance for regional development, assistance to promote adaptation of existing facilities to new environment requirements imposed by law or regulations.⁶⁵

Actionable subsidies were those whose use if caused adverse effects to the interests of other contracting parties, action could be taken upon them if proved that use of such subsidies caused injury to the other party.⁶⁶

The Agreement set out a mixed package for LDCs. Article 27, of the Agreement as subsidies recognized that subsidies played an important role in the economic development programme of LDCs.⁶⁷ The least Developed country members and other LDCs members whose per capita GNP is less than US \$

64. *ibid.*...p.151.

65. *ibid.*...pp.157-159.

66. *ibid.*...p.153.

67. *ibid.*...p.177.

1000 are exempt from disciplines on prohibited subsidies including export subsidies.⁶⁸ The other LDCs are however, are expected to apply the provisions in regard to the use of prohibitive subsidies. The provisions regarding the prohibition of export subsidies would take effect in other LDCs five years after the entry into force of the Agreement establishing WTO and would have a time bound exemption from other prohibited subsidies.⁶⁹

The special and differential treatment to LDCs under the Agreement on subsidies and countervailing measures catered to the principle of graduation. The LDCs members cannot increase the level of its export subsidies and their elimination is required when they become inconsistent with their developmental needs.⁷⁰ Moreover LDC s having reached export competitiveness that is a share of 3.25 percent in world trade in any given product, are required to phase out export subsidies within a period of two years and the least developed countries within a period of eight years.⁷¹ Here

68. *ibid...*p.191.

69. *ibid...*p.177.

70. *ibid...*p.177.

71. *ibid...*p.177-178.

again the concessions granted basically amount to longer time frames to adjust to the provisions of the Final Act.

Where the countervailing measures were concerned the Agreement stated that the countervailing investigation of a product originating in a LDC shall be terminated if the overall level of subsidies granted does not exceed 2 per-cent of the value of product.⁷²

(f) TRIPs In regard to TRIPs the LDCs have to undertake the obligations and commitments as specified by the Agreement, though longer time frames have been granted to them to fulfill the obligations and commitment as specified. With respect to the implementation of the Agreement, LDCs have been granted a 10 year and least developed countries a period of 11 years to bring their legislations in conformity with the Agreement.⁷³ LDCs which at present do not provide product patent protection in an area of technology would have up to 10 years to introduce such protection.⁷⁴ However, in the case of pharmaceuticals and agricultural chemical products, LDCs must accept the filing of patent applications

72. *ibid...*p.178.

73. *ibid...*pp.253-254.

74. *ibid...*p.254.

from the beginning of the transitional period through the patent need not be granted until the end of this period.⁷⁵

(g) TRIMs Under the Agreement on TRIMs the LDCs are allowed, temporarily to maintain quantitative restrictions against TRIMs under balance of payment difficulties. The LDCs can also deviate temporarily from Article III (National Treatment) and Article IX of GATT under balance of payment straints.⁷⁶ The LDC have also been given a grace period of additional 5 years and least developed countries 11 years for the elimination of all non confirming actions after a mandatory notification.⁷⁷

(h) Services The text of the General Agreement on Trade in services in its objectives recognized the difficulties and special economic, financial needs of the least developed countries. For the other LDCs, it called for their increased participation in trade in services and the expansion of their services exports through strengthening of their domestic services capacity. It called for their increased efficiency and competitiveness through access to technology on a commercial basis.⁷⁸ The developed countries are to facili-

75. *ibid*...p.256.

76. *ibid*...p.115.

77. *ibid*...p.115.

78. *ibid*...p.201.

tate the access to LDCs suppliers to information regarding commercial and technical aspects of supply of services and availability of service technology.⁷⁹ Special priority is given to the least developed countries to help them to increase their participation in services.

The text of General Agreement on Trade in Services (GATS) also provides for the maintenance of restrictions on trade in services under balance of payment difficulties.⁸⁰ But this provision was subject to many qualifications including graduation . It stated that restrictions applied should be temporary and phased out progressively.⁸¹ Moreover the extent of balance of payment difficulties of LDCs would be judged by the IMF.⁸²

Analysing the concessions provided to the LDCs on the whole under various agreements in the Final Act, the stress on the norm of reciprocity becomes apparent. The principle of graduation has been applied throughout the results of the Uruguay Round as embodied in the Final Act. Only the 30 least developed countries as specified by GATT Agreement have been accorded the special and differential treatment in

79. *ibid*...p.201.

80. *ibid*...p.208.

81. *ibid*...p.208.

82. *ibid*...p.209.

the real essence. The other LDCs have been subjected to enbloc, graduation.

3.3 INCORPORATION OF THE NEW ISSUES and LDCs

Right from the commencement of the discussions preceding the Uruguay Round the issues of TRIPs, TRIMs and services assumed a controversial character. Many LDCs argued that these were not issues that should be introduced into the GATT or that any attempt to deal with them should wait until greater progress was made on traditional agenda items such as agriculture or trade in textiles and clothing. However, the developed countries stressed on linking the expansion of the agenda to new issues to the progress on the old ones in the Uruguay Round.

Thus the new issues were incorporated in the Uruguay Round and were a source of major concern to LDCs. TRIPs and TRIMs were solely in relations to goods and were a part of GATT multilateral trade negotiations launched as a result of the decision taken by the Contracting Parties. Inclusion of the services on the other hand, as mentioned earlier, was a decision of Ministers, acting as representatives of their respective countries and not as Contracting Parties. Services were dealt with under a parallel track of negotiations.

Though all these issues were dealt with separately they had close interlinkages with the binding factor being tech-

nology. The infusion of these issues reelected a fundamental change in the process of production and trade policy, stimulated by advances in information and communication technology . These new issues shared a symbiotic relationship with technology. "Technology is the crucial element in international investment flows, and the same time permits rapid expansion of trade in services, either as a substance of such trade or as a medium that makes international trade in services possible. "⁸³ In another perspective foreign direct investment has enlarged the scope of transfer of technology and trade in services has facilitated innovation, adaptation and development of technology.

The developed countries in order to retain their comparative advantage and control markets wanted enhance and defend patent rights so that they could restrict the diffusion of technology. The inclusion of TRIPs in the negotiation can therefore be viewed from this perspective. The interlinkages between all these issues is thus apparent

The comparative advantage in trade in new issues obviously lies with the developed countries in particular the TNCs. TNCs monopolise the arena of high technology through

83. Murray Gibbs and Mina Mashayekhi, "Elements of a Multilateral Framework of Principles and Rules for Trade in Service" in UN, Ungway Round : Papers on Selected Issues (UNCTAD, 1989), p.84

research and development that is supported by their home governments. Hence, in the face of the onslaught of high technology the LDCs are at a disadvantage in the current international trading system as their comparative advantage lies in their natural resources and low labor costs.

Keeping their comparative advantage in mind the US and other developed countries pressed strongly for extension of GATT rules in the new areas.

SERVICES- "A service economy is frequently regarded as characteristic of the post industrial society.....".⁸⁴ But even in the developing countries services are of strategic importance in their economic social and cultural development. While LDCs recognize the importance of services to their development they were apprehensive about liberalization of trade in services. They did not have comparative advantage in traded services, with their infant service industries like banking, insurance, transportation needing protection. Liberalization in trade in services would therefore, impinge on their national security and sovereignty, and hamper the development of indigenous service indus-

84. William Diebold Junior, and Helena Stanton, "Negotiating Issues in International Service Transactions", as cited in William R.Cline, Trade Policy in the 1980s (Cambridge, London) 1983) p.582.

tries. A large section of service sector in LDCs comprises of labour intensive services and they are importers of capital intensive and high technology services. With many traded services such as banking, insurance and advertising, telecommunications being dominated by TNCs the LDCs felt themselves at a distinct disadvantage to compete with the former efficiently.

Hence it was not surprising that LDCs led by India and Brazil opposed the inclusion of services in the round.⁸⁵ In contrast the US along with other developed countries "regarded the inclusion of services in GATT talks as the sine qua non of a new round, and indeed as a barometer of efficacy of GATT itself".⁸⁶ In 1990 the world trade in commercial services was \$820 billion.⁸⁷ Under the Final Act the General Agreement on Trade in services (GATS) calls for effective liberalization of trade in services and calls for providing effective market access in this sector through successive

85. Jagdish Bhagwati, The World Trading System at Risk (Princeton, New Jersey ; 1991) p.87

86. Jeffery J.Schott and Jacqueline Mazza, "Trade in Services and Developing Countries", Journal of World Trade and Law, vol. 20, no.3 May-June 1986, p.254

87. Bernard M.Hoekman, "New Issues in the Uruguay Round and Beyond", The Economic Journal, vol. 103, no.42, November 1993, p.1528.

rounds of multilateral trade negotiations. " Members would enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the Agreement establishing MTO and periodically thereafter".⁸⁸ In GATS there is no emphasis separately on special and differential treatment for LDCs apart from the recognition of the economic, financial and trade difficulties of the least developed countries . The least developed countries are not required to make commitments and the negotiations on specific commitments would take into account their special economic situation. The rest of the LDCs are required to undertake the obligations and commitments as stipulated by the GATS. However, the GATS under Article IV calls for the increased participation of LDCs by strengthening their domestic capacity and their efficiency, through improved access of technology on a commercial basis⁸⁹. It also calls for liberalization of market access in sectors and modes of supply which are of particular interest to the LDCs.

88. N.K Chowdhary and J.C Aggarwal, Dunkal Proposals Volume II : The Final Act 1994 : Significance and for India and the World Trade (New Delhi , 1994), p.214.

89. *ibid.*...p.203.

Balance of payment difficulties of LDCs are recognized by GATS and they can to restrictions under Article XII of the Agreement.⁹⁰ However, these restrictions are temporary and should be phased out when the economic conditions improve.

In the process of liberalization of trade in services the level of development and national policy objectives of members are taken into account. "There shall be appropriate flexibility for individual members for opening sectors liberalizing few types of transactions, progressive extending of market access in line with their economic development...."⁹¹

But the above mentioned concessions, apart from the balance of payment provisions are in the nature of objectives. Moreover the GATS concentrates on basically capital intensive and technology services financial services, telecommunications, transport services where the industrialized countries have a depute comparative advantage. Labour intensive services in the LDCs have an advantage an relegated to the background.

90. *ibid.*...p.208.

91. *ibid.*...p.213.

3.4 TEXTILES

Textiles is one of the few sectors in which LDCs possess some comparative advantage in international trade. Textiles form a major position of exports in the LDCs and textiles and clothing are important in LDCs production employment and trade. Moreover, the developed countries markets are of a substantial importance for the exports of LDCs in textiles and clothing. In 1980, 51 per cent of LDCs exports of textiles and 70 per cent of their exports in clothing went to the developed countries markets.⁹²

But the developed countries have been following major protectionist policies in this sector adversely affecting the LDCs Trade in textiles for the last three decades was covered under the international regime of MFA which was a derogation of GATT principles. It was the basis on which developed countries restricted imports from LDCs, since, 1974.

The first step towards a regime in textiles was taken as far back in 1959, under the Eisenhower administration,

92. K.A Koekkoek and L.B.M Mennes "Liberalizing the Multi-fibre Arrangement : Some Aspects for Netherlands, the EC and the LDCs", Journal of World Trade Law, vol, 20, no.2, March-April, 1986, p.164.

to tackle the increased exports from Japan.⁹³ More restrictions soon proliferated and started affecting exports from South Korea and other LDCs. They soon became institutionalized in the form of Short Term Agreement (STA) in 1961, formed under the aegis of GATT.⁹⁴ The STA was followed by the Long Term Arrangement (LTA) in 1962 . The MFA which entered into force in 1974, was an expansion and refinement of the STA and LTA.⁹⁵ The MFA was renegotiated in 1977, 1981 and again in 1986.

The LDCs were, therefore, anxious for the integration of the textile sector into GATT and the abolishing of the regimes perpetuated by MFA. Infact a number of LDCs were not willing to support tangible progress in negotiations on services on safeguards if their demand for liberalization of world trade in textile and clothing was not met.⁹⁶

93. Vinod K. Aggarwal, "Liberal Protectionism: The International Politics of Organized Textile Trade", (Berkeley and Los Angeles : 1986), p.77.

94. Dilip.K. Das, "Dismantling the Multifibre Arrangement"? Journal of World Trade Law vol.19, no.1, January-February 1985, p.70

95. *ibid*...p.70.

96. Konrad Neundorfer, "Textiles and clothing in the Uruguay Round : Current Situation and Future Perspectives", Intereconomics, July/August 1990. p.171.

The Punta Del Este Declaration stated that the " negotiations in the area of textiles and clothing shall aim to formulate modalities that would permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade."⁹⁷

The Agreement on Textiles and Clothing in the Final Act stipulates the phasing out of MFA restrictions progressively by the year 2005.⁹⁸ It calls for integration of the textiles and clothing sector into GATT on the basis of strengthened GATT rules. The exports of the LDCs would certainly benefit from the increased market access resulting from the phasing out of MFA. But the actual liberalization of international trade in textiles would begin only after the end of the 10 year transition period.⁹⁹ The long transitional period for phasing out of the MFA, as specified by the Agreement thus reflected the deep seated protectionist attitudes of the developed countries and made the deal less favourable for the LDCs.

97. GATT, "Punta Del Este Declaration," GATT Activities 1986 (Geneva, 1987) p.20.

98. GATT, "The Final Act of the Uruguay Round 1994", News of the uruguay Round of Multilateral Trade Negotiation, 084, 5th April 1994, p.13.

99. ibid....p.13.

4. CONCLUSION

The Uruguay Round was at variance from the preceding rounds of trade negotiations not only because of its ambit and scope, but also because of its effort to institutionalise free trade. The conclusion of the Uruguay Round has led to the establishment of "the WTO", which, "envisages a single institutional framework encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices and the complete results of the Uruguay Round."¹⁰⁰

The WTO framework will ensure a "single undertaking approach" to the results of the Uruguay Round. In other words membership in WTO would entail accepting all results of the Round without exception.¹⁰¹ The Uruguay round deal thus negotiated by the developed countries to suit their interests, has been presented to the rest of the world as 'fait accompli,'.

Thus the augmentation of the existing schism between the developed countries and the LDCs has been further facilitated by the conclusion of the Uruguay Round. The new

100. *ibid.*,

101. GATT, "The Final Act of the Uruguay Round 1994: A Press Summary", News of the Uruguay Round of Multilateral Trade Negotiations, 084, 3rd April 1993

multilateral framework does not accommodate the interests of the LDCs, reflecting primarily the concerns of the developed countries and the TNCs. The problems of commodity trade, linkages between debt and trade, flow of financial resources and technology, issues vital to the LDCs were relegated to the objectives of the Ministerial Declaration and did not form a part of the negotiations. With the emphasis laid on principles of reciprocity and graduation in the negotiations the special and differential treatment, as envisaged in the 'enabling clause', stands jeopardized and eroded. This is apparent from the various agreements arrived on different subjects in the Uruguay Round.

Coupled with the erosion of the erosion of the principle of special and differential treatment is the infringement of the sovereignty of the governments under the Final Act. With GATT transcending the border trade paradigm and venturing forth into the arena of domestic legislations the LDCs are required to change their domestic Laws and policies in accordance with the provisions of the act. This is fairly indicated in the Agreements on agriculture TRIPs and TRIMS. It is ironical that the developed countries not only give precedence to their natural laws and prevent their infringement but they also deploy unilateral measures to bring legislative policies of other countries into conformity with

their own policies. The is reflected in the US efforts in the TRIPs negotiations to create a multilateral intellectual property regime in consonance with its intellectual property rights legislation. On the other hand the LDCs are being asked to change their national laws to fall in line with the global negotiations.

By emphasizing on reciprocity and the principle of graduation the developed countries to a large extent have succeeded in the effort to improve their market access in the LDCs, while simultaneously trying to protect their own markets. With the incorporation of the new issues as well as the other issues the developed countries will improve their market access to the markets of the LDCs. But all what LDCs have been offered in return is the liberalization of trade in textiles over a long transition period of 10 years.¹⁰² The provision of a long transitional period for the phasing out of MFA, only goes to show the developed countries reluctance to give up their protectionist policies and open up their markets.

The implementation of the Final Act is estimated to increase the world trade by 15 to 20percent, simultaneously adding \$ 200 to 300 billion dollars annually to the world income. Though the LDCs are expected to benefit from an open

102. *ibid.*, p.2.

trade based multilateral system as a result of the conclusion of the Uruguay Round, it is the developed countries along with the TNCs which stand to gain the most.

CHAPTER III

AGRICULTURE IN THE GATT URUGUAY ROUND OF NEGOTIATIONS : AN ASSESSMENT OF THE IMPACT ON THE DEVELOPING COUNTRIES

Agricultural trade reform emerged as the most pressing and most divisive issue on the agenda of the Uruguay Round of Multilateral Trade Negotiations. Notwithstanding the fact, that agricultural trade is a vital element in the well being of many countries in their roles as consumers and producers, the trade negotiations reflected the concerns of the developed countries, with the interests of LDCs relegated either to the background or generally ignored.

The Uruguay Round not only attempted to bring agriculture within the framework of negotiations under GATT but also gave it high priority in the Round. Infact agricultural trade liberalization formed the lynchpin on which the successful conclusion of the round rested. The progress in other vital areas of the Round - services, intellectual property rights, investment rights - became conditional on the progress in the agricultural front. Its ironical though, that in contrast to the areas mentioned above, agriculture was of marginal economic importance to the

developed countries¹. The share of agricultural products in the world merchandise trade declined to just 13% in 1987 as compared to 46% in 1950². This decline can not only be attributed in part to the strong growth of trade in manufactures and in fall of agricultural product prices, but also due to the interventionist measures taken by the governments directly or indirectly, having a significant impact in this sector.

At the very outset it is important to mention that the products covered under agriculture in the Uruguay Round were temperate zone products - cereals, meat, dairy products, oilseeds, vegetable oils sugar - as distinct from the tropical and natural resource based products. The LDCs are primarily exporters of tropical products and are net importers of temperate food products with the exception of a few countries. The developed countries dominate the trade in temperate agricultural products. Hence it was not surprising that the negotiations on agricultural trade reforms were dominated by the developed countries, the United States (US) and the European Community (EC), resulting in the marginali-

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1. Kevin Watkins - "Agriculture and Food Security in the GATT Uruguay Round", Review of African Political Economy, (Sheffield), No.50, March 1991. pg.39.
 2. Frances Williams - "GATT and Agriculture" European Trends, (London), No.1, 1990. P.48

sation of the LDCs with the exception of a few countries belonging to the Cairns Group³. The formation of the Cairns Group (CG) reflected the divergences amongst the developing countries and represented a cross-coalition between the developed and the developing countries. Its paradoxical that the developed countries in which farming accounts for less than 5% of GDP and employment dictated farm policies to countries in which agriculture typically accounts for over 2/3rds of employment and 25% of the national income⁴.

With the conclusion of the Uruguay Round of Multilateral trade negotiations and the extension of the GATT rules - for the first time - to the regulation of agricultural policies, has important implications for the LDCs. For not only do the new rules regulate the border trade policies in this sector, but they move into the arena of domestic agricultural legislation, amounting essentially to laying down of discipline in areas belonging squarely within the sovereign economic space of the countries.

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3. The membership of the Cairns Group is Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, Newzeland,, the Phillipines, Thailand and Uruguay. This is a group of agricultural exporters who consider them. selves to be "fair traders" not reliant on export subsidies.
 4. Kevin Watkins - "Agriculture and Food Security in thbe GATT Uruguay Round" Review of African Political Economy, No.50, March 1991, p. 39.

The primary objective of the chapter is to focus upon the relevance of agricultural trade liberalization under the Uruguay Round to the LDCs. This exercise involves, the understanding of the dynamics of the international agricultural trading system, designed primarily to cater to the needs of the developed countries, in order to define the position of the LDCs in the system. This requires a succinct but a comprehensive study of the special status of agriculture in GATT, the protectionist policies followed by the developed countries and the position of the LDCs in the system affected by the policies of the developed countries. This comprises the 1st section of the chapter.

The 2nd section deals not only with the agricultural negotiations in the Uruguay Round and its implications for the LDCs, but also factors leading to the inclusion of the otherwise neglected subject of agriculture in the Uruguay Round. The analysis of the results of the agricultural negotiations pertaining to the LDCs would be based on the text of the Final Act embodying the results of the Uruguay Round, as agreed upon by the contacting parties, in December 1993.

1. DYNAMICS OF INTERNATIONAL AGRICULTURAL TRADING SYSTEM

1.1 SPECIAL STATUS OF AGRICULTURE IN GATT

Prior to the Uruguay Round domestic agricultural pro-

grammes were regarded as sacrosanct and agriculture was accorded a special status within the GATT. with agricultural trade being given specific exemption in respect of market access and export competition. In the agricultural sector a number of exceptions to the general GATT rules existed, largely reflecting the interests of United States at the time GATT was established. Difficulties in the interpretation and enforcement of these rules, because of their ambiguous nature, allowed agricultural trade to remain largely outside the discipline of GATT.

At the time of the inception of GATT, the US argued against the extension of the general ban on quantitative restrictions to agricultural products. Article XI prohibits the use of quantitative restrictions but provides for certain exceptions particularly relevant to trade in agricultural products. But in order to prevent or relieve critical shortages of food stuffs and other essential products, export production on temporary restrictions could be applied as mentioned in paragraph 2(a) of Article XI. Imposition of import restrictions on agricultural and fisheries products for preventing interference with government to control marketing or production, or to remove temporary surplus in the domestic market is permitted under paragraph 2 (1) of Article XI.

Another important exception provided for agricultural products is under Section B of Article XVI relating to export subsidies. Here a significant divergence is reflected between the levels of obligations of industrial and agricultural product. Use of export subsidies are banned under GATT for industrial products under Article XVI:4. But Act XVI:3 permits export subsidies to applied to applied to agricultural trade provided that they do not enable a country to obtain "more than a equitable share of world trade". In practice though, the ambiguous nature of "equitable share" weakens the rule and US and EC over years have flouted the rule⁵.

Moreover GATT does not envisage any substantial discipline on production subsidies and these are covered only by the general obligations of Article XVI:1. This entails the notification of the extent and nature and effect of the subsidies influencing trade. If a contracting Party's interests are threatened or harmed by subsidization then the Article provides for a discussion on request and a possible reduction of subsidization. The Tokyo Round Subsidies Code did not introduce any substantial obligations with respect

5. C.Ford Runge and Gretchen Hiempel Stanton - "The Political Economy of the Uruguay Round Negotiations : A View from Geneva." American Journal of Agricultural Economics, (Iowa), 70 (5), Dec. 88. p. 1147

to the use of production subsidy⁶. The use of production subsidies is a frequently used measure, in the agricultural sector by the developed countries.

Several other trade distortive and protective measures are practiced in agricultural trade. Reduction in tariffs under periodic rounds of trade negotiations are envisaged in Act XXVIII bis of GATT. Under the previous sound of GATT Multilateral Trade Negotiations no concrete progress was made regarding tariff commitments in the field of agricultural products, barring the case of some noncompeting tropical products. "The unwillingness of major trading countries could also be gauged from the fact that a formula approach for the reduction of tariff and industrial products, the selective product by product request offer product procedure continued to be the rule for agricultural products"⁷.

In fact tariffs on agricultural products are not subject to binding in the case of EC, Japan, Sweden and Switzerland. absence of tariff commitments on basic foodstuffs enable the developed countries to use measures such as production

6. Anwarul Hoda - Developing Countries in International Trading system (New Delhi, 1987), p. 191.

7. Ibid... p. 190

subsidies and variable levies freely without the risk of causing nullification or impairment of tariff commitments.

Variable levies are one of the most commonly used devices by EC, Austria, Finland, Sweden and Switzerland to restrict imports.⁸ The variable levies though not violating any specific provisions of GATT, its certainly erodes the basic principles and objectives of GATT. These levies shield not only domestic production from international competition but also increase international price fluctuation by increasing demand in times of scarcity and high prices and diminishing in time of plenty and low prices. Tariff bindings could have provided a check on the use of variable levies. but a significant proportion of tariff lines relating to agriculture are excluded from the schedule of concessions of important industrialized countries⁹.

8. Variable levies are imposed on imported products so as to maintain their price at a higher level than that of the domestic product with the result that the imports are effectively shut out till the full domestic production has been consumed.

9. Tariff lines falling under customs cooperation council nomenclature (CCCN) Chapters 25-99 all subject to finding a very substantial lines falling under CCCN chapter 1-24 (agricultural products) are not subject to binding in the case of EC, Japan Sweden & Switzerland. As cited in Anwarul Hoda - Developing Countries in International Trading system (New Delhi, 1987), p. 190

1.2 PROTECTION OF AGRICULTURE IN MAJOR DEVELOPING COUNTRIES.

As mentioned above agriculture was largely left out of the discipline of GATT. This reflected the concerns of the major developed countries to give them flexibility to promote and protect their agriculture trade. Ever since the 50's the developed countries have been following their own policies regarding agriculture arbitrarily, flouting the general guidelines of GATT, and were generally unconcerned about the distortions caused in the international agricultural trading system. Infact agriculture is the best example of domestic economic policies which have significant international effects.

The agricultural trading crisis of the 1980's, the deepest and most protracted, since "the Great Depression, was the culmination of the policies followed by developed countries primarily the US and EC. It can be traced to the tendency of over production in the developed countries agricultural systems specially US and EC to outstrip domestic and international demand growth.

The category of temperate zone agricultural products encompasses almost all the basic foodstuff and they were all heavily protected in the developed countries. Protectionism of agricultural products in these countries stemmed from the

maintenance and perusal of a number of inter related policy objectives. Maintenance of the twin objective of food security and the maintenance and stabilization of agricultural incomes formed the basis of the policies followed by the developed countries. Food security was one of the important national objectives, as many of these countries after the post world war were substantially importing food. They wanted to attain self sufficiency in food stuffs, even if it implied expansion of uneconomic production. The objective of stabilization and improvement of agricultural level incomes was closely related to the above objective. Maintenance of production at a desired level not only required the insulation of farmers from the cyclical fluctuations in prices but also assurance to them of incomes comparable with those in other occupations.

