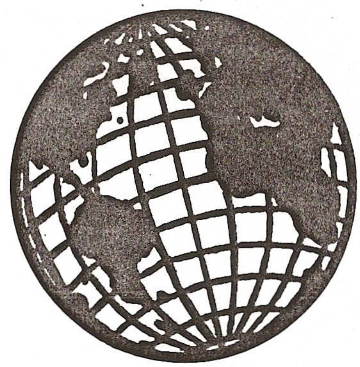
WTO and the Natural Rubber Sector



Volume 1

THE GENESIS OF WTO AND THE AFTERMATH

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PREFACE

The end point of the Uruguay Round negotiations was the creation of World Trade Organisation (WTO) in 1994 in order to institutionalise freedom of trade, enterprise and property rights with relevant provisions, rules and procedures. The evolution of the multilateral trading system from General Agreement on Tariffs and Trade (GATT, 1947) to WTO has witnessed major milestones surpassing the traditional agenda of tariff negotiations on industrial products. The WTO regime operational since January 1, 1995, is more than a device for promoting global circulation of commodities. It has a distinctive institutional focus in enforcing rules regarding commodity and non-commodity circuits as well as national and international regulations. Conceptually, the WTO presides over the most far-reaching attempt to level or harmonise economic, political, social and environmental protection so as to ensure market freedom and efficiency. However, there has been a growing realisation that the 'level playing field' metaphor has created more myths and mirages as not only the development divide remains as an enduring reality but also it keeps widening due to the new tides of globalisation. The professed objectives of the new multilateral trading system appear to be more easily verbalized than realised during the past seven years of its existence. Paradoxically, the perceptions and prognosis on the critical issues confronting global, national and regional economies have been overwhelmingly driven by information rather than comprehensive analysis. A potential toxic consequence of this approach would be unwarranted optimistic projections and inflated expectations which can jeopardise long-term national, regional or even sector–specific development strategies. Another explicit missing analytical link in the large volume of literature on the macro level issues arising from the WTO Agreement and its implications has been the paucity of sector and product specific studies underlining relevant policy imperatives. It is in this broad conceptual background that this report was conceived in two volumes so as to capture the major elements of change in the evolutionary process of GATT to WTO and to

analyse the provisions relevant to the natural rubber (NR) sector in India with a view to highlight policy options compatible with the WTO Agreement.

We are grateful to Mr.S.M. Desalphine IAS, Chairman, Rubber Board, for the keen interest shown in the work and the incessant encouragement. We are thankful to Dr. N.M.Mathew, Director, Rubber Research Institute of India, for the permission to undertake this study and for his valuable comments and suggestions on the earlier drafts of this report. Our colleagues in the Economic Research Division have been a constant source of inspiration in completing this work. The editorial comments offered by Mrs. Binni Chandy and secretarial assistance rendered by Mrs. P.V.Sreevidya and Mr. Joby Joseph are gratefully acknowledged. We have immensely benefited from the comments given by our colleagues in the Rubber Board during the detailed internal seminar given on the report on November 1,2001.

This endeavour would have been incomplete had we not been able to obtain the valuable suggestions from Prof. B. Bhattacharyya, Dean, Indian Institute of Foreign Trade (IIFT), New Delhi, in conceptualising the contents of the report. We are also grateful to him for giving permission to consult the vast volumes of WTO documents in the IIFT library. Mrs. B.Pankti, Librarian, IIFT, and her colleagues, were of immense help in identifying the relevant documents.

However, the remaining errors, if any, are the sole responsibility of the authors.

Kottayam
26-02-2002

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RELEVANCE OF THE STUDY

The relative share of the rubber sector comprising of various forms of elastomers and rubber products in the GDP and foreign trade of India is only around one per cent (Rubber Board, 2000:15-31; CMIE, 2000:14). However, a proper understanding of the issues encircling the NR sector in the context of the WTO stems from three important reasons: (i) The strategic commercial importance of NR as a valuable raw material to the economy and the unique status of the sector achieving rapid strides in productivity, production and area under cultivation *vis-à-vis* other major NR producing countries and other crops within the country over the past five decades (George and Thomas, 1997:30). However, the policy reforms initiated since the 1990s posed serious challenges to the hitherto pursued institutional support mechanisms and a captive domestic market. The serious implications of the changes have a strong bearing not only on the sustainability of an estimated number of around one million small and marginal rubber holdings but also on the regional economy of Kerala. (ii) To a certain extent, the policy reforms relevant to the NR sector initiated in the 1990s masked the required degree of transparency from the angle of the farming community and the general public. The dilution of the support mechanisms is reported to be justified for the sake of compliance with the WTO provisions. However, so far no systematic attempt has been made to examine the compatibility between the reforms and the provisions. Consequently, there is an element of confusion in addressing the major issues triggering the crisis enveloping the NR sector since 1997. The short-term policy measures have been found to be circumscribed by the backlash effects and the resultant vacuum in policy imperatives compatible with the WTO provisions.(iii)The popular perceptions on the crisis and its genesis have been revolving around the impressionistic expressions such as competitiveness in cost and quality, contestable markets, tariff barriers, market access, level playing field, aggregate measure of support *etc.* However, there are growing evidences to indicate that there have been concerted efforts to mystify the provisions and compliance. Though the present study is focused on the NR sector, it is expected to provide the relevant signals to initiate detailed assessments in other major sectors and sub-sectors of the economy.

Analytical Framework

Analytically, any systematic attempt to delineate the critical issues arising from the WTO Agreement and the globalisation process either at the macro or sector-specific levels has to be invariably focused in a comprehensive conceptual background as the various agreements, provisions and rules are intrinsically interrelated and mutually reinforcing in nature. Therefore, a purely micro level treatment of the WTO related issues encompassing the NR sector would lead to unrealistic impressions and policy inputs. Accordingly, the report is organised into two volumes. The volume one titled "The Genesis of WTO and the Aftermath" deals with the major milestones in the evolutionary process of multilateral trading system. This volume contains five chapters: (i) globalisation; (ii) genesis of GATT; (iii) Geneva to Tokyo; (iv) Uruguay to Marrakesh; and (v) progress, compliance and implications. The volume two titled "WTO and Natural Rubber Sector in India" attempts to focus on the major provisions relevant to the NR sector and formulate compatible policy options. This volume consists of three chapters: (i) WTO Agreements and structure; (ii) major WTO provisions relevant to trade in goods and trade policy in India; and (iii) WTO Agreement and the NR sector. The scope of the study on the trade policy measures initiated in India is limited to the year 2001-02.

Chapter 1

GLOBALISATION: THE CONCEPT AND PERCEPTIONS

Introduction

In the recorded world economic history, perhaps no other international economic initiative has been subjected to so much protracted debate as that of the Uruguay Round (UR) negotiations (1986-93) under the auspices of the General Agreement on Tariffs and Trade (GATT) and the establishment of the World Trade Organisation (WTO) in January, 1995. Large volumes of literature generated on the diverse aspects of the WTO Agreement, cutting across geographical, ideological, regional and even sectoral boundaries, have provided instant 'charismatic status' to the Agreement and its various provisions and rules. The lingering debate is characterised by the absence of any notable consensus on the deep-seated imbalances in economic power and systemic biases in the international trading and financial systems as well as the impact of the gains from the integration, the basic issues of growth, employment and poverty. There are many who interpret the events and shifts of the past few years as presaging the final triumph of global capitalism over all its rivals while others are either blatantly critical or more guarded in their assessments. Nevertheless, the buzzwords of both the proponents and critics of the changing global events are: globalisation, liberalisation, privatisation, free trade, level playing field and opening up- very often ignoring the technical overtones of these highly charged ideological expressions. However, globalisation is the mother of all such contemporary expressions (Kurien, 1994:88).

Chronology and the Context

In spite of the question-begging assumptions, projections, claims and counter- claims on the gains from the growing process of global economic integration, the conceptual boundaries of globalisation have to be defined for any meaningful analysis and policy inputs. However, the interpretative context of the globalisation itself has been polemical with its attendant question on the exact periodisation of the process of globalisation (Sengupta, 2001: 3137). The concepts of cross-boundary economic integration and globalisation have been traced back to the voyage of discovery in the 15th century and the complex webs of economic linkages existed among the ancient civilisations (*ibid;* Prakash, 2001: 546). The historical parallel drawn between the current phase of globalisation and the world economic integration in the 19th century under the British hegemony highlighted the mechanistic differences though inequalities and asymmetries in a world of unequal partners were common to both phases (Nayyar, 1997:14). Yet the roots of contemporary forces of globalisation, usually based on the theory of international trade conceived by David Ricardo in the early 19th century, have been identified with specific economic and political developments in the late 1980s and the early 1990s. The major events included global economic recession, debt crisis of the developing countries, growing importance of the neo-liberal package of New Political Economy (NPE)[1] providing the theoretical underpinning to the structural adjustment programme (SAP) of the World Bank, end of the cold war, dismantling of state socialism in the USSR and the collapse of Berlin wall (Dasgupta, 1998: 16; Sengupta, 2001: 3137 and Kurien, 1994: 54-66). The NPE package assumed operational level validity with the enunciation of liberalisation, privatisation and globalisation (LPG) model as an irreconcilable conditionality by the World Bank for overcoming the debt crisis enveloping the developing countries since the 1980s. The core of the explanations justifying the NPE package has been rooted in the conceptual basis that considers irrational economic outcomes as the results of rational political or social choices. More specifically, politically rational goals of private interests and public officials would lead to ends that are economically irrational (Grindle and John, 1991: 25). For example, the decision making process by powerful distributional coalitions, controls on imports and competition and other barriers would lead to colossal welfare loss and rent-seeking behaviour[2] at the expense of competition and the resultant efficiency in resource allocation. Therefore, economic management should be left to the market forces of supply and demand and public sector economic activities should be trimmed down to facilitate external orientation of an economy to ensure the unrestricted operation of the cardinal principle of comparative advantage. Thus, logically, global integration of economic activities becomes the appropriate strategy and in the process of integration, internal economic agents would sharpen their competitive edge culminating in the fulfilment of efficiency in resource allocation and welfare maximisation.

