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Rediscovering the Role of Developing Countries in GATT before the Doha Round

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Rediscovering the Role of Developing Countries in GATT before the Doha Round

Faizel Ismail*

Abstract: Developing countries have been characterized as having played an essentially defensive role in the GATT, unwilling to make tariff concessions, and have focused almost exclusively on securing Special and Differential Treatment concessions. These three perspectives have become part of the conventional wisdom in the academic literature on the GATT. The paper argues that the conventional argument is not an accurate description of the role of developing countries in the ITO and the GATT.

I. Introduction

At the launch of the Doha Round, developing countries were sceptical that the Round would address the issues of concern to developing countries. Their scepticism was based on their experience of past 8 rounds of the GATT that failed to adequately address the interests and concerns of developing countries. The Doha Round has witnessed developing countries play an active role through the formation of several developing country coalitions, based on specific issues, for example, the G20, NAMA 11, G33

This paper is dedicated to Clodoaldo Huguely who has made an outstanding contribution to the multilateral system for almost four decades. I was privileged to have worked with him and drawn on his wisdom whilst he served as the Senior Official, and then Ambassador of Brazil to the WTO and the UN, in Geneva, during the Doha Round, until July 2008.

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and regional groups, such as the Africa Group, the ACP, and groups that represented developing countries at lower levels of development, for example, LDCs, SVEs. These groups have tended to be relatively organized and articulate in expressing their interests and advancing their negotiating positions. Some of the major developing country groups such as the G20, NAMA 11 and G33 are technically very competent, and have been able to match the capacity of the major developed countries in the Doha negotiations. The unfolding history of this process has been recorded elsewhere and this paper does not intend to address this issue here.¹

Developing countries since the formation of GATT have been arguing for their particular development situations and interests to be taken into account.² However, the demand by developing countries for increased market access for products of export interest to them, such as agricultural products and textiles, were largely ignored. Instead these products faced ever increasing protection in developed countries for over 50 years since the formation of GATT/WTO. At its inception in 1947, the newly formed GATT did not recognize the special situation of developing countries. The fundamental principle of the agreement, referred to as the Most-Favoured-Nation Treatment, provided for in Article 1 of the GATT, was that rights and obligations should apply uniformly to all contracting parties.

Thus, in the early period of GATT (1948 to 1955) developing countries participated in tariff negotiations and other aspects of GATT activities as equal partners. However, GATT did go on to incorporate a number of exceptions to its general principles of most favoured nation (MFN)³ and national treatment,⁴ through the so-called special and differential treatment provisions. However, these provisions were considered to be largely ineffective. The WTO and GATT before it have thus been criticized by developing countries, and civil society groups as being unfair, unbalanced, and prejudicial to the interests of developing countries.⁵

Why has GATT failed to address the development needs of developing countries?

There are at least three reasons that a large number of writers on the history of GATT have ascribed this to; a) the passive and defensive role of

developing countries in GATT; b) the lack of participation of developing countries in the exchange of concessions, and c) the focus of developing countries on Special and Differential Treatment for developing countries as their main objective. This perspective has become the conventional wisdom in the academic literature and has shaped the perspectives of contemporary students of GATT. We explore these themes further below.

With regard to the first reason advanced above, consider the view of an eminent writer on the subject in a recent article. Michael Finger⁶ states “through GATT’s Tokyo Round, that ended in 1978, developing-country participation in multilateral trade negotiations was either passive or defensive. Developing countries that had joined GATT had in large part remained bystanders; many had acceded under Article XXVI 5(C), which exempted them from having to negotiate concessions in order to enter”. Finger goes on to state, however, that in “the Uruguay Round things were different. Already in the run-up to the Round, many developing countries took an active role”. However, Finger and other writers recognized that the Uruguay Round was unbalanced and that “developing countries had given more than they got – a concern that the basic GATT/WTO ethic of reciprocity had been violated”. The main reasons for this outcome has been ascribed to the “lack of assessment of the impacts of the agreement...” and that the Uruguay Round Agreements were “poorly understood and certainly not quantified”.⁷

Some developing country writers on the subject too have taken a pessimistic view of the role of developing countries in GATT and have argued that whilst developing countries have had a numerical advantage in GATT/WTO this has not helped them, and ascribe this to a number of weaknesses.⁸ These weaknesses are identified as ‘victims of traps and pitfalls’, ‘victims of harassment’, indifference and silence due to their ignorance of the issues or fear of developed country response or at best ‘stiff resistance and sudden collapse’.⁹

We will argue in this paper that both these observations do not do justice to the active role developing countries played in shaping the architecture of the ITO and GATT by continuing to assert their demands; for increased market access for products of export interest to developing

countries, and for the special needs and interests of the developing countries to be provided for in GATT. This was achieved notwithstanding their export pessimism, and political weakness as they emerged from the ravages of colonialism, in the early period of GATT. However, developing countries did lack the technical capacity and organization to build their bargaining power and gain negotiating leverage in the multilateral negotiations. This was only to emerge in the Doha Round from the formation of strong coalitions based on their development interests. Despite this the Uruguayan case against 15 OECD members of GATT in 1961 illustrates that developing countries were also not merely passive participants in GATT subsequent to its formation. This argument will be discussed further in section II.

The second reason for the failure of GATT to address the needs of developing countries has been ascribed to their lack of participation in the exchange of concessions. Will Martin and Patrick Messerlin, in a recent article state that “the fact that developing countries were not actively participating in the Kennedy and Tokyo Rounds made it much easier for the industrial countries to create mechanisms such as the multi-fibre agreement (MFA) targeted against exports from developing countries, to continue to exclude agriculture, to exclude other labour-intensive products from full formula-based liberalization, and to offer tariff preferences only at the discretion of the importer”.¹⁰ They argue further that “had emerging and developing countries been active participants in the exchange of market-access concessions in the Kennedy Round, it may have required more time to negotiate, and its measured productivity might have been lower, but it would likely have been much more successful in meeting the needs of developing countries”.

This paper will argue that this perspective fails to recognize that in the early rounds of GATT the developing countries were excluded from participation by the insistence of the US and the EEC on; the principle supplier rule, the exclusion of internal taxes and quotas that effectively excluded tropical products from the negotiations, and reciprocity. Thus developing countries were not unwilling to participate in the negotiations but were rendered unable to do so.¹¹ However, notwithstanding this

developing countries did make some relatively significant concessions in the early GATT Rounds, including the Tokyo and Kennedy Rounds. These issues will be discussed further in section III.

The third argument that many writers ascribe to the poor treatment of developing countries in GATT is their apparent focus on Special and Differential Treatment. Martin and Messerlin explain this argument as follows: “Prior to the Uruguay Round, most developing countries had sought to achieve their objectives primarily through special and differential treatment provisions. This was partly a result of the widespread belief in import substitution as a path to development, and partly to the power of the interest groups in import-substituting firms in developing countries”.¹²

These writers go on to assert that many of these countries resisted the use of key GATT approaches, such as reciprocal liberalization and the principle of non-discrimination” and that “the introduction of these provisions reflected a move away from the original GATT objective of providing a forum for exchanging market access towards one of making transfers to developing countries”.