The US sought and received a waiver in 1955 from, the obligations of GATT under Article II and XI for action taken under Section 22 of Agricultural Adjustment Act of 1933 as amended subsequently.¹⁰ Since 1935 Section 22 was used to restrict imports found to be interfering with US Department

10. Remy Jurenas - "US Agricultural Import Protection and GATT Negotiations." Congressional Research Service Issue Brief, (Washington) July 1, 1992. p. 2.

of agriculture.¹¹ The US used a variety of measures to support prices or subsidize farmers, together with an assortment of trade restrictions. The price support programmes deployed by US covered almost all major commodities viz, wheat, coarse grains, cotton, rice, soyabean, dairy products groundnut and tobacco.¹² The US Agricultural Adjustment Act also envisaged the use of export subsidies for stimulating exports of agricultural products.¹³

From the late 1960's the US domination of world market came under challenge from EC, where high guaranteed price support under Common Agriculture Policy (CAP) allied to technological advance, prompted huge productivity. These were dispersed on to the world markets normally with the help of hefty export subsidies. This was the beginning of the agricultural trade war between US and EC which was largely responsible for the distortions caused in the international trading system.

Since its inception in the late 1950 ; under the treaty of Rome, the CAP has had a dramatic impact on trade flows within EC and between EC and the rest of the world. CAP was

11. Ibid... p.1.

12. Anwarul Hoda - Developing Countries in International Trading system (New Delhi,1987), p. 194.

13. Ibid... p. 194.

formulated to ensure amongst other things a "fair level of income one commensurate with that of other sectors of economy, while taking account of the desirability of foreign trade."¹⁴ As a result of CAP the community's degree of self sufficiency for many of the principal agricultural products increased. The EC from a major importer of almost all food products in the 1960's, became a net exporter in 1970's.

The core of CAP was the setting up of a minimum "target on indicative price" in each country for goods coming under the system. Imports were only allowed at threshold prices, which were entry prices at which non community supplies of agricultural products can enter the Community ports. The difference between the threshold prices and world market prices was made up by variable levies imposed on the products entering into the Community. Since these levies were as effective as quantitative restrictions the need to impose such restrictions did not arise. For exports the difference between domestic prices and the world market prices world market prices was compensated by export restitutions. The device of export restitutions was invented to cope with surpluses generated due to over production and to

14. Gardner Patterson - Discrimination in International Trade. The Policy Issues, 1945-1965. (New Jersey, 1966) p. 202.

allow community exporters to compete on world markets.¹⁵ Another feature of EC's agricultural support programme was that no production controls was envisaged and no limit set on the expenditure for intervention and other measures.¹⁶ This led to the creation of surplus because of the expansion of uneconomic production much beyond the point of self sufficiency. In a number of products notably, sugar and beef in which LDCs have a special interest, the EC is now a net exporter. Only a few yrs. ago, it was a net importer of 20-30 million tons.¹⁷ Given the high level of support prices exports in these commodities has only been possible with the aid of substantial export subsidies, which the EC deployed, taking advantage of the lack of effective international discipline in this area. In sum the net effect of CAP, by generation of cheap supplies for the world market and by the reduction of prices, was to discourage production elsewhere.

In other developed countries like Japan, agriculture was aided by an even greater degree of government interven-

15. Nick Butler - The International Grain Trade : Problem and Prospects (New York, 1986) p.35.

16. Anwarul Hoda - Developing Countries in International Trading system (New Delhi, 1987), p.198.

17. Nick Butler - The International Grain Trade : Problem and Prospects (New York, 1986) p.33.

tion in comparison to US or EC. Japan uses quotas and State trading in addition to tariff for the regulation of import. The Japanese have achieved self sufficing by providing producers with support prices that exceed by five fold the world market prices for wheat and rice¹⁸.

A number of other contracting Parties, justified the use of quantitative restrictions on agricultural products on the basis of existing legislations under the provision of the Protocol of Provisional Applications of GATT, signed by original members or of Protocol of Accession, signed subsequently by government which became contracting Parties¹⁹.

Thus a variety of mechanisms to aid and protect the agricultural trade were deployed by the developed countries largely outside the realm of GATT obligations indicating a failure of international control over the international agricultural trade. This held forth several implications for the agricultural sector of LDCs for whom food security was vital for their well being.

18. Larry Deaton, Bob Riemenschneider, Matt Shane, Lee Ann Stockhouse - "GATT Trade Liberalization the US proposal." Agricultural Informations Bulletin no. 596 , March, 1990, p.3.

19. Anwarul Hoda - Developing Countries in International Trading system (New Delhi,1987), p. 192.

1.3 CONSEQUENCES OF PROTECTIONISM OF AGRICULTURE TRADE ON DEVELOPING COUNTRIES.

In the developing countries agriculture is closely linked to the developmental process and the importance of agricultural sector transcends purely commercial considerations. "Agriculture is the only sector which provide essential human need, is subject to erratic output variations on account of the vagaries of weather, employs thousands of small businessmen in rural areas where other employment opportunities are scarce."²⁰ The LDCs are importers for most temperate zone agriculture products comprising of the basic food stuffs. The following table gives the share of LDCs in world trade of principle temperate zone products in 1984.²¹

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20. Nick Butler - The International Trade : Problem and Prospects (New York,1986), p.80. Anwarul Hoda - Developing Countries in the International Trading System. (New Delhi,1987), P.215.
 21. Anwarul Hoda - Developing Countries in the International Trading System. (New Delhi, ,1987),p.215.

TABLE - 1

Quantities in 000 Metric tonnes

Product	World Import	Developing Country Import	Share in per cent	World Export	Deveoping Country Export	share in per cent
Bovine Meat	1380	870	26	3379	538	16
Sheepmeat	792	344	43	862	124	14
Pigmeat	2000	93	5	2014	209	10
Poultrymeat	1501	801	53	1574	381	24
Canned Meat	1187	274	23	1256	329	24
Milk dry	2985	1600	54	2914	24	1.0
Butter	1254	463	37	1264	29	2.0
Cheese and Curd	1707	384	22.5	1788	1	1.0
Wheat and Flour	115600	65281	56	116126	8729	7.2
Rice	11749	8981	76	12518	9013	72
Barley	22549	12203	54	22487	2077	9.0
Maize	68114	20712	30	68458	10029	15
Tomatoes	2037	299	15	2096	890	02
Orange	5268	903	17	5411	1889	35
Apples	3485	670	19	3499	706	20
Sugar	28321	11176	39	28587	18457	65
Soyabeabcake	2199	3248	17	20678	11385	53
Wine	5120	260	5.0	5288	276	5.0
Tobacco	1414	224	16	1404	766	55
Soyabean	24800	4745	19	25764	6025	23
Cotton lint	4434	1606	36	4230	1831	42
Soyabean oil	4079	3068	75	4019	1512	38

Source: As cited in Anwarul Hoda, Developing Countries in the International Trading System

It will be seen except in the case of rice, sugar and tobacco the developed countries are principal exporters. forms a very large part of the expenditure in LDCs. Hence for them food security is by for one of the most important national objectives. Food and other agriculture products are essential imports for LDCs and unlike imports for many industrial goods the LDCs have little or no margin for reducing essen-

tial food imports in response to heavy pressure on their external payment position.

The food trade balance sharply deteriorated in the LDCs from the late 1960's to the mid 1980's, while at the same time, food surpluses increased steadily in industrial countries.²² This excess production was dumped in the LDCs markets with the aid of hefty export subsidies. "Subsidization of exports on the one hand represent on balance a net transfer of resources to LDCs, though only accidentally and for from optimal manner"²³, on the other it has a negative effect on the self reliance in food and agricultural sector in these countries. These countries instead of devoting sufficient. Resources to the development of food and agricultural sector favour imports because of low international prices.²⁴ Because of the policies of US and EC of dumping farm surpluses , over the past two decades there has been a substantial transfer of consumes preferences, in the developing world, towards imported wheat and rice and away from local root crops and course grains. This is especially

22. H. Guyomard, L.P. Mahe, K.J. Munk & T.L. Roe - "Agriculture in the Uruguay Round : Ambitions and Realities." Journal of Agricultural Economics. Vol. 44 No.2, May 1993 p. 247.

23. Nick Butler - The International Trade : Problem and Prospects (New York, 1986), p.43.

24. Trade and Development Report, 1988, UNCTAD, p. 233.

true in Africa and the subsidised commercial food exports combined with food aid has fostered this shift in consumer tastes and fuelled Sub-Saharan Africa's chronic food import dependence.²⁵

Though most LDCs are net importers of food and account for 40% of the world imports in agriculture products,²⁶ there are some LDCs like Argentina, Brazil, Thailand, Columbia, who export some of the temperate zone agricultural products and derive substantial foreign exchange. It is these countries who are especially hard hit by the policies of developed countries. The trade distorting subsidies amounting to \$ 70 billion annually have created a global production glut undermining the prices world wide, particularly damaging to developing country farmers who often receive little government assistance.²⁷

Argentina is one of the major exporters of wheat coarse grain oilseeds. Thailand is one of the major exporters of

25. Kevin Watkins - "Agriculture and Food Security in the GATT Uruguay Round" Review of African Political Economy, no. 50, March 1991, p. 43.

26. Chakrawarthy Raghvan-Recolonization of GATT, the Uruguay Round and the Third World. (Penang, 1991) p. 163.

27. Stuart K. Tucker, "Opportunities and Risks : Developing countries in the Uruguay Round". Policy Issues (Washington D.C.) no. 7 1988, p.6

rice. In case of bovine meat the adverse effects of protectionism for a number of LDCs is very significant because of the importance of product to their economies, despite the fact that their proportion in world export is not very large. Sugar is another product of importance to the LDCs. Due to protectionism and high domestic support in developed countries specially in EC the LDCs competitive producers have been displaced from these traditional markets. EC from being an imports has now become one of the largest exporters, transferring of over 4 million tons- equivalent to a third of domestic production on to the world markets.²⁸

Export subsidization has thus hurt efficient farmers in other countries unable to match US-EC subsidies "dollar for dollar'" and adversely effected the livelihood of several producers in LDCs.

Thus the agriculture trade and food security problems of LDCs were compounded by the US-EC trade hostilities. The worst hit were major Latin American and Asian exporters. Argentina according to one study lost \$ 3 billion per annum in the mid 1980's as a direct consequence of 1985 US farm

28. Kevin Watkins - "Agriculture and Food Security in the GATT Uruguay Round." Review of African Political Economy, no. 50, March 1991, p.48.

act and EC export dumping - a sum equivalent to half of annual debt service repayments at the time.²⁹

Hence LDCs exporting temperate zone products perceived agricultural trade liberalization in the Uruguay Round as imperative and their interests in this sector were more in conformity with the other developed countries hit by the protectionism in agriculture- than with other LDCs. This resulted in the formation of Cairns Group in August 1986 and was a a cross coalition between LDCs and other major developed temperate zone exporters. Notwithstanding the central role of Australia, New Zealand and Canada, the Cairns Group was primarily made up of LDCs, specifically the principal agricultural exporting ones. It was formed with the aim of securing major reform in international agricultural trade and establish itself as an actor with considerable influence in the Uruguay Round of negotiations.³⁰ The following table gives the relative share of the countries

29. Ibid... p. 43.

30. Richard A. Higgot and Andrew Fenton Cooper - "Middle power leadership and coalition building: Australia, the Cairns Group, and the Uruguay Round of trade negotiations" International Organization, (Cambridge), Vol.44, No.4, Autumn 1990. p.590

belonging to the Cairns Group in the world agricultural trade.³¹

TABLE 2. The Cairns Group : select data on agriculture

Group Member ^b	Agriculture as a percentage of GDP	Agriculture as a Percentage of Export
Argentina	13	73
Australia	5	39
Brazil	11	41
Canada	3	18
Chilli	-	25
Colombia	20	67
Fiji	-	-
Hungary	17	23
Indonesia	26	21
Malaysia	-	38
New Zealand	11	68
Phillipines	26	26
Thailand	17	54
Uruguay	12	58

a Figures in Italics are for data prior to 1986. All other data are for 1986

b Camparable date for Fiji are not availble.

Source : World Bank, World Development Report 1988 (Oxford : Oxford University Press 1988). pp. 222-23, 226-27, 244-45 and 282-83

31. The Table is cited in Ibid.....p.603.

The formation of Cairns Group brought forth the divergences between the interests of the LDCs on the whole. It represented an alternative to the perspective of food importing LDCs. The net importers of food products amongst the LDCs were more bothered about concerns of food security the negative implications of agricultural liberalization and special and differential treatment in the Uruguay Round. Reformation of CAP of EC, removal of trade distortionist measures and increased market access demands of the US and the Cairns Group were not priority sectors on their agenda in the Uruguay Round of negotiations.

2. AGRICULTURE AND URUGUAY ROUND

2.1 FAILURES OF INTERNATIONAL CONTROL IN THE AGRICULTURAL TRADE SECTOR

Agriculture trade has not been a significant part of the post W.W II trade liberalising trend. In the course of seven GATT rounds held prior to Uruguay Round, tariff cuts were far smaller for agricultural products, and the degree of binding was likewise more limited as has already been mentioned earlier. Nominal protection rates for agricultural commodities in industrial countries rose from 21% to 28%

between 1965 and 1974 reached 40% in 1988.³² Protection was rampant in the agricultural trade sector and some efforts were made in the early years of GATT to look into the problems of agricultural trade.

Committee II set up under the GATT "Programme for Trade Expansion" in 1958 was charged with the problems arising in trade in agricultural products.³³ In its conclusion it stated "....." there has been extensive resort to the use of non tariff devices, whether or not in conformity with the General Agreement, which in many cases, has impaired or nullified tariff concessions or other benefits which agricultural exporting countries expect to receive from the General Agreement."³⁴

With the formulation of CAP another impetus to agriculture protectionism was given. The trend of developments in EC were almost towards complete autonomy. At the Kennedy Round (1964-1967), for the first time, a serious attempt was

32. Larry Deaton, Bob Riemenschneider, Matt Shane, Lee Ann Stockhouse - "GATT Trade Liberalisation the U.S. proposal." Agriculture Information Bulletin no. 596, March 1940, p. 2.

33. GATT, The Role of Gatt in Relation to Trade and Development, March 1964, p. 14.

34. GATT BISD , 10th Supplement, p.144, as cited in Anwarul Hoda - Developing Countries in the International Trading System (New Delhi,1987), p. 207.

made to liberalize agricultural trade. But all that was done in the Kennedy Round in agriculture sector was, tariff reductions on a few products. The discussion on Kennedy Round would be incomplete if one does not mention the proposal put forward by the EC in Kennedy Round, regarding the consolidation and effective freezing of the levels of support offered to agriculture through various devices available (the Montant de soutien).³⁵ This was rejected by the US because it was seen as entrenchment of protectionist domestic policies. In retrospect, however, it was nearest that GATT came to success in agricultural trade.

The US in 1970's wanted a reformation of CAP as it began to feel threatened, by the displacement by EC in other country market. In Tokyo Round the EC argued that CAP was essentially regulation of internal policy and, therefore, its principles and mechanisms should not be called into question and do not constitute a matter of negotiations"³⁶ There were some changes for agriculture in the Tokyo Round, but overall the effects was small. Attempts were made to set

35. For further details on EC's position in Kennedy Round, please see, Gardner Patherson, Discrimination in International Trade, the Policy Issues 1945 to 1965, (Princeton & New Jersey 1966), pp. 212-217.

36. Nick Butler - The International Trade : Problem and Prospects (New York, 1986), p.119.

limits on non tariff barriers and 5 "Codes were decided upon. These defined more explicitly the rules governing the use of non tariff barriers like dumping, subsidies, standards, government procurement etc. However the proliferation of subsidies continued despite the Codes and no substantial discipline in the international trade in agriculture was reached and difference between the US and EC persisted.

2.2 AGRICULTURAL TRADE CRISIS OF THE 80'S AND THE INCLUSION OF AGRICULTURE IN THE URUGUAY ROUND

Following the earlier discussion the protectionist policies followed by the major developed countries in agricultural sector, since, the inception of GATT and the failure of international control over agricultural trade culminated in the trading crisis in the 1980's. This was the worst agricultural crisis, since, the Great Depression. Prices for the main temperate food staple fell to their lowest levels in real terms, since, 1920's. With farm budget spiralling in developed countries and trade conflicts notably between EC and US reached their nadir. Need was felt to bring agricultural sectors under GATT rules and disciplines in the Uruguay Round.

During the 1960's and early 1970's, the US and EC farm surpluses were absorbed, admittedly amidst growing trade

weakness of the LDCs to use retaliatory measures inside or outside the GATT forum has further weakened them.

Thus on the one hand the general disregard of the observance of GATT rules by the developed countries, and on the other the arbitrary utilization of GATT rules to suit own their purposes, had not only an adverse affect on the LDCs, but also threatened the viability and effectiveness of the GATT system.

Though it is a difficult task to quantity the gains and losses of the LDCs countries in the previous 7 rounds of GATT nagotiations, one can't ignore the glaring phenomena of the obvious discrimination of the LDCs within the GATT framework. Whether this can be attributed to the general north-south conflict within the larger context or just their differences on individual trading issues, the fact remains that the LDCs, have had to benefit substantially from the existing global institutions.

CHAPTER II

GATT, THE URUGUAY ROUND AND THE DEVELOPING COUNTRIES

The latter half of the eighties, coupled with the early years of nineties would be chronicled in history as the most turbulent, eventful and consequential years, since the Second World War, during which international political and economic norms were restructured and redefined. The turbulent world is being shaped by the forces of globalization, liberalism, market economy and competition. The forces of liberalization sweeping through the world resulted in the crumbling of the ideological walls, the opening up of economies with the dismemberment of the iron curtain, the ensuing dismantling of controls and regulations and the reconfiguration of the geo-political map of the world. Seen also in this context of the forces of liberalization and globalization was the launching of the Uruguay Round of negotiations in 1986 under the auspices of GATT.

The new round launched, was the most challenging undertaking in GATT history, different from the preceding rounds of trade negotiations, not only because it was initiated against the backdrop of an unprecedented worsening of world trading system since the Second World War, with a view to develop a more viable and durable multilateral trading

system but also because of the scope and complexity of its agenda.

After seven years of protracted and arduous negotiations, the signing of the Final act embodying the results of the Uruguay Round, has virtually rewritten the rules of international economic relations. With the conclusion of the Round the aborted idea of an International Trade Organization (ITO) has been revived as the World Trading organization (WTO) with much more sweeping jurisdiction and enhanced power. Coming into effect from 1st of January 1995 the WTO "envisages a single institutional framework encompassing the GATT, as modified by the Uruguay Round, all agreements and arrangements concluded under its auspices and the complete results of the Uruguay Round".¹

The meaning of trade has undergone a sea of change with GATT transcending the border trade paradigm and moving into the interiors of the domestic economic policies of national governments. Along with the traditional market access issues it addresses the problems that have emerged in the institutional framework of GATT. Not only has the Uruguay Round brought agriculture and textiles back within the

1. GATT, "The Final Act of the Uruguay Round 1994: A Press Summary", News of the Uruguay Round of Multilateral Trade Negotiations, 084, 5th April 1994, p.1

framework of GATT, but has established a framework of rules and disciplines for issues which are not strictly trade and have not been dealt within the ambit of GATT previously.

The creation of a new multilateral system under the Uruguay Round, has brought forth opportunities and threats of an entirely different magnitude and character for the LDCs. Thus the discussion of the Uruguay Round negotiations assumes central importance, in the analysis of potentials and problems of LDCs in relation to GATT in the eighties.

The primary purpose of the chapter is to analyse the LDC participation in the Uruguay Round and discuss certain issues of relative importance to the LDCs. The Chapter is divided into three sections. The first section, examines the world economic situation in the eighties, against the backdrop of which the Uruguay Round was launched, with particular reference to the LDCs. It briefly deals with the economic and trade policies of the developed countries and its repercussions on the LDCs, which to a large extent moulded the LDC stance in the Uruguay Round of multilateral trade negotiation. The second section deals with the launching of the Uruguay Round and the attitude of the LDCs towards the new round. It also incorporates the nature and scope of the Uruguay Round and its principles and objectives with reference to LDCs. Selected issues of importance to

the LDCs in the Uruguay Round is discussed in the third section, covering issues of stand still and roll back, special and differential treatment, new issues and the textiles. Amongst the new issues services would be discussed here briefly as the issues of trade related investment measures (TRIMs) and Trade related intellectual property rights (TRIPs) would be dealt with in the subsequent chapters.

1. WORLD ECONOMY IN THE EIGHTIES, WITH A PARTICULAR REFERENCE TO DEVELOPING COUNTRIES

The LDCs in the early eighties found themselves in a critical predicament. "If stagflation, plentiful liquidity and shortages of basic materials were the hallmark of the seventies, those of the 1980s... was deflation, financial stringency and glutted markets.² The end of the Tokyo Round trade negotiations was followed by the second oil shock, high interest rates and fall of the level of economic activities in the developed countries. The recessionary trends exacerbated the problems of the developed countries leading to a lower investment level and growth of unemployment. This triggered a world wide recession, collapse in commodity prices and the worst international trade slump since the

2. UNCTAD, Trade and Development Report 1986 (Geneva, 1987) p.1

Great Depression. The length and the severity of the crisis contributed to the creation of a climate favorable to anti-liberal policies. This led to the adoption of unilateral protectionist measures by the developed countries against several products of interest to LDCs.

The LDCs were affected by the world wide recession which brought their growth to a standstill. The real GDP growth estimated by the World Bank was 5.9percent for the period of 1965-80 as compared to the growth rate of 4.3percent in the eighties in the LDCs.³ The cessation of their growth was associated with a reduction in the import demand in the developed countries thus leading to a fall in exports in the LDCs. The prices and the volumes of primary commodity exports were heavily dependent on increased levels of demand since, scope for their increased market penetration was rather limited. The following table shows the steady decline of the share of LDCs in the world exports in the eighties.⁴

3. Sumitra Chishti, Restructuring of International Economic Relations (New Delhi) 1991), p.26

4. As cited in *ibid...*p.27

TABLE 1: Values of Exports

	in million US \$					
	Shares are in the brackets					
1988	1950	1960	1970	1975	1980	1985
World 2,838,900	60,700	12,100	315,100	875,000	2,002,000	1,931,000
Developed Market 1,985,500 Economies (69.9)	36,900 (60.8)	85,100 (65.9)	223,500 (70.9)	574,200 (65.6)	1,251,600 (62.5)	1,266,500 (65.6)
Developing 579,100 countries (20.0)	18,900 (31.1)	28,300 (21.9)	57,900 (18.4)	214,800 (24.5)	573,500 (28.6)	459,500 (23.8)
Countries of 223,200 Eastern Europe (3.9)	4,100 (3.0)	13,000 (4.3)	31,000 (4.1)	78,300 (3.8)	156,500 (3.8)	175,500 (4.5)
Socialist 51,110 Countries of Asia (1.8)	790 (1.3)	2,730 (2.1)	2,720 (0.9)	8,180 (0.9)	20,430 (1.0)	30,060 (1.6)

Source: UNCTAD, Handbook of International Trade Statistics 1989, (UN, New York, 1990)

The share of LDCs in world exports stood at 31.1 percent in 1950 which declined to 20.4 percent in 1988 as seen in the table.

The terms of trade of primary commodities also remained depressed. The prices of non-oil commodities fell precipi-

tously between 1980 and 1986.⁵ Though there was an increase in export of manufactured products by 6.7 percent a year, in the eighties⁶ in the LDCs , they were adversely affected by the "new protectionism followed by the developed countries. Moreover the sluggish demand in the export markets also affected the LDCs..ls2

Further compounding the problems was the problem of debt which grew to serious proportions in the eighties. Huge debts were created in the LDCs due to growth of debt in relation to export earnings combined with high scale of interests. Debt export ratio of seriously indebted countries stood at 275 percent while that of moderately indebted countries stood between the figures of 165 - 275 percent.⁷

Apart from the problems mentioned above the LDCs were seriously affected by the policies of "the new protectionism"⁸ followed by the developed countries. The emergence of

5. World Bank, World Development Report, 1988, p. 24

6. World Bank, World Development Report, 1990, p.12

7. Sumitra Chishti, Restructuring of International Economic Relations (New Delhi , 1991) p. 29

8. C. Fred Bergsten and William R. Cline, "Trade Policies in the 1980's. An overview", in William R. Cline, ed., Trade Policy in the 1980s, (Cambridge, London : 1983) p. 68.

new protectionism is explained by some analysts in "terms of dynamic comparative advantage, resulting in a shift of competitiveness for many low technology manufactures from the industrialized to the developing countries, readily adjusting for when the world economy was growing steadily but presenting problems in the recession".⁹ Some observers even contended that protectionism "replaced the commodities question as the main bone of contention in the north-south relations."¹⁰

Apart from the economic recession the renaissance in foreign trade protectionism took place primarily due to the unsolved structural problems in the developed countries. The expansion of "the protectionism" was accompanied by a proliferation of non-tariff barriers which became the preferred form of trade intervention. With the reduction of tariffs after seven multilateral trade negotiations tariffs had

9. A.F Ewing, "Non Tariff Barriers and Non-Adjustment of International Trade : A Review Article", Journal of World Trade Law, (Geneva) Vol 18, no.1, January-February 1984, p.65.

10. Seigfried Schultz, "Protectionism of the Developed Western Countries and its Impact on the Newly Industrialized Countries" Development and Peace (Budapest) Vol.8, Autumn 1987, p.123.

become more as less redundant as a form of protection.¹¹ This development represented a serious threat not only to the multilateral trading system but was also particularly damaging to the exports of LDCs who had little bargaining power to counter discriminatory measures.

Both in agriculture and in the manufactured products such as textiles and clothing, iron and steel, electrical machinery, and footwear, non tariff restrictions practiced by developed countries affected a substantial share of LDCs trade.¹² Trade in manufactures was plagued by non-tariff measures such as Voluntary Export Restraints (VERs) and Orderly Marketing Arrangements (OMAs). The most conspicuous sector was that of textile and clothing- immensely important to LDCs trade- was regulated under Multi Fibre Agreement

11. J. Michael Finger and Sam Laird, "Protection in Developed and Developing Countries - An Overview", Journal of World Trade Law, vol.21, no.6, November-December 1987, p.10

12. While the percentage of imports from industrial countries to industrial countries subject to non tariff barriers rose from 10.5percent in 198 1 to 11.3 in 1984, the Non-Tariff barriers in industrialized countries rose on products from developing countries from 19.5 to 20.6 percent, as cited in World Bank, World Development Report 1984, pp.22,23.

(MFA).¹³ These measures were bilaterally arrived at and were a derogation of the basic GATT principles.

Barriers to agricultural trade grew because governments in developed countries wanted to protect and appease their politically powerful farming lobbies. This was a prominent objective specially of EC agricultural policy. agricultural protectionism, though practiced since the sixties, gathered momentum in both EC and US . The developed countries competed with the producers of LDCs by subsidizing agricultural exports. Moreover, international trade in agriculture being virtually outside the jurisdiction of GATT, gave the governments of the developed countries a free hand.