Definition

In contrast to the debate on the chronology of globalisation, its conceptual constructions have been defined in two broad and interrelated contexts, *viz.*, the economic context and the socio-cultural, historical and political dimensions (Sengupta, 2001: 3138). Globalisation is broadly defined as a multi-faceted phenomenon impacting economic, social and political spheres of human existence (Prakash, 2001: 545). As the dominant economic dimension triggers changes in other segments of society, the concept has to be logically defined in the economic context in order to understand the dynamics of the processes of integration. More precisely, globalisation involves a quantum leap in the transnationalisation of production, distribution and marketing of goods and services, financial flows and changes in institutional set up. The organisational breakthrough of the increasing integration crests on its ability to disperse economic activity geographically and consolidate it electronically and *vice versa* (Tussie, 1998: 83). The ongoing processes underline the increasing integration of factor and final products markets coupled with increasing salience of multinational enterprises' value chains in cross-border flows (Prakash, 2001: 546-548). Therefore, the emerging process is different from the two major attempts in the 20th century to integrate the world economy, *viz., Pax Britannica* which sought integration through unilateral free trade and *Pax Americana* which attempted integration through contractual freeing of trade (Meyer, 1978: 14). The structure of economic relationships evolved in the ongoing process of integration, dominated by the transnationl corporations (TNCs), has been conceptually and operationally different from the earlier forms of integration embedded to a national territory. The current process of integration is activated by the neo-liberal deregulation regime through weakening of sovereign state control over transnational economic transactions and behaviour heralding a new era of borderless world in which explicit national identities are becoming increasingly irrelevant in the economic decision making process.

Salient Features

Having briefly defined the basic tenets of the ongoing process of integration, it is important to highlight its distinct features *vis-à-vis* those of the past and the specific role of the latest technological innovation, *viz.*, the information technology (IT) revolution, in reinforcing the changes. The distinct feature of the current process of globalisation is a relatively free and rapid flow of tangible and intangible forms of capital integrating global production of goods and services and the consequent changes in the organisation of production. The principal players, *ie.*, the TNCs, have shifted the emphasis from direct investment in branch plants to multiple production locations for sourcing inputs, intermediate products and selling final products by employing institutional arrangements such as foreign direct investment (FDI), strategic alliances and dedicated sub-contractors[3]. Functionally, this change is a move away from hierarchical firm structures to flexible production organised through sub-contracting and other network relationships (Coleman and Underhill, 1998:5). Advanced information technology facilitates the creation and management of such networks on a global scale. Although the motive forces behind the strategy are improvement of efficiency, optimisation of costs and profit maximisation, the fulcrum of the emerging process is revolving around the practice of transfer pricing which is in contrast to competitive prices conceived under the free trade regime (Kurien, 1994: 63).

Another important feature of the current process of globalisation is the unprecedented expansion of global financial transactions surpassing the growth in world output and trade. The estimated volume of financial transactions exceed the total volume of world merchandise trade by twenty to forty times (Coleman and Underhill, 1998:6). The growing financial globalisation consists of rapid growth of international banking, securities and equities markets, growing interdependence and linkages between domestic financial services markets, and the deepening and diversification of domestic markets (Coleman, 1996: 5-8). The changes in the structure of global financial system have been accelerated by revolutionary strides in information technology ensuring instantaneous international co-ordination of financial flows with considerable reduction in spatial barriers. A corollary of the observed trends is the surge in the global FDI inflows with a more than proportionate increase in its composition dominated by the cross-border mergers and acquisitions (M&As). In 1999, the total value of FDI inflows was US $ 865 billion in which the share of cross-border M&As was more than 83 per cent (UNCTAD, 2000: xvi-xix). An important dimension of the cross-border M&As has been the dominant share of horizontal M&As (70%) compared to vertical and conglomerate M&As.

The Catalyst

The pivotal role of the IT revolution in facilitating and providing a sustainable material basis for the present globalisation process deserves mention. The contributions of the technical innovations in the IT sector to globalisation are comparable to the pivotal role of new sources of energy to the successive industrial revolutions in the past[4]. Though technological innovations have been essentially market-driven, the IT revolution has certain specific features. It has brought science and technology together, not as a one-time event but as a continuing interaction, making research and development (R &D) an essential component of production activity (Kurien, 1994: 60). Thus, the contemporary technological revolution is also regarded as a 'knowledge explosion' where human resources compared to the physical resources are central to the production process. To a large extent, this unique feature of the latest technological revolution, explains its greater global spread in relation to its predecessors (*ibid*). However, it necessitated an unprecedented concentration of capital arising from the need for rapidly replacing obsolete machinery and the financial muscle to acquire the latest equipment and skilled personnel than sinking capital in fixed forms for a long duration. Consequently, there has been tremendous increases in the scale and concentration of production, intra-industry specialisation leading to global sub-contracting and associated economies of scale with a view to maximise profits.

The Convergence

The approaches to assess the extent of transnationalisation and country level cross-border economic integration are different. The transnationality index has been considered a useful indicator of the relative integration across the major sectors and industries in world economy[5]. Conversely, the country level cross-border economic integration is analysed in terms of four important indicators, *viz.*, (i) ratio of total foreign trade to gross domestic product (GDP); (ii) ratio of FD1 to GDP; (iii) ratio of total import duties to total value of imports; and (iv) the extent of institutional convergence or harmonisation across countries (Nayar, 2001: 3531; Prakash, 2001: 545).

In the industry composition of the top hundred TNCs, the transnationality index was reported to be the highest in the case of construction (90.5%) followed by media (86.7%), food/beverages/ tobacco (74.3%) and pharmaceuticals (64.3%) during 1998 (UNCTAD, 2000: 78). Similarly, there has been considerable increase in the degree of concentration across the major industries such as automobiles, pharmaceuticals, banking, telecommunications, insurance and energy[6]. However, the extent of country level cross-border economic integration exhibits disparate trends as reported in a recent study (Nayar, 2001: 3534- 3537). While the developing countries have shown a comparatively better performance in trade and FDI ratios over time, the tariff levels have been lower in the developed countries. However, there could be serious limitations in drawing sweeping inferences from these macro level broad indicators as there are country and sector specific elements which inhibit transparency and a thorough understanding of the barriers on cross-border integration. Nevertheless, the degree of transnationalisation of the major sectors and extent of cross-border integration of the economies have been undergoing significant changes during the 1990s posing serious questions on the issues arising from globalisation and the survival.

Chapter 2

THE GENESIS OF GATT (1947)

The Initial Phase

A comprehensive analysis of the WTO Agreement and its implications at the macro and product specific levels would be incomplete without a review of the critical economic, political and historical factors contributing to the birth of GATT and its outcome during the eight rounds of negotiations. The genesis of GATT (1947), its subsequent rounds and the outcome have been closely related to the evolutionary dynamics of global capitalism than a unified multilateral initiative to reform a highly distorted international trading system for optimum resource use, efficiency and welfare maximisation. The changes observed in the structure of global capitalism since the late 19th century and the attendant international economic initiatives bear testimony to this observation.

The British hegemonic power which remained unchallenged for about a century till the outbreak of the First World War had been functioning on the basis of unilateral British free trade *(Pax Britannica)* and its unique international payment mechanism exemplified in the gold standard (Meyer, 1978: 15-22; Kurien, 1994:42). Under the system of inter-sectoral trade between manufactured goods and primary commodities, there was a perceptible economic integration of industrial countries with the countries producing primary commodities (colonies). This phase was also notable for the virtual absence of any deliberate attempt for integration of industrial economies. Although there was a strong interdependence between the industrialised countries and the colonies, the growing conflicts among the industrial countries which reflected in the economic nationalism had sown the seeds of an emerging crisis in the prevailing international trading system. The roots of the crisis stemmed from a relatively higher domestic economic growth compared to the growth in trade among the industrial countries leading to protectionist measures (Meyer, 1978: 20). The rivalries among the developed industrial economies could not be contained by the turn of the 19th century and the gravity of the issue was confounded by the First World War. Meanwhile, the US economy had been maturing as a major economic power and exporter of goods to European nations. However, the war-ravaged economies of Europe were not in a position to reciprocate in goods. The consequent flow of gold from Europe including Britain and the growth of Wall Street in New York as the financial capital of the world were the precursors of a new system of international integration (*Pax Americana*). The contradictions in the British hegemony were more evident with the devaluation of pound sterling and a formal abandonment of the gold standard in 1931. The subsequent years during the 1930s witnessed two important developments: (i) resurrection of national capitalism leading to competitive depreciation of local currencies by the major European countries so as to make gains at the expense of their neighbours- a practice that came to be known as the 'beggar thy neighbour' in popular parlance; and (ii) growing bilateral trade negotiations between the US and UK germinating the basis for future multilateral initiatives.

Though the Ottawa negotiations in 1932 marked the beginning of such bilateral efforts, it was the post-1934 negotiations between the two major powers that led to tariff concessions which were automatically extended to all countries with unconditional most-favoured nation (MFN) rights (Monroe, 1975: 11). The concessions were bilaterally negotiated and applied multilaterally. This process was also characterised by the conflicting interests between British imperial preferences and the US trade policy agreements in the 1930s. The targets of the US policy were free trade through lowering tariff rates towards the levels permitted under its legislation, elimination of other trade barriers and application of such concessions multilaterally. The British method was simultaneous negotiations of bilateral agreements with several countries. Functionally, the multilateral phase of the US-UK negotiations in the 1930s was short-circuited by the Second World War which broke out in 1939. Conceptually, the importance of the US-UK bilateral negotiations in the

1930s merits attention. The GATT (1947) is considered an international counterpart to US tariff policy which drew heavily on British experience on preferential trading agreements and negotiating methods with countries under the British empire (Meyer, 1978: 126).