This paper will argue that these writers fail to problematize the concepts of MFN and Reciprocity which were debated in the ITO with developing countries arguing that these concepts required to take into account the different level of development and special needs of developing countries. In addition it will be argued below that Part IV of GATT (1965), and the subsequent Enabling Clause (1979) that created the basis for the special and differential treatment provisions of the Tokyo round were partly a response to the failure of the developed countries to address the key interests of developing countries, due to their own domestic protectionist interests in products of export interest to developing countries, particularly, in areas such as agriculture and textiles.

This paper will elaborate on the three themes discussed above by raising three set of questions on the role of developing countries in GATT. Firstly, did developing countries play a passive and defensive role in GATT(section II)? Secondly, did they exchange concessions? Had they provided more

concessions, could they have extracted more concessions from the developed countries in return (section III)? Thirdly, was special and differential treatment the main objective and focus of developing countries in GATT (section IV)? Finally the paper will also discuss the perspectives of writers above on the role of developing countries in the Uruguay Round (section V). However this discussion will be confined to the role played by developing countries in the process of launching the Uruguay Round. The conclusion of the paper will summarize the main arguments made in the paper (section VI).

II. Did developing countries play a passive and defensive role in GATT?

Of the 23 original contracting parties 10 were developing countries.¹³ By 1960, of the 37 contracting parties, 21 were developed and only 16 were developing. However, by 1970 this trend was to change significantly, as of the 77 contracting parties 27 were developed and 52 were developing countries. By 1987, of the 95 contracting parties, 29 were developed and 66 were developing countries.¹⁴ Thus, the participation of developing countries in GATT Rounds increased progressively with 25 developing countries participating in the Kennedy Round, 68 in the Tokyo Round, 76 in the Uruguay Round and in the Doha Round over 70 percent of the 153¹⁵ members are currently developing countries.¹⁶

At the time of the creation of GATT, the vast majority of developing countries were still under colonial rule.¹⁷ In some cases their interests were spoken for by the developed countries, or “represented” by their colonizers during the early GATT Rounds. In some cases they were satellite regimes of their colonial states, as was the case of Southern Rhodesia (now Zimbabwe) and South Africa. In addition, the Developed Countries, or the colonial countries were to regard GATT as their “property” and “they did not have to accommodate the interests of the rest of the world”¹⁸ Thus, even as many developing countries became independent in the late 1950’s and early 1960’s their attitudes were partly shaped by this experience, and their perspectives of the particular development needs of their newly independent countries.

The ITO

However, notwithstanding this the developing countries did participate actively, both in GATT negotiations and especially in the process towards creating the International Trade Organization (ITO). Developing countries were already actively involved in the negotiations on the formation of the (ITO), which was abandoned due to the failure of the US Congress to ratify the ITO Charter. Even at the very first negotiations on the ITO charter, the developing countries were vigorous in their engagement, and “tabled a wide range of proposals” in the negotiations on the ITO charter. The first draft of the ITO charter proposed by the USA in December 1945 had ‘no provisions on economic development, nor were there any special rules or exceptions for developing countries’.¹⁹

Much of the debate about GATT took place in the negotiations towards the creation of the ITO as it was understood that GATT would be subsumed within the ITO once it was created. Thus, the debates about the nature and underlying principles that governed the trading system took place in the ITO negotiations, rather than GATT. The principle of reciprocity was debated in the ITO negotiations with developing countries raising concerns that they lacked the bargaining power to enable them to extract concessions of value from developed countries on a reciprocal basis and therefore there should be some consideration for the reality that developing countries were not able to grant reciprocal tariff cuts of equal value to that of the more advanced developing countries.²⁰ In spite of these objections this principle was adopted as a core principle in GATT and incorporated in the preamble of GATT 1947.

During the first meeting of the negotiations on the ITO Charter, held in London in 1947, the US put forward its proposed Charter (which had been agreed between the US and the UK much earlier). However, the Brazilian delegation had also put forward a “Proposed Charter”. The Brazilian Charter engaged with the US proposal on the most favoured nation (MFN) principle by stating that this should be adhered to unconditionally only by countries in the advanced stage of development. They both also called for a ban on quantitative restrictions. However the US proposal called for a broad exemption on the ban for any agricultural product.

The Brazilian proposal also called for a recognition of the problems faced by less developed countries as well as the need for special measures to assist these countries with their development.²¹ During the debate on the ITO Charter in the United Nations Economic and Social Council, developing countries were able to insert an amendment which called for the ITO negotiations to 'take into account the special conditions which prevail in countries whose manufacturing industry is still in the initial stages of development'. The US rejected this proposal, so it did not get into the ITO Charter.

However, on the issue of the voting method, the developing countries were more successful. For decision making in the ITO the US delegation proposed the same method of weighted voting that was used in the recently created International Monetary Fund (IMF). A similar proposal was made by the UK, to take into account the economic size of the country in its share of the vote – a system of weighted voting. Developing countries voiced their opposition to such a system of voting as they feared that this would institutionalize their secondary status. A number of developing countries²², voiced strong opposition to weighted voting and came out in favour of consensus. As a consequence the ITO did not adopt a system of weighted voting. Thus on this issue developing countries did succeed in shaping the voting procedures of the ITO and GATT.

Developing countries were active participants in the negotiations on the ITO and did succeed in getting some of their concerns into the finally agreed Charter at the Havana Conference in early 1948. It was partly for this reason and the fact that the US did not succeed in getting all their narrow interests into the ITO Charter that the Havana ITO Charter was rejected by the United States Congress and thus never came into force.²³

The Uruguayan Case

Developing countries were also not merely passive participants in GATT subsequent to its formation. This can be illustrated by the Uruguayan case. In 1961 Uruguay filed a legal complaint against fifteen developed countries (against the entire developed country membership of GATT) that listed 576 restrictions in the fifteen markets against its exports. The point of the Uruguayan complaint was to draw attention to the commercial barriers facing exports from developing countries.²⁴ Most of the provisions that

Uruguay pointed to were GATT illegal and the case ought to underline the lack of effectiveness of GATT in protecting the interests of developing countries at the time. Thus the Uruguayan case illustrates that the developing countries did participate and did attempt to shape the architecture of the trading system. In some cases they succeeded and in some cases they failed to make the changes they sought. However, their failure to effect changes in GATT should not be mistaken for a lack of participation and engagement.

III. Developing Countries Reciprocity in concessions?

The discussion below will explore the issue of developing country participation in GATT further in the context of developing country willingness to participate in the exchange of concessions during the early GATT rounds and the later Dillon, Kennedy and Tokyo Rounds of GATT.