Apart from quantitative restrictions and other non-tariff barriers, to appease the domestic protectionist lobbies, the developed countries also deployed a number of instruments as health, safety and sanitary regulations, official procurement policies to restrict flow of imports where GATT commitments prevented the use of tariffs.¹⁴

13. Dilip.K.Das, "Dismantling the Multi-Fibre Arrangement ?" Journal of World Trade Law, vol.19, no.1, January-February 1985. pp.67-76

14. Marcelo de Paiva Abreu and Winston Fritsch, "Brazil Latin America and the Caribbean", in John Whalley ed, Dealing With the North : Developing Countries and the Global Trading System, (Ontario ; 1987),p.137.

Besides the deployment of non tariff barriers, LDCs exports increasingly faced the imposition of anti-dumping and countervailing duties by developed countries in recent years. These duties affect prices as opposed to quantities of imports and constituted an important non-tariff measure used by the developed countries to deter imports.¹⁵

Moreover, the developed countries not only used bilateral measures like VERs and OMA's but also deployed unilateral measures in attacking foreign trade barriers and practices to pry open the markets of LDCs. Section 301 of the 1984 US Trade and Tariff Act and Super 301 of 1988 Omnibus Trade and Competitiveness Act was used to extract unilateral trade concessions.¹⁶ Apart from Japan, India and Brazil were two LDCs which were named in the super 301 process in May 1989.¹⁷

Radical technological changes taking place in the world production and trade also fortified the protectionist sentiment in the developed countries. Through liberalism and free

15. *ibid.*...p.156.

16. For further details on Section 301 and Super 301 please see, Jagdish Bhagwati, The World Trading System at Risk, (Princeton, New Jersey ; 1991) pp.126-140

17. Jagdish Bhagwati World Trading System at Risk (Princeton, New Jersey : 1991), p.56

trade was preached to increase access to foreign markets, protectionism and state intervention particularly in areas of new technologies and new product industries was practiced by the developed countries in order to retain their monopoly over high technology.

Related to the advance in high technology was the accelerated pace of transnationalization of the world economy which affected the economies of the LDCs . There was pressure on the LDCs to alter and modify their domestic policies in a manner that they would become attractive to foreign direct investment and the operations of TNCs. The developing countries were also subject to threat of retaliatory measures against their exports (for eg super 301 of US) if they did not introduce laws protecting and enhancing patents and other industrial property rights of TNC's.¹⁸ This indicated a transgression of the sovereign economic space of the LDCs.

Another striking feature that came to light in the eighties was the sharp degree of heterogeneity amongst the broad spectrum of LDCs. "In the 1980's it was far too simplistic think in terms of two camps of developed and de-

18. Chakravarthi Raghavan, "Uruguay Round and New Themes : A Third World Perspective", Mainstream, (New Delhi) September 23, 1989. p.12

veloping countries, each refusing to mutually accommodate their trading interests through an exchange of concessions within the GATT."¹⁹ Under conditions of severe economic problems the varying and conflicting interests of LDCs came to the fore and the solidarity of the LDCs came under stress. There were higher income LDCs with a per capita of US \$ 3000, and lower income countries with a per capita of US \$ 200.²⁰ The rise of the "Newly Industrialized Countries (NIC's) whose exports constituted largely of manufactured goods, in comparison to countries which were largely exporters of commodities with a stagnant rate of growth.²¹ This further reinforced the economic divisions and differences in interest in the LDCs. Moreover certain LDCs who were temperate zone exporters had overlapping trading interests with developed countries.²²

19. John Whalley, "Introduction" in John Walley ed, Dealing With the North : Developing Countries and the World Trading System, (Ontario, 1987) p.4

20. *ibid*... p.2

21. For further details, please see, C. Michael Aho and Jonathan David Aronson, Trade Talks : America Better Listen : (New York ; 1985). pp.95-15

22. For further details please see, Richard A. Higgot and Andrew Fenton Cooper, "Middle Power Leadership and Coalition Building : Australia, The Cairns group, and the Uruguay Round," International organization () vol.44, no.4 Autumn 1990. pp.589-632.

At the eve of the Uruguay Round cracks in southern solidarity were extremely visible. Though the LDCs in the GATT forum never really performed under a bloc wide strategy, there was a certain commonality of interests which bound them together to a large extent. But in the eighties, divergences were more apparent than convergences amongst the LDCs and the lack of solidarity amongst the LDCs manifested itself in the Uruguay Round . The prospect of preferential access to the North American Market has made Latin American countries more subservient to the U.S Interests.²³ The NICs on the other hand are more concerned with increasing of market access for their exports. Under the pressure of IMF and the World Bank several LDCs started substituting their import substitutionist polices by following a more outward export oriented growth.

All these differences not only implied divergences amongst the trading interests of individual LDCs but also that their national policy objectives need not coincide with the collective group objectives of LDCs in general. The approach of the LDCs to the Uruguay Round was, therefore definitely distanced from the common bloc wide strategy

23. Rajiv Anand, "Uruguay Round Text in Perspective", Economic and Political Weekly, (Cambridge) vol, no. , May 2,1992, p.967

characterized as that of the group of 77. Coalitional activity between developed countries and LDCs on particular issues, where their interests overlapped was also evident. Even amongst the LDC , coalition forming in the negotiations was more issue specific than general.

The LDCs, thus found themselves in a quagmire of economic difficulties, at the eve of the Uruguay Round and were forced to relent to the demands of the developed countries. This to a large extent shaped their stance in the new multilateral trade negotiations. The passive approach of the LDCs in the previous global trade negotiations was critiqued by the developed countries and they demanded a more active reciprocal approach. The developed countries also demanded a reduction of the states role in the management of the economies of LDCs under the slogan of liberalization. This process was further facilitated by policies followed by the World Bank and the IMF.²⁴ The lending programs of these institutions were linked with stringent conditionality, thereby forcing the recipient countries to follow economic

24. For the role of these financial institutions to further liberalization in the developing countries inducing them to replace import substitutionist policies by export oriented policies, please see, Anne O. Krueger and Constantine Michalopoulos, "Developing Countries Trade Policies and the International Economic System", in Earnest H. Preeg, ed., Hard Bargaining Ahead : US Trade Policy and Developing Countries, (Washington DC : 1985) pp.49-54.

policies dictated by these financial institutions. This circumscribed the role of the LDCs to shape their own economies and necessitated them to replace their import substitutionist policies by following a more outward export oriented growth.

According to Jagdish Bhagwati, the import substitutionist policies followed by the LDCs had not brought about the degree of development and economic stability in these economies as expected. The stupendous economic performance of Taiwan, South Korea, Hong Kong, Singapore who had unilaterally liberalized their trade also influenced the other LDCs. "The intellectual orthodoxy, therefore, shifted rather sharply away from the early emphasis on the virtues of protectionism and the attendant import substitutionist strategy and towards the merits of trade liberalization and the outward looking strategy of export promotion."²⁵

Hence in an effort to maximise their benefits many LDCs liberalized their trade in late eighties and early nineties. But to benefit more substantially, the opening up of their markets required the developed countries to open up their markets too. But the trend towards greater openness in LDCs

25. Jagdish Bhagwati, Protectionism (Cambridge, Massachusetts, 1988) p.93

has been accompanied by more, protectionism in developed countries.

All these developments in the world economy as well as changes amongst the LDCs themselves, moulded the stance of LDCs towards the Uruguay Round.

2. THE GATT URUGUAY ROUND OF NEGOTIATIONS

2.1. THE PROPOSAL FOR A NEW ROUND and THE ATTITUDE OF THE DEVELOPING COUNTRIES

In the early eighties, the US began clamouring for a new round of multilateral trade negotiations and began directing its activities towards the effort at official and unofficial meetings. In January 1982, at the Davis Symposium of the European Management forum, US called for a ministerial meeting to launch a new round.²⁶ It called for a new round to deal with liberalization of trade in services, the problems of investment, free movement of capital, the challenges to trade in technology, and question of safeguards among other things. It also wanted to deal with trade in agriculture and further methods to bring LDCs fully into the world trading system by insisting on reciprocity and graduation in trade negotiations. According to William R.Cline, "A

26. Chakravarthi Raghavan, Recolonization : GATT the Uruguay Round and the Third World (Penang, 1991), p-70

major objective of the reciprocity movement is to open up foreign markets in services and foreign investment....²⁷

The stress on the incorporation of new themes of intellectual property rights, services and investment was to maintain and further the obvious competitive advantage the developed countries had in this sector. Hence, instead of first, addressing the Tokyo Round backlog, the developed countries, led by US, stressed for an early round of new multilateral trade negotiations and precipitate a discussion on these new issues.

The first , major attempt to address the Tokyo Round backlog was taken under the GATT Ministerial Meeting, in 1982, held in the depth of recession to curb rampant protectionism and rekindle faith in the multilateral trading system.²⁸ The Ministerial Declaration adopted a Work Programme designed to strengthen the multilateral trading system and liberalize world trade²⁹ Certain issues of con-

27. William R.Cline, "Reciprocity : A New Approach to World Trade Policy "? In William R.Cline, ed., Trade Policy in the 1980s (Cambridge, London : 1983), p.123

28. For further details please see, Bhagirath L. Das "The GATT Ministerial Meeting 1982 : An Interpretative Note". Journal of World Trade Law, vol.18, no.1, January-February 1984, pp.3-15

29. Anwarul Hoda, Developing Countries in International Trading System, (New Delhi) 1987), p.39

cern to LDCs were also included. The US drive for inclusion of investments and intellectual property rights and services did not succeed. The commitments to reverse protectionist to contain protectionism was diluted as some major trading partners declared this part of the understanding as merely as "best endeavor clause."³⁰

The failure of the developed countries, to initiate some work on the new issues, in the Ministerial Meeting further fortified protectionist sentiment. Need for a new round was felt even more deeply by the developed countries so that the mandate of GATT could be broadened and new issues could be included.

US and Japan gave the call for a new round of multilateral trade negotiations by the close of 1983.³¹ The US had deployed and numbers of protectionist measures inconsistent with GATT policies and principles, as mentioned earlier. In a number of sectors it no longer had comparative advantage in for eg steel and automobiles. It stood, therefore to benefit from expected MFN liberalization in the so called

30. Bhagirath L.Das, "The GATT Ministerial Meeting 1982 : An Interpretative Note", Journal of World Trade Law, vo.18, no.1 January-February 1986, p.6

31. Anwarul Hoda, Developing Countries in the International Trading System (New Delhi / 1987) p.40

"new areas". However, the LDCs refused to address the question of a new round until the backlog of issues and erosions of preference had been addressed.³²

The stalemate was broken by US pressure in July 1985 , and a Preparatory Committee was established for discussion of objectives and modalities for a new round.³³ Fundamental differences led to the presentation of two proposals for setting the agenda of a new round . One was presented by a Group of Nine (G9) industrialized countries and the other was presented by a Group of Ten (G10) LDCs led by India and Brazil.³⁴ The latter group opposed the inclusion of services and proposed a more traditional agenda excluding new issues. Negotiations were held and the position of agriculture and services in the new round was discussed. Finally a compromise was made with the acceptance of the "Swiss Columbia" text, which was adopted and G 10s amendments were rejected.³⁵ But the G10 did influence the outcome over services which were to be subject to a separate, but a parallel track of negotiations.

32. Allan M.Winters, "The Road to Uruguay" Economic Journal vol.100, no.403 December 1990, p.1297

33. *ibid*...p.1297

34. *ibid*...p.1297

35. *ibid*...p.1297

2.2. SCOPE OF THE URUGUAY ROUND

The Uruguay Round of Multilateral Trade Negotiations were launched at a meeting in Punta Del Este in Uruguay. Ministers of the member countries at the Special Session of GATT Contracting Parties adopted the declaration launching a new round of multilateral trade negotiations. "First meeting as contracting parties, the ministers adopted Part I of the Declaration, a decision to launch Multilateral Trade Negotiations on trade in goods. Second as representatives of governments meeting on the occasion of the special session, the ministers adopted a declaration to launch negotiations on trade in services. Third the ministers then adopted the Declaration on the whole."³⁶ The Punta Del Este Declaration, thus, placed services in a separate 'track' and delinked it from the GATT agenda.

As envisaged originally 15 areas were to be discussed in the Uruguay Round as mandated by the Punter Del Este Declaration. Fourteen of the issues came under the auspices of Group of Negotiation on Goods (GNG) which was established to oversee and coordinate the negotiations of the fourteen

36. GATT, "Punta Del Este Declaration", GATT Activities 1986 (Geneva, 1987) p.15.

areas falling under its preview.³⁷ The fifteenth and the final area of services came under the auspices of group of Negotiations on Services (GNS).³⁸ A surveillance Body was also established to maintain a moratorium ("standstill") on new trade restrictive measures and to orchestrate the progressive dismantling of existing illegal trade restrictions.³⁹ A trade Negotiations Committee (TNC) was set up to oversee the work of the three bodies mentioned above and all the three bodies mentioned above, were to report to TNC.⁴⁰

The Uruguay Round negotiations however got suspended at the Ministerial Meeting in Brussels in December 1990, as an impasse was reached with US and EC at loggerheads over agricultural subsidies.⁴¹ The negotiations could not be resumed till February 1991 when the TNC took the decision to restart trade talks on 26th February 1991 and Arthur Dunkel proposed the Dunkel Draft on December 10, 1991 as a compromise. The Dunkel Draft "represented a distillation of some

37. GATT, GATT Activities 1987, (Geneva, 1988) p.10

38. *ibid*... p.10

39. *ibid*... p.10

40. *ibid*... p.10

41. GATT, GATT Activities 1990 (Geneva,1991) pp.23-24

1,300 proposals and working papers during the four years of negotiations since the start of the Round."⁴²

A Work Programme was adopted by the TNC and the 15 areas of negotiations as envisaged in Punta Del Este was re-grouped and rationalized into seven areas.⁴³ These were -

a) Market Access, which included tariff, non tariff measures and tropical products

b) Rule Making, which included subsidies and countervailing duties, antidumping, safeguards, pre-shipment inspection, rules of origin, customs valuation, government procurement and GATT Articles.

c) Agriculture

d) Textiles and Clothing

c) TRIPs and TRIMs

d) Dispute settlement and final acts including the functioning of GATT system.

g) Services.

The agenda thus proposed by the Dunkel Draft was a mix of traditional and new issues. Finally two years after the presentation of Dunkel Proposal, the Uruguay Round of Multilateral Trade Negotiations were concluded after the signing

42. *ibid.*....p.22

43. GATT, GATT Activities 1991 (Geneva, 1992) p.19

of the Final Act embodying the results of the Uruguay Round on April 15, 1994 at Marrakesh.

2.3 OBJECTIVES AND PRINCIPLES GOVERNING THE NEGOTIATIONS, WITH SPECIAL REFERENCE TO DEVELOPING COUNTRIES

Objectives, as set forth, in the Punta Del Este Declaration reiterated the aim to "bring about further liberalization and expansion of world trade... to benefit all countries, especially less developed contracting parties including improvement of access to markets by reduction of tariff and quantitative restrictions other than non tariff measures and obstacles."⁴⁴ It reaffirmed the faith in GATT 's role in international trade. It envisaged the widening of the scope of GATT to cover wider issues in international trade.

Amongst other objectives there was a desire to increase the responsiveness of GATT to the changing economic environment and to foster cooperation so that inter-relationship between trade and other economic policies might be strengthened .The objectives also referred to the importance of trade in high technology products, difficulties in commodity trade. It paid lip-service to the importance of improving the trading environment for the benefit of LDCs by providing, for example, the ability of indebted countries to meet

44. GATT, "Punta Del Este Declaration" GATT Activities 1986 (Geneva ; 1987), p.17.

their financial obligations. It also called for strengthening the inter-relationship between trade policies and other economic policies conducive to the development and strengthening of LDCs. These were some of the issues which some LDCs wanted to include in the Uruguay Round as subjects for discussion. Although they did not figure in as areas of discussion in the Round, they did find a mention in the objectives.

The principles governing the negotiations recognized the need for special and differential treatment to be accorded to the LDCs. But at the same time it incorporated the developed countries demand for the principle of graduation to be applied to the LDCs. Attention was also given to the problems of the least developed countries. The ground rule of the negotiations was the commitment for standstill and rollback protection.

From the perspective of LDCs the Ministerial Declaration presented a rather dismal picture. The entire thrust of the developed countries in the new round was not only to maintain the existing status grow but also to enhance their economic superiority vis-a-vis the LDCs. The trade issues of importance to the LDCs were largely ignored, as manifest in the rejection of G10 s proposals. Moreover, issues like access to high technology, problems of commodity trade

relations between debt and trade, and making the global system more conducive to their economic growth were relegated to the objectives in the Ministerial Declaration. Principle of graduation was stressed upon and commitment to standstill and rollback was at best an political undertaking.

3. SELECTED ISSUES OF IMPORTANCE TO THE DEVELOPING COUNTRIES

This section would examine the issues of importance to LDCs as treated under the Uruguay Round of Negotiations. The issue of reciprocity and special and differential treatment, standstill and rollback commitments, textiles, implication of the incorporation of new issues, specially the services would be dealt with and analysed in this chapter. The issue of agriculture TRIPs and TRIMs with reference to the LDCs would however be dealt under the subsequent chapters. would be dealt with and analysed.

3.1 STANDSTILL AND ROLLBACK

As mentioned earlier in the 1st section of the chapter, the eighties witnessed a proliferation of protectionism as a result of which exports of LDCs suffered with the curtailment of market access. The utilization of VER's and OMA's other forms of non tariff measures and unilateral actions by the developed countries were often targeted against the exports of the LDCs. The LDCs under the threat of retalia-

tion had to bear the brunt of these non-tariff measures, often a derogation of the GATT principles.

Hence all the LDCs were united on the implementation of the 1982 Ministerial Declaration on the standstill and roll back commitments. But the commitment to constrain and reverse protectionism was feeble.⁴⁵ In 1985 and 1986 the LDCs led by India and Brazil insisted on the commitment to standstill and rollback to be made as a precondition for the launching of the Uruguay Round." through legal commitments in the form of Protocols."⁴⁶ The developed countries refused to commit themselves and what emerged in the Ministerial Declaration " was generally described as a political commitment.⁴⁷

In the Punta Del Este Declaration the standstill clause entailed an undertaking not to introduce "trade restrictive on distorting measures inconsistent with the General Agree-

45. Bhagirath L. Das, "The GATT Ministerial Meeting 1982 : an Interpretative Note", Journal of World Trade Law vol.18, no.1 January-February 1984, p.14

46. Chakravarthi Raghavan, Recolonization : The GATT the Uruguay Round and the Third World (Penang ; 1991) p.179

47. *ibid*...p.179

ment as instruments negotiated under the auspices of GATT."⁴⁸

The Declaration further stated that the utilization of trade distorting or restrictive measures in the legitimate exercise of GATT rights should not exceed the minimum necessary to remedy specific situations as provided for in GATT. More over any trade measures by the contracting parties to improve their negotiating positions should not be taken.

The commitment to Roll back was also a political undertaking and was "seen as a limited means of trade policy disarmament in other words, the progressive dismantling, during the Round of all trade restrictions which are inconsistent with GATT."⁴⁹ The phasing out of measures inconsistent with GATT was expected to take place through a process of consultation, but GATT concessions could not be requested as payment for the elimination of these illegal measures. This was stipulated in the Declaration.

The concept of standstill and roll back measures on the basis of being inconsistent with GATT provisions gave rise to disputes. The difficulty lay in determining what actions

48. GATT, "Punta Del Este Declaration", GATT Activities 1986 (Geneva : 1987), p.18

49. GATT, GATT Activities 1988, (Geneva ; 1989), p.25

were GATT consistent or inconsistent. This prevented any achievement in regard to the implementation of roll back measures⁵⁰ much to the consternation of LDCs.

3.2 SPECIAL AND DIFFERENTIAL TREATMENT IN THE URUGUAY ROUND

Special and Differential treatment was not in itself an issue for negotiations in the Uruguay Round but was covered under the various subjects for negotiations under the round. It was one of the principles governing the Uruguay Round of Negotiations. However in practice it was accorded only to the least developed countries, with the rest of the LDCs expected to make contributions to the negotiations.

Though special and differential treatment was finally incorporated in the rules of GATT in the Tokyo Round of Negotiations, it was the culmination of a long history of efforts made by the LDCs for special treatment in the global trade. Beginning from the overhauling of Article XVIII and addition of section B to it in the Review Session, to the addition of Part IV to GATT in 1964, and finally the incorporation of the 'Enabling Clause' in 1979 under the Tokyo Round, reflected the recognition of special and developmental needs of LDCs in discharging their obligations under GATT rules. The details of the history of special and dif-

50. Sumitra Chishti, "Restructuring of International Economics Relations (New Delhi , 1991) p.83.

ferential treatment would not be dealt here as it has already been discussed comprehensively in the previous chapter.

Much to the chagrin of LDCs, the issue in the Uruguay Round was the reconsideration of special and differential treatment accorded to them and the stress by the developed countries on the phenomenon of graduation especially with regard to the advanced LDCs on NICs. Through the Uruguay Round Declaration contained a clean and unequivocal reaffirmation of special and differential treatment as a principle of the trading system it also made a reference to the graduation principle. The Uruguay Round expected the LDCs to follow the principle of reciprocity and to make contributions and take up the obligations of GATT with the progressive development of their economies.

In the developed countries there was a notable loss of sympathy with the trade problems of LDCs .⁵¹ According to H.W Arndt, " the time is past when the developing countries, or at any rate the more advanced NICs, have an option whether or not accept gradual graduation from their special and

51. H.W Arndt. "GATT and the Developing World : Agenda for a New Trade Round" Review of World Economics (Tuebingen), vo.123, no.4 1987, p.708

frictions and were induced by the strong demand of the LDCs and changes in the policy posture of centrally planned economies. LDCs importing demand was the most dynamic factor behind the trade expansion growing at double the rate of OCED countries.³⁷ American agricultural exports expanded rapidly in the 1970's due to enlargement of the world market by Soviet purchases and by the growth of trade with Japan and LDCs of South East Asia.

But by the 1970's the US domination of world markets in agricultural products with the emergence of EC as a competitor undermined its hold on previously secure markets. Hence, the US desired reform of the CAP of EC which had led to major trade distortions in the agriculture trade and proved to be an obstacle to US agricultural exports.

The 1980's however witnessed, the halting of the growth in global commodity markets due to a global recession, debt crisis and fluctuations in exchange rates as mentioned earlier in the second chapter.

Agriculture trade growth average a little more than 1% per annum for the 1st half of 1980's as compared to 5% in

37. Kevin Watkins - "Agriculture and the Food Security in the GATT Uruguay Round," Review of African Political Economy, no. 50, March 1991, p.44.

1970's.³⁸ Due to the onset of debt crisis in the 1980's in the LDCs, the demand for agricultural imports declined and US exports were specially hard hit because of the dollar overvaluation and debt problem in key Latin American countries. Import demand was further constrained by the rising self sufficiency in key Asian markets for eg India, Pakistan and Indonesia.

The world market trends were, therefore, far from conducive for agricultural trade growth, but the agriculture output in US and EC was insulated from world price trends. Import protection and strong domestic support inducement policies designed to maximise productivity were responsible for the rise in output despite changed external market conditions. From 1980-87, agricultural production in Europe and North America rose at double the rate of increase in domestic consumer demand. The resulting surpluses led to a severe price depression. Subsidization of these surpluses led to the increasing costs of supporting farm incomes.

National agriculture policies came under growing budgetary pressure." Global expenditures on domestic agricultural programmes nearly doubled during the first 5 years of 1980's

38. Kevin Watkins - "Agriculture and the Food Security in the GATT Uruguay Round," Review of African Political Economy, no. 50, March 1991, p.40.

and in 1986 the US and EC each spent \$ 25 billion on farm programmes."³⁹ The US surplus dumping was market by EC despite growing internal strains. The trade conflicts between US and EC multiplied as was evidenced by a number of complaints received by GATT panel and export subsidy war on grain trade continued between EC and US.⁴⁰

In Europe the spiralling agricultural budget threatened the Community with bankruptcy. The US struggled to reign its budget deficit. In the developed countries several unilateral corrective measure ever taken but they were "peicemeal, shorterm and superficial."⁴¹ The Cairns Group countries comprising developing and developed members, had substantial stakes in international agricultural trade, responsible for

39. Roningen & Dixit, 1989, pg.1, as cited in A.J. Rayner, K.A. Ingersent and R.C. Hine - "Agriculture in the Uruguay Round : An Assessment." The Economic Journal, (Oxford U.K., Cambridge, U.S.), vol 103, no. 421, Nov. 1993 p. 1514.

40. H.Guyomard, L.P. Mahe, K.J. Munk & T.L. Roe - "Agriculture in the Uruguay Round : Ambitions and Realities.:" Journal of Agricultural Economics vol. 44 , no. 2, May 1993, p. 245.

41. Frances Williams - "GATT and Agriculture" Europeans Trends, No. 1, 1990, p. 48.

about 25% of global farm exports. ⁴² wanted trade liberalisation in agriculture and wanted reformation of domestic policies in agriculture.

Need was, therefore, felt for concrete multilateral action and led the governments to the negotiating table in the Uruguay Round to discipline international trading in agriculture. They realized that they could not afford to spend more on farm support.

2.3 NEGOTIATION ON AGRICULTURE IN THE URUGUAY ROUND

Although more than 100 contracting Parties to the GATT took part in the Uruguay Round, the course of agricultural negotiations was dominated by the sharply opposed positions adopted by the US and EC, with the Cairns Group and Japan playing broadly supportive though a subordinate role. In general the Contracting parties in the Uruguay Round may be classified into two categories "the proponents of reform and the proponents of restraint".⁴³ US and the Cairns group led the first group which stood to gain from multilateral trade

42. A.J. Rayner, K.A. Ingersent and R.C. Hine - "Agriculture in th Uruguay Round: Ambitions & Realities." Journal of Agricultural Economics vol. 44, no. 2, May 1993. p. 1517.