The Post-war Phase

After the Second World War, the USA emerged as the key player of the capitalist world and dictated the terms of post-war reconstruction efforts and of the organisational arrangements for an international economic order. In July, 1944, representatives of 45 governments met in Bretton Woods in the US under the auspices of the UN and proposed the setting up of three international institutions, *viz.,* (i) the International Monetary Fund (IMF); (ii) the International Bank for Reconstruction and Development (IBRD or World Bank); and (iii) the International Trade Organisation (ITO). The IMF was entrusted to deal with short-term liquidity problems and the World Bank to attend to the long-term capital requirements. However, the initial advantage that the US had in shaping the post-war international economic order was strategically used to derail the proposals for the ITO within the UN system (Kurien, 1994: 46; Dasgupta, 1998: 142; Krueger, 1998:3; Myneni, 2000: 15; Shukla, 2000: 2). The different rounds of negotiations on the ITO initiated under the auspices of the UN were completed in March, 1948 (Havana Conference), pending ratification by the US legislature. Meanwhile, the GATT came into existence on October 30, 1947, as an interim arrangement signed by 23 participating countries before the ratification of a more comprehensive Havana Charter that embodied the agreement on the ITO. Since the US did not approve the proposal for ITO, the GATT became effective on January 1, 1948. Thus the interim arrangement became a permanent organisation and the proposal for the permanent organisation was finally archived in 1950 (Dasgupta, 1998: 142; Shukla, 2000: 2).

The Outcome

The proposal for the ITO was rejected by the US and other major economic powers for three important reasons: (i) the apprehensions on the ITO as a UN agency empowering it with substantive control on international economic matters in contrast to the IMF and World Bank governing principle of voting rights based on financial contributions; (ii) the specific political and economic developments of the period characterised by the onset of cold war and rising protectionist attitude; and (iii) the provisions for stabilisation of primary commodity prices contained in the original proposal of ITO (Dasgupta, 1998: 141). On the other hand, the main purpose of GATT was to create a predictable international trading environment in which industrial and commercial entities would have the confidence to invest, generate jobs and trade. The three basic principles embodying the purpose of the GATT were: (i) reciprocity; (ii) non-discrimination; and (iii) transparency. However, subsequent negotiations turned out to be hard bargaining in which arm-twisting came to be accepted as a standard practice. In practice, the conception of the GATT was based on a kind of managed mercantilism rather than the professed standard economic arguments for free trade. The GATT (1947) was essentially a modified extension of the US-UK bilateral agreement (1938) as the general trade concessions of GATT largely resembled the agreement. However, the major difference was that several negotiations were conducted simultaneously and around 123 bilateral agreements were concluded during the seven months of 1947 (Geneva) negotiations (Meyer, 1978: 137).

Principles of GATT (1947)

The eight basic principles which characterised the nascent multilateral system were:

(i) Non-discrimination in tariffs and trade regulations is upheld in the celebrated clause of "Most Favoured Nation (MFN) Treatment" embodied in the Article I. Any advantage, favour, privilege or immunity with respect to duties or other trade regulations granted by a contracting party to any other country shall be accorded immediately and unconditionally to all other contracting parties. However, the Commonwealth (Imperial) preferences as well as the French, Belgian, Dutch and the US preferences with regard to their respective dependant/associate territories are exempted.

(ii) General elimination of quantitative restrictions (QRs) on import and export is provided in the Article XI. Price based measures such as duties, taxes or other charges shall only be used to regulate external trade. But built-in exceptions were introduced by the US for agricultural and fisheries products to justify its system of domestic agricultural support. However, QRs on the quantity or value of merchandise can be imposed to safeguard the balance of payments position, subject to conditions laid down in the Article XII.

(iii) The principle of national treatment recorded in the Article III stipulates that products of other contracting parties shall be accorded treatment no less favourable than accorded to like products of national origin in respect of all laws, regulations and requirements.

(iv) The fourth principle relates to the provision under the Article XXVIII, to maintain a general level of reciprocal and mutually advantageous concessions in tariff negotiations. The process of tariff reduction negotiations is based largely on techniques refined in the US reciprocal trade agreements.

(v) The fifth feature, usually referred to as retaliation, is related to the sanction offered by the system. This is the ultimate weapon provided in the Article XXIII, to be used after all other measures such as consultation, investigation and adjudication have been exhausted.

(vi) The safeguard mechanism (Article XIX) can be applied in emergency situations where excessive imports of a product cause, or threaten to cause, serious injury to domestic producers of like or directly competitive product, and the party affected is free to suspend its concession in respect of the product in question, to the extent necessary to prevent or remedy the injury.

(vii) The seventh principle upholds that the mandate of GATT is solely cross-border trade in goods irrespective of the Article IV relating to cinematograph films and the Articles VI and XVI relating to subsidies and countervailing measures.

(viii) The last principle relates to decision making and amendment procedures provided in the Articles XXV and XXX respectively. Each contracting party shall be entitled to have one vote in all meetings. Decisions shall be taken by a majority of the votes cast except as otherwise provided for in other articles of the GATT. The Article XXX stipulates that amendment to the Articles I and II in part I relating to MFN clause and schedules of concessions and the Article XXIX relating to the relation of GATT to the Havana Charter requires unanimity. It gave implicit veto to every contracting party in amendments of provisions in the Articles I, II and XXIX of GATT (Shukla, 2000:2-3; Gupta, 2000: 21-86).

Integration and Multilateralism

The post-war initiatives under the US leadership for a new international economic order witnessed three important developments with serious consequences on future world economic integration and multilateralism. The most important among them was the conception of a framework that would facilitate the corporate capitalist interests in an orderly world, once the challenges from within the system had been eliminated. The first priority was economic recovery and integration of Western Europe. This regional economic initiative under the "Marshall Plan" since the late 1940s involving massive unilateral transfer of capital from the US to Britain and other European nations provided the required momentum for integration and consolidation of Western Europe. The package also included gradual elimination of exchange and trade restrictions which facilitated large trade volumes catering to bigger markets exploiting the economies of scale. In fact, the US steel, chemical, automotive, rubber and electrical machinery industries faced insatiable demand (Shukla, 2000:6).

The other important development was the pre-eminent status accorded to US dollar in international affairs. The dollar was legally pegged to gold by the US government which made the currency as good as gold. In spite of various means of transfers of the dollar in the post-war era, it was instrumental in sustaining the tempo of growth in production and trade in the developed countries.

The underlying economic philosophy of the new development paradigm had been enshrined in the altar of *Pax Americana* with its characteristic focus on integration of industrial countries.[7] The pivotal role of multinational corporations (MNCs) in interlocking various processes of the emerging industrial organisation accelerated the pace of growth in production and trade. The four major developments underlining the global industrial integration during this phase had been increasing international mobility of industrial capital among the developed countries, growing intra-industry trade, oligopolistic organisation of industrial production and international division of production processes (Tussie, 1987: 39-57). Consequently, GATTs tariff-cutting role was painless in sectors and among countries where oligopolistic forms competition prevailed (ibid: 6). Apparently, the tariff reductions under the auspices of GATT were more of the consequences than the causes of trade expansion. Functionally, therefore, the period from the end of the Second World War to the early 1970s is popularly known as "the golden age of capitalism" under the US leadership. This phase has heralded a new era of multilateral trade in which the role of MNCs had been dynamic and dominant in providing a new direction and composition of international trade flows. However, the new developments in the world economy since the 1970s which crystallised in the 1980s have been posing serious challenges to the US leadership on major economic issues. In popular academic parlance, the subsequent affliction to the US unilateralism came to be known as "diminished giant syndrome". This was similar to Britain's status in the first quarter of the 20th century (Bhagwati, 1998:95). The developments since the 1970s had serious implications on the agenda and outcome of the subsequent rounds of GATT negotiations and the formative phase of the WTO.

Chapter 3

GENEVA (1947) TO TOKYO (1979): THE MILESTONES

A comprehensive assessment of the agenda, issues, contentions, consensus and the outcome of the seven rounds of GATT negotiations till the Uruguay Round, is beyond the scope of this section. The objective is to capture the major elements of change with specific reference to developments in world economy during this 33 year period which are relevant to the Uruguay Round negotiations and the subsequent WTO Agreement. Table 1 furnishes the summary details on the period, venue of the negotiations, number of participating countries and the estimated value of trade covered in the seven rounds of GATT up to the Tokyo Round.

Table 1. Seven rounds of GATT negotiations

Round	Year/Period	Venue	Number of participating countries	Estimated value of trade covered (US $ billion)
Geneva	1947	Geneva (Switzerland)	23	10
Annecy	1949	Annecy (France)	33	NA
Torquay	1950-51	Torquay (England)	34	NA
Geneva	1956	Geneva (Switzerland)	22	2.5
Dillon	1960-61	Geneva (Switzerland)	45	4.9
Kennedy	1964-67	Geneva (Switzerland)	48	40
Tokyo	1973-79	Tokyo (Japan)	99	155

Sources: Krueger (1998:xv - xvi); Dasgupta (1998: 143); Bhattacharyya (2000[a]: 84); Myneni (2000: 17 - 18); McDonald(1998: 32).