The Early GATT Rounds

During the early period of GATT there were at least three major obstacles to developing country participation in the process of tariff bargaining or exchange of concessions. These include the principle of reciprocity, the principle supplier rule and the focus on tariffs only in the negotiations.

During the debate on the ITO negotiations the US made it clear that it required the principle of reciprocity to be the foundational principle of GATT. This required that any tariff cuts that were made by the US would have to be paid for by reciprocal concessions made for US manufactured goods. Developing countries such as India argued that due to the limited size of their domestic market their bargaining power was inadequate to induce concessions from developed countries, and moreover they wanted to protect their infant industries which were at the early stage of industrialization.²⁵

During the negotiations on the ITO many members had preferred a system of bargaining that was formula based – across the board tariff negotiations - but the US Congress indicated that this would be unacceptable to them. The UK supported this method as it would have led to the levelling of high US tariffs. The US delegation however argued for a system of reciprocal bargaining over specific tariff lines that required a product-by-

product, principal supplier method of tariff negotiations by which a country could only be requested to make tariff cuts on a particular product by the principal supplier of that product to that country.²⁶ This meant that for any particular product the importing country negotiates its tariff rate with its principal supplier and not with all suppliers of the same product. Developing countries at the time were seldom principal suppliers of any product, except raw materials that entered industrialized countries duty free. Only at the 4th Round of GATT, (Geneva, 1956), was this rule modified to allow developing countries to negotiate collectively in requesting concessions. However, they were still effectively prevented from requesting concessions in any products that they did not produce in large quantities. Thus the principal supplier rule had the effect of locking out developing countries from the tariff cutting negotiations.

Thirdly, for those developing countries that exported tropical products the primary impediments to their exports were more often internal taxes in importing markets rather than tariffs. These internal tariffs were as high as 500 percent for products such as sugar. However, internal taxes were not on the agenda of GATT and could not be negotiated. In addition, quotas were also not part of the early GATT negotiations and as GATT evolved these growing quotas in developed countries increased the barriers to entry for the products of interest to developing countries.

Thus Wilkinson²⁷ observes that by the mid- 1960s the evolution of GATT led to two different experiences. For the industrialized countries, “liberalization under GATT had seen the volume and value of trade in manufactured, semi-manufactured and industrial goods increase significantly”. In addition, “they had also managed to protect their agricultural and textile and clothing sectors through a blend of formal and informal restrictions”. To give effect to this, there were a number of GATT waivers to protect developed country agricultural markets and the exclusion of textiles and clothing from liberalization in developed countries. For developing countries this meant that the products of interest to them were excluded from liberalization.²⁸ Thus the argument that developing countries were not willing to provide concessions in the early rounds of GATT must be seen in the context of the many obstacles that prevented developing country

effective participation in the tariff bargaining process and that excluded them from the negotiations. This was to shape their attitude to the unfolding rounds of negotiations in GATT.

Haberler Report

The export interests and demands of developing countries were again clearly articulated in the 1950s (at a Ministerial Meeting in 1957 and the Harberler Report in 1958) and placed firmly on the agenda of the Kennedy Round in 1964. Developing countries whilst still a minority in GATT already by the mid 1950s asserted the need for market access in developed countries for products in which they had a comparative advantage. Thus, a GATT Ministerial Meeting convened to discuss this issue in November 1957 noted ..’ the failure of the trade of less developed countries to develop as rapidly as that of developed countries, excessive short-term fluctuations in prices of primary products, and widespread resort to agricultural protection’.²⁹ This meeting led to a study of these issues that produced the Haberler Report in October 1958.³⁰

Dillon Round

The Harberler Report had recommended the inclusion of internal taxes in the negotiations. This together with strong pressure from developing countries, particularly, India and Brazil, led to the inclusion of internal taxes in the Dillon Round (1960 -61). The inclusion of internal taxes in the Dillon Round was met with fierce opposition from the US and the newly formed European Economic Community (EEC). The increasing use of non-tariff barriers to protect the agricultural markets of developed countries and the exclusion of agriculture from the negotiations, together with the use of the principal supplier rule resulted in poor and disappointing results for agricultural exporting developing countries.³¹

Thus in 1963 a Nigerian led Group of developing countries (G21) proposed a programme of action urging the contracting parties to focus their attention on targeting those barriers to trade identified as directly affecting the less-developed countries. This programme of action was adopted as a resolution at the May 1963 GATT Ministerial meeting. The resolution called for a standstill on new tariff and non-tariff barriers. However, the

EEC obtained an exception for its emerging common external tariff, Austria and Japan stated that they were not able to meet the deadline of December 1965 and the US stated that its national legislation required its tariffs to be reduced over a five year period and thus it could not comply. Thus the 1963 resolution only resulted in a committee to investigate the revision of GATT with a view to safeguarding the interests of developing countries in their international and development programmes.³²

The Kennedy Round

The Kennedy Round thus was to remedy some of these deficiencies in GATT and was 'advertised as the long-awaited answer to demands by developing countries for improved access to developed-country markets'.³³ The tariff reductions that were required to be made by developed countries on tropical products that were of export interest to developing countries did not materialize. The Kennedy Round (1963-7), that had promised to prioritize the issues of interest to developing countries (agriculture and textiles), thus failed to make any real progress on these issues.

The US Trade Expansion Act passed by the US Congress in 1962 provided the US with the basis to negotiate across the board formula based negotiations. However the approach the US chose was a hybrid one that utilized a formula combined with substantial bilateral bargaining over the exceptions list. This bargaining usually took place between the principal suppliers of the product in question to ensure reciprocity. Thus in this process, developing countries were still hampered by their lack of bargaining power and the ability to offer reciprocal tariff concessions. Thus, the Kennedy round also resulted in the previous pattern of achieving far greater concessions for products of export interest to developed countries.

In contrast to the approximately 35 percent average tariff reductions achieved for developed country manufactured goods, tariff cuts on cotton textile products only achieved an 18 percent cut from the US and 22 percent from the EEC. In addition both the US and the EEC made their textiles sector offer conditional on the renewal of the Long Term Arrangement (LTA), rendering these tariff cuts irrelevant due to the LTA quota's that were imposed against the largest supplying developing countries into these developed country markets.³⁴ In addition little progress was made on

agriculture as the agriculture support programmes of the US and the EEC remained highly restrictive. Developing countries also continued to face high tariffs on finished and semi-finished industrial products.³⁵

However, in spite of this developing countries did participate in the tariff reduction process with at least 23 developing countries having declared themselves as participating countries for the purpose of making a contribution with about 14 making tariff bindings or concessions that were included in their GATT schedules.³⁶

Tokyo Round

Again, in the Tokyo Round developing countries did participate, by making proposals for agreement and agreeing to implement restrictions in certain areas. The Tokyo round went beyond tariff cuts and went on to negotiate rules on non-tariff barriers (NTBs). For developing countries one of the most important issues was the so-called Voluntary Export Restraints (VERs). These VERs dominated the cotton sector, and several other products of importance to developing countries. By the time of the Tokyo Round there were more than 800-850 NTBs in force. The committee charged with examining QRs with a view to restricting their use produced two reports, with one synthesizing the proposals of developing countries, represented by Brazil and the 3 Chairs; of GATT contracting parties, the Council, and the Committee on Trade and Development. It called for the gradual liberalization and elimination of QRs. The other report was presented by the US which made a distinction between legal and illegal restrictions, with the illegal QRs being subject to negotiations. However, few countries accepted the US distinction or definition of what was legal or illegal. Thus the multilateral approach to the negotiations on QRs was abandoned in favour of a bilateral request and offer approach.