43. Hathway 1990, as cited in - It seryomard, L.P.Mahi, K.J.Munkj & T.L.Roe - "Agriculture in the Uruguay Round: Ambitions & Realities". Journal of Agriculture Economics, Vol.44, No.2, May 1993, P.254.

liberalisation in agricultural trade. Infact the Cairns Group played an important part in the negotiations, not only because of their combined share of the world market but also because they represented a coalition between developed and developing countries. It acted " as a constructive bridge builder and consensus seeker in the tense and sometimes complectual relationship not only between the major actor but also between the major actors and some of the more antagonistic developing conutries".⁴⁴ The second group, was composed of EC. Japan and Nordic countries and importing developing nations whose position in the Uruguay Round was highly influenced by the political clout of the farming lobbies in their respective countries.

The Uruguay Round primarily dealt with the agenda of the developed countries, concentrating mainly on increasing the market access and reductions of barriers to the agricultural trade. Concerns of the LDCs such as food security and demand for special and differential treatment, were relegated to a secondary position.

The Punta Del Este Declaration recognized the urgent need to bring discipline and predictability to agricultural

44. Richard A. Higgot and Andrew Fenton Cooper - "Middle power Leadership and Coalition Building; Australia, the Cairns Group and the Uruguay Round of Trade Negotiations, International Organisation, Vol.44, no.4, Autumn 1990, pp. 591-92.

trade and stated that the aim of the negotiations was "to bring all measures affecting import access and export competition under strengthened and more operationally effective rules and disciplines", by reducing import barriers, increasing disciplines on subsidies and minimizing the adverse effects of sanitary and phytosanitary measures.⁴⁵

The United States and the Cairns Group wanted a basic restructuring of policies by negotiating agricultural programme changes world wide and by curbing subsidised exports from EC. The Cairns group wanted to limit the detrimental effects on their economics resulting from the protectionist policies followed by major developed economics in the agricultural sector. The EC on the other hand was rather ambivalent where reform in agricultural trade was concerned and was committed to the preservation of the principles of CAP. At the same time it realised that its agricultural policy could not continue to be isolated from the competitive influence of world markets.⁴⁶

The first proposal tabled by US called for the elimination of all forms of trade distorting measures and protec-

45. Punta Del Este Declaration, GATT Activities 1986. P.21.

46. Ingersent et al 1994, as cited in A.J.Rayner, K.A.Ingersent, and R.C.Hine - "Agriculture in the Uruguay Round : An Assessment", The Economic Journal Vol. 103, No.421, May 1993, p. 1518.

tion over a period of 10 years including agricultural subsidies and other barriers.⁴⁷ Exception was made for bonafide food aid and decoupled income support to farmers. This was called the zero option proposal. Reductions were to be based on aggregate measurement support (AMS).⁴⁸ The Cairns Group agreed with the long term objectives of US but allowed for more flexibility.

In November 1988 in addition to the above proposal US introduced the concept of "tariffications" i.e. conversion of all non tariff barriers into tariffs and their subsequent binding and reduction leading to elimination over a ten year period.⁴⁹

The EC bitterly opposed the plan as it was not prepared to consider ending all support to agriculture. It proposed the need for short term measures based on current policies

47. Larry Deaton, Bob Riemenschmider, Matt Shane & Lee Ann Stokhouse - "GATT Trade liberalization: The US proposal" Agriculture Information Bulletin No.596, March 1990, p.4.

48. Aggregate measurement support (AMS) as defined in the text of the Final Act means the "annual level of support expressed in monetary terms, provided for an agricultural product in favour of the producers of the basic agricultural product or non product specific support provided in favour of agricultural producers in general, other than support provided under programmes that qualify as exempt from reduction

49. GATT, GATT Activities 1989, (Geneva, 1990), p.50.

as opposed to the long term US approach.⁵⁰ It also proposed to reduce internal and external support to agriculture as opposed to US plan of elimination. It stressed on the arriving of a "disciplined market sharing arrangement " and "rebalancing of external protection policies".⁵¹

Concerns relating to other non-economic issues besides food security were raised by some developed and many LDCs. Protection of environment, maintenance of rural populations and rural development were some of the concerns included. A proposal by a group of countries stressed the "vulnerability to the possible price effects of any decisions taken by major exporters" of the LDCs who were net importers of agricultural products.⁵²

However, Contracting Parties were unable to agree upon the objectives of the agricultural negotiations at the Mid-Term Review at Montreal. The wrangle over the "zero option" between EC and US whether a commitment could be undertaken to eliminate trade distortive support and protection or

50. GATT, GATT Activities 1988, (Geneva, 1989), p.32.

51. Larry Deaton, Bob Riemenschneider, Matt Shane & Lee Ann-Stockhouse - "GATT Trade Liberalization: The US proposal" Agriculture Informations Buletin No.596, e.g March 1990, p.4.

52. GATT, "GATT Activities 1988, (Geneva, 1989), p.37.

whether the aim should be a substantial reduction led to a stalemate.⁵³

Very little movement in the initial positions on agriculture occurred until after the stalled Montreal Mid-Term Review and the Geneva Accord of April 1989. However, the Geneva Accord replaced the controversial language calling for the elimination of trade distortions by "substantial progressive reductions in agricultural support and protection sustained over an agreed period of time."⁵⁴ The Geneva accord also paid lip service to the issues of food security special and differential treatment for LDCs and ways to counter the possible negative effects of reform process on net food importing countries.

In late 1989 US reached a substantial measure of accommodation with EC on the its proposal of tariffication, which it tabled in October 1989.⁵⁵ In addition to tariffication it also called for the elimination of all forms of derogations from existing GATT rules and also elimination of all quanti-

53. *ibid.*.....p.37.

54. Larry Deaton, Bob Riemenschnider, Matt Shane & Lee Ann Stockhouse - "GATT Trade Liberalization ; The US Proposal".Agriculture Information Bulletin, No.596, March 1990, p.5.

55. GATT, GATT Activities 1989, (Geneva, 1990) p.50

tative restrictions authorized under article XI:2 (c).⁵⁶ The EC partially accepted the offer of tariffication put forward by the US, only if the problem of rebalancing existing border measures was taken into account.⁵⁷ The concept of rebalancing existing border measures, was widely opposed. The EC adhered to its proposal for the reduction programme based on aggregation of all internal support mechanisms, a proposal which was too imprecise for either US or Cairns Group. Throughout the initial proceedings on agriculture in the Uruguay Round, the Cairns group attempted to bring about some consensus between the US and EC and tried to provide a "middle way" for progress in negotiations and emerged as a third force in the Uruguay Round of negotiations on agriculture.⁵⁸ In particular the group tried to assuage the EC preoccupation with "rebalancing" and US preoccupation with "tariffication" as a way of placing an easily identifiable ceiling in variable levies.

To introduce momentum in the proceeding on agriculture in the Uruguay Round the US finally yielded ground on the

56. *ibid.*.....P.50

57. *ibid.*.....P.51

58. For further details please see-Richard A. Higgot & Andrew Fenton Cooper - "Middle power Leadership and Coalition Building : Australia the Cairns Group & the Uruguay Round of Trade Negotiations", International Organization , Vol.44, No.4, Autumn 1990. PP 613-632.

long term issue of zero option and as a compromise put forward a proposal in 1990 involving 90% reduction in domestic support and 75% reduction in borders protection over 10 years.⁵⁹ The EC apart from offering to reduce internal support by 30% over 10 years, expressed in terms of AMS refused to commit itself to any specific reductions in border protection.⁶⁰

To the US and the Cairns group such an indefinite undertaking by EC was unacceptable, moreover, the EC's unwillingness to make firmer commitment, as well as the sensitive issue of export subsidies resulted in the collapse and temporary suspension of Uruguay Round in December 1990.

Following the suspension of negotiations, little actual progress was made until, in late 1991. Secretary General Dunkel attempted to break the deadlock by tabling 'Draft Final Act' covering all areas of negotiations. It finally formed the basis of Final Act which embodied the results of the Uruguay Round of negotiations. The main body of the Dunkel text on agriculture specifically dealt with improving

59. A.J.Rayner, K.A.Ingersent and R.C.Hine - "Agriculture in the Uruguay Round : An Assessment, The Economic Journal, Vol.103, No.421, Nov.1993. p.1519.

60. *ibid*p.1519

market access, reducing domestic support and reducing export subsidies.

The US and the Cairns group (except Canada) were prepared to accept the Dunkel text for concluding the negotiations. But the EC portrayed a continued unwillingness to be committed to any firm restriction on the quantity of subsidized exports.

The US and EC tried to settle their differences bilaterally and reached an agreement in December 1992 on cuts in trade distorting farm support programmes and export subsidies. This agreement was known as the Blair House agreement.⁶¹

The Blair House Agreement contributed to optimism about completing the Round by end of 1992. But an agreement was not concluded. Negotiations were stalled when France asserted that EC commission had exceeded its negotiation mandate in reaching the Blair House Accord. In September 1993, Peter Sutherland, the Director General of GATT wanted a multilateral acceptance for the Blair House Accord and thought that it will provide a strong and stable global framework in

61. For further details of the agreement please see - Lenore Sek, Edward Rappaport, Jeanne J.Crimmet, & Charles E Hansraln 7 "The Uruguay Round: Unsesolved Issues, CRS Issue Breif No.93-804 E., August 30, 1993. p.6-8.

agriculture trade⁶²

The US-EC differences were finally settled just before the conclusion of the Round and the French opposition to the Blair House Accord was also overcome when it compromised on the issue of protection of agriculture in return for the preservation of their cultural specificity.

2.4 RESULTS OF THE AGRICULTURAL NEGOTIATIONS IN THE URUGUAY, ROUND WITH PARTICULAR REFERENCE TO IDC'S.

Under the Final Act embodying the results of the Uruguay Round the negotiations on agriculture emphasized on the establishment of a "fair and market oriented agricultural trading system" by calling for a "substantial and progressive reductions in agricultural support and protection over a period of time"⁶³. The Agreement is committed to achieve specific binding commitments in the areas of market access, domestic support; export competition and sanitary and phytosanitary issues. In its objectives it calls for the recognition of the particular needs of LDCs "by providing for greater improvement in opportunities and terms of access for

62. GATT, The News of Uruguay Round, 065, 14 September 1993, p.7.

63. The text of the Final Act, as agreed upon in December 1993, as cited in, N.K. Choudhary & J.C. Aggarwal - Dunkel Proposals Vol.11. The Final Act 1994: Significance for India and the World Trade, (Delhi, 1994), pp. 31-32.

agricultural products of particular interest" to them⁶⁴. It also takes into cognizance of the possible negative impact of the implementations of the reform programme on the least developing and net food importing LDCs and specific concerns of food security and special and differential treatment to LDCs have also been addressed⁶⁵.

MARKET ACCESS - In the area of market access non tariff barrier measures are replaced by tariffs. Tariffs resulting from the tariffication process as well as other tariffs on agricultural products are to be reduced by an average of 36% in the case of developed countries and over a period of 6 years and 24% in the case of LDCs over a period of 10 years.⁶⁶ The least developed countries are not required to reduce their tariffs. The tariffication package also requires the maintenance of current market access which is less than 3% of domestic consumption⁶⁷.

Under article 4:2 of the Agreement on agriculture the members are prohibited to maintain measures like quantitative restrictions, variable import levies and other deroga-

64. *ibid* p. 32.

65. *ibid*..... p.32.

66. GATT, "The Final Act of Uruguay Round 1994 : A Press Summary". News of Uruguay Round of Multilateral Trade Negotiations , 085, 5th April, 1994. p.8.

67. *ibid*.....p.15.

tions from the provisions of GATT, Other than ordinary customs duties.

But the LDCs have been accorded special and differential treatment which entails that the provisions of article 4:2 will not apply in respect to primary agricultural product which is the predominant staple in their traditional diet.

DOMESTIC SUPPORT - Domestic Support is expressed in terms of Aggregate Measure Support ⁶⁸. The Total AMS⁶⁹ encompasses all support provided in either a product specific or non-product specific basis that does not qualify for exemption. This domestic support is to be reduced by 20% in developed countries and 13.3% in LDC with no reduction required in least developed countries.⁷⁰

However, domestic support policies having a minimal impact on trade (green box policies) are exempted from the

68. For definition of AMS please refer to note 48, in the chapter.

69. Total AMS as defined in the text of the agreement on agriculture in the Final Act, Part I Article 1(h), means "the sum of all domestic support provided in favour of agricultural producers calculated as the sum of all aggregate measurements of support for basic agricultural products, all non product specific aggregate measurements of support and all equivalent measurements of support for agricultural products.

70. GATT "The Final Act of Uruguay Round 1994 : Press Summary", The News of the Uruguay Round of Multilateral Trade Negotiations, 085 5th April 1994, p.10.

commitments and are not included in the total AMS Calculations. These exemptions are applicable both to the developed and the developing countries and include government services programmes like research, pest and disease controls, inspection services, marketing and promotion services and the general infrastructural services. Public stock holding for food security services, domestic food aid, direct payment to producers, and decoupled income support to farmers are also included.⁷¹

But apart from these green box policies, LDCs can undertake certain other measures which need not be included in Total AMS reduction commitments. These include government measures of assistance to encourage agriculture and rural development which form an integral part of thus individual developing programmes. The governments can grant investment subsidies and agricultural input subsidies to low income or resource poor producers in LDCs⁷².

71. For further details please see, Annex 2 to the text of Agreement on Agriculture, which details the basis for exemption from the reduction commitments pertaining to Domestic Support, in N.K. Chowdhary & J.C. Aggarwal -Dunkel Proposal Vol. 11; The Final Act 1994 : Significance for India and the World Trade (Delhi : Shipra Publications, 1994), pp. 45-49.

72. N.K.Chowdhary & J.C. Aggarwal - Dunkel Proposals Vol.II: The Final Act 1994: Significance for India and the World Trade, (Delhi, 1994), p. 37.

Moreover members can subsidise, value of production in case individual products on in case of non product specific support of the value of total production, up to 5% in case of developed countries and up to 10% in case of developing countries⁷³.

EXPORT SUBSIDIES - The Agreement on Agriculture entails that no measures would be undertaken to provide export subsidies, except as specified by the Agreement. Members are required to reduce the value of mainly direct export subsidies to a level below 36%, below the 1986-90 base period level over 6 years. The quantity of subsidized exports should also be reduced to 21% over the same period.⁷⁴ The LDCs are required to make reductions in export subsidies by two third of that made by developed countries over a period of 10 years. The least developed countries are not required to make reductions.

The LDCs retain the possibility to resort or institute export prohibitions consent with paragraph 2(a) of article XI of the GATT, unless the measure is taken by a LDC member

73. *ibid*p. 37.

74. "GATT, Final Act of Uruguay Round 1994" : Press Summary. The News of the Uruguay Round of the Multilateral Trade Negotiations, 085, 5th April, 1993(Geneva, 1993), p. 16.

which is a net food exporter of the specific foodstuff concerned⁷⁵.

Further under Article XV, Part IX of the Agreement on Agriculture under its Final Act it is recognized that special and differential treatment is required for LDCs and this is provided in the relevant provisions of the agreement.

The Agreement on Agriculture also recognises that during the reform programme the least developed countries and net food importing countries may experience negative effects with respect to supplies of food imports on reasonable terms and conditions. Therefore, a special decision set out objectives with regard to the provision of food aid and provision of basic foodstuffs in full grant form and aid for agricultural development.⁷⁶

3. IMPLICATIONS OF THE PROPOSALS ON AGRICULTURE ON THE DEVELOPING COUNTRIES.

The Agreement on Agriculture as arrived at in the Uruguay Round of Negotiations withholds various implications for LDCs on the whole. As mentioned earlier, the issues of

75. N.K. Chowdhary & J.C Aggarwal - Dunkel Proposal Vol. II : The Final Act 1994 : Significance for India & The World Trade 1994, (Delhi, 1994), p. 40.

76. *ibid...*, p.41.

food security, special and differential treatment, in the agricultural sector, issues of major concerns to LDCs were relegated to the background. Apart from the agricultural exporting LDCs, members of the Cairns group, the role of the LDCs in the agricultural negotiations could be termed as marginal and their voice ineffectual.

The Final Act deals largely with the issues important to industrialized countries and "reflects the compromises the multinational companies have worked out with other interest groups in their own country⁷⁷." The propositions on agriculture were dominated more by the issues of liberalization and enlargement of market access than by the concerns of food security. Though the proposals regarded the extension of special and differential treatment to LDCs as an integral part of the negotiations under Article 15, part IX of the text on Agreement on Agriculture, the special and differential treatment actually accorded to LDCs was only limited to according them longer time frames to undertake reduction commitments as specified by the proposals. Only the least developed countries are exempted from making any reductions be it in the area of market access or domestic support. Moreover, the Final Act attempts to regulate not

77. Usha Menon - "Dunkel Proposal and Indian Agriculture" National Working Group on Patent Laws, July 1992, p. 1.

only the internal domestic policies of exporting nations but even that of countries which do not export and are importing countries and where the state intervention and the role of the government plays an important role in correcting the market imbalances and promote the cause of equitable development.a) Market access - In the area of market access special and differential treatment to the LDCs, is limited to longer time frames accorded to them to undertake reduction commitments on tariffs resulting from tariffication. As mentioned earlier, which the developed countries had to reduce their tariffs by 36% by 1999, the LDCs have to reduce by 24% by 2003. Another provision of market access having implications for the LDCs is the granting of current market access i.e. members have to allow imports at the level which they were importing during 1986-88⁷⁸. The LDCs have to grant a minimal market access of 2%. This implies that tariff measures cannot be used to reduce imports below these levels. But a LDC having a balance of payment problem can be exempted from providing minimum market access. But whether a country is having balance of payment difficulties is decided not only by the country itself but the IMF as well, according to GATT Article XV. Moreover, the balance of

78. Usha Menon - "Dunkel Proposal and Indian Agriculture" National Working Group on Patent Laws, July 1992, p. 4.

payment agreement under the Final Act favours the use of price based measures rather than quantitative restrictions to restrict amount of imports. ⁷⁹

But many argue that since, developed countries under minimum market access are to ensure an access of 3% of their markets for imports against minimum tariffs, going up to 5% later, the resulting exporting opportunities should benefit LDCs⁸⁰. If the so called benefits resulting from the export expansion accrue at all, they will possibly benefit a few LDCs exporting temperate food products. Infact it is the trans-national corporations (TNC's), who have a very large proportion in the world grain trade, stand to benefit more from the liberalization. The 5 major translational corporations⁸¹ account for more than 85% to 90% of world trade in grains and are not really accountable to any higher authorities⁸². The farmers will be reduced into the position of

79. GATT, "Final Act of Uruguay Round 1994 : Press Summary". The News of the Uruguay Round of Multilateral Trade Negotiations, 085, 5th April 1994, p.1.

80. Usha Menon - "Dunkel Proposals and Indian Agriculture" National Working Groups on Patent Laws, July 1992, p. 12.

81. The 5 major MNC's are Cargill, Continental, Bunge and Born, Louis Dreyfus and Andre ' Sarnac. Nick Butler - International Grain Trade : Problems and Prospects, (New York, 1986),p. 90.

82. *ibid...*,p.110.

cheap suppliers of grains to TNC, with very little bargaining leverage.

b) Domestic Support - The Agreement on Agriculture not only regulates international trade in agriculture but also with the domestic policies related to agriculture followed by member countries.

Various problems are faced by the LDCs in the agricultural sector as most LDCs are primarily agrarian economies. As the South Commission puts it "solution to these problems demand a strong leadership role from the state and cannot be left to the case of market forces. In particular market forces cannot deal with chronic problems of rural poverty as the rural poor are often not part of the market forces".⁸³ "For equitable and balanced development to be achieved it is necessary for the government to intervene to reduce the cost of credit for rural borrowers. Such support should not be construed as a distortion or a subsidy".⁸⁴

Farm price support and procurement measures have played an important role in stimulating agricultural production. But it is new these policies and government intervention-measures for maintaining stocks and the public distribution

83. South Commission "Statement on Uruguay Round", Geneva 1990, p. 17.

84. *ibid* ..., p. 17.

system, that has been attacked under the Final Act of the Uruguay Round of negotiations. The LDCs will have to reduce their subsidies if it is more than 10% of the value of production. Only the least developed countries are not required to make any reductions of the kind mentioned above.

However certain kinds of domestic support measure are exempt from the reduction commitments and these are important for the LDCs. These measures include subsidies given for general services, research, pest and disease control, infrastructural services, grading or standardization for food security purposes and decoupled income support.⁸⁵

Food Security - Through subsidies for maintaining and public stock holding for "food security purposes" and "domestic food aid" or the public distribution system are exempt from reduction commitments, exemptions are subject to certain qualifications. The Final Act not only attacks food security by opening up the LDCs markets to the fluctuations in international markets but also by prescribing certain policies related to food security. Food security is the ability of the governments to build up buffer stocks or import goods at a certain point and then release them to

85. N.K.Chowdhary & J.C. Aggarwal "Dunkel proposals Vol.II:final act 1994:Significance for India and the World Trade" (Delhi,1994), pp.45-49.

keep the general price level under control.⁸⁶ Though exemption is granted for government expenditure in relation to the accumulations and holding of stocks forming an integral part food security programmes, certain conditions are attached to the exemption. These exemptions are applicable only if the food purchases by the government take place at current market prices and do not cause trade distortions. Moreover sales made from food security stocks are to be made at the current domestic market prices.⁸⁷

Relying on market operations to fulfill food security operations has serious implications for LDCs. Under the proposals the government has to follow the market prices rather than interfere in the price settlement mechanism and stabilize the free prices of food grains.⁸⁸ This seriously circumscribes the role of the government regarding food security.

Public Distribution System - The proposals also put the public distribution system of the government under interna-

86. Abhijit Sen - "GATT Round and Impact on Agriculture in the Third World" Monthly Commentary on Indian Economic Conditions (New Delhi), vol.39, January, 1993, pp.14.

87. N.K. Chowdhary & J.K. Aggarwal - Dunkel Proposals vol.II: The final act 1994: Significance for India and the World Trade, (Delhi, 1994), p.46.

88. Abhijit Sen - "GATT Round and impact an agriculture in the third world". Monthly commentary on Indian Economic conditions vol.34, January 1993, p.14

tional discipline, an area which has nothing to do with trade and belongs squarely within the domestic operation of the agricultural section. Expenditure in relation to the provision of domestic food aid to sections of population in need are exempted from reduction commitment. But this is subject to the fact that the governments can buy agricultural products for its buffer stocks, only at market prices and any subsidised provision of food to the domestic population can only be provided to groups identified on the basis of nutritional criteria.⁸⁹

c) Domestic Subsidies - Where export subsidies are concerned the special and differential treatment to the LDCs is only limited to a longer time frame to implement reductions and that they have to introduce two thirds of the reductions that the developed countries have to introduce regarding export subsidies for agricultural products. Moreover, the LDCs have also been given exemption from reduction commitments for subsidies given for freight changes and for marketing for the implementations period.⁹⁰

One of the most significant impact on the LDCs importing agricultural products would be the significant price

89. N.K.Chowdhary & J.C.Aggarwal - Dunkel proposals vol II: The final act 1994 : Significance for India and the World Trade. (Delhi,1994),p. 46.

90. *ibid...*,p.38.

rise of the temperate products due to trade liberalization in agriculture. Many studies have attempted to evaluate the implications of trade liberalization in the industrial countries on the economies of LDCs, and despite certain discrepancies, it has generally been found that trade liberalization in the North would cause a general price rise.⁹¹ Food importing LDCs would suffer from agricultural policy reform in developed countries manily due to cuts in subsidies in Europe. The increase in the prices of foodgrains in the world market, means increased importing costs for essential products for LDCs. But the food exporting developing countries, example for LDC members of the Cairns Group would, however, benefit from the agricultural trade liberalization in the developed countries. However, it is argued on the other hand that in the longer run higher agricultural prices can have a positive effect as they would provide a greater incentive to farmers in LDCs to expand production.⁹² Some other argue that reform agricultural politics would benefit LDCs, if they deregulate their own

91. Parikh et al., 1987, as cited in, H.Guyomard, L.P. Mahe, K.J. Munk and T.L. Roe -" Agriculture in the Uruguay Round: Ambitions and Realities". Journal of Agricultural Economics, vol.44, no.2, may 1993, p.247.

92. UNTAD, Trade & Development Report, 1988, p.233.

agricultural sectors too and if, at the same time, industrial countries liberalise non agricultural trade.⁹³

However, these are long term propositions and one is unable to arrive at any conclusions, but it is certain that in the short run a very large number of LDCs particularly African countries will suffer very severely as a result of higher prices of foodgrains.

To put it briefly the LDCs would be adversely affected by the trade liberalization in agriculture as envisaged in the Final Act of the Uruguay Round. Perhaps the only LDCs bound to benefit are the small numbers of food exporting developing nations. Special and differential treatment as envisaged earlier in GATT, is only being given to the least developed countries alone. The rest of the LDCs have only been accorded longer time frames to implement their commitments. At this stage it is too early to come up with a concrete conclusion, as to how the LDCs would be affected by the agricultural policy reform. On the whole, one thing is certain that the Agreement on Agriculture in the Final Act only reflects the concerns of the developed countries alone.

93. Anderson & Tyers, 1990; Burniause et al., 1990; Zietz and Valdes 1990, as cited in H.Guyomard, L.P.Mahe, K.J.Munk and T.L. Roe - "Agriculture in the Uruguay Round : Ambitions and Realities:." Journal of Agricultural Economics, vol.44, no.2, May 1993.p. 247

CHAPTER IV

THE GATT URUGUAY ROUND, AND TRIPs: A DEVELOPING COUNTRIES PERSPECTIVE

The inclusion of TRIPs in the Uruguay Round and its incorporation within the GATT framework amongst the other new issues, reflected a fundamental change in the process of production and trade stimulated by advances in information and technology. With the growth of knowledge intensive products in international trade the developed countries stressed on the recognition of connection between intellectual property and international trade. The possession and monopolization of technology was not only a major component of the wealth of developed countries, but it also formed a major part of their international trade. "Constant innovation ... became the hallmark of the economies of developed countries and the technology innovation component of exports both tangible and intangible - became a major factor in international economic competition.¹

1. Fredrick M. Abbot, "Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework", Vanderbilt Journal of Transnational Law, (Buffalo, New York), vol.22, no.4, 1989, p.696.

The wealth created in the form of science and technology was protected by intellectual property rights embodied in laws regarding patents, copyrights trade secrets and designs. These laws were governed by mainly the Paris and the Berne Conventions administered by World Intellectual Property Organizations (WIPO); Universal Copy right convention, governed by United Nations Educational, Scientific and Cultural Organization (UNESCO). But the rise of new technologies in computer, software, semi conductors, chip designs challenged the existing patterns of intellectual property protection and consequently there was a growing interest in the economics of intellectual property rights.² Hence the developed countries who monopolized and dominated new technologies stressed not only on adequate and effective protection of intellectual property rights in order to retain their comparative advantage, but also the creation of new norms and standards regarding intellectual property.