More than three decades of GATT negotiations up to the Tokyo Round revealed an ebb and flow characterised by notable achievements and shortcomings. Each succeeding round had been characterised by considerable tariff reductions, accession of new members and more ambitious agenda than its predecessors. Another notable development had been a significant increase in the value of trade covered since the Kennedy Round. During the Uruguay Round, the estimated value of trade covered has increased to US $ 500 billion (McDonald, 1998: 32). Though the GATT tried to grapple with new generation of trade problems in each round, it nearly ended up with a challenge to its integrity. Functionally, it was torn between adherence to its operational rules and the reality of the weight of the trade powers (Shukla, 2000: 5). It is true that by the end of Tokyo Round negotiations, the average tariff on manufactured goods in the nine biggest markets had been reduced to 4.7 per cent- a reduction from the average OECD tariff level of 40 per cent in the late 1940s (Bhattacharyya, 2000[a]: 84; Tussie, 1998: 84). The average annual growth rate of global trade (8%) outstripped the growth in world output (5%) during 1950-74 (Krueger, 1998: 6). However, the average growth rate in world trade had been declining after reaching a peak level of 8.3 per cent in the 1960s (Kurien, 1994: 56). In fact, the observed gap in the growth rates between world trade and output narrowed after the early 1970s (Nayyar, 1997:15). Therefore, it is important to review the specific economic and political developments guiding the agenda and outcome of the negotiations with important consequences on the pattern and volume of trade up to the Tokyo Round.

Although no standard classification is available on the seven rounds of the GATT negotiations based on global economic and political developments, it would be plausible to classify the rounds into two broad phases, *viz.*, phase one characterised by the undisputed dominance of the US in the negotiations and global economic affairs ending with the Kennedy Round (sixth) and phase two since the Tokyo Round coinciding with the emergence of issues questioning the unilateral initiatives of the US in the functioning of the GATT. In spite of the extent of overlapping in the classification and its conceptual basis, the explicit elements of contradictions in the global trading system, questioning the US hegemony, were more evident only since the 1970s.

Developments Up to the Kennedy Round

There was substantial progress in fulfilling the main objective of GATT, *ie.*, tariff reduction, during the first six rounds of negotiations. Among the six rounds, the first (Geneva Round, 1947) and the sixth (Kennedy Round, 1964-67) remained unrivaled with regard to the expanding coverage of the US tariff reductions with an average cut of more the 33 per cent (Meyer, 1978: 137). However, the tariff reductions had been singularly focused on industrial products whereas agriculture, textiles and clothing were deliberately excluded to suit the interests of the US and the Western European economies. The achievements in industrial tariff reductions and growth in volume of trade had been fostered by three important factors: (i) growing intra-industry specialization and trade among the advanced countries in the backdrop of huge inflows of capital to Europe during the post-war period accelerating the process of integration; (ii) international exchange rate stability assured by the supremacy of the US dollar; and (iii) status of the US as the major exporting nation. Till the fifth round, the negotiations on tariff reductions were conducted under an 'item-by-item' procedure in the form of initial 'requests' and 'offers'. However, during the fifth round of negotiations there emerged an explicit division among the negotiating member countries, viz., (i) dominant linear group led by the US, six European Economic Community (EEC) countries, Japan, UK, Austria and Denmark adopting the method of an initial offer of 50 per cent tariff reduction subject to sectoral exceptions; (ii) a miscellaneous group of countries at various stages of development with a concentration in exports of a few products; (iii) a group of seven developing countries which sought concessions on individual products; and (iv) a group of 41 developing countries without any specific requests for concessions (*ibid*: 148). In this phase, the maximum achievements in tariff reductions among the industrial products were made in products with intra-industry specialization while only moderate success was observed on the more traditional products of the advanced countries such as cotton textiles and steel (*ibid*: 151). Another important feature of this phase was that the impact of tariff cuts was far less on products of export interest to the developing countries. (Shukla, 2000: 5). The developing countries were viewed as "free riders" benefiting from tariff reductions based on the MFN principle without any active participation in the negotiations until the Uruguay Round (Krueger, 1998: 5). This polemical position has conveniently ignored the relative stages of economic development for active participation in a phase dominated by intra-industry specialization and integration.

The first phase is also remarkable for the 'permanent waiver' status accorded to the agriculture sector from any serious negotiation on tariff reductions. At the time of GATT's inception, a built-in exception was provided by the Article XI, which prohibited quantitative restrictions, in order to suit the US requirements of domestic support policy for agriculture (Shukla, 2000: 9). The genesis of the US domestic support programmes for agriculture can be traced back to the Agricultural Amendment Act (1935) enacted so as to enable the United States Department of Agriculture (USDA) to pursue price support policy and its subsequent modifications culminating in the country's emergence as the largest exporter of food grains (McMichael, 2000: 130). The formation of EEC in 1957 and its formulation of a Common Agricultural Policy (CAP) in 1962 have given a complex dimension to the issue of meaningful negotiations on agriculture. Although agricultural negotiations formed part of the fifth and sixth rounds of GATT, progress was negligible mainly due to the reluctance of the major protagonists to subject domestic agricultural policy to international scrutiny (Tanner and Swinbank, 1998: 622). However, at the time of the eighth round (Uruguay) the US turned to be a forceful advocate of agricultural liberalization as not only its market share eroded but also its access to European market was severely restricted. Similarly, the case of trade liberalization in the textiles and clothing sector bore proof to blatant discrimination of low cost countries by the US under the banner of its Trade Agreement Act of 1962 (Shukla, 2000: 47). A discriminatory and restrictive regime was clamped on the developing countries on the plea that low wage regions were causing 'market disruption'.

Despite the achievements in the six rounds of GATT negotiations under the leadership of the US, the inherent contradictions within the system and other developments questioning the relevance of the hitherto followed framework of operation became more explicit. First of all, the universal acceptance of the US initiatives in the negotiations were undermined by the gradual evolution of regional blocs since the late 1950s in the form of customs unions, free trade agreements and sectoral co-operation. During this phase, four such important blocs emerged- the EEC in 1957, Central American Common Market (CACM) in 1960, European Free Trade Association (EFTA) in 1960 and Australian-New Zealand Closer Economic Relations in 1965 (Fratianni and Pattison, 2001: 344-46). This had serious implications on the agenda as well as the outcome of the subsequent negotiations as even the sixth round was initiated by the US for its apprehensions on the growing bargaining power of the EEC (Bergsten, 2001: 6).

Another important development had been the changes in the composition of GATT membership in favour of the developing countries since the 1960s. This group became more vocal to: protect their infant industries, safeguard the balance of payments and adopt remedial measures for low export growth dependent on fluctuating commodity prices. The establishment of United Nations Conference on Trade and Development (UNCTAD) in 1964 accelerated the process of collective action among the developing countries. The outcome of the subsequent negotiations reflected the impact of the new developments though these were dominated by the discretion of the major power blocs.

The Tokyo Round

The Tokyo Round negotiations had been unique in many ways compared to the previous rounds. The major elements of departure from previous rounds included: (i) the lengthiest round to grapple with the complex issues; (ii) changing global economic and political equations; and (iii) emergence of the developing countries demanding a more equitable distribution of the gains from the international trading system. The first six rounds were primarily concerned with multilateral reduction in industrial tariffs and the gains were compatible with the interests of the major trading power groups. However, the achievements in the elimination of growing non-tariff barriers (NTBs) to trade liberalisation had been moderate. The basis of the previous rounds coinciding with a phase of remarkable growth in world trade had undergone significant changes on the eve of the seventh round and the institutional underpinnings of the trade order represented by GATT were being questioned. Therefore, the seventh round had to address more complex issues such as non-tariff barriers and a variety of other measures impinging on the domestic policies of the participating countries. In this context, a brief review of the major changes in the world economy with serious implications on the trading system is in order.

The most important change in this phase was the suspension of convertibility of the US dollar into gold in 1971. Although the genesis of the crisis of the US economy during this phase has been vigorously debated, it had signalled the death-knell to the central pillar of Bretton Woods monetary arrangements (Kurien, 1994: 49; Ghosh, 1998: 21). The importance of this development stems from the fact that though international monetary changes were outside the purview of the GATT system, the monetary arrangements have been the key factors in the post-war evolution of the multilateral trading system (Bergsten, 2001: 8). The subsequent changes to separate monetary and non-monetary transactions in gold and the resultant chaos in the international monetary system were critical ingredients in the initiative by the US in launching the seventh round. The seventh round was launched as part of the understanding, insisted upon by the US, to restore fixed exchange rates among the major countries and terminate the import surcharge that it had instituted in August, 1971 (*ibid*). The US strategy was essentially two fold: (i) to accomplish a substantial devaluation of the dollar so as to restore its competitiveness and reverse its deteriorating trade balances; and (ii) to launch a new round (the Tokyo Round) of trade negotiations to overcome the protectionist measures evolved among the developed countries by the 1970s.

Another important development during this phase was the coincidence of two oil price shocks in 1973 and 1979 which formed the basis of successful interventions by a Third World cartel under the banner of Organisation of Petroleum Exporting Countries (OPEC). The ramifications of the oil crisis were reflected both in the demands for reforming of world economic order and the international trading system. The collective action of the developing countries for a New International Economic Order (NIEO) culminating in the special session of UN General Assembly in 1974 marked the beginning of an initiative for new world economic order. However, the victory of the developing countries was short-lived as the windfall gains of the OPEC were largely funnelled to the US private banks on attractive terms instead of granting cheaper loans from the accumulated surplus for the developmental programmes of the non-oil exporting countries in the Third World (Wallerstein, 1991:1104; Kurien, 1994:51; Dasgupta, 1998:79). Though OPEC model was paraded as a successful case of Third World cartel worth emulating, sooner it became evident that sustainable replication of the model for the reversal of terms of trade in the case of other primary products exported from the developing countries had been entangled in a mass of contradictions. The new developments had not only revived the sagging image of the US dollar but also had sown the seeds of the notorious 'debt crisis' of the developing countries in the 1980s and global inflationary pressures short-circuiting the efforts and hopes of the developing countries for a NIEO.