Again, in the Tokyo Round, as in the Kennedy Round, the developed countries made the extension of the multi-fibre arrangement (MFA) a precondition for any reduction of tariffs on textiles. In addition, the US restricted the growth of its quota's for developing country textiles even further from 6 percent to 1-3 percent a year. The EEC went further and required the major developing country exporters to reduce their textile and

clothing exports to below 1976 levels requiring cuts of 9 percent, 7 percent and 25 percent, for Hong Kong, Korea and Taiwan respectively.³⁷

On the issue of Safeguards in which the developing countries had a major interest, Brazil and Nigeria, on behalf of the majority of developing countries, presented proposals. However, the negotiations broke down because developing countries refused to accept the EECs demand that each member should have the right to impose unilateral safeguards on individual countries without multilateral approval. Even in other areas of the negotiations, such as Customs Valuation, and Subsidies and Countervailing Duties, developing countries played an active role but their views were largely ignored.

Thus on many of the negotiations on NTB codes and in the negotiations on tariffs and agriculture, developing countries played an active role but were largely ignored from the process. The US and the EEC negotiated a mutually acceptable outcome and then included other members of the Quad (Japan and Canada). The rest of the membership of GATT were thus faced with a *fait accompli*, with developing countries lacking the political and economic bargaining power to determine the outcome.³⁸

However, notwithstanding this lack of negotiating power, developing countries did make concessions in the Tokyo Round. The Tokyo Round Schedules includes concession bindings from several developing countries.³⁹ And in the supplementary protocol to the Tokyo Round in November 1979 concessions were made by a large number of other developing countries.⁴⁰ Thus the contention that developing countries were not active participants in the Kennedy and Tokyo Rounds and were not willing to make tariff concessions does not take into account the active role that developing countries played in attempting to negotiate agreements in their interest and the tariff concessions that they actually did make.

Whilst these concessions may not have been very significant they should be considered in the context of the refusal of developed countries to fully engage with or to respond in a positive manner to the negotiating proposals put forward by developing countries, and the very poor results achieved by developing countries on both tariff and non-tariff barriers against products

of export interest to them. Given the growing protectionism in the developed countries on agriculture and textiles and clothing products of interest to developing countries, the relatively small markets of developing countries, the principal supplier tariff reduction techniques adopted by developed countries, and the relatively poor political and economic bargaining power of developing countries, it is very unlikely that they could have achieved better results had they made robust tariff cutting concessions for the products of export interest to developed countries of GATT.

IV. Was special and differential treatment the main objective and focus of developing countries in GATT?

In this section we will engage with the assertion that developing countries “sought to achieve their objectives primarily through special and differential treatment provisions” prior to the Uruguay Round. As the discussion above suggests, as GATT advanced with each GATT Round developing countries were willing and did in fact contribute to the process of tariff reduction and exchange of concessions. However, developing countries also sought to create provisions in GATT that addressed their particular development situation and needs. This section will discuss the gradual adoption of these special and differential measures by GATT, Article XVIII, Part IV of GATT and the Enabling Clause, and argue that they were often not fully responsive to the demands of the developing countries and in most cases, dressed up in best endeavour language, without legal effect. We will begin by a discussion of the contention that developing countries simply resisted “the use of key GATT approaches, such as reciprocal liberalization and the principle of non-discrimination” and that “the introduction of these provisions reflected a move away from the original GATT objective of providing a forum for exchanging market access towards one of making transfers to developing countries”. We argue that this fails to problematize these concepts as being inadequate to address the very real differences that existed and still remains today between the levels of development and different development needs of developing countries.

Reciprocity and MFN

The debates about the nature and underlying principles that governed the trading system took place in the ITO negotiations, rather than GATT. The

first draft of the ITO charter proposed by the USA in December 1945 had ‘no provisions on economic development, nor were there any special rules or exceptions for developing countries’.⁴¹

The principle of reciprocity was debated in the ITO negotiations with developing countries raising concerns about their lack of bargaining power to enable them to extract concessions of value from developed countries on a reciprocal basis. There should therefore be some consideration for the reality that developing countries were not able to grant reciprocal tariff cuts of equal value to that of the more advanced developing countries.⁴² However this principle was adopted as a core principle in GATT and incorporated in the preamble of GATT.⁴³

As observed earlier, in the first meeting of the negotiations on the ITO Charter held in London in 1947, the US and Brazil put forward their proposed Charters. The Brazilian Charter engaged with the US proposal on the most favoured nation (MFN) principle and also called for a recognition of the problems faced by less developed countries as well as the need for special measures to assist these countries with their development.⁴⁴ At the debate on the ITO Charter in the United Nations Economic and Social Council, developing countries were able to insert an amendment which called for the ITO negotiations to ‘take into account the special conditions which prevail in countries whose manufacturing industry is still in the initial stages of development’. This was rejected by the US.

Thus the principle of reciprocity, and MFN were highly contested by developing countries during the negotiations in the ITO. The adoption of these principles by GATT without the full support of developing countries and without any qualification should thus be problematized by academic observers of GATT. These concepts were thus to be continuously challenged by developing countries in the early period of GATT’s formation, during the early and later rounds of GATT, and up to and including, in the Doha Round.

The need to qualify the concepts of reciprocity and MFN to take into account the special needs of developing countries led to the adoption of a

number of development provisions in GATT. In addition a number of provisions went beyond this to provide for positive measures to be adopted by the developed countries of GATT to assist developing countries with their development needs, especially with regard to capacity building and technical assistance. These measures were agreed to by developed countries partly due to the increasing pressure that developing countries created in GATT for them, and partly due to the recognition by developed countries that the prevailing techniques of negotiation, the increasing protectionism in developed countries for products of interest to developing countries and the outcomes of the early rounds were not resulting in market access gains for developing countries.