Moreover there were differences amongst the various policies and laws followed by national governments to protect intellectual property rights which depended primarily on their national objectives. In the LDCs it was the objec-

2. Carlos Alberto Prima Braga, "The Economics of Intellectual Property Rights and the GATT: A View from the South", Vanderbilt Journal of Transnational Law, Vol.22, No.22, 1989, p.254.

tive of public welfare maximization which shaped the granting of intellectual property rights protection. Hence differences among national intellectual property protection system tantamounted to non-tariff barriers to trade in knowledge intensive products³ detrimental to the developed countries. The developed countries not only wanted an effective and adequate protection of intellectual property rights but also a uniform system for protection of intellectual property rights, despite the reservation of LDCs.

The developed countries harboured complaints that patents, trademarks and other intellectual property rights were not only infringed but extensively pirated in foreign markets specially in LDCs due to their inadequate intellectual property right protection. Intellectual property being intangible wealth and often easily appropriated and reproduced with the marginal costs of reproduction nearly zero, the developed countries saw in the intellectual property problem "as unintended transfer of wealth-in form of technology - from developed to the developing countries".⁴

3. Carlos Alberto Prima Braga, "The Economics of Intellectual Property Rights and the GATT: A View from the South", Vanderbilt Journal of Transnational Law, Vol.22, No.22, 1989, p.244.

4. Fredrick M.Abbot, "Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework", Vanderbilt Journal of Transnational Law, Vol.22, No.4, 1989, p.697.

The developed countries, specially the US, decided to deploy unilateral measures to contain piracy and deal with "defective intellectual property systems specially of LDCs. But the potential of unilateral and bilateral measures used by the developed countries was limited. Thus disenchanted with the existing multilateral intellectual property forums. WIPO and UNESCO, and the absence of enforceable minimum standards within existing multilateral intellectual property treaties, the use of GATT forum for improvising the level of protection for intellectual property rights was advocated by the developed countries.

Hence the negotiations on TRIPs in the Uruguay Round was primarily a debate regarding the incorporation of TRIPs within the GATT framework and the degree of intellectual property protection countries should provide. This chapter explores the divergent attitudes of the developed countries and LDCs on TRIPs and deals with the implications of the agreement on TRIPs contained in the Final Act embodying the results of the Uruguay Round. In doing so it is important to deal with the relationship of GATT to TRIPs, and briefly dwell on the background of the intellectual property problems. Section 2 deals with the position of LDCs regarding intellectual property rights. The mandate of the Uruguay Round and the response of the LDCs is dealt with in section

4. Section 5, deals with the divergences of the opinions between developed countries and LDCs in the Uruguay Round of negotiations. Finally section 6 and 7, deal with the important provisions and principles of the Agreement on TRIPS and the implications for the LDCs respectively.

1. GATT PROVISIONS AND PRINCIPLES AS RELATED TO INTELLECTUAL PROPERTY RIGHTS

The Uruguay Round of negotiations sought extension of GATT provisions and principles to new areas of economic activity never before dealt with in GATT. The regulation and administration of intellectual property rights, even since the eighteenth century falls under the purview of international conventions, namely Paris Convention for protection of industrial, property, the Berne Convention for protection of literary and artistic works, the universal copyright convention. These conventions are administered by WIPO and UNESCO.⁵

Prior to the Uruguay Round GATTs concern with intellectual property was rather marginal. GATT's treatment of intellectual property has been rather sketchy, and wherever GATT touches upon intellectual property protection it

5. J.H.Reichman, "Intellectual Property in International Trade: Opportunities and Risks of a GATT Connection" Vanderbilt Journal of Transnational Law, Vol.22, no.4, 1989, p.756.

"adopts a permissive rather than a prescriptive approach, in that it allows governments, to adopt intellectual property related measures or legislation provided such measures are not inconsistent with GATT".⁶ According to Abbot, GATT did not explicitly address the extraterritorial protection of intellectual property rights.⁷

Explicit reference to intellectual property rights in the text of GATT is limited to 3 articles. Article IX.2 states that in adoption and regulation of marks of origin - trade names, geographical indications should not be done in a manner to hamper international trade. Moreover Article XI.6 also seeks to prevent their use in a manner "as to misrepresent the true origin of a product to the detriment of such distinctive, regional geographical names of products of the territory of a contracting party as are protected by the legislation".

Another article dealing with intellectual property is Article XX entitled "General Exceptions". Section D of this

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6. Rajan Dhanjee and Lawrence Baisson De Chazournes, "Trade Related Aspects of Intellectual Property Rights (TRIPs): Objectives, Approaches and Basic Principles of the GATT and of Intellectual Property Conventions", Journal of World Trade and Law(Geneva), Vol.24, no.5, 1990, p.6.
 7. Federick M.Abbot, "Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework", Vanderbilt Journal of Transnational Law, Vol.22, no.4, 1989, p.696.

Article allows for the adoption or enforcement of laws and regulations for the "protection of patents, trademarks and copyrights, and the prevention of deceptive practices".

These measures are not bound by GATT disciplines as long as they are applied non-discriminatory and necessarily to assure compliance with GATT laws and regulations.

In addition Article XII.3(C) and XVIII: 10 require that in order to safeguard the balance of payment position, the import restrictions should not be applied in a manner as "prevent compliance with patent trademark, copyright on similar procedures.

The developed countries dissatisfied within the existing legal protection of intellectual property rights under WIPO, the developed countries sought to establish a set of rules dealing not only with counterfeit goods but also setting new norms and standards for adequate and effective intellectual property, system under GATT.

The developed countries therefore tried to garner support for the inclusion of intellectual property rights within the GATT framework. Even during the Tokyo Round, the US attempted to muster support for an anti-counterfeiting code, but the consensus level needed for its incorporation

in the results of the Round could not be reached.⁸

However with the 1982 Ministerial Declaration the debate on intellectual property rights gathered momentum and some analysts consider the inclusion of a section entitled "Trade in Counterfeiting Goods" in the Declaration as a major development in the history of intellectual property rights under the GATT system.⁹

The LDCs were however, not enthusiastic about the incorporation of new issues and wanted the backlog of issues to be dealt with. The US and Japan gave a call for a new round of multilateral trade negotiations and endeavoured towards the inclusion of new issues, including TRIPs. Finally with the launching of the Uruguay Round of negotiations, TRIPs became a subject for negotiations in the Round.

2. LDCs AND THE INTELLECTUAL PROPERTY SYSTEM

"National Policies on the scope of legitimised intellectual property rights vary widely depending on the results of a cost benefit analysis balancing the immediate public welfare against long term interests in private capital

8. Carlos Alberto Primo Braga, "The Economics of Intellectual Property Rights and the GATT: A View from the South", Vanderbilt Journal of Transnational Law, Vol.22, no.2, 1989, p.248.

9. *ibid.* p.246.

formation".¹⁰ In the LDCs it is the primacy of public welfare which had shaped the national laws and policies regarding intellectual property rights. LDCs assigned a higher weightage to social interests than to private interests. Hence as a natural corollary, the developed countries negated the natural rights theory forming the basis the traditional arguments for protection of intellectual property rights as private rights. Intellectual property rights being intrinsic for the technological and economic development the LDCs argued that they were the common heritage of mankind. In contrast, the developed countries emphasized that intellectual property rights were fundamental rights comparable to the right of physical property.

The Intellectual property system was loosely governed by the Berne, Paris and Geneva Conventions administered by the WIPO and UNESCO. Under these conventions members were given adequate freedom and discretion to regulate the protection of intellectual protection of intellectual property laws in consonance with their developmental needs. Even the developed countries in the earlier stages of development did not provide for strict intellectual property

10. Fredrick M. Abbot, "Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Framework", Vanderbilt Journal of Transnational Law, Vol.22, no.4, 1989, p.697.

protection. Several subjects of vital importance like food, chemicals and agricultural products were not patentable in several of the developed countries like Germany, Switzerland, Nordic countries up til the late seventies.¹¹

The patents laws formulated by the LDCs reflected their developmental objectives. Their implementation not only served public interests but also facilitated the transfer of technology a much needed requirement for economic development. The patent laws of most LDCs contained various measures for the limitation - in public interest - of the monopolistic private rights conferred by the grant of patents. These have included compulsory licences, licences of right; automatic lapse; revocation; use and expropriation by the state, provisions against failure to work on insufficient working; limitations or importation of patent articles, etc.¹² Various sectors of vital importance to socio-economic development were exempted from patent protection, either

11. In the patent field, for instance, food chemical and pharmaceutical products were not protected by the Federal Republic of Germany until 1968; by Japan until 1987 who did not protect medical process; and by Spain until 1986, though it granted protection for chemical and pharmaceuticals as late as 1992; as cited in Rajan Dhanjee and Lawrence B.D.Chazournes "TRIPs: Objectives, Approaches and Basic Principles of the GATT and of Intellectual Property Conventions", Journal of World Trade and Law, Vol.4, no.5, p.8.

12. Surendra J.Patel, "Intellectual Property Rights in the Uruguay Round: A Disaster for the South?" Economic and Political Weekly, vol.244, no.18, 1989, p.980.

product or process. For example, in Argentina and India only process patents are granted for chemicals, pharmaceuticals and food products, while the Brazilian law excluded food, and pharmaceutical products from product and process patents.

The industries in the developed countries - especially the pharmaceutical and chemical - were affected adversely by the patent laws followed by the LDCs. Hence the developed Countries pressurized the LDCs through bilateral and unilateral measures to secure effective and adequate patent protection for their products.

The developed countries also took into account the use in counterfeited and pirated goods due to lax intellectual property protection of the proprietary rights of creators, inventors and trademark owners. The growth in counterfeited and pirated goods reduced the share of the developed countries in the total quantum of intellectual goods traded across of world markets. It also "established a parallel market of counterfeited goods in competition with the legitimate market for products distributed in conformity with national and international intellectual property laws."¹³

13. R.Oman, Register of Copyrights, "Copyright Piracy in the Western Pacific Rim: Update 86 (Paper presented to International Counterfeiting Coalition, San Diego, California, May 29, 1986) as cited in J.H.Reichman

The US International Trade Commission estimated the value of losses due to counterfeiting and piracy of US products throughout the world, at \$40 billions per year.¹⁴

The ITC report attributed significant losses to certain LDCs and NICs like Brazil, China, Hongkong, India, Mexico, Republic of Korea and Taiwan.¹⁵ The LDCs were held primarily responsible for illegal appropriation of intellectual property of developed countries. The industries cited as most affected by these practices were chemicals, pharmaceuticals, computers, software and entertainment.

The growth of piracy was further facilitated by the use in new copying technologies and the increasing international technological rivalry. The advent of these new technological changes "outpaced the legal normative aspects and operative

...Continued...

"Intellectual Property in International Trade: Opportunities and Risks of a GATT Connection", Vanderbilt Journal of Transnational Law, vol.22, no.4, 1989, p.755.

14. Robert W.Kastenmeier and David Beier, "International Trade and Intellectual Property: Promise, Risks and Reality", Vanderbilt Journal of Transnational Law, Vol.22, no.2, 1989, p.256.

15. Fredrick M.Abbot, "Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework", Vanderbilt Journal of Transnational Law, Vol.22, no.4, 1989, p.701.

mechanisms of the intellectual property system"¹⁶ thereby challenging it.

Simultaneously the exports of intellectual goods became a major component of international trade evoking a further interest in the economics of intellectual property rights. The developed countries, therefore, not only wanted a stronger intellectual property system with enhanced power of enforcement, but also one which could keep pace with the technological developments. This was necessary, keeping in line with their objective of maintaining their comparative objectives.

This required not only formulation of new norms, rules and standards governing the intellectual property system but also the effective maintenance and recognition by the LDCs of stricter intellectual property laws protecting the proprietary rights of the owners. Though for the effective compliance of the intellectual property rights and resolving of the intellectual property problem, the forum of GATT was a preferred strategy, the developed countries, especially the US, also used measures and unilateral economic sanctions. Under the Omnibus Trade Competitiveness Act 1988, the US Congress initiated sanctions to protect US intellectual

16. Paolo Bifani, "Intellectual Property Rights and International Trade", UN, Uruguay Round, Further Papers on Selected Issues (UNCTAD, 1989), p.144.

property rights in foreign markets, particularly the LDCs, and also to amend their, so called unfair trading practices legislation.¹⁷ Coupled with this was the threat or denial of general scheme of preference benefits against countries who refused to improve their intellectual property standards.¹⁸

Apart from pressuring the LDCs through unilateral and bilateral sanctions, the developed countries tried to promote the protection of intellectual property in LDCs by advocating that benefits would accrue to them in the form of increased investment and technology.¹⁹ It was advocated that intellectual property protection would encourage independent research and development and effective protection of patent and trademarks would facilitate negotiating licenses..

But the analysis of costs and benefits of theory for LDCs is in its infancy. The LDCs also disagreed with the

17. Fredrick M.Abbot, "Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework", Vanderbilt Journal of Transnational Law, Vol.22, no.4, 1989, p.708.

18. Robert W.Kastenmeier and David Beier, "International Trade and Intellectual Property: Promise, Risks and Reality", Vanderbilt Journal of Transnational Law, Vol.22, no.2, 198, p.299.

19. For further details on a costs-benefits analysis of the intellectual property protection in LDCs, please refer to Richard T.Rapp and Richard P.Rozek, "Benefits and Losses of Intellectual Property Protection in Developing Countries" Journal of World Trade and Law, Vol.24, no.5, 1990, p.75-102.

theory propounded by the western analysts. Infact no significant empirical study has yet demonstrated the beneficial impact of patent system on economic growth and social development.²⁰

The developed countries, hence dissatisfied with the working of intellectual property system and realizing the limited potential of the effectiveness of unilateral actions, stressed upon the use of GATT to improve the intellectual property system and set new norms and standards regarding intellectual property.

The LDCs however, professed faith in the jurisdiction of specialized agencies WIPO and UNESCO to deal with intellectual property rights and questioned the GATTs competence to deal with them.

3. MANDATE OF THE URUGUAY ROUND ON TRIPS

Following several years of effort intellectual property negotiations were included as a part of the Ministerial Declaration on the Uruguay Round of GATT. The US provided governmental leadership on this issue and the private sector in the US, Europe and Japan supported these efforts.

20. Fredrick M.Abbot, "Protecting First World Assets in the Third World, Intellectual Property Negotiations in the GATT Multilateral Framework", Vanderbilt Journal of Transnational Law, Vol.22, no.4, 1989, p.699.

Controversy surrounded the mandate from the beginning. The developed countries were adamant on the inclusion of TRIPs as a subject of negotiations under GATT. While, a significant number of LDCs, were of the opinion that GATT had only marginal jurisdiction in the area. WIPO was competent to deal with all intellectual property rights including trade in counterfeit goods. The draft resolution presented by Group of 10 developing countries in the preparatory conference leading to the Uruguay Round, did not contain any reference to intellectual property or other new issues and confined itself to traditional areas of GATT.²¹ However, the LDCs finally acquiesced to the developed countries demand for the inclusion of TRIPs, but they stressed on the special and differential treatment accorded to them.

The mandate of Uruguay Round on TRIPs stated :

In order to reduce the distortions and impediments to international trade, and taking into account the need to promote effective and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.

Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines

21. Allan N. Winters, "The Road to Uruguay" The Economic Journal, vol. 100, no.402, 1990p.1297.

dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.

These negotiations shall be without prejudice to other complementary initiatives that may be taken in the World Intellectual Property Organization and elsewhere to deal with these matters.

The mandate on TRIPs was divided into 3 paragraphs dealing with trade related aspects of intellectual property rights, trade in counterfeit goods, and consideration of the relationship between the negotiations in this area and initiatives in other fora such as WIPO.

The preambular part of the first paragraph dealt with adequate and effective protection of intellectual property rights, but at the same time mentioned that enforcement of such rights do not themselves become barriers to trade. The main differences between the participating countries, in particular the developed countries and the LDCs, centered around the extent to which the mandate allowed for the elaboration of new substantive rules and disciplines relating to protection and enforcement of intellectual property rights.²² According to the LDCs the GATT's concern was with liberalization of international trade and not with elabora-

22. Abdulgawi A. Yusuf "Developing Countries and Israel Related aspects of Intellectual Property Rights", UN, Uruguay Round, Further Papers on Selected Issues, (UNCTAD, 1989) p. 186.

tion and enforcement of intellectual property rights of individuals, which were within the competence of WIPO. The main task of the negotiating group according to LDCs, was the clarification of GATT rules and principles in relation to intellectual property rights.²³ Further new rules and disciplines should be devised for reduction of distortions and impediments to international trade. The developed countries insisted on creation of new norms and standards for protection of intellectual property rights, and linking the enforcement measures with the dispute settlement mechanism of GATT.

The second paragraph dealt with the relatively uncomplicated issue of trade in counterfeit goods. It was concerned with the development of a multilateral framework for dealing with international trade in counterfeit goods. This is a subject which has been discussed earlier in GATT. The question relating to the growing proliferation of counterfeit goods in domestic and international trade was dealt with in the Tokyo Round. However, no agreement could be reached on the draft agreements put forward by EEC and the US.²⁴ Duplication or overlap between issues in the TRIPs negotiations and areas covered by the existing convention

23. Ibid, p.186.

24. Ibid, p.186

administered by WIPO has been dealt with in the third paragraph. The mandate refers to the negotiations on TRIPs as complementary with the work in WIPO.

It was thus clear from the mandate that only trade related aspects of intellectual property rights and not the rights themselves should be tackled. But the developed countries insisted on setting the norms and standards. The LDCs stated that this was beyond the scope of the mandate. Hence the negotiations related to TRIPs were fraught with disagreements regarding the understanding and the interpretation of the mandate.

4. DIVERGENCE IN APPROACHES OF THE DEVELOPED AND DEVELOPING COUNTRIES IN THE NEGOTIATIONS ON TRIPs.

The differences in scope and interpretation of the mandate on TRIPs between LDCs and developed countries were manifested in divergent proposals. The US was the primary advocate for a fundamental restructuring of the intellectual property system, supported by EC, Japan and the Nordic countries. Brazil and India on the other hand characterized the position of the LDCs in their opposition to the incorporation of intellectual property rights into the GATT framework.

The proposals of the developed countries on TRIPs reflected their desire for inclusion of certain elements in the proposed framework of the Agreement on TRIPs. These elements concerned - defining substantive standards for intellectual property protection; provisions of enforcement measures not only at the border level but also internally; setting a multilateral consultation and dispute settlement mechanism and the application of GATT principles and provisions like that of transparency, national treatment, and MFN to be applicable to intellectual property.²⁵ Though EC and Japan supported the position of US they adopted a less radical approach in the negotiations.²⁶ Though they supported the US goal of 'adequate and effective' intellectual property protection around the world yet they did not share the US enthusiasm for setting strict international standards for intellectual property rights and the full harmonization of intellectual property legislation across the world under

25. Robert W. Kastenmeier & David Beier "International Trade and Intellectual Property Promise, Risks, and Reality", Vanderbilt Journal of Transnational Law, Vol. 22, no.2,, 1984, p.291.

26. Carlos Alberto Primo Braga, "The Economics of Intellectual Property Rights and the GATT: A View from the South", Vanderbilt Journal of Transnational Law, Vol. 22, no.2, 1989, p.249.

GATT.²⁷

The LDCs questioned the competence of GATT in relation with intellectual property rights. The LDCs in their proposals emphasized their strong support for existing international agreements administered by WIPO - i.e. Paris Convention (patent, utility models, designs and trademarks, trade names and appellation of origin), the Berne Convention (copyrights), the Madrid and the Lisbon Agreement (repression of false or deceptive indications of source on goods).

On the level and scope of protection to be accorded there were outstanding differences between developed countries and LDCs. The LDCs strongly opposed the demand of the developed countries for stronger intellectual property right protection. They contended that excessive protection of intellectual property rights would curtail their access to modern technologies and inventions.²⁸

The creation of norms and standards for intellectual property rights was a major bone of contention between the LDCs and developed countries. Hence they resisted any endeavour to transform negotiations into "an exercise to set

27. For details on the positions of Developed countries please see, Paolo Bifani, "Intellectual Property Rights and International Trade", UN, Uruguay Round, Further Papers on Selected Issues, (UNCTAO, 1984) pp.175-176.

28. Ibid., p.176.

standards of protection of intellectual rights and to raise the level of protections under existing multilateral agreements through strengthening the enforcements procedures".²⁹

The LDCs though accepted the existence of a clear mandate to negotiate trade in counterfeit goods, they specified that the negotiations should only deal with the examination of the trade effects of counterfeiting and not what constitutes counterfeiting.³⁰

There was also wide opposition to the inclusion of non-discrimination or MFN treatment applicable to the intellectual property rights. The participating LDCs stressed on the flexibility to provide protection to intellectual property rights in accordance "with their stage of development and to take action called for by national public interest, developmental and technological considerations".³¹ The LDCs in their proposals also insisted on the obligations as well as the rights that should be placed on right holders and on the control of the abusive or anti-competitive practices in the licensing of intellectual property rights.³²

29. Carlos Alberto Primo Braga, "The Economics of Intellectual Property Rights and the GATT. A View from the South", Vanderbilt Journal of Transnational Law, Vol. 22, no.2, 1989, p.249.

30. GATT, GATT Activities 1988 (Geneva, 1989), p.50.

31. GATT, GATT Activities 1989 (Geneva, 1990), p.64.

32. GATT, GATT Activities 1990 (Geneva, 1991), p.45.

However the opposition of the LDCs over the period of the negotiations was watered down.³³ The NICs had previously acquiesced in to bring intellectual property within the Uruguay Round under threat of unilateral and bilateral sanctions, conditioned on the demand of special and differential treatment and its incorporation in any framework on TRIPs which emerged after the negotiations.³⁴

After considerable negotiations and renegotiations the Chairman of the negotiating group on TRIPs presented a draft in December 1991 which was incorporated in the Draft Final Act.³⁵ With the conclusion of the Uruguay Round Agreement on TRIPs forms a part of the Final Act, establishing a framework of rules and regulations governing TRIPs.

5. **AGREEMENT ON TRIPs: IMPORTANT PRINCIPLES AND PROVISIONS**

The negotiations of TRIPs in the Uruguay round reflected great divergences between the developed countries and LDCs. The Agreement was reached after long protracted negotiations and proposed a uniform set of rules regarding intellectual property rights to be followed both by de-

33. Sumitra Chishti, "Restructuring of the International Economic Relations, (New Delhi 1991), p.113.

34. J.H. Reichman, "Intellectual Property an International Trade: Opportunities and Risks of a GATT Connection", Vanderbilt Journals of Transnational Law, Vol.22, no.4, pp.765-66.

35. GATT, GATT Activities 1991 (Geneva, 1992), p.43.

veloped countries and the LDCs. Its wide in scope and coverage and creates a multilateral framework of principles setting standards and norms for intellectual property rights and trade in counterfeit goods under the auspices of GATT.

The preambular section of the Agreement³⁶ the need to reduce distortions and obstacles to international trade and calls for the promotion of "effective and adequate" protection for intellectual property rights. But at the same time, it states that these measures to enforce intellectual property rights should not become barriers to international trade themselves. It underscores the developed countries point of view, that intellectual property rights are private rights. Though recognizing the special needs of the least developed countries, other LDCs have not been granted any special and differential treatment in the Agreement Applicability of GATT principles and principles of relevant international convention to TRIPs has been called for. Adequate standards and norms for intellectual property rights; effective enforcements of these principles; a multilateral dispute settlement; and a transitional arrangement has also been desired. A complementary relationship between World

36. The text of the Final Act agreed upon in December 1993, as reproduced in, N K Choudhary & J.C. Aggarwal, Dunkel Proposals Vol II: The Final Act 1994: Significance for India and the World Trade, (Delhi, 1994), p.230-31.

Trade Organization and WIPO has also been envisaged.

The Agreement is divided into 7 parts. Part I of the Agreement sets out general provisions and basic principles applicable to intellectual property rights. Article 3, of the Agreement stipulates the principle of national treatment to be applicable to protection of intellectual property.³⁷ National treatment requires that protection of intellectual property treatment accorded to the nationals of other countries would be as favorable as treatment accorded to one's own nationals. Article 4, of the Agreement contains the MFN. Clause under which any advantage a party gives to the nationals of another country would be extended immediately and unconditionally to the nationals of another country.³⁸

Article 7 and 8, of the Agreement lay down the objectives and principles of relevance to the LDCs, though they do not address the LDCs specifically. Article 7 of the Agreement stipulates that the protections and enforcement of intellectual property rights should contribute adequately to the promotion of technological innovation and diffusion of technology in a manner conducive to social and economic

37. *ibid.*, p.232

38. *ibid.* p.232.

welfare.³⁹ Principles governing the negotiations stated under Article 8 give the member the flexibility to formulate and amend national laws and regulations and adoption of measures "to protect public health and to promote the public interest in sectors of vital importance to their socio economic and technological development, provided such measures are consistent with the provisions of the Agreement."⁴⁰

Part II of the Agreement sets the "standards concerning the availability, scope and use of intellectual property rights". It addresses each intellectual property right in succession and sets norms and standards for protecting copyrights, trademarks, geographical indications, industrial designs, patents and trade secrets,

Copyrights relating to literary and artistic works and computer programmes have to be protected in accordance to the Berne Convention (1971), however, members are not obliged to conform with the moral rights as stipulated by Article 6 bis. of the Convention.⁴¹ There is also a provision for rental rights as mentioned under Article 11.⁴² The authors of computer programs and cinematographic works are

39. *ibid.*, p.233.

40. *ibid.*, p.233.

41. *ibid.*, p.233.

42. *ibid.*, p.234.

given the right to authorise or prohibit the commercial renting of their works in public.

The Agreement defines what kind of trademarks and service marks are eligible for protection and also sets forth the minimum rights conferred upon the owner under Articles 15 and 16.⁴³

Relations for protection of geographical indications are set out under Article 22.⁴⁴ Geographical indications "... identify a good as originating in territory of a member, or a region or locality in that territory"⁴⁵ The Agreement also stipulates the provision of legal means by all members for the prevention of the use of any indication which misleads the public about the geographical origin of goods, and any use of indications which constitute as an act of unfair competition as mentioned under the Paris Convention.⁴⁶

Article 25 provides a 10 year protection for industrial designs.⁴⁷ The right to prevent the manufacture, "sale or importation" of Articles bearing or embodying a design which

43. *ibid.*, p.235.