However, the major source of reformist efforts to address the critical issues enveloping the multilateral trading system could be traced back to the establishment of UNCTAD in 1964. This organisation was a new forum for developing countries to demand modifications in the GATT. The implementation of Generalised System of Preferences (GSP) in 1971, was an effort towards a legal basis for overcoming the inequitable nature of the non-discrimination principle of GATT, which treated unequals equally. In accordance with the GSP, GATT granted two waivers: one enabled developed countries to extend tariff preferences to developing countries and the other allowed developing countries to exchange tariff preferences among themselves. However, during the seventh round the potential benefits of the developing countries based on the preferential arrangements of the GSP had been circumscribed by two important factors. Though the US and EEC extended preferences to the developing countries, such preferences were confined to specified quantities of the selected products. Unlimited preferences were given only to products where domestic consumption exceeded the overseas associates production. In effect, the new preferential treatment had only underlined inter-industry specialisation rather than an intra-industry relationship (Meyer, 1978: 155). Another major drawback of the GSP was that it was concentrated in manufactures and 44 per cent of GSP trade benefits accrued to only four countries, *viz.*, Hong Kong, South Korea, Taiwan and China (Dasgupta, 1998: 145). The major reason for such a skewed distribution of trade benefits was that the US and EEC imposed a condition stipulating at least 35 per cent of the value added should originate in the exporting country. A majority of the developing countries found it extremely difficult to fulfil this condition. The plight of GSP during the seventh round was in sharp contrast to the tariff preferences given among the regional trading agreements (RTAs) such as European Community (EC) and EFTA. Subsequently, the preferential concept was superceded by the 'graduation' principle by which advantages arising from the infant industry and balance of payments protection arguments were effectively nullified. This was the first move by the developed countries to circumscribe the Article XVIII.B (Shukla, 2000:9).

A major milestone of the seventh round was that for the first time the GATT system was extended to cover the NTBs (Myneni, 2000: 18; Laird, 2001: 453; Bergsten, 2001:4). During the round 'codes' were defined on NTBs such as subsidies, government procurement and dumping. Unlike tariff measures, these codes impinged more closely on domestic policies of the negotiating countries. However, the perennial missing component was the impasse in the negotiations on tariff reductions in agriculture. The conflicting views of the US and EC persisted with regard to a suitable framework for agricultural trade-the US arguing for greater reliance on market-oriented forces and the EC favouring a more managed-market approach (Tanner and Swinbank, 1998: 623).

In spite of the protracted negotiations spanning 33 years, the balance sheet of the seven rounds of the GATT negotiations exhibited an organic relationship with the changing dimensions of global capitalism. The remarkable progress in tariff reductions in the case of industrial products during the seven rounds was necessitated by the dynamics of the global economic system dominated by the US though there had been serious issues eroding its hegemonic power in the 1970s. This aspect was reflected in the background, agenda and the outcome of the seventh round which was characterised by divergent interests, halfway solutions, cosmetic compromises and shelving of the more difficult problems. The Third World initiatives since the mid 1960s under the auspices of the UNCTAD and the enthusiasm for NIEO in the 1970s had been effectively corked by the explicit cognitive skills of the developed countries in designing appropriate countervailing measures. This difference had become more transparent in the Uruguay Round negotiations in a different global economic context.

Chapter 4

FROM URUGUAY TO MARRAKESH (1986-94)

The final (Uruguay) round of GATT negotiations initiated since September, 1986 and which culminated in the formal establishment of the WTO on January 1, 1995 had been unparalleled in the history of the organisation in view of its background, duration, agenda and the outcome. The issues leading to the Tokyo Round (seventh) not only loomed large in the 1980s but also there were new specific developments challenging the viability of GATT as a presiding institution over the international trading system. The major gaps in GATT's functioning during the 1980s were found to be centred around three critical aspects: (i) international trade liberalisation was lagging behind domestic liberalisation; (ii) the progress achieved in the reduction of tariff barriers in manufactured products was nullified by the NTBs consisting of quotas, voluntary export restraints (VERs), government subsidies to production, anti-dumping legislation, tax and other administrative measures; and (iii) failure to include agriculture, services and investment in the liberalisation network (Fratianni and Pattison, 2001: 342). However, the basic issues encompassing the genesis of the Uruguay Round had specific monetary, structural and sectoral undercurrents leading to the US initiative for the negotiations.

Monetary Issues

The launch of the Uruguay Round was also closely linked to a monetary crisis. The huge dollar over valuation of the early 1980s, stemming from the massive budget deficits, generated a large current account deficit which transformed the status of the US from world's largest creditor country to the largest debtor. This important policy change has triggered protectionist pressure and subsequently the US government granted more import relief to its industry than in more than half a century. (Bergsten, 2001: 8). This policy component was initiated in the background of the inflationary pressures engulfing the US economy in the backdrop of its unprecedented monetary expansion to meet its military expenditure and international commitments. The subsequent efforts at monetary regulation (increasing interest rates and restriction of money supply) slowed down industrial production and led to a contraction of international trade. Consequently, the role of the dollar as lead currency was in dispute. It also became a period of flexible and floating exchange rates. Under the new circumstances, there were other important developments also which seriously affected the hitherto set rhythm of the international trade. The 1980s witnessed an enormous expansion in the sphere of international finance. The financial transactions not only ceased to be a facilitator of the real economy but also acquired autonomy for itself. During 1970-87, international banking grew twice as fast as international trade (Kurien, 1994:74). On the eve of the Uruguay Round, global integration was more effective in the realm of finance and there was a remarkable shift from banking to security markets. In effect, free trade became to denote freedom of financial capital transcending national boundaries to buy and sell securities.

Debt Crisis

Another important monetary issue which affected the agenda and outcome of the Uruguay Round negotiations was the 'debt crisis' of the developing countries in the 1980s starting with a public proclamation of bankruptcy by Mexico in August, 1982. The roots of the crisis were located in the recycling of petro-dollar to multinational private banks located in the developed countries and the subsequent lending spree to the developing countries with the balance of payment difficulties in the 1970s (Kurien, 1994: 80-82; Dasgupta, 1998: 78-82). The large scale borrowing of developing countries from private sources in the 1970s was in sharp contrast to the bulk borrowing from official sources in the past. The large-scale default by the LDC borrowers affected by the declining commodity prices and deteriorating terms of trade paved the way for the entry of IMF for rescue operations in the 1980s. The structural adjustment loan (SAL) offered by IMF since 1986 was coupled with a string of conditionalities in tandem with the loan package introduced by the World Bank in its Structural Adjustment Programme (SAP) in 1980. The convergence of the lending philosophy and conditionalities by the Bretton Woods Twins with different professed objectives was remarkable in the 1980s[8]. The core of the conditionalities imposed by the twins was the LPG model of growth articulated in the theoretical perspectives propounded by the protagonists of the new political economy (NPE). The imposition of the LPG model by the twins severely curtailed the choice of independent decision making by the LDCs at the time of Uruguay Round negotiations as more than half of them were indebted or dependent on developed countries, the IMF and the World Bank (Dubey, 1996: 5). This new development was in tune with the professed economic philosophy of GATT exemplied in free trade and the convergence of the agenda of the 'holy economic trinity' (IMF, World Bank and GATT) is accidental or articulated is a moot question. However, it is true that this vulnerability of the LDCs was effectively utilised by the developed countries in breaking the Third World unity and fixing the agenda for the Uruguay Round.

Structural Issues

The major structural and sectoral changes in the world economy affecting the agenda of the Uruguay Round negotiations had been basically threefold: (i) erosion in the competitive edge of the US in manufacturing since the late 1970s; (ii) EC's emergence as a mega exporter of agricultural products seriously affecting the US' market access not only in the EC market but also in the world market; and (iii) the growing importance of the regional trade agreements (RTAs) posing the question of building blocks or stumbling blocks on free trade under the auspices of GATT.

By the end of the 1970s international capitalism had three power centres, *viz.*, the US, EC and Japan plus the newly industrialised East Asian countries (NICs). This period was also notable for the challenges to steel, automotive, electronics and machine tools industries of the US posed by Japan, Germany, South Korea, Taiwan, Singapore and Brazil (Shukla, 2000: 13). The decline in the US competitiveness was partly due to the staggering level of its military expenditure and the cult of nuclear deterrence (Dubey, 1996: 2). Consequently, the US had to resort to a range of non-tariff protectionist measures consisting of voluntary export restraint (VER) and the application of the notorious provisions (for example, Super 301) contained in its two far reaching legislative acts, *viz.*, the Trade and Tariff Act 1984 and Trade and Competitiveness Act, 1988. In the 1980s, VER became an effective weapon for protection to incompetent industries and agriculture in the developed countries. In 1989, the GATT secretariat listed 236 VER agreements and EC and the US topped the list (Dasgupta, 1998: 155). This weapon was effectively used on automobiles, steel, textiles and clothing, machinery, shoes and consumer electronics. Thus, these grey area measures functionally replaced GATT philosophy of open markets and competition and in practice, the approach was managed trade, market sharing and discriminatory bilateralism (Shukla, 2000: 13). Therefore, the priority of the US during the Uruguay Round negotiations was to include the services sector in the ambit of GATT negotiations as the economy has acquired decisive competitive edge in banking, finance, consultancy and data processing systems. To a great extent, the agenda on the services was prefixed so as to offset the US economy's disadvantages in other sectors and the new areas were expected to restore the primacy of the US in world economy.