Article XVIII

At the review of GATT in 1954/1955 developing countries again criticised the failure of GATT to meet their needs, particularly with regard to the exclusion of agriculture from the remit of GATT and the exemption of agricultural products from the ban on quantitative restrictions. Developing countries argued that they required to be afforded the use of trade restricting measures to protect their infant industries. Thus Article XVIII of GATT was revised to provide developing countries additional flexibility with regard to their obligations. It enabled developing countries to raise their bound tariffs for the purposes of economic development, and with certain conditions, to use any measure that was not consistent with other provisions of GATT for the purpose of promoting a particular industry.⁴⁵

Part IV of GATT

It was in response to this criticism of GATT and its failure to address the concerns of developing countries that at a special session of GATT in Geneva, November 1964, the contracting parties drew up a protocol amending GATT, and introduced a fourth protocol known as Part IV of GATT, that dealt with trade and development issues. Part IV however, was the result of significant negotiations by developing countries that had submitted a large number of proposals. However, the result was a significantly reduced version of provisions submitted by the less developed countries themselves. Part IV of GATT did commit developed countries to; a) give high priority to the reduction and elimination of trade barriers to

trade for goods of export interest to developing countries, b) refrain from introducing or increasing tariffs or non-tariff barriers on these products, c) remove the requirement for reciprocity, and d) create a Committee on Trade and Development to monitor progress being made in these areas.⁴⁶

Part IV of GATT also created the basis for preferences for developing countries, both between developed and developing countries and between developing countries themselves. Developing countries took advantage of the latter provision and on the 8th of December 1971 a protocol relating to trade negotiations between developing countries was finalized along with some trade concessions between developing countries. Developed countries did use the former provision to introduce GSP schemes in favour of developing countries. Developing countries had created the pressure for a firmer legal basis for the above legal arrangements than the GATT waiver that was used for this purpose.

Enabling Clause

Thus, during the Tokyo Round, both the above preferential arrangements were provided with a firmer legal basis through the adoption of the Enabling Clause in 1979. The agreement by the US⁴⁷ to expand the preference system (the European countries had brought their colonial preferences into GATT at its formation) led to the formal legal recognition of such derogations from the MFN principle of GATT. The Enabling Clause gave permanent legal authorization for the GSP preferences, preferences between developing countries, special treatment for developing countries from GATT rules, and special treatment for the least developed countries. Developing countries had refused to sign any of the agreements or 'codes' reached in the Tokyo Round until agreement was reached to include special and differential treatment provisions for developing countries. This was therefore agreed to by the US and the other developed countries in GATT and took the form of non-binding assurances of technical assistance to help developing countries comply with the new rules or exemptions from the new obligations.

Thus, Part IV of GATT (1965), and the subsequent Enabling Clause (1979) that created the basis for the special and differential treatment

provisions of the Tokyo round were a direct response to the failure of the developed countries to address the key interests of developing countries in their markets due to the ever increasing protection in their markets of products of interest to developing countries. Developing countries did attempt to negotiate the opening of developed country markets but were obstructed from doing so as has been discussed above. In addition developing countries were willing and did in fact contribute to the process of tariff reduction and exchange of concessions. Developing countries thus could not be said to have "sought to achieve their objectives primarily through special and differential treatment provisions" prior to the Uruguay Round.

However, developing countries also sought to create provisions in GATT that addressed their particular development situation and needs. The special and differential measures that were gradually adopted by GATT were often not fully responsive to the demands of the developing countries and in most cases, dressed up in best endeavour language, without legal effect.⁴⁸ In addition the assertion that developing countries simply resisted "the use of key GATT approaches, such as reciprocal liberalization and the principle of non-discrimination" and that "the introduction of these provisions reflected a move away from the original GATT objective of providing a forum for exchanging market access towards one of making transfers to developing countries", fails to problematize these concepts as being inadequate to address the very real differences that existed and still remains today between the levels of development and different development needs of developing countries.

The failure of GATT during the first 8 rounds to address the issues of the appropriate balance between the principles of reciprocity and MFN, on the one hand, and the special development needs of developing countries, on the other, continues to haunt the members of the WTO in the Doha Round.⁴⁹

V. The Uruguay Round

Whilst many writers ascribe a passive and defensive role to developing countries in previous rounds of GATT they acknowledge that in "the Uruguay

Round things were different. Already in the run-up to the Round, many developing countries took an active role”.⁵⁰ However these writers recognized that the Uruguay Round was unbalanced and that “developing countries had given more than they got..”. The main reason for this outcome is ascribed by these writers to their lack of technical capacity.⁵¹ Some developing country writers also take a pessimistic view of the role of developing countries in GATT and have ascribed their lack of success in determining the outcomes to a number of weaknesses identified as ‘victims of traps and pitfalls’, ‘victims of harassment’, indifference and silence due to their ignorance of the issues or fear of developed country response, or at best ‘stiff resistance and sudden collapse’.⁵²

This paper will not attempt to discuss the role of developing countries during the Uruguay Round but only discuss the role they played in the launch of the Round, to illustrate that this description is not entirely accurate. Developing countries did understand the dangers posed by the new issues that were proposed by the US for inclusion into the new round. This is why they opposed the inclusion of these issues in the agenda of the negotiations. In addition, the description of the role of developing countries as “stiff resistance and sudden collapse” is not accurate. Developing countries were engaged in the negotiations until the last minute and did secure some gains in shaping the agenda of the launch of the Uruguay Round.

Two years after the end of the Tokyo Round the United States initiated a process towards launching a new round. The majority of developing countries were opposed to the proposed extension of GATT’s remit into services, intellectual property and investment. Developing countries such as India and Brazil argued that previous rounds had not yielded gains for developing countries and that action should first be taken to remove VER restrictions, the MFA and restrictions in Agriculture.⁵³ This opposition to the launch of a new Round, was a major factor that resulted in the collapse of the November 1982 Ministerial Meeting that was called to launch the round.

The US pursued the objective of launching a new round with threats to impose unilateral import restrictions under sections 301. The US also

introduced new export subsidies to challenge the EEC.⁵⁴ The support for a new round grew to include all the developed countries by 1985 and a number of developing countries. However, a group of 24 developing countries⁵⁵ were firmly opposed to the agenda of the round. They insisted on progress being made first on the removal of GATT-inconsistent measures and the MFA. They opposed the new agenda of services, TRIPS and investment, and instead called for a round that was confined to industrial products and agriculture, together with a stand-still and roll back of protectionist measures that were not inconsistent with GATT.⁵⁶

The group of 24 developing countries that opposed the Round was eventually reduced to a group of 10.⁵⁷ However, the group of ten eventually agreed the launch of the Round which included the new agenda, after having secured agreement that these new issues will be pursued on a separate track from the negotiations on goods. Croome⁵⁸ records that the new issues involved long negotiations, at Punta del Este, in which the US, India and Brazil were the principal participants. The principal result that emerged was a detailed procedural agreement that ensured coverage of all three subjects but separated them sufficiently from the traditional areas of GATT negotiations to be acceptable to Brazil, India, and their allies.