44. *ibid.*, p.237.

45. *ibid.*, p.237.

46. *ibid.*, p.237.

47. *ibid.*, p.239.

is a copy, or is substantially a copy of the protected design, for commercial purposes is granted to the owner of the protected industrial design.⁴⁸

Perhaps the most controversial rules in this section are those relating to patents, holding several implications for the LDCs. Under the Agreement the members will have to shift completely to a product patent regime complying with the provisions of the Paris Convention. The term of patent protection granted would be 20 years from the date of filing under Article 33.⁴⁹ The transitional period granted to the developed country members to extend product patents would be 5 years and the least developed countries and others LDCs are granted 10 years under Article 65.⁵⁰

But Article 70.8 stipulates that those members who do not provide patent protection for pharmaceutical and agriculture chemical products as on the date of entry into force of the Agreement establishing the MTO, would have to grant patent protection to the patent applications filed after 1993 in the areas mentioned above.⁵¹

48. *ibid.*, p.239.

49. *ibid.*, p.242.

50. *ibid.*, p.254.

51. *ibid.*, p.256.

This provision thus to a large extent grants the transitional period accorded to the LDCs ineffective and would be later explained under the implications of the Agreement on the LDCs.

Patents, product or process would have to be made available for any new inventions in the field of technology capable of "industrial application" under Article 27.1..⁵²

However, the rules relating to patent protection allow certain inventions to be exempted from patentability, for eg. those inventions whose commercial exploitations would effect public order or morality, environment, human, animal plant life or health.⁵³ Certain other inventions related to diagnostic, therapeutic and surgical methods for treatment of humans and animals would also be excluded.⁵⁴

Moreover, plants and animals other than micro - organisms, and biological processes for production of plant and animals other than non biological processes are also exempted from patentability under Article 27.3.⁵⁵ Plant varieties have to be protected by members either by patents or by a

52. *ibid.*, pp.240-41.

53. *ibid.*, p.241.

54. *ibid.*, p.241.

55. *ibid.*, p.241.

'sui-generis' system or a combination of both.⁵⁶ The 'sui-generis' system implying a system of plant breeders rights has been one of the most controversial arrangements under the Agreement and would be discussed under the implications for the LDCs.

There has been a curtailment of the governments' rights to protect patents in accordance with their developmental needs. One such measure, to whose use, stringent conditions have been attached is compulsory licensing. Detailed conditions are laid down under Article 31 for compulsory licensing or governmental use of patents without the authorization of the patent owner.⁵⁷ In the case of infringement of process patents, the onus to prove otherwise, lies with the defendant under Article 34.1⁵⁸

Layout designs of integrated circuits are also covered under TRIPs and the Agreement requires protection of layout designs on the basis of the Washington Treaty of Intellectual Property.⁵⁹ The term of protection of a layout design is 10 years as specified under Article 38.⁶⁰ Undisclosed infor-

56. *ibid.*, p.241.

57. *ibid.*, p.241.

58. *ibid.*, p.242.

59. *ibid.*, p.243.

60. *ibid.*, p.243.

mation on trade secrets having commercial value have been granted patent protection too.⁶¹

Part III of the Agreement deals with the enforcement of intellectual property rights. This part lays down certain obligations for member governments to provide procedures and remedies for effective patent protection and enforcement of intellectual property rights under their domestic laws. Provisions under "civil and administrative procedure" deal with the fair and equitable procedures evidence of proof, injunctions; damages other remedies etc.⁶²

Further measures under Part III deal with border measures, which requires the suspension of release, by customs authorities into domestic markets, of counterfeit goods, trademarks, or pirated copy right goods as stipulated under Article 51.⁶³ Members would also be required to provide for criminal procedures.⁶⁴

Part IV deals with the "acquisition and maintenance of intellectual property rights and related interparties procedures."⁶⁵ Part V deals with the dispute prevention and dis-

61. *ibid.*, p.244.

62. *ibid.*, pp.246-248.

63. *ibid.*, p.249.

64. *ibid.*, p.251.

65. *ibid.*, p.252.

pute settlement mechanism. According to the Agreement disputes regarding intellectual property would be settled under GATT dispute settlement provisions of Articles XXII and XXIII.⁶⁶

Part VI deals with the transitional arrangements and have been discussed earlier in the section. Part VII deals with the institutional arrangements and established a Council for TRIPs to monitor the operation of the Agreement as set forth in Article 68.⁶⁷ It will hold a review after 4 years of the implementation of the programme.⁶⁸

Thus, the developed countries have succeeded in bringing TRIPs under a comprehensive set of rules and procedures higher in level and wider in scope than the existing international conventions. The contracting party to the GATT Agreement on TRIPs would have to undertake and adopt new laws and amend the existing ones and to bring them into conformity with the Agreement. The implication of TRIPs on the broad spectrum of LDCs ranging from least developed countries to NICs would be dealt with in the next section.

6. IMPLICATIONS OF THE AGREEMENT ON TRIPs ON THE LDCs

The inclusion of TRIPs in the Uruguay Round was perhaps

66. *ibid.*, p.252.

67. *ibid.*, p.254.

68. *ibid.*, p.256.

one of the most contentious issues reflecting a deep schism between the developed countries and the LDCs in the view of the divergences in their national interests. With the conclusion of the round, and the Agreement on TRIPs, the differences between the developed countries and the LDCs have been further reinforced and aggravated. TRIPs, as seen by the LDCs, is an effort directed towards the maintenance of technological domination by the developed countries and also as an attempt by them to protect their assets and wealth in the LDCs.⁶⁹

The Agreement on TRIPs must not be viewed in isolation. It must be seen in the context of the multilateral trade negotiations, seeking to change the order not only to suit the interests of the developed countries but also the TNCs, disregarding the views of the LDCs.

The Agreement has wide ranging implications for LDCs on diverse but related areas of national economic development, public health, agriculture, technological development and public interest at large. However, the impact may vary from country to country keeping in mind their stages of developments.

69. Frederick M. Abbot, "Protecting First World Assets in the Third World: Intellectual Property Negotiations in the GATT Multilateral Framework", Vanderbilt Journal of Transnational Law Vol.22, no.4, 1989, p.697.

Analysing the implications of the Agreement on TRIPs the most glaring phenomenon is the undermining of the special and differential treatment of the LDCs. Though the Agreement recognises the special economic, financial and developmental needs of the least developing countries, the problems of the other LDCs are largely ignored. Special and differential treatment in the Agreement is only limited to providing the LDCs longer time frames to adapt and change their laws and policies in order to conform to the Agreement. They are given a 10 year transitional period as compared to the 5 year period given to the developed countries.

Though the preambular portion of the Agreement recognizes the developmental and technological objectives underlining the public policies of the governments, the Agreement calls for the application of uniform laws thus ignoring the special and developmental needs of the LDCs. Infact "because of the insistence on precise legal standards and norms to be adopted with those prevailing in the most technologically advanced countries... would introduce material reciprocity in the international property system".⁷⁰

70. Abdulqawi A. Yusuf, "Developing Countries and Trade Related Aspects of Intellectual Property Rights", UN, Uruguay Round, Further Papers on Selected Issues (UNCTAD, 1989)p. 193.

The reciprocity demanded by the developed countries is in conflict with Part IV of the GATT as well as the Ministerial Declarations on the Uruguay Round which stipulates the principle of non-reciprocity in favour of the LDCs in the trade negotiations. Infact one of the goals of the US proposals in the negotiations was to harmonize international property laws with US laws and practices; in other words to introduce reciprocity into international protection of intellectual property rights.⁷¹

The Agreement recognizes intellectual property rights as private rights, as mentioned earlier in the previous section. This is the belief of the developed countries and is contrary to the view of the LDCs who "deemphasize the natural rights philosophy that forms the underlying basis of the traditional arguments for protection of intellectual creations as private property."⁷²

The Agreement provides for a strong intellectual property right regime protecting the rights of the owners of intellectual property. The argument of the LDCs is that,

71. Michael H. Hart, *The Mercantilist Lament: National Treatment and Modern Trade Negotiations*, Journal of World Trade and Law, Vol. 37, no.59, 1987.

72. J.H.Reichman, "Intellectual Property in International Trade", : *Opportunities and Risks of a GATT Connection*", Vanderbilt Journal of Transnational law, vol.22, no.4, 1989, p.764.

intellectual property is the common heritage of mankind, and that knowledge is the requirement for economic development. Making knowledge private property would restrict its diffusion. Hence the developmental needs of LDCs are ignored and private welfare is put above public welfare. This is clearly reflected in the norms and rules regarding patenting of pharmaceuticals, chemicals, micro - organisms, where TNCs are going to be major beneficiaries and whose goal is profit maximization. Thus, for the developed countries protection of intellectual property rights might be a fundamental right comparable to the right to physical property, although the LDCs view it "fundamentally as an economic policy question".⁷³

The intellectual property regime as envisaged by the Agreement would further pave the way for the penetration by TNCs of the LDCs markets and create technological dependence. A strong patent regime would limit the diffusion of technology and adversely affect the promotion of domestic research and development and the building of domestic technological capabilities. The major beneficiaries of the

73. R. Michael Gadbaw & Timothy J. Richards, "Introduction" in R.M Gadbaw & T.J. Richards (eds) Intellectual Property rights : Global Consensus, Global Conflict (Boulder, Westview Press) p.2 as cited in Jagdish K. Patnaik, "India and the TRIPs: Some Notes on the Uruguay Round Negotiations", India Quarterly, Vol 48. no.4. 1992, p.33.

international property right protection would be the TNCs.⁷⁴ The TRIPs Agreement would thus further widen the gap between the 'knowledge rich' and the 'knowledge poor' countries of the world.

The Agreement curbs the right of the LDCs' governments to regulate intellectual property rights, through the domestic policies and measures, in accordance with their national development. Under the principles agreed under Article 8 of the Agreement, the members are given the flexibility, while formulating or amending their national laws and regulations to adopt measures necessary to protect, nutrition and public health, and to promote socio-economic and technological development. But these measures have to be consistent with the provisions of the Agreement. But the option thus given is relegated to the principles. The Agreement stipulates stringent measures to control and regulate the protection of intellectual property rights under the various parts of the Agreement. For example, the Agreement stipulates measures under Part II relating to availability and scope of intellectual property rights, enforcement and prevention of the abuse of intellectual property rights

74. Carbo Alberto Primo Braga, "The Economics of Intellectual Property Rights and the GATT: A View from the South," Vanderbilt Journal of Transnational Law, Vol. 22, no.2. 1989, p.252.

(Part III), and dispute settlement mechanism (Part V). The stringent measures thus provided curbs to some extent, the discretion of the government to formulate their own laws and policies relating to intellectual property rights. This is in contrast to the Paris Convention which gives a great amount of discretion to the national legislators in determining how to protect intellectual property rights.⁷⁵

The Paris Convention also leaves the individual member countries freedom to decide on the period of protection they wish to provide under their national laws, while the Agreement stipulates a period of 20 years for patent protection from the filing date under Article 33.⁷⁶

The governments in LDCs often resort to compulsory licensing in the case of protection of intellectual property rights for several reasons for example, to facilitate transfer of technology amongst other reasons.⁷⁷ Though compulso-

75. Hans Peter Kunz Hallstein, "The US Proposal for a GATT Agreement on Intellectual Property and the Paris Convention for the Protection of Industrial Property", Vanderbilt Journal of Transnational Law, Vol. 22, No.2. 1989p.268.

76. Kalim Siddiqui, "Dunkel Draft on GATT and the Developing countries", Link 34(35), 12th April 1992, p.23.

77. Compulsory licence is a licence granted by the controller of patents (or by the patenter as directed by the controller) to a non patentee to use a patent on payment of royalties to a patentee. For further details please see Sudip Chowdhary, "Dunkel Draft on Drug Patents: Background and Implications", Economic & Policial Weekly, September 4, 1993.

ry licensing is allowed under the Agreement, several conditions are laid down under Part II. Article 31. Under Article 31.b a government can resort to compulsory licensing "in case of national emergency or other circumstances of extreme urgency, or in case of public non - commercial use"⁷⁸. Compulsory licensing is also allowed to remedy anti - competitive practices indulged by the patent owners under Article 31.J.⁷⁹

Under the Agreement on TRIPs, the countries would have to shift fully to a product patent regime. Even the developed countries who are pressurising the LDCs to make changes in the intellectual property systems, had in their early stages of development either weak patent legislation or no legislation at all.⁸⁰ The strong patent regime as perpetuated by the Agreement has grave implications for the LDCs as the kind of regime called for in the Agreement does

78. N.K. Chowdhary and J.C. Aggarwal, Dunkel Proposal Vol II: The final Act 1994: Significance for India and The World Trade, (Delhi, 1994) p.241.

79. *ibid.*, p. 241.

80. For example, in the field of food, chemical and pharmaceutical products patents were not protected by Federal Republic of Germany until 1968, by Japan until 1987, with Japan not even protecting the process patents, and by Spain where protection of chemicals and pharmaceuticals was only implemented in 1992. As cited in Rajan Dhanjee and Lawrence Boisson de Chazournes, "TRIPs: Objectives, Approaches and Basic Principles of GATT and of Intellectual Property Conventions, Journal of World Trade and Law; Vol 24, no. 5. 1990. p.8.

not commensurate with the stage of technological development and development of the private and public sector of the LDCs.

The sectors most affected by the extension of a product patent regime would be the national health schemes and agriculture of countries like India. This extension would affect the national food security and the health sector."

Members have to provide patents, whether products or process to new innovations in all fields of technology according to Article 27.1.⁸¹ The transition period given to LDCs, to formulate rules and regulations to extend product patents, is 10 years. But this has to be seen in conjunction with Article 70.8 which lays down requirements for those members who do not grant patent production in the fields of agriculture chemicals and pharmaceuticals, when the Final Act enters into force.⁸² The requirement, therefore is that the category of members mentioned above will have to accept patent applications filed after 1993 in the field of chemicals, agriculture and pharmaceuticals and provide patent protection to them for the remainder of the patent term.⁸³

81. N.K. Chowdhary & J.C Aggarwal, Dunkel Proposals. Vol II: The Final Act 1994: Significance for India and the World Trade, (Delhi: 1994), pp. 239-40.

82. *ibid.*, p.256.

83. *ibid.*, p. 256.

Thus the transitional period accorded to countries is of little value according to Kalim Siddiqui.

Extension of patents to pharmaceuticals has been one of the most controversial areas with a significant impact on LDCs. For example, India now granting only process patents would have to grant product patents too. Thus when a new drug is introduced in a market, the indigenous firms would be prohibited to manufacture it or import it for a period of 20 years even if they can develop their own process for manufacturing it. The extension to pharmaceuticals of product patents could result in higher consumer price for drugs, larger exchange outflow due to large imports and lesser exports and smaller employment generation due to lower domestic production.⁸⁴

Indigenous sector will not be able to manufacture and export the patented drug. This puts India back to a position before the Patent Act 1970, where TNCs were given a free hand to use this product patent monopoly to prevent Indian firms from entering into pharmaceutical production with drugs being introduced in the Indian market only 10 to 15

84. Sudip Chowdhary, "Dunkel Draft on Drug Patents : Background and Implications", Economic and Political Weekly, Sept 4, 1993, p. 1864.

years after their introduction in the world markets.⁸⁵

But there are counter arguments that the LDCs would not be affected so badly by the promulgation of a strict intellectual property rights regime the essential 250 drugs enlisted in World Health Organisation (WHO) are beyond the patent purview and only 7 are currently under patents.⁸⁶ Moreover, international patents have expired on 90% of the drugs thereby limiting the dispute over a narrower area.

Uptil now, agriculture has been excluded from patentability by most LDCs including India, because of the high level of dependence on agriculture. Though under Article 27.3 plants and animals and essentially biological processes for the production of plants and animals, the Agreement on TRIPS calls for protection of plant varieties either by patents or an effective 'Sui generis' system.⁸⁷ In the Agreement the 'Sui-generis' implies a system of plant breeders rights along the lines of the International Convention

85. Under the 1970 Patent Act the domestic firms could introduce new drugs by developing their own processes within 5 years of discovery and as a consequence the drug prices in India were very low.

86. Jagdish K. Patnaik, "India and the TRIPS: Some notes on the Uruguay Round Negotiations". India Quarterly, Vol.48, no.4, 1992, p.37.

87. 'Sui generis' means a form of intellectual property rights which is derived from itself, or, in other words, is not a part of the patent system. Please see Usha Menon, "Dunkel Proposals and Indian Agriculture", National Working group on Patent Laws, July 1992, p.19.

for the Protection of New Varieties of Plants (UPOV).⁸⁸

Thus Article 27.3 implies the recognition of plant breeders rights for new varieties of plants, and the recognition of patents for microbiological processes and microorganisms. The enforcement of plant breeders rights would increase the monopolizing of the seed industries resulting in increase in prices of seeds and will restrict the rights of the government to promote diffusion of new varieties of seeds on account of restrictions on adoptive research⁸⁹. The diffusion of the seeds would be affected by plant breeders right because it forbids the small farmers from multiplying and selling new varieties over which proprietary rights exist. Thus the farmer to farmer sale of seeds and multiplication crucial in the diffusion of high yielding varieties of seeds would be affected.⁹⁰ According to Suman Sahai, convener of the gene campaign and Professor of genetics at Heidelberg University, high cost of patented agricultural inputs like bio-fertilisers, bio-pesticides, and most of all genetically engineered seeds would affect the small and

88. Rajeev Anand, "Uruguay Round Text in Perspective", Economic and Political Weekly, May 2, 1992, p. 968.

89. Kalim Siddiqui, "Dunkel Draft on GATT and Developing Countries", Link, 34 (35), 17th April 1992, p. 22.

90. Usha Menon, "Dunkel Proposals and Indian Agriculture", National Working Group on Patent Laws, July 1992, p. 21.

marginal farmers.⁹¹

Though the farmers right to store seeds has not been prohibited under the Agreement implying the applicability of the 'sui generis' system it certainly stands jeopardized in the long run. According to Usha Menon, the possibility of patenting plant and animals exists in the longer run and could probably happen after the review of the Final Act carried after 4 years.⁹² Then the possibility of the farmers storing seeds would be affected.

Moreover, the increase in the prices of seeds however has been defended by arguments that the increase in costs would be offset by the high productivity of these new hybrid seeds. It has also been mentioned that patenting of seeds is primarily targeted at major agri-business and not farmers.⁹³ Probably, it is too early to come up with a concrete conclusion for the Final Act has yet to be implemented.

Another implication of the TRIPs Agreement is that due to stricter enforcement of intellectual property rights the LDCs would have to bear the additional costs of payment, of

91. N.K. Chowdhary & J.C. Aggarwal, Dunkel Proposals Vol. II, The Final Act 1994 : Significance for India and the World Trade, (Delhi, 1989) p. 260.

92. For further details, please see, Usha Menon, "Dunkel Proposals and Indian agriculture", National Working Group on Patent Laws, July 1992, p. 22.

93. Editorial, Economic Times, December 15, 1993.

royalties to the owners of the patents and could adversely effect the foreign exchange reserves.⁹⁴ The prohibitive costs of patents would also affect domestic research.

Another related cost for the LDCs would be the dislocation and displacement of firms devoted to piracy.⁹⁵ This has not, however, been highlighted by the LDCs for tactical and legal reasons, because it means acknowledgement of their lax rules regarding protection of intellectual property rights.

Certain issues of importance to the LDCs have not been dealt with in the Agreement. One such issue, is the abusive practices of the TNCs. The draft Agreement is heavily biased in the favour of patentees. While their rights are sought to be wide ranging, their obligations have been considerably lowered.⁹⁶

6. CONCLUSION

All these suggested implications point towards the further subjugation of the interests of the LDCs by the developed countries. The interest of the LDCs would definitely be affected in the short run because of the proposed

94. Carlos Alberto Primo Braga, "The Economics of Intellectual Property and GATT : A View from the South", Vanderbilt Journal of Transnational Law, Vol.22, no.2, 1989, p.259.

95. Ibid., p.256.

96. Kalim Siddiqui, "Dunkel Draft on GATT and Developing Countries", Link 34(35), 12th April, 1992, p.21.

intellectual regime and would probably generate a welfare loss in the LDCs. The stricter enforcement of intellectual property rights would affect the wealth allocation between LDCs and developed countries to the near detriment of the former.⁹⁷

Some western analysts have tried to alleviate the fears of the LDCs and have argued that effective intellectual property rights protection would help to attract technology, to help in the diffusion of technology through out the domestic economy and ultimately help develop indigenous industries.⁹⁸ Rapp and Rozek infact draw a relationship between socio-economic development and effective patent protection. But how far, does protection of intellectual property rights attract investment and technology is clearly debatable. The LDCs are also quite sceptical about the extent of benefits accruing to them under a more effective intellectual property regime as proposed by the Agreement on

97. Federick M. Abbot, "Protecting First World Assets in the Third World : Intellectual Property Negotiations in the GATT Multilateral Framework", Vanderbilt Journal of Transnational Law, Vol. 22 no. 4, 1989. p. 691.

98. For a detailed examination of the costs and benefits of providing intellectual property protection, please see, Richard T. Rapp, and Richard P. Rozek, "Benefits and Costs of Intellectual Property Protection in Developing Countries", Journal of World Trade and Law, Vol.24, no.5, 1990, pp.75-102.

TRIPs. They can only visualise the TNCs benefiting largely from the proposed Agreement.

But despite all the arguments for and against the Agreement on TRIPs, it offers the LDCs relatively better terms than those that developed countries have negotiated bilaterally with certain LDCs like Brazil, Argentina, Mexico, Chile, Korea, Singapore, Indonesia, Phillipines and Thailand.⁹⁹ All these countries have agreed to transitional Agreements which amount to providing protection for pharmaceutical product inventions, for which patent applications were filed after 1983 to 1984.¹⁰⁰

Looking at the number of arguments and counter arguments for and against TRIPs, the scenario for the LDCs becomes quite complex and cannot be really judged adequately at present. Only with the implementation of Final Act and passage of time can the costs and the benefits of providing intellectual property right protection for the LDCs be quantified.

99. Rajeev Anand, "Uruguay Round Text in Perspective" Economic and Political Weekly, May 2, 1992, p. 969.

100. *Ibid.*, p. 969.

CHAPTER V

TRIMS IN THE GATT, URUGUAY ROUND OF NEGOTIATIONS : A DEVELOPING COUNTRIES' PERSPECTIVE

Inclusion of TRIMs in the Uruguay Round was a culmination of the effort by the developed countries to broaden the mandate of GATT by including the new issues of TRIPs, TRIMs and services. The incorporation of TRIMs could be seen as a part of grand strategy of the developed countries to enhance their comparative advantage. Growth of high technology and its diffusion was also a related factor responsible for bringing TRIMs under the GATT mandate in the Uruguay Round. Infact, the inclusion of TRIMs amongst the other new issues, was driven by the forces of technology; technology being the crucial element in the investment flows.

An other determinant for the regulation of investment measures were the practised government policies regarding foreign direct investment which encompassed measures both to attract and to regulate the investment activities. The Transnational Corporations (TNCs), holders of high technology and capital wanted the removal of the regulations on investment measures in order to facilitate further penetration of markets and profit maximization. The governmental

measures to regulate foreign direct investment were considered by various western analysts in the past 2 decades, who pointed out the potential damage to the international economic system by these regulatory measures.¹ They pointed out "the need for international policy instruments to deal with the problems involved".² The spread of such measures and the effects on investment and foreign trade in particular, led the developed countries, specially the US, to call for bilateral or international agreements to deal with them.

In order to facilitate a uniform application of rules and laws to contain the trade distortive effects of regulatory investment policies, the developed countries endeavoured to bring TRIMs under the discipline of GATT. The LDCs opposed the idea and regarded GATT's regulation of their investment measures to constitute an infringement of their economic sovereignty. Moreover they considered GATT, not competent to deal with TRIMs. The inclusion of TRIMs as a subject for negotiations in the Uruguay Round was against the wishes of the LDCs. The negotiations in GATT on TRIMs hence were characterised by conflicting perspectives of

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1. For further details please see A.E.Safarian, "Trade Related Investment Issues", in William R.Cline, ed., Trade Policy in the 1980s, (Washington D.C., 1983), pg 611.
 2. A.E.Safarian, "Trade Related Investment Issues", in William R.Cline, ed., Trade Policy in the 1980s, (Washington D.C., 1983), pg 611.

developed countries and LDCs with the latter's interest being relegated to the background. The Agreement on TRIMs reached in the Uruguay Round has significant consequences for the LDCs.

This chapter focuses on the consequences of the Agreement on TRIMs with particular reference to the LDCs. The regulatory investment measures followed by LDCs in accordance with the development needs (the use of which has been curbed by the Agreement on TRIMs) have been enumerated in section 1 of the chapter. Section 2 deals briefly with efforts of the developed countries to bring TRIMs into the GATT framework. Section 3 deals with the mandate of the Uruguay Round on TRIMs and elaborates on the position of the Developed Countries in the negotiations. The opinions and the perspectives of the LDCs in the Uruguay Round is dealt with in section 4. The main principles of the Agreement on TRIMs with reference to LDCs have been enumerated in section 5. Section 6 finally deals with the implications of the Agreement on the LDCs.

1 REGULATORY POLICIES FOLLOWED BY LDCS REGARDING FOREIGN DIRECT INVESTMENT.

In accordance with their developmental plans and priorities, the LDCs have sought to direct foreign investments and projects in their countries. Such policies encompass

measures both, to attract investment and to regulate it. Since LDCs need foreign investment and technology, they feel impelled to provide incentives to attract the investor. But at the same time they stipulate a number of conditions for several reasons.

The objective of the LDCs is their need to ensure that not only the channelisation of the investments in accordance with their developmental needs, but also, to minimize the adverse effects on their balance of payments position caused by "the net outflow of current and capital payments associated with investments", through profit remittances on payments for goods and services.³

Moreover, the high profit oriented sectors are the main targets for foreign investment,⁴ leading to high profit remittances and deprivation of necessary capital to priority and needy sectors.⁵ Technology transfer usually associated

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3. Hardeep Puri & Phillip Brusick, "Trade Related Investment Measures: Issues for Developing Countries", UN, Uruguay Round Further Papers on Selected Issues (UNCTAD, 1989), p.210.
 4. N.S.Siddharthan, "Conglomerates and Multinationals in India", (Istitute of Economic Growth, New Delhi, 1981). Louis Well Jr., "Investment Incentives: An Unnecessary Debate", The CTC Reports, No.22, Autumn 1986, as cited in Sumitra Chisti, Restructuring of International Economic Relations, (New Delhi, 1991), p.118.
 5. Sumitra Chisti, Resturcturing of Internaitonal Economic Relations, (New Delhi, 1991) p.118.

with foreign direct investment is not usually up to the mark and therefore, needs regulation. The LDCs also face the problems of restrictive business practices resorted to by foreign investors particularly TNCs, like transfer pricing etcetera. leading to the outflow of resources, hence adversely effecting their balance of payment position.