Agricultural Issues

In all the previous GATT rounds, negotiations on tariff reductions in agriculture had been effectively given the status of 'exclusion built into integration' reflecting the interests of major trade powers. However, the conditions propping up the exclusion had undergone significant changes in the 1980s with the graduation of EC from a net importer to a major exporter of agricultural products. The massive subsidy programmes of the EC enunciated under the auspices of CAP transformed this food deficit region into a large exporter in the 1980s (Tussie, 1993: 184; Hayami and Godo, 1997: 374; Dasgupta, 1998: 181). The growth of EC's relative shares in world exports was not only remarkable but by 1986 its exports of cereals, beef, sugar and dairy products actually surpassed those from the US (Atkin, 1993: 196). The extreme polarisation of the positions of the US and EC on the liberalisation of agricultural trade reached its peak when the former initiated its Export Enhancement Programme (EEP) in 1985 which was tantamount to declaring a subsidy war (Tanner and Swinbank, 1998: 625; Dasgupta, 1998: 182). The common feature of the composition of agricultural subsidies of the two trade powers vis-à-vis Japan (which depended on border protection) was that both the US and EC were relying more on budgetary transfers compared to Japan in achieving the status of major exporters (Hayami and Godo, 1993: 374). The government farm subsidy provided in the US was $ 32 billion, $ 53 billion for EC and $ 33 billion for Japan even in 1989 (Dasgupta, 1998: 181). The position continued unabated as the producer subsidy equivalent (PSE) as a proportion of gross agricultural output was 48 per cent in EC, 22 per cent in the US and 69 per cent in Japan during 1991-93 (Hayami and Godo, 1993: 372). This subsidy war was found to be disastrous for both the US and EC as it had serious implications on the macro economic management and border protection at the expense of the consumers which appeared to be counter-productive in the long run. It is at this juncture that the Cairns group (a group of 14 middle income and rich countries which was formally launched in Cairns, Northern Australia, in 1986) intervened, mediated and highlighted the need for liberalising agricultural trade. Eventually, after protracted negotiations and pressure, a consensus was reached on the issue and negotiations on agriculture became an important component of the WTO Agreement in 1994.

Role of RTAs

The growing importance of RTAs since the 1980s in the world trade has been widely debated (Tussie, 1998; Coleman and Underhill, 1998: 91-94; Fratianni and Pattison, 2001: 342-43; Diao *et al*, 2001: 51-70; Bergsten, 2001:4). The major factors attributed to the growth of the RTAs are: (i) geographic proximity; (ii) preferential arrangements; (iii) common language; (iv) cultural similarities; and (v) a relative homogeneity of policy regimes (Diao *et al*, 2001: 52). In spite of the debate on the underlying factors, the RTAs had an important role in the Uruguay Round negotiations. It was pointed out that 46 RTAs have been started in and after 1986, whereas only 22 were created before the year (Fratianni and Pattison, 2001: 342). Between January 1996 to 1998, the WTO was notified of 33 new RTAs (*ibid*: 343). The importance of the RTAs in world trade is evident from the fact that the five major RTAs had a share of about 60 per cent in total world trade in 1998 (Bergsten, 2001:4).

The two important issues which had a strong bearing on the agenda and outcome of the Uruguay Round negotiations were the underlying factors leading to the growth of RTAs and their compatibility with the GATT system. There had been a growing consensus on the fact that the RTAs became more pronounced than the successes of the multilateralism under the GATT system. The uncertainty surrounding the multilateral system and the metamorphosis of the US policy towards RTAs in the 1980s and the region-specific issues were considered to be the major factors in contributing to the growth of RTAs (Tussie, 1998: 86-87; Tanner and Swinbank, 1998: 619; Stubbs, 1998: 68-69). The declining status of the US in the 1980s as a hegemonic power and its shift in strategy favouring regionalism starting with Canada-US Free Trade Area (CUSFTA) in 1988 (trade arrangement with Canada) and launching of North American Free Trade Area (NAFTA) in January, 1994(with Canada and Mexico) were considered to be strategies to face the challenges to the US predominance (Tussie, 1998: 87). This U-turn in the US strategy from a staunch advocate of multilateralism to regionalism had been a striking parallel to the British position of reciprocal protection and preferences to its colonies in the 19th century (Bhagawati, 1998: 102-103). However, the compatibility of the RTAs with multilateral trading system has to be viewed from three angles, *viz.,* (i) the extent of protection and market sharing under the RTAs; (ii) dichotomy of the interests of the developed and developing countries; and (iii) the regional alliances as a new source of bargaining power in the context of the changing status of the US' hegemonic power to collegial leadership. In the finalisation of the agenda and the subsequent outcome of the Uruguay Round negotiations, the undercurrents of RTAs had played a pivotal role in redefining the future structure of multilateral system and the presiding organisation.

Role of MNCs

Another equally important development defining the agenda and outcome of the Uruguay Round negotiations was the phenomenal growth of the MNCs coupled with sectoral and cross-border integration during the 1980s. The MNCs have acquired a long chain of inter-sectoral alliances and controls transcending the spatial barriers. The LPG model propounded by the World Bank- IMF combine with a string of conditionalities since the 1980s had been catalytic to gradual penetration of the MNCs to the hitherto protected economies of the developing countries. The basic strategy of the MNCs was to exploit the homogeneity and mobility of capital to exercise control over physical resources and human labour; both characterised by heterogeneity and relative immobility. In fact, the US insistence on the services issue in the agenda was primarily to increase space for the expansion of the activities of MNCs. (Shukla, 2000: 14). Their role in Uruguay Round negotiations was illustrated by the composition of the US delegation consisting of the representatives of American Express, Citibank, IBM, Pfizer, Monsanto, Dupont and Cargill to provide the required logistic support (Dasgupta, 1998: 148).

The Agenda

The Uruguay Round negotiations had been unique in many ways: lengthier than the previous rounds, protracted preparatory meetings, a contentious agenda, and the final outcome with implications on the policy formulation in the sovereign nations. The preparatory ministerial meeting held in November, 1982, witnessed two major controversies: the conflict between the US and developing countries on the issue of trade in services and the persistent polarisation between the interests of the US and EC on the liberalisation of agricultural trade. The period from November, 1982, had witnessed unilateral announcements, initiatives, moves and countermoves at various levels without reaching the required consensus till the Uruguay Round was formally launched in Punta del Este in September, 1986. However, the subsequent tortuous negotiations till the conclusion of the round approving the results on December 15, 1993, were not based on any prefixed conclusive agenda. Conversely, the varying proposals of the major players had to be either imposed or modified while the major contentions of the developing countries were effectively eliminated during this period of more than seven years. The highlights of the Uruguay Round agenda compared to the previous rounds were: Trade-Related Intellectual Property Rights (TRIPS), Trade-Related Investment Measures (TRIMS), trade in services, dispute settlement, new institutional arrangements for decision making and trade policy review. Moreover, drastic trade liberalisation measures were proposed in the case of textiles, agriculture and government procurement. The GATT Articles pertaining to anti-dumping, subsidies, countervailing measures and safeguards were also subjected to detailed discussion.

Negotiations till the Dunkel Draft (1986-91)

The Uruguay Round negotiations initiated in September, 1986, was marked by serious contentions and conflicts, especially on the new issues. The initial responses were far short of the objectives of the US. The developing countries' interests were spearheaded by India and Brazil and the compromise reached in the ' Common Working Platform' envisaged negotiations, provided that: (i) there was a clear legal separation in the two negotiation streams, *viz.*, for goods and services; (ii) the services negotiations were to be given a development orientation; and (iii) national laws and regulations in the services sector were to be respected (Shukla, 2000: 17). The major contentious issues were related to TRIPS and trade in services and no agreement was reached before the mid-term ministerial meeting in December, 1988 at Montreal. In the Montreal meeting, the negotiations on agriculture and the attendant extreme positions of the US and EC were the major issues. There was no consensus either on agriculture or on the services issue and the outcome was mainly confined to guidelines for future negotiations.

The post- Montreal meeting witnessed certain important developments effectively cutting the unity and bargaining power of the developing countries. The strategy employed was basically twofold. First of all, the left arm- right arm-twisting strategies employed by the World Bank-IMF combine forced many of the developing countries to embrace trade liberalisation as part of the conditionalities of the SAPs. As a result, more than 60 developing countries reported unilateral trade liberalisation measures to GATT between 1986 and April, 1994 (Dubey, 1996: 8-9). Secondly, the 'aggressive unilateralism' of the US was amply demonstrated in its use of Super 301 against Brazil before April, 1989 and India in May during the same year (Shukla, 2000:21). The resultant fragile unity of the developing countries was evident during the mid-term review of negotiations in Geneva, in April, 1989. This meeting was also noted for the growing consensus on the contentious issue of agriculture between the US and EC, dwindling enthusiasm of the developing countries on the question of TRIPS and comfortably squaring up the textiles and clothing and the safeguard issues.

Dunkel Draft and the WTO Agreement

The subsequent ministerial meeting in December, 1990 at Brussels also did not produce the desired results as EC was not prepared to make substantial commitments in agriculture. However, the post-Brussels meeting witnessed certain important developments leading to the final WTO Agreement in April, 1994. The most important among the developments was the presentation of a 'Draft Final Act' popularly known as the "Dunkel Draft" presented by Arthur Dunkel, Secretary General of GATT, in December, 1991. This effort was mainly targeted to overcome the stalemate enveloping the negotiations which was expected to be concluded by 1990. Although the draft did not reflect a consensus on issues such as TRIPS, TRIMS, competition policy and agriculture, it was more than a precursor to the final Agreement reached on December 15, 1993, and signed at the ministerial meeting at Marrakesh (Morocco) on April 15, 1994.