Thus whilst the developing countries did not succeed in pushing the new issues off the agenda of GATT, they did succeed in shaping the agenda to some extent. Nevertheless, the fact that the Uruguay Round was only launched in 1986, at Punta del Este, Uruguay, about five years later than the US had wanted, was a result of the opposition that developing countries had waged, and their insistence that the issues of interest to them should be adequately addressed. Thus developing countries played an active role in the launching of the Uruguay Round, and the shaping of the agenda of the Round. The fact that they had not succeeded in removing the new issues from the negotiating agenda of the Round was not a result of lack of technical capacity but the superior negotiating power of the US (and other developed members of GATT), reflected in its threats to use its unilateral section 301 actions. Developing countries were, however, engaged and were negotiating until the last moment in shaping the agenda of the Uruguay Round. The characterization of developing country participation as “stiff resistance and

sudden collapse” is not an accurate description of the role of developing countries in launching of the Uruguay Round.

VI. Conclusions

At the launch of the Doha Round it was widely accepted that the results of the Uruguay Round were imbalanced. There was also recognition that the products of interest to developing countries, especially in agriculture were not adequately addressed in previous rounds. Even in the area of special and differential provisions for developing countries the complaint of developing countries that these provisions did not adequately address their purpose was acknowledged and thus the Doha Round mandate agreed to review these provisions with a view to making these special and differential treatment provisions, “precise, effective, and operational”.⁵⁹

However, the issues that this paper has sought to explore are the explanations provided for this imbalance in GATT, and in particular why GATT failed to address the development interests of developing countries. There are some standard explanations for this outcome that have been provided in the academic history of GATT. This paper has identified three major themes in the literature that have been argued as reasons for developing countries failure to advance their interests in GATT. Three main reasons have been provided: a) that developing countries did not play an active role in GATT until the Uruguay Round, and this participation was characterized as passive and defensive; b) that the developing countries were unwilling and failed to make concessions to their developed country negotiating partners in the exchange of tariff reduction bargaining; and c) that the developing countries main objective and focus in GATT negotiations was on special and differential provisions.

In this paper we have explored each of these themes and have argued that these assertions are not an accurate description of the role that developing countries played both in the ITO negotiations and in GATT. Firstly, it has been argued that developing countries played an active role in the negotiations on the ITO, within which GATT was to have been located. Despite the superior negotiating power of the US and the other developed

countries in these negotiations the developing countries made some significant advances in including their interests in the ITO Charter. It is partly for this reason that the US Congress refused to adopt the Charter and the creation of the ITO. The paper also illustrates the active role that developing countries played in the early years of GATT with the Uruguayan case that was filed in GATT against 15 of the developed members of GATT.

Secondly, the argument as to the participation of developing countries in GATT is explored further in the context of developing country participation in tariff concessions, in the early period of GATT, and in the later Rounds of negotiations, including the Dillon Round, the Kennedy Round and the Tokyo Round. In each case the evidence that emerges is that developing countries were excluded from the negotiation process by the negotiating techniques and approach adopted by GATT (principal supplier and reciprocity) or by the reluctance of the US and EEC to negotiate on issues of interest to developing countries (such as agriculture, clothing and textiles and internal taxes and restrictions).

Thirdly, the argument that developing countries focused on special and differential treatment and that this was their main objective in GATT is also not accurate as the above discussion points to the active role that developing countries played in asserting their demands for increased market access for products of interest to developing countries throughout the history of GATT.

Developing countries did, however, call for provisions in GATT that took account of their special situations. In this regard they debated the concepts of reciprocity and MFN during the ITO negotiations and argued for these concepts to be balanced against the different levels of development of developing countries and their special development needs. Despite this developing countries were treated as equals in the early GATT years and they were required to reciprocate with tariff concessions of their own, notwithstanding their less competitive situations. However, they continued to campaign for provisions to be included in GATT that addressed their particular development needs. A series of special and differential provisions

were gradually included in GATT providing for derogations from the above GATT principles, in Article XVIII, Part IV of GATT, and the Enabling Clause.

However these provisions did not fully take on board the proposals of developing countries. They were at best attempts by developed countries to mitigate for the high and ever increasing levels of protection in developed countries against the products of interest to developing countries, and they were at best framed in language that was not binding on developed countries. The frustration of developing countries with the ineffectiveness of these provisions resulted in the Doha mandate to agree to review these provisions with a view to make them “more precise, effective and operational”. Thus the argument that these S&D provisions “reflected a move away from the original GATT objective of providing a forum for exchanging market access towards one of making transfers to developing countries”, does not have any resonance in the experience of developing countries.

Most writers on the Uruguay Round now also recognize that the results of the Uruguay Round were unbalanced and that developing countries did play an active role in the negotiations. However, these writers either argue that developing countries lacked the technical capacity to assess the results of the Round and that their opposition was characterized by “stiff resistance and sudden collapse”. A brief discussion of the negotiations leading up to the launch of the Uruguay Round at Punta del Este, in 1986, suggests that, developing countries, while not successful in removing the new issues that the US and other developed countries insisted on to be part of the agenda of the Uruguay Round, did succeed in shaping the agenda of the Round and were engaged in the negotiations until the last moments of the launch of the Uruguay Round in Punta del Este. Thus the description of “stiff resistance and sudden collapse” is not a fitting description of their role in the launch of the Uruguay Round.

The role of developing countries in the current Doha Round is clearly unprecedented. They are more organized, they have gained significant technical capacity, they are engaged in the process of bargaining and exchange of concessions, they are offensive in areas of export interest to them and

they have developed powerful alliances in the form of the G20 on agriculture and NAMA 11 on industrial tariffs. Even the smaller developing countries such as the LDCs, the so-called small and vulnerable economies (SVEs) and interest groups that are more defensive on agriculture (the G33) or on cotton (the Cotton Four) have been making proposals and shaping the outcome of the Doha negotiations. Thus developing countries in the Doha Round are shaping not only the content of the Doha Round and its outcome, but are also shaping the architecture and trajectory of the multilateral trading system. Thus the current and future generation of developing country trade negotiators will become increasingly curious about the role that developing countries played in GATT since its inception. Re-discovering the history of GATT will become an essential part of their attempts to shape the future architecture and content of the multilateral trading system.

Endnotes

- ¹ Ismail, F. 2007. *Mainstreaming Development in the WTO. Developing Countries in the Doha Round* (CUTS International and Friedrich Ebert Stiftung, 2007).
- ² Robert Hudec records that the proposal of developing countries in the ITO negotiations to include a provision “.take into account the special conditions which prevail in countries whose manufacturing industry is still in the initial stages of development” was ignored by the United States. See Hudec, R., *Developing Countries in the GATT Legal System*, 1987, (Brookfield, VT:Gower) .
- ³ Article I of GATT 1947 provides 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”. This rule prohibits members from discriminating against imports according to their source.
- ⁴ Article III.i of GATT 1947 provides: “ The contracting parties recognize that internal taxes and other internal charges, and laws, regulations and requirements affecting the internal sale, offering for sale, purchase transportation, distribution or use of products, and internal quantitative regulations requiring the mixture, processing or use of products in specified amounts or proportions, should not be applied to imported or domestic products so as to afford protection to domestic production”. This national treatment provision requires members to accord non-discriminatory treatment to imports vis-à-vis domestic products once they have passed through customs.
- ⁵ See Stiglitz, J., *Globalization and its Discontents*, 2002, (WW Norton and Company, USA).
- ⁶ Finger, J.M, “Implication and imbalance: dealing with hangover from the Uruguay Round”, *Oxford Review of Economic Policy*, Volume 23, Number 3, 2007, pp 440-460.
- ⁷ Ostry, S., “The Uruguay Round North – South Grand Bargain: Implications for Future Generations”, in Chapter 10 in D.M. Kennedy and J. D. South wick (eds), *The*

Political Economy of International Trade Law: Essays in honour of Robert E. Hudec, (Cambridge University Press, 200).