In order to reduce the incidence and impact of such measures, the governments have developed a wide range of devices and regulatory performance requirements, based primarily on developmental considerations. These performance requirements include export requirements, local content requirements, technology transfer and licensing requirements, limitation on remittance and foreign exchange restrictions, and local equity requirement.⁶

One of the most explicit policies followed by governments is the designation of sectors closed to foreign direct investment.⁷ Under export requirements an investor is obliged to export "a fixed percentage of production, in terms of minimum quantity as value of goods on some propor-

6. Hardeep Puri & Phillip Brusick, "Trade Related Investment Measures: Issues for Developing Countries in the Uruguay Round", UN, Uruguay Round Further Papers on Selected Issues, (UNCTAD, 1989) pp.213-16.

7. A.E.Safarian, "Trade Related Investment Issues", in William R.Cline ed., Trade Policy in the 1980s (Washington D.C. 1983), p.612.

tion of the investments import balance".⁸ According to A.E.Safarian, the minimum export requirement has the same effect as export subsidies, since it raises exports, beyond what they would be otherwise. Through export requirements the LDCs try to reduce the net outflow of foreign exchange.

The local content requirement "obliges an investor to produce or purchase from local sources, some percentage on absolute amount of the value of investors production".⁹ This measure counters and reduces the net foreign exchange outflow, by curbing the TNCs to import inputs required for manufacturing to some extent even if they are locally available.

The technology transfer and licensing requirement furthers the basic objective of acquiring advanced technology that is important for development. Limitations on the outflow of profits and other remittances is mainly aimed at reducing pressures on the balance of payments position. Product mandating requires an investor to export a certain product and is a government - imposed obligation to counter market allocations and other restrictive business

8. Hardeep Puri & Phillip Brusick, "Trade Investment Measures: Issues for Developing Countries in the Uruguay Round", UN, Uruguay Round Further Papers on Selected Issues, (UNCTAD, 1989) p.213.

9. *ibid.*..... p.214.

practices.¹⁰ Under local equity requirement a specification is made that a certain percentage of the equity of a company created by foreign investment should be controlled by local investors. This provides a certain degree of local management and control over the forcing company.

It is these measures which have been attacked in the Uruguay Round by the Developed Countries and which are seen as barriers to the free flow of investment. The TNC's also regard them as barriers because they stand in the way of profit maximization. Though investment measures are prevalent both in developed and LDCs, they are more explicit in the LDCs in comparison to the developed countries.¹¹ LDCs see these regulations as necessary to minimize the foreign exchange outflow and to counter the adverse effects of measures adopted by foreign investors, specially the restrictive business practices of TNCs.

2. PREVIOUS EFFORTS OF THE DEVELOPED COUNTRIES TO INCORPORATE TRIMS WITHIN THE GATT.

Efforts to enlarge the mandate of GATT to include investment measures commenced soon after the end of the

10. *ibid.*..... pp.215-16

11. Hardeep Puri & Delfino Bonded, "TRIMs, Development Aspects and the General Agreement", UN, Uruguay Round Further Papers on Selected Issues (UNCTAD, 1990) p.57, as cited in Sumitra Chishti. Restructuring of International Economic Relations (New Delhi, 1991), p.120.

Tokyo Round in 1979. At the GATT Ministerial Meeting in 1982, US, Japan and to some degree EEC endeavoured to include in the new round, problems of investment and the related problems of liberalising the free movement of capital amongst other things. But, the US drive on investment measures and intellectual property rights did not succeed. The Ministerial Declaration dissatisfied those who thought that the Ministerial Meeting could be utilized for initiating work in GATT, on the new areas.¹²

However, efforts were revived with renewed vigour in the preparatory process for the Uruguay Round. A proposal was presented by the US to the Preparatory Committee in June 1986, stressing that the new trade negotiations should address the means to increase discipline over government investment measures and that the measures should be regulated in accordance with the specific articles and overall objectives of GATT.¹³ The investment issues had already been incorporated in the domestic legislation of US and it could resort to retaliatory unilateral measures, under Section 301 of the 1984 Trade and Tariff Act and Special 301 of the 1988

12. Bhaghirath L.Das, "The GATT Ministerial Meeting, 1982: An Interpretative Note", Journal of World Trade and Law, Vol.18, No.1, Jan.-Feb. 1984, p.14.

13. Hardeep Puri & Phillip Brusick, "Trade Related Investment Measures: Issues for Developing Countries in the Uruguay Round", UN, Uruguay Round Further Papers on Selected Issues (UNCTAD, 1989), p.204.

Omnibus Trade and Competitiveness Act, against its trading partners in respect of market access for goods, if it perceived its interests in respect to investment adversely affected. Section 301, 305 and 307 of the 1984 Trade and Tariff Act conferred on the relevant authorities in the US, the required legislative authority on the issue of foreign direct investment. Section 305 and 307 defined the term international trade "to include goods and services and foreign direct investment by US persons, especially if such investment had implications for trade in goods and services".¹⁴

The LDCs on the other hand were reluctant to incorporate TRIMs into the GATT negotiations. They regarded the regulation of investment measures by GATT as an infringement of their economic sovereignty. They did not regard GATT as competent to deal with investment measures as it was a contractual framework providing rights and obligations only for international trade in goods. The LDCs opposed the inclusion of new issues in the Preparatory Committee and the proposal of the LDCs was centered around the traditional issues, excluding the new issues.¹⁵ Finally a compromise was

14. *ibid.*.... p.204.

15. L.Allan Winters, "The Road to Uruguay", Economic Journal, Vol.100, No.403, Dec.1990, p.1297.

made with the acceptance of the Swiss Colombia Text and the new issues including TRIMs were included in the Uruguay Round Mandate.

3 POSITION OF THE DEVELOPED COUNTRIES ON TRIMs IN THE URUGUAY ROUND.

The Uruguay Round negotiations on TRIMs were marked by deep divergences between developed countries and LDCs on the interpretation and understanding of the mandate. There were differences as to whether investment measures like export obligations and local manufacturing requirements should be disciplined, even prohibited or whether it was enough to simply address their trade distortive effects. LDCs opposed any such prohibitions and stressed that the work of the negotiating groups should be limited to the trade distortive effects of TRIMs as and when demonstratable.¹⁶ The Punta Del Este. Declaration states, "Following an examination of the operation of GATT articles related to trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary to avoid such adverse effects on trade".¹⁷

16. Sumitra Chishti, "Restructuring of International Economic Relations, (New Delhi, 1991) p.119.

17. GATT, GATT activities 1986, (Geneva, 1987) p.24.

According to the wording of the mandate not every investment measure which is trade related could have been considered in the Uruguay Round, but only those measures having a restrictive or distorting effect on Trade. The LDCs stressed on the review of investment measures to be limited only to their trade effects and not extend to the whole gamut of investment measures. On the other hand the developed countries proposed an investment regime which would establish rights for foreign investors and reduce constraints on TNCs.

Various developed countries contended in the negotiations that trade effects of many investment measures conflicted in some way with GATT Articles. They envisaged "confirming the applicability of certain Articles in this regard and establishing additional GATT rules where necessary, that can more clearly and effectively deal with adverse effects of government investment requirements such as local content, export performance, trade balancing, product mandating and domestic sales".¹⁸

Principal thrust on TRIMs came from US and Japan. The US and Japan wanted to use the forum of the Uruguay Round to initiate an international investment regime with rules and

18. GATT, GATT Activities, 1988, (Geneva, 1989), pp.51-52.

principles that will limit and restrict, the policies, laws and administrative measures directed at foreign investments, of the host countries receiving investments.

The US tried to relate its proposals to individual GATT articles and provisions in an effort to relate them to the mandate. Measures such as local content, export performance, trade balancing, manufacturing product mandating, remittance restrictions, technology transfer etc. were cited as trade distorting measures. For each of the above mentioned TRIMs a number of GATT Articles were cited in relevance to the investment measures and a review of these Articles were called for. GATT Articles cited by the US were I, II, III, IV, XI, XV, XVI, XVIII and XXIII.¹⁹ The US also proposed that GATT concepts like non-discrimination, transparency dispute settlement were applicable to TRIMs and called for additional GATT provisions in order to avoid the trade distorting effects of TRIMs.²⁰

In Montreal the Ministers agreed upon further identification of trade restrictive and trade distortive effects of investment measures by the negotiating group, keeping in

19. Hardeep Puri & Phillip Brusick - "Trade Related Investment Measures: Issues for Developing Countries in the Uruguay Round", UN, Uruguay Round, Further Papers on Selected Issues, (UNCTAD, 1989) p.207.

20. GATT, GATT Activities, 1988, (Geneva, 1989), p.52.

mind not only the operation of GATT Articles but also developmental aspects.²¹

During 1989 the discussion continued to centre on what constituted TRIMs and what constituted a country's sovereign right to formulate its investment policy.²² The position of EC and Nordic countries in comparison to US and Japan was moderate and they emphasized that the negotiations should not call into question national investment policies and any new measures should be built on existing GATT rules and principles.²³ They focussed on measures having a direct and significant impact on trade with links to existing GATT rules and were in favour of addressing issues of local content and export requirement. Though the developmental considerations were recognized by the developed countries, they reiterated that further GATT provisions were necessary in order to avoid adverse trade effects.²⁴

4 POSITION OF THE LDCS ON TRIMs IN THE URUGUAY ROUND

The LDCs had a marginal role in the negotiations on TRIMs in the Uruguay Round as most of the proposals were

21. *ibid.*..... p.52.

22. GATT, GATT Activities 1989, (Geneva, 1990), p.67.

23. GATT, GATT Activities, 1989, (Geneva, 1990), p.67.

24. GATT, GATT Activities 1990 (Geneva, 1991) p.47.

presented by the developed countries primarily US, Japan, EC and the Nordic countries.

However, the LDCs contended

- i) that only trade distorting effects of investment measures should be dealt with in the negotiations and not the measures themselves.
- ii) developmental aspects should be incorporated in the negotiations.
- iii) that there were existing GATT remedies which were sufficient for dealing with adverse effects of the investment measures practised and hence they were opposed to the establishment of a new investment regime.

While the developed countries earmarked measures such as local content requirement, export obligation, transfer of technology, equity etc., as trade distortive, the LDCs maintained that these measures were aimed at legitimate objectives including industrialization and development.

The LDCs specified that the Ministerial Declaration called only for examination related to trade restrictive and distorting effects of investment measures, rather than the examination of the legitimacy of the measures themselves. Any attempt to eliminate measures themselves would imply a reinterpretation of the mandate.

The LDCs contended that the main objective of seeking elimination of investment measures was to ensure wider and freer investment opportunities for foreign investors, in particular the TNCs. The objectives of foreign investors was profit maximization which was not in consonance with the developmental needs of the LDCs.²⁵ In Montreal, the Ministers recognized the need for the integration of developmental aspects in dealing with investment measures.²⁶

Submissions from India, Malaysia, and Singapore argued that the developmental dimensions of certain investment measures far outweigh their trade effects and they also referred to the restrictive business practices of the TNCs.²⁷

In 1990, 13 LDCs presented a communication to the negotiating groups outlining the need for the group to address the trade effects of investment measures, the developmental aspects of investment measures, and the relationship of GATT Articles to the adverse effects of these measures.²⁸ The communication in its conclusion insisted that any outcome of negotiations should facilitate a movement of investment

25. Hardeep Puri & Phillip Brusick, "Trade Related Investment Measures: Issues for Developing Countries in the Uruguay Round", UN, Uruguay Round, Further Papers on Selected Issues, (UNCTAD, 1989), p.212.

26. GATT, GATT Activities, 1988, (Geneva, 1989), p.

27. GATT, GATT Activities, 1989, (Geneva, 1990), p.67.

28. GATT, GATT Activities, 1990, (Geneva, 1990) p.47.

across international frontiers, with a view to serving developmental aspirations of LDCs.

The LDCs not only stressed upon the incorporation of developmental aspects in the negotiations on TRIMs but also insisted, that in event of nullification and impairment of benefits due to investment measures in practice, there were existing GATT remedies to deal with this alleged adverse effects.²⁹ They stated that it is not necessary that export commitments restrict trade, but in case of any trade distorting effect, the existing provisions of GATT on anti dumping and subsidies (Art. VI and XVI) were adequate to address the trade distorting measures.³⁰

Similarly, if domestic content requirements limited import of raw materials and intermediate products, remedies existed through prohibition of quantitative as stated under GATT Article XI.³¹ In case of impairment and nullification of rights and benefits, due to export commitments or domestic content requirement, countries could initiate proceed-

29. *ibid.* p.47.

30. Bibek Debroy, "The Uruguay Round Status Paper on Issues relevant to Developing Countries" Foreign Trade Review, Vol.24, no.3, 1991, p.150.

31. Hardeep Puri & Phillip Brusick, "Trade Related Investment Measures: Issues for Developing Countries in the Uruguay Round", UN, Uruguay Round, Further Papers on Selected Issues (UNCTAD, 1989), p.211.

ings under normal GATT procedures as mentioned under Articles XXII, XXIII.³² Thus the above mentioned GATT Articles could deal with the possible trade distortive effect and if some improvement was needed where these Articles were concerned, it could be brought about during the negotiations.

During the discussions the LDCs also raised the issues of the policies and restrictive business practices of TNC's.³³ The developed countries opposed the inclusion of restrictive business practices of TNC's in the agenda, as GATT was only intended to deal with government measures and not private enterprises.³⁴

Thus the pre-Brussels negotiations on TRIMs were marked divergences between developed countries and LDCs and only a brief statement outlining the areas of disagreements was submitted to the Ministers.³⁵ Nevertheless during the latter part of 1991, the Chairman of the rule-making group conducted consultations which allowed them to put forward a text

32. *ibid.* p.211.

33. Robert E. Baldwin - "What's at stake for LDCs, Now that the Uruguay Round Talks have been suspended?" Pakistan Development Review, Vol.30, No.4, part 1, 1991, p.594.

34. Chakravarthi Raghavan - Recolonization: GATT, The Uruguay Round & the Third World, (Penang, 1991), p.156.

35. For further details please see, GATT, GATT Activities, 1990, (Geneva, 1991), pp.47-48.

which formed a part of the Draft Final Act.³⁶

5. THE AGREEMENT ON TRIMS

With the signing of the Final Act, embodying the results of the Uruguay Round, TRIMs has finally been incorporated within the GATT framework. It is an area, which GATT has not attempted to regulate previously. But with the conclusion of the round, GATT's principles' and procedures, like that of nondiscrimination national treatment, transparency dispute settlement mechanism, becomes applicable to TRIMs.

The Agreement on TRIMs in the Final Act seeks to regulate the governmental investment measures, by laying down rules and guidelines in order to contain the trade restrictive and trade distortive effect of these measures. The Agreement either prohibits or lays down certain conditions regarding the applicability of such investment measures. The goal of the Agreement, as mentioned in the preamble is to facilitate investment across international frontiers so as to increase the economic growth of all trading partners and particularly developing country members while assuring free

36. GATT, GATT Activities 1991, (Geneva, 1992), p.31.

competition".³⁷ The preamble also recognises the special developmental and financial needs of LDCs and specially of least developed countries.

Investment measures related to trade in goods only are within the scope of the Agreement on TRIMs.³⁸ The Agreement, recognizing the trade distortive effect of certain measures, provides that no contracting party shall apply any TRIM inconsistent with Article III and Article IX of GATT dealing with national treatment and with prohibition of quantitative restrictions respectively.³⁹ An illustrative list' of such prohibited measures is annexed to the Agreement. Measures included in this list are those which require mandatory levels of purchase or procurement by an enterprise from local sources, under domestic law.⁴⁰ Thus, local content requirement measures cannot be deployed by the governments. Other measures listed in the annex and are inconsistent with Article IX of the GATT are those which restrict the

37. The text of the Final Act, agreed upon in December 1993, as reproduced in N.K.Choudhary and J.C.Aggarwal, Dunkel Proposals Volume II. The Final Act 1994: Significance for India and the World Trade, (Delhi, 1994) p.114.

38. N.K.Chowdhary and J.C.Aggarwal, Dunkel Proposals Volume II: The Final Act 1994: Significance for India and the World Trade, (Delhi; 1994) p.114.

39. *ibid.* p.115.

40. *ibid.* p.117.

imports of the products used by an enterprise in its local production, in accordance with the volume or value of its exported products manufactured locally.⁴¹

Transitional arrangements specified under Article 5 of the Agreement stipulate that the members have to notify, to Council of Trade in Goods, within ninety days of the establishment of MTO of all TRIMs which are inconsistent with the provisions of the agreement.⁴² All the TRIMs notified would have to be eliminated within a period of 2 years of the establishment of MTO.⁴³

However for the LDCs and least developed countries, the elimination period required for TRIMs inconsistent with the Agreement is stipulated as 5 years, and 7 years respectively.⁴⁴

Apart from the longer period provided for transition the LDCs have been granted another concession and have been allowed the option to maintain TRIMs inconsistent with Article III and Article IX of GATT temporarily under balance of payment problems.⁴⁵

41. *ibid.* p.117.

42. *ibid.* p.117.

43. *ibid.* p.116.

44. *ibid.* p.116.

45. *ibid.* p.116.

The dispute settlement mechanism as provided for in GATT under Articles XXII and XXIII would apply to the consultations and settlement of disputes relating to TRIMs under this Agreement.⁴⁶

The Agreement thus hopes to facilitate the free flow of investment across international borders by the removal of trade distortive and trade restrictive measures. How far the Agreement achieves its objective would become visible only after the implementation of the Agreement.

6. IMPLICATIONS OF THE AGREEMENT ON TRIMs ON THE DEVELOPING COUNTRIES

The provisions of the Agreement on TRIMs holds several ramifications for the LDCs. The Agreement on TRIMs is predominated by the interests of the developed countries and the TNCs who are the major sources of capital and technology. The developmental needs of the LDCs have largely been ignored and relegated to the background.

The general erosion of the principle of special and differential treatment in the Uruguay Round has been reflected in the Agreement on TRIMs as well. Special and differential treatment in the text of the Agreement is limited to providing LDCs and least developed countries longer time frames to notify and eliminate all TRIMs inconsistent with

46. *ibid.* p.116

the Agreement. However, the LDCs have been given the option to deviate temporarily from the provisions of the Agreement in case of balance of payment problems under Article XVIII of GATT. But moreover with the conclusions of the Uruguay Round negotiation, the regulation of international trade involves not only the regulation of border trade measures, but also related domestic policies of national governments. The Agreement on TRIMS is largely reflective of the above argument. It seeks to regulate the domestic policies of the governments restructuring their power to direct and control foreign investment. This is a definite infringement of the economic sovereignty of governments.

With restriction of the right of the governments to control foreign investments through measures like local content export requirement, transfer of technology etc., the socio-economic and developmental goals of the LDCs are jeopardized. Through regulatory investment measures practised by the LDCs they try to minimise outflow of foreign exchange and other effects inimical to their development. Under the provisions of the Agreement the member countries cannot impose local content requirements and export requirements on the foreign investors or enterprise. Thus the TNCs and other foreign investors are not under any obligation to abide by the local content requirements or export require-

ment. This may affect the indigenous development of local industries and increase the outflow of foreign exchange and hence adversely affecting the balance of payment positions of LDCs. The Agreement thus removes restrictions on the operations of the TNCs and reduces pressure on them.⁴⁷ The Agreement also facilitates the technological dependence of the LDCs on the developed countries.

The Agreement through stipulates several restrictions as government measures, it does not deal with the question of restrictive business practices of the TNCs much to the detriment of the LDCs. Although the above mentioned implications are quite general. It becomes apparent that the impact of the Agreement on TRIMs on LDCs is far from beneficial. It Agreement does not deal with developmental concerns, germane to the LDCs but furthers the interests of the developed countries and the TNCs.

47. Kalim Siddiqui, "Dunkal Draft on the GATT and the Developing Countries", Link, Vol. 34, No.35, 12th April 92, p.23.

CONCLUSION

With the conclusion of the Uruguay round, after a seven year long protracted debate, the developed countries have succeeded in their endeavour to redefine and restructure the international economic relations. With the stake of the developed countries being high in the successful conclusion of the round, they were not prepared to countenance a collapse of the round which was tantamount to inviting political and economic dislocation. With the creation of an ideological vacuum, economics and technology have become the propelling forces, forming the basis of international power relations putting the developed countries at a distinct advantage. In fact, the demise of the Soviet Union and the collapse of the ideological opposition to liberalism and free play of market forces, coupled with the crumbling solidarity of the LDCs in face of their divergent national interests, played an important role in facilitating the acceptance of the Uruguay Round.

With the establishment of a new multilateral framework and the creation of WTO superseding the GATT, the character of the relationship between GATT and the LDCs has also undergone a sea of change. With the creation of a new multilateral framework under the Uruguay round the LDCs face opportunities and threats of an entirely different magni-

tude. The implications on the LDCs and their transformed relationship with GATT has, therefore, to be viewed in a broad economic, political and social context. The conclusion of the Uruguay Round has further entrenched the deep polarization between the developed countries and the LDCs. The completion of the Uruguay round has been facilitated, by bilateral deals and agreements, primarily, carried amongst the developed countries thereby undermining the multilateral nature of the GATT negotiations. The initiative nested primarily with the technology leaders with the LDCs being relegated to a bargaining position in the negotiations. This was reflected in the ignorance of issues germane to the LDCs like that of relation between debt and trade, commodity issues, special and differential treatment, etc. The LDCs have thus been presented with a 'fait accompli' in the form of the Final Act which is a single package, offered by the developed countries.

Though analysing the implications unleashed by the creation of a new multilateral trading order is fraught with complexities, one thing becomes apparent that its implementation would adversely affect the LDCs position in the world economy and would result in a net welfare loss for them at least in the short run. The Final Act represents an paradox. On the one hand the LDCs are required to liberalize their

economies and offer greater market access to the developed countries, on the other the latter is resorting to protectionism in the fields of technology and goods to retain and enhance their competitiveness in international trade. This is reflected in the various agreements comprising the Final Act.

The Final Act has ushered in a trading system conducive for the operations of the TNCs paving the way for the transnationalization of the world economy. With the comparative advantage lying in the adaptation and innovation in the field of high technology than in low labour costs, and with the erosion of the special and differential treatment the LDCs find themselves in a vulnerable spot.

Despite the clear and unequivocal reaffirmation of special and differential treatment as a guiding principle governing the Uruguay Round of the negotiations, the resulting Agreement has undermined the principle. The economic and developmental needs of the developing countries have been largely ignored and special and differential treatment has been limited to the least developed countries as listed by the GATT Agreement. Reciprocity and effective participation being the key word the LDCs other than the least developed countries have 'enbloc' been subjected to graduation. The advanced LDCs and particularly the NIC's have been subjected

to great pressure to graduate and provide their own preferential treatment and concessions to the other LDCs, when their per capita incomes are one fifth to one tenth of the advanced industrial nations and they still have many pockets of abject poverty in their own countries.

Apart from providing longer transitional arrangements to LDCs to facilitate their adaptation to the obligations of the Final Act, a uniform application of rules and principles as agreed upon in the Final Act are required. Though maintenance of restrictions under balance of payment provisions have been allowed the revision of Article XVIII under the Agreement favours the use of price based mechanisms than the use of quantitative restrictions.

One of the most significant outcomes of the round has been the decision to establish WTO as a successor to the GATT and one of the possible benefits for the LDCs is the dispute settlement mechanism introduced under it for a multilateral settlement of disputes. Under the dispute settlement mechanism the use of unilateral measures (the likes of special 301 action) would be restricted, though not abolished, completely. All unilateral trade actions would be subject to a multilateral review. Thus the developed countries likes US would first have to resort to the dispute settlement mechanism before resorting to unilateral meas-

ures. Though the dispute settlement mechanism restricts the use of unilateral measures it on the other hand provides for cross sectoral conditionality which has grave repercussions for LDCs as it provides another lever to the developed countries to bring the former in line with their priorities. The LDCs agreed to the principle of cross sectoral retaliation as they felt that multilaterally sanctioned dispute settlement mechanism with inbuilt safeguards was preferable to unilateral measures. How effective the dispute settlement mechanism would be in curbing the deployment of unilateral measures would only be visible after the implementation of the Final Act. Moreover there exists a large possibility of the WTO controlled as it would be by the developed countries, and in conjunction with the World Bank and the IMF, of turning into another instrument and institution for undermining the interests of the LDCs

Regarding the liberalization of agriculture another key area in the Uruguay Round the implementation of the Final Act would bring forth adverse consequences for the LDCs. It would affect the food security of the LDCs with the increase in prices of grains due to the cuts in the subsidies. The required provision of 'minimum market access' would provide for a further penetration of the LDCs markets and would be inimical to the interest of the LDCs. Moreover regulations

of the internal domestic policies of state intervention and the role of the government, playing an important role in correcting the market imbalances would also be put under international discipline.

Perhaps the only LDCs to benefit would be a small number of food exporting countries.

The new issues of TRIPs and TRIMs and services together make a single global issue namely that of the creation of comparative advantage and achievement of international competitiveness. The incorporation of these new issues not only mirror the aspirations of the developed countries to structure and define the parameters of a new system in conformity with their interests, but also reflects the interests of the TNCs. With the implementation of the Agreement on TRIPs the diffusion of the much needed technology for development would be restricted under the garb of the maintenance of intellectual property rights. The provisions relating to patents in the Agreement will effect the national health schemes and agriculture in the LDCs. With the rise in the prices in pharmaceuticals due to the payment of royalties and the rise in prices of seeds due to the implementation of the plant breeders rights would generate a net welfare loss in the LDCs. On the other hand it is the TNCs who would benefit primarily from the promulgation of the new

intellectual property rights regime. The developed countries have argued that effective intellectual property right protection would help to attract technology or investments. But this is clearly a debatable and a speculative contention. With regard to TRIMs the restrictions on the rights of the governments to deploy investment measures like local content requirements, export performance, transfer of technology the socio economic goals of the LDCs are jeopardized. The Agreement basically facilitates the operations of the TNCs.