The other important development was the proposal contained in the Dunkel Draft to set up a multilateral trade organisation (MTO). Conceptually, the proposal triggered a paradigm shift in the organisational structure of GATT as the original idea of treating negotiations as a 'single undertaking' was changed to mean that all results of all negotiations were to be applicable as a 'single whole' to all contracting parties (*ibid* 2000: 23). However, before the Marrakesh meeting, the MTO was changed into WTO, at the instance of the US, based on its apprehensions on the relative implications of the nomenclature (Dubey, 1996: 103). The two other developments during the interim period were the US-EC progress in the negotiations on the agricultural issues and the US pursuit of regional initiatives with Canada and Mexico, leading to the formal launching of NAFTA as a second tier strategy prior to the WTO Agreement. A confluence of all these factors evolved over time and defined by the specific changes in the global economic scenario have led to the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade negotiations which was formally approved on April 15, 1994, and made effective from January 1, 1995.

The Outcome

The assessment of the outcome and implications is perceived to capture major changes in the organisational structure, implications of the new disciplines under the WTO and explicit infirmities vis-à-vis the professed objectives.

The transmutation process of GATT from a trade accord in 1947 with 23 members into WTO as a membership organisation with 125 members (WTO 2001[a]) signing the Marrakesh Agreement had been remarkable for its mutually agreed multilateral framework and enforceable rules. The WTO Agreement contains a legal framework which binds together various trade pacts that had been negotiated under the auspices of GATT. The Final Act (1994) includes as many as thirteen new instruments constituting Multilateral Agreements on trade in goods, four Plurilateral Trade Agreements, an Agreement each on TRIPS and Services, an Understanding on Dispute Settlement, Trade Policy Review Mechanism, and numerous decisions and declarations adopted at the Marrakesh Ministerial Meeting.

The major systemic aspects of the WTO Agreement with legal implications are the following:

i. Safeguards:- The credibility of the Article XIX of GATT 1994 dealing with safeguards had been eroded over time on account of the practice of grey area measures such as VERs, minimum export price *etc.* The Agreement on Safeguards (AOS) succeeded in bringing about a measure of discipline to the grey area measures. The AOS provides protection to the domestic industry through safeguard measures in the form of duties and QRs when increased imports cause or threaten to cause serious injury (Gupta, 1998: xiii-xx; Shukla, 2000:27).

ii. Countervailing measures: - The Articles XVI and VI of GATT 1994 dealing with subsidies and countervailing measures provided only ambiguously stated obligations necessitating contracting parties to consult with others the possibility of limiting subsidisation if it was determined that subsidies had caused serious prejudice to the interests of any other contracting party (Gupta, 1998:xv). The Agreement on Subsidies and Countervailing Measures (ASCM) classified subsidies into prohibited, actionable and non-actionable and provided remedial measures to be undertaken in case of infringement of the laid down provisions by any member country. However, agricultural products are given special and differential treatment with regard to subsidies as provided for under the Agreement on Agriculture (AOA).

iii. Anti-dumping duties:- Imposition of anti-dumping duties provided in the Article VI of GATT 1994 has been the most preferred non-tariff measure to protect the interests of the domestic industry against cheaper imports. The Agreement on the Implementation of the Article VI of the GATT 1994 defined dumping, margin of dumping, injury *etc.* and streamlined the procedures for determination of dumping and injury and imposition of anti-dumping duties.

iv. Balance-of-payments measures:- The Understanding on Balance-of-Payments (BOP) diluted the provisions in the Articles XII and XXVIII.B of GATT by incorporating the "graduation principle" which requires the member countries to notify time-table to phase out QRs taken on BOP grounds. The new stipulations have effectively circumscribed the substantive rights enjoyed by the developing countries to impose QRs on BOP grounds with built-in flexibility.

v. Dispute settlement: - The provisions in the Articles XXII and XXIII of GATT 1994 dealing with consultation and nullification or impairment have been ineffective in settling the disputes among the contracting parties. The Understanding on Rules and Procedures Governing the Settlement of Disputes provides security and predictability to the multilateral trading system envisaged in the WTO Agreement. The General Council of WTO, which also acts as the Dispute Settlement Body has the authority to establish panels, adopt Appellate Body Reports, maintain surveillance of implementations of rulings and recommendations and authorise suspension of concessions and other obligations under the covered agreements.

For the proponents of liberal institutionalism, the new (WTO) environment is conducive for re-invigorated multilateralism. Although the paradigm shift in multilateralism ensconced in WTO propels an impulse towards universality and integration, operationally, it is dependent on deliberate policy choices by the individual governments. Therefore, such policy choices provide signals and guide the speed and direction of the globalisation process (Tussie, 1998: 85). The most important element of change in the paradigm shift has been the encroachment of the WTO system into "the soveriegn economic space" of the member countries; especially the developing countries (Dubey, 1996:11). In the process of change, WTO has transcended the traditional jurisdiction of GATT confined to cross-border transactions in tangible goods and the new regimes such as TRIMS, TRIPS, Services, Competition Policy and Government Procurement under its ambit of concern provide space for intrusion into the macro economic policies of member countries.

Chapter 5

PROGRESS, COMPLIANCE AND IMPLICATIONS

The analysis on the implications of the new arrangements under WTO during the post-Uruguay Round (PUR) is confined to the extent of tariff reductions and market access for industrial and agricultural products and an assessment of the implicit implications of GATS, TRIMS and TRIPS. As the key players in the new arrangements and based on the relative strength arising from the size of the market, the progress in market access and tariff reduction in industrial and agricultural products have to be logically focused on the developed countries.

Industry

The two important outcomes of the Uruguay Round negotiations were the substantial increase in the binding coverage (by fixing maximum tariff rates) and reduction in the industrial tariff rates. The binding coverage of developed countries increased from 78 to 99 per cent compared to 21 to 73 per cent in the case of developing countries (WTO, 2001[b]: 7). Similarly, the average trade-weighted tariff rate on all industrial products was reduced by 38 per cent compared to 34 per cent reduction in tariffs on imports from developing countries (UN, 1999: 154). Though the extent of tariff cuts exceeded those achieved in both the Kennedy and Tokyo Rounds, the net impact of the previous cuts was greater than the Uruguay Round tariff cuts due to the lower initial tariff rates (*ibid*).

It is true that there has been a substantial reduction in the tariff rates of developed countries for industrial products over time and the rates are lower compared to the developing countries in the PUR phase. The average tariff (excluding petroleum products) in developed countries has come down to 3.9 per cent for all industrial products (Katti, 2000:18). However, behind this apparently attractive scenario of higher tariff reductions and lower average tariff levels in the developed countries, there are certain formidable barriers such as tariff peaks, tariff escalation and specific tariffs which affect the products of export interest to developing countries. First of all, compared to the average industrial tariff of 3.9 per cent, the relevant rate for industrial products imported from developing countries is 4.5 per cent and the rate was the highest for textiles and clothing (11.5%) followed by leather, rubber, footwear and travel goods (6.6%) in the PUR phase (*ibid*). Therefore, in practice, the lower average tariff rates in the developed countries conceal substantial tariff peaks which effectively preclude the market access opportunities of the developing countries. Despite the GSP, developing countries face high tariffs in the US and Canada for products such as textiles, clothing and footwear as these products are excluded from the preferential treatment (UN, 1999:158). Tariff escalation refers to increase in the rate of tariff commensurate with the stages of value addition. In effect, tariff escalation is a major obstacle to promoting local processing and value addition in exporting countries. In spite of considerable reduction in tariff escalation during the Uruguay Round, it is a major impediment in the PUR phase restricting vertical diversification and value addition in certain sectors of the developing countries (UNCTAD,1999: 135-136). As the specific duties are confined to the physical unit of a product, they tend to conceal high *ad valorem* equivalents which offers higher levels of protection against low-cost imports from the developing countries. Sometimes, specific rates are combined with *ad valorem* rates either as a sum or as alternatives, which causes an even greater degree of confusion (UN, 1999: 160). The developed countries are imposing specific duties rather than *ad valorem* rates on a number of sensitive products. In practice, the imposition of specific duties by the developed countries conceals the higher applied rate either in the budget or in any international document (Mehta, 2000: 63). The panorama of protectionism for industrial products in the developed countries is basically concentrated in low-technology and resource based industries as well as high technology products which involve unskilled labour in the production of components (UNCTAD, 1999: IX). The attempts for market penetration into the developed country markets have been effectively blocked by employing new forms of protectionism within the framework of various WTO Agreements. The abuse of anti-dumping procedures, health and safety standards and even VERs are also continued to be applied (*ibid*). It is estimated that an extra US $ 700 billion of annual export earnings could be achieved in a relatively short-time by the developing countries in the case of a number of low-technology and resource based industries had there been adequate market access on the basis of comparative advantage (*ibid*).

Agriculture

Functionally, agriculture is a new discipline under WTO regime as till the Uruguay Round it was shelved for reasons mentioned earlier. Under WTO regime the Agreement on Agriculture (AOA) was basically evolved around three central issues: tariffication (market access), domestic support and export competition. Although the time bound programme fixed for tariffication and domestic support as per the Agreement is apparently in favour of the developing countries, agricultural sector is highly protected in the developed countries (Gulati and Narayanan, 2000: 101-103; Chand and Philip, 2001: 3014-3016; Rao, 2001: 3455; UNCTAD, 1999: 136). The AOA is basically a pact between the US and EU, who rigged the rules to suit themselves (Madeley, 2000:10). The developed countries have been successful in effectively utilising the provisions in the AOA so as to include a significant share of the support programmes under the exempted categories from reduction commitments which are popularly known as the green box and blue box measures[9]. A recent study by the WTO secretariat which covered 68 countries showed that the US, Japan and EU together accounted for 82.90 per cent of the total subsidy disbursements under all heads during 1995. The relative shares of this bloc in green box and blue box support measures were 79.30and 96.70 per cent respectively (WTO, 2001[b]: 84-85). Moreover, the reduction commitments in the non-exempt category of aggregate measure of support (AMS) were also to the advantage of the developed countries as the committed levels of support in the baseline period were higher compared to the developing countries. Therefore, although the reduction commitments were higher for the developed countries (20%) if it is above the de-minimus level, the effective rates of AMS are also higher in these countries. The AMS varied from 4.09 per cent in the US to 32.89 in EC in the PUR phase. (Chand and Philip, 2001: 3014). But the total domestic support to agriculture including AMS, green box, blue box and special and differential support as a percentage of GDP agriculture was 58.19 per cent in EU, 56.78 per cent in Japan and 37.63 per cent in the US during the PUR phase (*ibid*: 3015). Similarly, the PSE as a proportion of GDP agriculture was estimated to be 34 per cent in OECD countries even during 2000 (Thamarajakshi, 2002:24).