8 Das, B.L. *The WTO and the Multilateral Trading System. Past, Present and Future*. (Zed Books, London, New York, Third World Network, Penang, Malaysia, 2003)

9 See also Jawara, F., and Kwa, A., *Behind the scenes at the WTO. the real world of international trade negotiations*. (Zed Books, London in association with Focus on the Global South, Bangkok, 2003).

10 Martin, W., and Messerlin, P., “Why is it so difficult? Trade liberalization under the Doha Agenda”, *Oxford Review of Economic Policy*, Volume 23, Number 3, 2007, pp.347-366.

11 Wilkinson, R., and Scott, J., “Developing Country Participation in the GATT. A Reassessment”, *World Trade Review*, 7:3 (July 2008), pp.1-18.

12 Martin, W., and Messerlin, P., “Why is it so difficult? Trade liberalization under the Doha Agenda”, *Oxford Review of Economic Policy*, Volume 23, Number 3, 2007, pp.347-366.

13 See Hudec, R., *Developing Countries in the GATT Legal System*, 1987, (Brookfield, VT:Gower). The countries were: Brazil, Chile, Cuba, China, India, Lebanon, Myanmar, Pakistan, Sri Lanka, and Syria. China (also Syria and Lebanon) withdrew after the first few years. At the time some countries such as Australia, New Zealand and South Africa were also regarded as developing countries. However, the latter were to be regarded as Developed countries much later. And South Africa, until the Uruguay Round was still regarded as a Developed Country in the GATT.

14 By early 1995 the GATT had 128 members.

15 As of June 2007, the Kingdom of Tonga became the 151st member of the WTO.

16 WTO, Annual Report. 2001.

17 See Annex A, B, C, D, of the Havana Charter for list of territories of the UK; France; Belgium, Luxembourg and the Netherlands; and the USA, respectively.

18 Hudec, R. *The GATT Legal System and World Trade Diplomacy*, 1990.

19 WTO doc. “Background Document, High Level Symposium on Trade and Development”, (Geneva, 17-18 March 1999).

20 Wilkinson, R., and Scott, J., “Developing Country Participation in the GATT. A Reassessment”, *World Trade Review*, 7:3 (July 2008), pp.1-18.

21 Wilkinson, R., and Scott, J., “Developing Country Participation in the GATT. A Reassessment”, *World Trade Review*, 7:3 (July 2008), pp.1-18

22 Such as Czechoslovakia, Turkey, Lebanon, Iraq, El Salvador, Venezuela and Mexico

23 WTO doc. “Background Document, High Level Symposium on Trade and Development”, (Geneva, 17-18 March 1999).

24 See Hudec, R., *Developing Countries in the GATT Legal System*, 1987, (Brookfield, VT:Gower) pp.46-47.

25 Wilkinson, R., and Scott, J., “Developing Country Participation in the GATT. A Reassessment”, *World Trade Review*, 7:3 (July 2008), pp.1-18.

26 Wilkinson, R., and Scott, J., op. cit.

27 Wilkinson, R., *The WTO. Crisis and Governance of Global Trade*, (Routledge, London and New York, 2006).

28 Wilkinson, R., op. cit.

29 WTO doc. “Background Document, High Level Symposium on Trade and Development”, (Geneva, 17-18 March 1999).

30 See Annex 2 for further elaboration.

31 Wilkinson, R., and Scott, J., op. cit

32 ibid.

33 WTO doc. “Background Document, High Level Symposium on Trade and Development”, (Geneva, 17-18 March 1999).

34 Wilkinson, R., and Scott, J., op. cit

35 ibid.

36 ibid.

37 ibid.

38 ibid.

39 Czechoslovakia, Yugoslavia, Argentina, Jamaica, Romania and Hungary.

40 Brazil, Chile, the Dominican Republic, Egypt, Haiti, India, Indonesia, Ivory Coast, Korea, Malaysia, Pakistan, Peru, Singapore, Uruguay and Zaire.

41 WTO doc. “Background Document, High Level Symposium on Trade and Development”, (Geneva, 17-18 March 1999).

42 Wilkinson, R., and Scott, J., op. cit.

43 See WTO doc, GATT 1947 in The Legal Texts (Cambridge University Press, 1999).

44 Wilkinson, R., and Scott, J., op. cit.

45 See Annex 2 below for further elaboration.

46 This is elaborated in Annex 2 below.

47 Hudec notes that the US agreed in 1969 to expand the GSP system and to create it own GSP for developing countries that the EC already had in place.

48 Srinivasan is quoted as stating that under Part IV the “ less developed countries achieved little by way of precise commitments.. but a lot in terms of verbiage”, quoted in Wilkinson, R., and Scott, J., op. cit.

49 Ismail, F. 2005. “How can Least Developed Countries and Other Small, Weak and Vulnerable Economies also gain from the WTO Doha Development Agenda on the Road to Hong Kong?”, *Journal of World Trade*, 40 (1) 37-68, February 2006.

50 Finger, J.M, “Implication and imbalance: dealing with hangover from the Uruguay Round”, *Oxford Review of Economic Policy*, Volume 23, Number 3, 2007, pp 440-460

51 ibid.

52 See also Jawara, F., and Kwa, A., op. cit

53 Croome, C, *Reshaping the World Trading System. A History of the Uruguay Round*, (Kluwer Law International, 2nd Revised edition, 1999)

54 The US raised their export subsidies from zero in 1984 to \$256 million dollars in 1986. The EEC already had export subsidies amounting to 47, 094 million. Wilkinson, R., and Scott, J., op. cit.

55 They included, Argentina, Bangladesh, Brazil, Burma, Cameroon, Columbia, Core d’Ivoire, Cuba, Cyprus, Egypt, Ghana, India, Jamaica, Nicaragua, Nigeria, Pakistan, Peru, Romania, Sri Lanka, Tanzania, Trinidad and Tobago, Uruguay, Yugoslavia and Zaire.