Under GATS the emphasis being on capital intensive services the LDCs find themselves at a distinct disadvantage as a long section of their service sector comprises of labour intensive services. Liberalization of trade in service in GATS would not only stunt development of indigenous infant service industries but would also impinge upon the security and sovereignty of the LDCs. LDCs like India may stand to gain by providing labour intensive services like that of software professionals, engineers, medical technicians, construction workers etc. But due the inadequate provisions regarding mobility of labour and the restrictive immigration laws of most developed countries, the expected gains to the LDCs stand minimised. Perhaps, textiles is the only sector under the Agreement where the LDCs

actually stand to gain due to the possession of comparative advantage over the developed countries. The phasing out of the inequitous MFA under the Agreement and the integration of the textile sector into GATT, would further the liberalization of trade in textiles and would enable the LDCs to have a greater market access to the markets of the developed countries. However, the liberalization would become effective only after 2005 because the quota system, would be dismantled progressively over a 10 year long transitional period. This has made the deal less favourable for the LDCs. It would have been more reasonable for the developed countries to have agreed for a more rapid integration of trade in textiles and clothing with the GATT regime, than with the back loading of the phase out of the MFA which has been agreed upon. This only goes to prove that the deeply entrenched protectionist policies in the developed countries would not be given up easily.

Infact the end of the round has witnessed further efforts by the developed countries to perpetuate protectionism. The developed countries primarily the US and EC tried to link trade with extraneous issues in under to establish non tariff barriers and impede the free flow of exports from LDCs. The issues of social dumping, minimal labour standards and lack of enforcement of environmental concerns

was brought up in Marrakesh and the developed countries wanted them to be brought on the agenda of WTO with the veiled intention to nullify the comparative advantage of LDCs. For the LDCs their only comparative advantage lies in low labour costs. THE US and EC feel very threatened by the impact of cheap manufactured goods from the LDCs and demand that they should be compelled to adopt minimum labour standards.

For LDCs in an inherently disadvantageous position with respect to capital and technology, for once unified in their opposition to discuss labour standards. The concern of the developed countries was disguised protectionism than the concern for the working conditions of labour in the LDCs. The LDCs maintained that these issues were beyond the scope of the WTO. The LDCs are thus faced with a rather dismal situation for once the discussion is initiated on labour standards other social and civil issues would be brought in by the west to raise new barriers to the expansion of trade of the LDCs.

Hence the subjugation of the LDCs interests by the developed country is quite apparent with the analysis of the Uruguay Round. How far can the LDCs capture the share of additional expansion of world trade, estimated to be atleast 15 to 20 percent, following the Uruguay Round by the twenty

first century at best can be speculated. At present it is too early to quantify the gains on losses of the LDCs resulting due to the conclusion of the Round.

Imperfect as the GATT package might be in addressing the concerns of the developing nations, it will be unwise to step out and loose the benefits that multilateralism confers on member countries. Far from bemoaning the new pact as an imposition, the LDCs should awaken to the challenge posed by the new possibilities of integrating their economy with the world economic system and adjust themselves in the evolving international economic order.

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APPENDIX I

General Agreement on Tariffs and Trade

TRADE AND DEVELOPMENT

Article XXXVI

Principles and Objectives

1. The contracting parties,
 - (a) recalling that the basic objectives of this Agreement include the raising of standards of living and the progressive development of the economies of all contracting parties, and considering that the attainment of these objectives is particularly urgent for less-developed contracting parties.
 - (b) considering that export earnings of the less-developed contracting parties can play a vital part in their economic development and that the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports;
 - (c) noting, that there is a wide gap between standards of living in less-developed countries and in other countries.
 - (d) recognizing that individual and joint action is essential to further the development of the economies of less-developed contracting parties and to bring about a rapid advance in the standards of living in these countries;
 - (e) recognizing that international trade as a means of achieving economic and social advancement should be governed by such rules and procedures - and measures in conformity with such rules and procedures- as are consistent with the objectives set forth in this Arti-

cle.

(f) noting that the CONTRACTING PARTIES may enable less-developed contracting parties to use special measures to promote their trade and development agree as follows.

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

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

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

5. The rapid expansion of the economics of the less-developed contracting parties will be facilitated by a diversification of the structure of their economies and the avoidance of an excessive dependence on the export of primary products. There is, therefore, need for increased access in the largest possible measure to markets under favourable conditions for processed and manufactured products currently or potentially of particular export interest to less-developed contracting parties.

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

ment.

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

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

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

Article

XXXVII

Commitments

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

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

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

(c) (i) refrain from imposing new fiscal measures, and

(ii) in any adjustments of fiscal policy accord high priority to the reduction and elimination of fiscal measures,

which would hamper, or which hamper, significantly the growth of consumption of primary products, in raw or processed form, wholly or mainly produced in the territories of less-developed contracting parties, and which

are applied specifically to those products.

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

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

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

(iii) The consultations by the CONTRACTING PARTIES might also, in appropriate cases, be directed towards agreement on joint action designed to further the objectives of this Agreement as envisaged in paragraph 1 of Article XXV.

3. The developed contracting parties shall :

- (a) make every effort where a government directly or indirectly determines the resale price of products wholly or mainly produced in the territories of less-developed contracting parties, to maintain trade margins at equitable levels;
- (b) give active consideration to the adoption of other measures designed to provide greater scope for the development of imports from less-developed contracting parties and collaborate in appropriate international

action to this end;

- (c) have special regard to the trade interests of less-developed contracting parties when considering the application of other measures permitted under this Agreement to most particular problems and explore all possibilities of constructive remedies before applying such measures where they would affect essential interests of those contracting parties.
- 4. Less-developed contracting parties agree to take appropriate action in implementation of the provisions of Part IV for the benefit of the trade of other less-developed contracting parties, in so far as such action is consistent with their individual present and future development, financial and trade needs taking into account past trade developments as well as the trade interests of less-developed contracting parties as a whole.
- 5. In the implementation of the commitments set forth in paragraphs 1 to 4 each contracting party shall afford to any other interested contracting party or contracting parties full and prompt opportunity for consultations under the normal procedures of this Agreement with respect to any matter or difficulty which may arise.

Article XXXVII

Joint Action

- 1. The contracting parties shall collaborate jointly, within the framework of this Agreement and elsewhere, as appropriate, to further the objectives set forth in Article XXXVI.
- 2. In particular, the CONTRACTING PARTIES shall:
 - (a) where appropriate, take action, including action through international arrangements, to provide improved and acceptable conditions of access to world markets for primary products of particular interest to less-developed contracting parties and to devise measures designed to stabilize and improve conditions of world markets in these products including measures designed to attain stable, equitable and remunerative prices for exports of such products:

- (b) seek appropriate collaboration in matters of trade and development policy with the United Nations and its organs and agencies, including any institutions that may be created on the basis of recommendations by the United Nations Conference of Trade and Development:
- (c) collaborate in analysing the development plans and policies of individual less-developed contracting parties and in examining trade and aid relationships with a view to devising concrete measures to promote the development of export potential and to facilitate access to export markets for the products of the industries thus developed and, in this connexion, seek appropriate collaboration with governments and international organizations, and in particular with organizations having competence in relation to financial assistance for economic development, in systematic studies of trade and aid relationships in individual less-developed contracting parties aimed at obtaining a clear analysis of export potential, market prospects and any further action that may be required:
- (d) keep under continuous review the development of world trade with special reference to the rate of growth of the trade of less-developed contracting parties and make such recommendations to contracting parties as may, in the circumstances, be deemed appropriate:
- (e) collaborate in seeking feasible methods to expand trade for the purpose of economic development, through international harmonization and adjustment of national policies and regulations, through technical and commercial standards affecting production, transportation and marketing, and through export promotion by the establishment of facilities for the increased flow of trade information and the development of market research; and
- (f) establish such institutional arrangements as may be necessary to further the objective set forth in Article XXXVI and to give effect to the provisions of this Part.

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

APPENDIX II

CHAPTER IV: FRAMEWORK FOR CONDUCT OF INTERNATIONAL TRADE

The aim of the negotiations in this area was to reinforce certain GATT provisions in their applications, through the refinement or establishment of appropriate rules and procedures, and to bring about the adaptations necessitated by the important changes in trade relations, in particular those between developed and developing countries.

The specific subjects dealt with in the negotiations were the following:

1. the legal framework for differential and more favourable treatment for developing countries in relation to GATT provisions:
2. the applicability of the principle of reciprocity in trade relations between developed and developing countries and the fuller participation of developing countries in the framework of rights and obligations under the GATT:
3. safeguard action for development purposes;
4. safeguard action for balance of payments purposes;
5. notification, consultation, dispute settlement and surveillance;
6. export restrictions and charges.

Five texts were agreed upon covering these questions, 1 and 2 above being incorporated in one text.

A description of the negotiations on these subjects and of the texts that emerged is given in Chapter XI of Part I. This Chapter indicates some of the more important results of the negotiations.

A Enabling Clause

The single most important element in this area of the Tokyo Round was the establishment of differential treatment for developing countries as an integral part of the GATT system. The Enabling Clause, which covers

both items 1 and 2 above, provides for such treatment in respect of:

- tariff preferences accorded under the GSP
- non-tariff measures governed by codes negotiated under GATT auspices
- tariff and, subject to conditions that may be prescribed, non-tariff preferences granted to one another by developing countries in the framework of regional or global trade arrangements.
- special treatment for least-developed countries.

The Clause also, inter alia:

- provides that the extension of differential treatment for developing countries must not prevent the reduction of trade barriers on an m.f.n. basis, nor raise barriers to the trade of countries to which such treatment is not applied.
- provides that differential treatment accorded by developed countries must be designed to respond positively to the needs of developing countries.
- establishes consultation procedures to deal with difficulties that may arise in connexion with the introduction, modification or withdrawal of differential treatment
- reaffirms and strengthens the developed countries' commitment not to seek in trade negotiations concessions inconsistent with the needs of the developing countries concerned
- states the expectation of developing countries that they will be able to participate more fully in the framework of rights and obligations under the GATT with the progressive development of their economics and improvement in their trade situation. In this connexion, the serious difficulties of the least-developed countries in making concessions and contributions are recognized.

Source : GATT *The Tokyo Round of Multilateral Trade Negotiations*", Report by the Director General, (Geneva, 1979).

APPENDIX - III

PUNTA DEL ESTE DECLARATION

Ministerial Declaration of 20 September 1986

Ministers, meeting on the occasion of the Special Session of the Contracting Parties at Punta Del Este, have decided to launch Multilateral Trade Negotiations (The Uruguay Round). To this end, they have adopted the following Declaration. The Multilateral Trade Negotiations will be open to the participation of countries as indicated in Parts I and II of this Declaration. A Traded Negotiations Committee is established to carry out the negotiations. The Trade Negotiations Committee shall hold its first meeting not later than 31 October 1986. It shall meet as appropriate at Ministerial level. The Multilateral Trade Negotiations will be concluded within four years.

PART I

NEGOTIATIONS ON TRADE IN GOODS

The Contracting Parties meeting at Ministerial level

Determined to halt and reverse protectionism and to remove distortions to trade

Determined also to preserve the basic principles and to further the objectives of the GATT

Determined also to develop a more open, viable and durable multilateral trading system

Convinced that such action would promote growth and development

Mindful of the negative effects of prolonged financial and monetary instability in the world economy, the indebtedness of a large number of less developed contracting parties, and considering the linkage between trade, money, finance and development,

Decide to enter into Multilateral Trade Negotiations on trade in goods within the framework and under the aegis of the General Agreement on Tariffs and Trade.

A. OBJECTIVES

Negotiations shall aim to :

- (i) bring about further liberalization and expansion of world trade to the benefit of all countries, especially a less-developed contracting parties, including the improvement of access to markets by the reduction and elimination of tariffs, quantitative restrictions and other non-tariff measures and obstacles;
- (ii) strengthen the role of GATT, improve the multilateral trading system based on the principles and rules of the GATT and bring about a wider coverage of world trade under agreed, effective and enforceable multilateral disciplines;
- (iii) increase 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 and prospects including the growing importance of trade in high technology products, serious difficulties in commodity markets and the importance of an improved trading environment providing, *inter alia*, for the ability of indebted countries to meet their financial obligations;
- (iv) foster concurrent cooperative action at the national and international levels to strengthen the inter-relationship between trade policies and other economic, policies affecting growth and development, and to contribute towards continued, effective and determined efforts to improve the functioning of the international monetary system and the flow of financial and real investment resources to developing countries.

B. GENERAL PRINCIPLES GOVERNING NEGOTIATIONS

- (i) Negotiations shall be conducted in a transparent manner, and consistent with the objectives and commitments agreed in this Declaration and with the principles of the General Agreement in order to ensure mutual advantage and increased benefits to all participants.
- (ii) The launching, the conduct and implementation of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at

an early stage may be implemented on a provisional or a definitive basis by agreement prior to the formal conclusion of the negotiations. Early agreements shall be taken into account in assessing the overall balance of the negotiations.

- (iii) Balanced concessions should be sought within broad trading areas and subjects to be negotiated in order to avoid unwarranted cross-sectoral demands.
- (iv) The CONTRACTING PARTIES agree that the principle of differential and more favourable treatment embodied in Part IV and other relevant provisions of the General Agreement and in the Decision of the CONTRACTING PARTIES of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries applies to the negotiations. In the implementation of standstill and roll-back, particular care should be given to avoiding disruptive effects on the trade of less-developed contracting parties.
- (v) The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of developing countries, i.e. the developed countries do not expect the developing countries, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs. Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial and trade needs.
- (vi) Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.
- (vii) Special attention shall be given to the particular situation and problems of the least-developed countries and to the need to encourage positive measures to

facilitate expansion of their trading opportunities. Expeditious implementation of the relevant provisions of the 1982 Ministerial Declaration concerning the least-developed countries shall also be given appropriate attention.

C. STANDSTILL AND ROLLBACK

Commencing immediately and continuing until the formal completion of the negotiations, each participant agrees to apply the following commitments;*Standstill*

- (i) not to take any trade restrictive or distorting measure inconsistent with the provisions of the General Agreement or the instruments negotiated within the framework of GATT or under its auspices;
- (ii) not to take any trade restrictive or distorting measure in the legitimate exercise of its GATT rights, that would go beyond that which is necessary to remedy specific situations, as provided for in the General Agreement and the instruments referred to in (i) above;
- (iii) not to take any trade measures in such a manner as to improve its negotiating positions.

Rollback

- (i) that all trade restrictive or distorting measures inconsistent with the provisions of the General Agreement or Instruments negotiated within the framework of GATT or under its auspices, shall be phased out or brought into conformity within an agreed timeframe not later than by the date of the formal completion of the negotiations, taking into account multilateral agreements, undertakings and understandings, including strengthened rules and disciplines, reached in pursuance of the Objective of the Negotiations;
- (ii) there shall be progressive implementation of this commitment on an equitable basis in consultations among participants concerned, including all affected participants. This commitment shall take account of the concerns expressed by any participant about measures directly affecting its trade interests;
- (iii) there shall be no GATT concessions requested for the elimination of these measures.

Surveillance of standstill and rollback

Each participant agrees that the implementation of these commitments on standstill and rollback shall be subject to multilateral surveillance so as to ensure that these commitments are being met. The Trade Negotiations Committee will decide on the appropriate mechanisms to carry out the surveillance, including periodic reviews and evaluations. Any participant may bring to the attention of the appropriate surveillance mechanism any actions or omissions it believes to be relevant to the fulfilment of these commitments. These notifications should be addressed to the GATT secretariat which may also provide further relevant information.

D. SUBJECTS FOR NEGOTIATION

Tariffs

Negotiations shall aim, by appropriate methods, to reduce or, as appropriate, eliminate tariffs including the reduction or elimination of high tariffs and tariff escalation. Emphasis shall be given to the expansion of the scope of tariff concessions among all participants.

Non Tariff Measures

Negotiations shall aim to reduce or eliminate non-tariff measures, including quantitative restrictions, without prejudice to any action to be taken in fulfilment of the rollback commitments.

Tropical products

Negotiations shall aim at the fullest liberalization of trade in tropical products, including in their processed and semi-processed forms and shall cover both tariff and all non-tariff measures affecting trade in these products.

The CONTRACTING PARTIES recognize the importance of trade in tropical products to a large number of less developed contracting parties and agree that negotiations in this areas shall receive special attention, including the timing of the negotiations and the implementation of the results as provided for in B(ii).

Natural resource-based products

Negotiations shall aim to achieve the fullest liberalization of trade in natural resource-based products, including in their processed and semi-processed forms. The negotiations shall aim to reduce or eliminate tariff and non-tariff measures, including tariff escalation.

Textiles and clothing

Negotiations in the area of textiles and clothing shall aim to formulate modalities that would permit the eventual integration of this sector into GATT on the basis of strengthened GATT rules and disciplines, thereby also contributing to the objective of further liberalization of trade.

Agriculture

The CONTRACTING PARTIES agree that there is an urgent need to bring more discipline and predictability to world agricultural trade by correcting and preventing restrictions and distortions including those related to structural surpluses so as to reduce the uncertainty, imbalances and instability in world agricultural markets.

Negotiations shall aim to achieve greater liberalization of trade in agriculture and bring all measures affecting import access and export competition under strengthened and more operationally effective GATT rules and disciplines, taking into account the general principles governing the negotiations, by;.lm6

- (i) improving market access through, *inter alia*, the reduction of import barriers;
- (ii) Improving the competitive environment by increasing discipline on the use of all direct and indirect subsidies and other measures affecting directly or indirectly agricultural trade, including the phased reduction of their negative effects and dealing with their causes;
- (iii) minimizing the adverse effects that sanitary and phytosanitary regulations and barriers can have on trade in agriculture taking into account the relevant international agreements.

In order to achieve the above objectives, the negotiating group having primary responsibility for all aspects of agriculture will use the Recommendations adopted by the CONTRACTING PARTIES at their Fortieth Session, which were developed in accordance with the GATT 1982 Ministerial Work Programme, and take account of the approaches suggested in the work of the Committee on Trade in Agriculture without prejudice to other alternatives that might achieve the objectives of the negotiations.

GATT Articles

Participants shall review existing GATT Articles, provisions and disciplines as requested by interested contracting parties, and, as appropriate undertake negotiations.

Safeguards

- (i) A comprehensive agreement on safeguards is of particular importance to the strengthening of the GATT system and to progress in the Multilateral Trade Negotiations;
- (ii) The agreement on safeguards:
 - Shall be based on the basic principles of the General Agreement;
 - shall contain, *inter alia*, the following elements: transparency, coverage, objective criteria for action including the concept of serious injury or threat thereof, temporary nature, degressivity and structural adjustment, compensation and retaliation, notification, consultation, multilateral surveillance and dispute settlement; and
 - shall clarify and reinforce the disciplines of the General Agreement and should apply to all contracting parties.

MTN Agreements and Arrangements

Negotiations shall aim to improve, clarify, or expand, as appropriate, Agreements and Arrangements negotiated in the Tokyo Round of Multilateral Negotiations.

Subsidies and countervailing measures

Negotiations on subsidies and countervailing measures shall be based on a review of Articles VI and XVI and the MTN Agreement on subsidies and countervailing measures with the objective of improving GATT disciplines relating to all subsidies and countervailing measures that affect international trade. A negotiating group will be established to deal with these issues.

Dispute settlement

In order to ensure prompt and effective resolution of disputes to the benefit of all contracting parties, negotiations shall aim to improve and strengthen the rules and the procedures of the dispute settlement process. While recognizing the contribution that would be made by more effective and enforceable GATT rules and disciplines. Negotiations shall include the development of adequate arrangements for overseeing and monitoring of the procedures that would facilitate compliance with adopted recommendations.

Trade-related aspects of intellectual property rights, including trade in counterfeit goods

In order to reduce the distortions and impediments to international trade, and taking into account the need to promote and adequate protection of intellectual property rights, and to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade, the negotiations shall aim to clarify GATT provisions and elaborate as appropriate new rules and disciplines.

Negotiations shall aim to develop a multilateral framework of principles, rules and disciplines dealing with international trade in counterfeit goods, taking into account work already undertaken in the GATT.

These negotiations shall be without prejudice to other complementary initiatives that may be taken in the World Intellectual Property Organisation and elsewhere to deal with these matters.

Trade-related investment measures

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

E. FUNCTIONING OF THE GATT SYSTEM

Negotiations shall aim to develop, understandings and arrangements :

- (i) to enhance the surveillance in the GATT to enable regular monitoring of trade policies and practices of contracting parties and their impact on the functioning of the multilateral trading system;
- (ii) to improve the overall effectiveness and decision-making of the GATT as an institution, including *inter alia*, through involvement of Ministers;
- (iii) to increase the contribution of the GATT to achieving greater coherence in global economic policy-making through strengthening its relationship with other international organizations responsible for monetary and financial matters.

F. PARTICIPATION

- (a) Negotiations will be open to ;
 - (i) all contracting parties,
 - (ii) countries having acceded provisionally,
 - (iii) countries applying the GATT on a de facto basis having announced, not later than 30 April 1987, their intention to accede to the GATT and to participate in the negotiations,
 - (iv) countries that have already informed the Contracting Parties, at a regular meeting of the Council of Representatives, of their intention to negotiate the terms of their membership as a contracting party, and

- (v) developing countries that have, by 30 April 1987, initiated procedures for accession to the GATT, with the intention of negotiating the terms of their accession during the course of the negotiations.
- (b) Participation in negotiations relating to the amendment or application of GATT provisions or the negotiation of new provisions will, however, be open only to contracting parties.

G. ORGANIZATION OF THE NEGOTIATIONS

A Group of Negotiations on Goods (GNG) is established to carry out the programme of negotiations contained in this part of the Declaration. The GNG shall, *inter alia*;

- (i) elaborate and put into effect detailed trade negotiating plans prior to 19 December 1986;
- (ii) designate the appropriate mechanism for surveillance of commitments to standstill and rollback;
- (iii) establish negotiating groups as required. Because of the interrelationship of some issues and taking fully into account the general principles governing the negotiations as stated in B (iii) above it is recognized that aspects of one issue may be discussed in more than one negotiating group. Therefore each negotiating group should as required take into account relevant aspects emerging in other groups.
- (iv) also decide upon inclusion of additional subject matters in the negotiation;
- (v) co-ordinate the work of the negotiating groups and supervise the progress of negotiations. As a guideline not more than two negotiating groups should meet at the same time;
- (vii) the GNG shall report to the Trade Negotiations Committee.

In order to ensure effective application of differential and more favourable treatment the GNG shall, before the formal completion of the negotiations, conduct an evaluation of the results attained therein in terms of the Objectives and the General Principles Governing Negotiations as set out in the Declaration, taking into account all issues of interest to less developed parties.

PART II

NEGOTIATIONS ON TRADE IN SERVICES

Ministers also decide, as part of the Multilateral Trade Negotiations, to launch negotiations on trade in services.

Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade under conditions of transparency and progressive liberalization and as a means of promoting economic growth of all trading partners and the development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant international organizations.

GATT procedures and practices shall apply to these negotiations. A Group of Negotiations on Services is established to deal with these matters. Participation in the negotiations under this Part of the Declaration will be open to the same countries as under Part I. GATT secretariat support will be provided, with technical support from other organizations as decided by the Group of Negotiations on Services.

The Group of Negotiations on Service shall report to the Trade Negotiations Committee.

IMPLEMENTATION OF RESULTS UNDER PARTS I AND II

When the results of the Multilateral Trade Negotiations in all areas have been established, Ministers meeting also on the occasion of a Special Session of CONTRACTING PARTIES shall decide regarding the international implementation of the respective results.

Statement by the Chairman of the Ministerial Meeting

Before proposing adoption of the Ministerial Declaration on the Uruguay Round, the Chairman voted that the purpose of the declaration was to launch multilateral trade

negotiations on goods and services. This involved taking three decisions; in goods; the first would be to adopt, as the CONTRACTING PARTIES, Part I of the Declaration, relating to negotiations on trade in goods; the second would be to adopt Part 11, on trade in services, as representatives of Governments meeting on the occasion of the Special Session of the CONTRACTING PARTIES at Punta del Este; thirdly, again as representatives of Governments meeting on the occasion of the special Session of the CONTRACTING PARTIES at Punta del Este, to adopt the Declaration as a whole.

He then made the following specific points;

Representatives of certain governments had expressed concern regarding a number of problems relating, in particular, to commodities, natural resource-based products and tropical products. Those governments were concerned that solutions to their problems be found and implemented quickly. Specific proposals had been put forward by certain African governments. While he was sure that this conference attached great importance to those concerns, it had not been possible to complete consideration of the proposals at the conference. It had, therefore, been agreed that the proposals would be considered by the Trade Negotiations Committee foreseen in the Declaration.

In order to participate fully in the negotiations, developing countries would require technical support. There was agreement that technical support by the Secretariat, adequately strengthened, should be available to developing countries participating in the negotiations.

Some governments had expressed concern over trade measures applied for non-economic reasons.

He then summarized discussions that had taken place on the objectives of the negotiations;

- There had been a proposal to include, among the objectives of the negotiations, that of redressing growing disequilibria in world trade and of achieving, in the spirit of the Preamble to the General Agreement, a greater mutually of interests.
- However, it had been represented that the foregoing proposal might lead to trading system incompatible with the basic objectives and principles of GATT, the guarantor of the open and non-discriminatory trading system.

- Nevertheless, it was common ground that growing disequilibria in world trade constituted a serious problem and would need to be tackled by the countries concerned by various policy means including macro-economic policy, exchange rates, structural reform and trade policy.
- It was furthermore agreed that in the negotiations every contracting party should make genuine efforts to ensure mutual advantages and increased benefits to all participants, in accordance with the principles of the GATT.

Some proposals had been received regarding the setting up of negotiating groups for the negotiations. These proposals would be formally circulated after the Session.

He noted that there were certain issues raised by delegations on which a consensus to negotiate could not be reached at this time. These issues included the export of hazardous substances, commodity arrangements, restrictive business practices and workers rights.

He then clarified that it was understood that paragraph F(b) was interpreted as meaning that (a) all participants in the multilateral trade negotiations have the right to participate in all negotiations on all issues and that (b) non-contracting parties shall only be precluded from participation in decisions of contracting parties relating to the results of these negotiations.

The conference had noted requests by certain governments, not at present covered by the provisions in the Declaration on participation, to take part in the multilateral trade negotiations. The Director-General was authorised upon request by such governments, to keep them informed of progress in the negotiations.

No delegation present would see in the Declaration all the points that it wished to be included when this meeting had opened. Many of the specific concerns of delegations would have to be pursued in the negotiations themselves, and this was as it should be.* Source : GATT, *GATT Activities 1986*, (Geneva 1987).