- ⁵⁶ Croome, C, *Reshaping the World Trading System. A History of the Uruguay Round*, (Kluwer Law International, 2nd Revised edition, 1999)
- ⁵⁷ Argentina, Brazil, Cuba, Egypt, India, Nicaragua, Nigeria, Peru, Tanzania and Yugoslavia.
- ⁵⁸ Croome, C, op. cit. pp.24.
- ⁵⁹ See WTO Doc. Ministerial Declaration. Adopted on 14th November 2001. WT/MIN(10)/DEC/1 20th November 2001. Paragraph 12 and Paragraph 44.
- ⁶⁰ This section draws largely on the detailed account of this process in WTO doc. Background Document, High Level Symposium on Trade and Development, (Geneva, 17-18 March 1999).
- ⁶¹ A. Keck and P. Low, *Special and Differential Treatment in the WTO: Why, When and How?* Staff Working Paper ERSD, May 2004.

Annexure 1

Trade negotiation rounds under GATT and the WTO

1947	Geneva, Switzerland
1949	Annecy, France
1950-1951	Torquay, United Kingdom
1956	Geneva
1960-1961	The Dillon Round (Geneva)
1964-1967	The Kennedy Round (Geneva)
1973-1979	The Tokyo Round (Geneva)
1986-1994	The Uruguay Round (Geneva)
2001 on	The Doha Development Agenda (Geneva)

Taken from Wilkinson, R., *The WTO. Crisis and the governance of global trade*, (Routledge, London and New York, 2006. pp. 48)

Annexure 2

The Evolution of Development provisions in the GATT/WTO

This Annex provides a schematic account of the historical origins of development provisions in GATT/WTO.⁶⁰

Article XVIII of GATT

At the review session of GATT (held in 1954-55), Article XVIII of GATT was revised to provide developing countries additional flexibility with regard to their obligations. This article which was now titled “Government Assistance to Economic Development” created a number of significant new provisions. Section A enabled developing contracting parties to modify or withdraw scheduled tariff concessions in order to promote the establishment of a particular industry. Section B recognized the long term nature of developing countries’ balance-of-payments problems and provided them with additional flexibility for the use of quantitative restrictions. Section C enabled developing countries, with certain conditions, to use any measure not consistent with other provisions of GATT for the purpose of promoting a particular industry.

The Haberler Report

At the 1957 Ministerial Session of the Contracting Parties, an expert panel headed by Professor Gottfried Haberler was established to examine trends in international Trade with particular reference to the “failure of the trade of less developed countries to develop as rapidly as that of industrialized countries, excessive short term fluctuations in prices of primary products and widespread resort to agricultural protectionism”. The Haberler Report found that there was some substance in the feeling of disquiet among primary producing countries that the present rules and conventions about commercial policies are relatively unfavourable to them”. As a result the contracting parties adopted a Declaration on the Promotion of Trade of Less-developed Countries in December 1961. The Declaration called for action in seven areas: the “speedy removal of those quantitative restrictions which affect the export trade of less-developed countries”; special attention to tariff reductions of direct and primary benefit to less-developed countries; removal,

or considerable reduction of fiscal duties in developed countries; improved access for developing countries in purchases made by State agencies; preferences in market access for developing countries; limitation of subsidies on production or export of primary products; and careful observance of GATT or UN mandated limitations on disposal of commodity surpluses or strategic stocks. The Declaration also called for a “sympathetic attitude to the question of reciprocity by developing countries. Finally, the Declaration called for more attention to be given in developed countries’ technical assistance programmes to efforts by developing countries to improve production and marketing methods, and for the expansion of trade among developing countries themselves.

Part IV of GATT

After a Special Session of the Contracting Parties (17th November to 8th February 1965) a chapter on Trade and Development was added to GATT as Part IV. Part IV contained three new Articles, entitled Principles and Objectives (Article XXXVI), Commitments (Article XXXVII) and Joint Action (Article XXXVIII). Article XXXVI recognized the need for conscious and purposeful effort on the part of contracting parties, individually and jointly, to improve access to world markets for primary, processed and manufactured products currently or potentially of particular interest to the developing countries. The concept of “non-reciprocity” which stated that “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” was formulated in paragraph 8 of the Article. Article XXXVII introduced provisions for contracting parties to take certain actions in respect of trade interests of developing countries. However, these provisions did not constitute mandatory obligations but were of a best endeavor nature. Article XXXVIII mandated the contracting parties to take action to improve access to world markets for primary products of interest to developing countries. The Parties agreed to undertake analyses of the development plans and policies of individual developing countries in collaboration with international financial organizations so that trade and aid relationships might be examined and the need for further action in the fields of trade and aid brought into focus. The Committee on Trade and Development was established in 1964 to review

the application of the provisions of Part IV. However, even at this early stage, the provisions of Part IV of GATT were at best regarded as “best endeavour undertakings” with no legal force.⁶¹

In the United Nations the influence of newly independent developing countries, led by the process of decolonization in Asia, Africa and the Caribbean, gave rise to the creation of the United Nations Conference on Trade and Development (UNCTAD) in 1964. Part IV of GATT also agreed to establish institutional arrangements ... “to collaborate with the United Nations and its organs and agencies in matters of trade and development policy...”. In this context, the International Trade Centre (ITC) was established (later to become an agency of UNCTAD and GATT).

The Tokyo Round and the Enabling Clause

The Declaration that launched the Tokyo Round provided that the negotiations must aim to “secure additional benefits for the international trade of developing countries”. One of the major decisions that emerged from the Tokyo Round, that was adopted by the Contracting Parties on the 28th of November 1979 was the “Enabling Clause” entitled “Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries”. The Enabling Clause established an exception from Article 1 of GATT which made possible the extension of differential and more favourable treatment for developing countries. Such differential treatment was envisaged in respect of preferential tariffs extended by developed to developing countries, non-tariff measures, and regional or global arrangements entered into by the developing contracting parties. Provision was also made for special treatment of least-developed countries. Several agreements on non-tariff measures negotiated during the Tokyo Round contained provisions for differential and more favourable treatment of the developing countries, including in the Agreement on Technical Barriers to Trade, the Agreement on Subsidies and Countervailing Measures, the Agreement on Government Procurement and the Customs Valuation Agreement. Developing countries argued that they were not fully part of the negotiations on these agreements and these agreements thus became plurilateral agreements.

The Uruguay Round

The Uruguay Round Agreement which came into force in 1995 took a few significant steps in the direction of integrating trade in agriculture and in textiles and clothing into the multilateral trading system. Developing countries, in exchange were required to accept as a single undertaking all three major agreements which constituted the WTO Agreement; namely, the multilateral Agreements on Trade in Goods, the General Agreement on Trade in Services and the Agreement on Trade-Related Aspects of Intellectual Property Rights. In the goods area, the plurilateral non-tariff measure agreements negotiated in the Tokyo Round became part of the WTO agreement. Special and Differential Treatment provisions are contained in the WTO Agreements and can be categorized into five main groups: provisions requiring WTO members to safeguard the interests of developing countries; provisions allowing flexibility to developing countries in rules and disciplines governing trade measures; provisions allowing longer transitional periods to developing countries; and provisions for technical assistance.

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