In effect, the issues related to market access, domestic support and export competition in international trade in agriculture loom large in the PUR phase due to the creation of new forms of trade barriers as a by-product of tariffication in the Uruguay Round and high rates of protection (Tangermann, 2001: 201). Broadly, the issues revolve around very high applied rates of tariffs resulted mainly from the conversion of former NTBs into bound tariffs in sensitive areas, prevalence of high levels of export subsidy in the developed countries and the explicit exemption of controversial domestic support programmes even after substantial reforms and trade liberalisation. The extent of protection could not be reversed to the desired extent even after the decisions on the reforms to EU's CAP in 1992 and 1999 as well as the FAIR Act adopted by the US in 1996 as in many cases the old forms of price support and export subsidies have been replaced by direct government payments (*ibid*: 210-211). The consequences of the emerging scenario are illustrated by UNCTAD's Trade and Development Report (1999). The report highlights the trade-distorting effects of the support measures compatible with WTO regime. It was emphasised that in spite of highest cost of production, European producers of dairy products control about 50 per cent share of the world market. The average annual level of agricultural support in OECD countries was US $ 350 billion compared to US $ 170 billion total agricultural export earnings of developing countries during the period 1996-98 (UNCTAD, 1999: 136). Though the prices received by the OECD farmers were on an average 43 per cent higher than the world market prices, the difference is too blatant in the case of products which the emerging economies are best equipped to export (The Economist, 2001: 75-76; Thamarajakshi, 2002: 24). The futility of the well professed and publicised level playing field metaphor is abundantly clear from the complex issues encompassing the Third World agriculture in obtaining market access, providing domestic support and competing in the export markets.

Services

Among the new disciplines under the WTO Agreement, the potential implications of the General Agreement on Trade in Services (GATS), TRIMS and TRIPS on the developing countries are more important in the process of national decision making process, investment and trade. The main features of GATS include the definition of the four modes in which services trade takes place: (i) the cross-border movement of services; (ii) the movement of consumers to the country of importation; (iii) the establishment of a commercial presence in the country where the services are to be provided; and (iv) the presence of natural persons in another country, in order to provide the service there. The GATS consists of two main elements: a framework of generally applicable rules and liberalisation commitments specific to the service sectors and sub-service sectors listed in each country's schedules pertaining to specific commitments. In the case of GATS, though the formal position of the developing countries was articulated by "the group of ten" spearheaded by India and Brazil, the compromise reached with some modifications did not seriously affect basic contents and orientation of the original proposal (Shukla, 2000:17). There were at least three important reasons for the initiatives and subsequent pressure by the developed countries to include trade in services under the framework of a multilateral agreement during the Uruguay Round negotiations: (i) the growing share of services sector in global gross domestic product; (ii) a relatively higher rate of growth of services in international trade vis-à-vis merchandise trade; and (iii) the gradual loss of competitiveness of the US and other developed countries in manufactured goods in relation to the competitive edge in commercial services such as banking, insurance, communications, transport, computers, schools, hospitals, groceries *etc*[10]. In the PUR phase, considerable progress has been made on several issues such as agreements on telecommunications and financial services in 1997. Progress has also been made in gathering information on national procurement regimes. However, on movement of persons, the progress has been rather tardy (UN, 1999: 78).

Although services is defined in a comprehensive sense to cover any service in any sector except services supplied in the exercise of governmental authority, the operational level importance of GATS is constrained by two major elements in the Agreement; (i) the development orientation; and (ii) the respect for policy objectives underlying national laws. While the development orientation contained in GATS is laudable, the discrimination meted out to labour *vis-à-vis* capital have serious implications for the developing countries. The asymmetries in the treatment of labour and capital are evident from the exclusion of relevant provisions in the Agreement to address measures affecting the entry of natural persons seeking access to employment, citizenship or residence on a permanent basis (Dasgupta, 1998: 166; Shukla, 2000: 31). In effect, GATS is biased towards a relatively free movement of capital and technology intensive services from developed countries in accessing markets in the developing countries in areas such as banking, insurance, telecommunications and civil aviation whereas the scope for the mobility of semi-skilled and skilled surplus labour from the developing countries has been pre-empted.

TRIMS

The genesis of the Agreement on TRIMS in the Uruguay Round had been basically rooted in the debt crisis of the developing countries in the 1980s and the subsequent imposition of SAPs by the IMF- World Bank combine as a development strategy in which unrestricted inflow of foreign direct investment was a critical element. Therefore, functionally, the Agreement on TRIMS reflects a major departure from the subordination of the activities of foreign enterprises to national interests and sovereignty in the 1960s and 1970s in the host countries. TRIMS Agreement requires member countries to phase out performance criteria such as local content requirements and foreign exchange neutrality on foreign enterprises. However, the Agreement allows exemptions on account of balance of payment difficulties, promoting development objectives, preserving national security and health (Dasgupta, 1998: 167). In spite of the apparent concessions given to the developing countries, the asymmetries in TRIMS Agreement at the operational level are exposed by the result of a recent study (Kumar, 2001: 3152-53). The study highlighted the insistence of the 'Rules of Origin' by the developed countries utilising the RTA exceptions so as to increase the domestic value addition. Accordingly, the NAFTA and EU rules of origin require that a substantial portion of inputs originate within the region for automobiles, telecommunications, computers, textiles and apparel, colour televisions, computers *etc*: (ibid: 3152). In effect, though the practice is compatible with the WTO Agreement under section XXIV of GATT, it is an explicit violation of one of the cardinal principles stipulating the phase-out of local content requirements. An equally important asymmetry in the Agreement is its inherent deficiencies in regulating the huge investment incentives given by the developed countries to attract FDI inflows[11]. The gravity of the observed distortions in the investment patterns assumes importance in the context of relevant provisions of the TRIMS Agreement discriminating host governments not subscribed to any powerful RTAs. While the Agreement requires phasing out of restrictions on exports or imports imposed by the host governments, the MNCs are relatively free to impose restrictions on their foreign affiliates/subsidiaries by virtue of technology transfer agreements and other sources of dependence.

TRIPS

Till the Uruguay Round negotiations, IPRs (Intellectual Property Rights) was never considered an aspect of multilateral trade regime and developing countries vehemently opposed the inclusion of IPRs in the WTO Agreement. The contentions of the developing countries were mainly based on three points: (i) IPRs is not a trade issue to be covered by GATT negotiations; (ii) the patent rights and obligations have to be supervised by the World Intellectual Property Organisation (WIPO); and (iii) an Agreement on IPRs under the auspices of GATT would create massive monopoly rent by erecting barriers to the dissemination of knowledge. However, the Agreement on TRIPS, mainly based on the calibrated agenda of the US based MNCs, covers industrial patents, copyrights, geographical indications, plant varieties, micro organisms, bio-technological processes, layout designs of integrated circuits and trade secrets[12]. The justifications highlighted by proponents of the TRIPS regime were the following points: (i) IPRs as an incentive and reward for innovation; (ii) free flow of knowledge and the resultant increase in trade; and (iii) the stimuli for research would be beneficial to both firms and consumers in the developing countries in the long run. However, at the operational level, the euphoria generated on the potential gains marks certain grave infirmities of the Agreement on TRIPS. The major contentious issues from the angle of the developing countries were: (i) universalisation of IPRs protection and extension of the period of patent rights; (ii) termination of the distinction between product and process patents; (iii) reversal of the burden of proof on the defendant; and (iv) issues related to patent rights on seed varieties and biodiversity.

The potential implications of the extension of the period of patent rights to 20 years would be essentially two fold: (i) the longer period of patent rights would enable higher economic rent for the patented technologies; and (ii) it virtually blocks the opportunities of the developing countries to resort to 'reverse engineering' techniques for evolving indigenous technologies using comparatively cheaper material inputs. The serious implications of the restrictive conditions pertaining to extension of period of the rights and termination of the distinction between product and process patents on the public health care systems and pharmaceutical industry have been widely debated (UNCTAD, 1999: 42, Shiva, 2001: 86-93, Mishra, 2001: 4464-65, Dhar, 2001: 4343). In spite of the apparent concessional grace period given to the developing countries *vis-à-vis* the developed countries, the cumulative effect of the first three contentious issues would amount to technological protectionism by the MNCs so as to perpetuate monopoly economic rents. The serious issues encompassing patent rights on seeds and biodiversity have been considered as attempts to tilt the balance in favour of the MNCs *vis-à-vis* the developing countries (Dubey, 1996: 37-43). The protection given in the Agreement to breeders' rights in the case of plant varieties and MNCs for exploiting biodiversity in the developing countries under the regime of IPRs are the serious issues. In effect, these are new forms of intrusion into the socio-culturally transmitted traditional knowledge over generations in the developing countries. The controversial Indian experiences of bio-piracy on neem and turmeric underline the gravity of the problem from the developing countries' perspective (Shiva, 2001: 57-68). In an operational sense, the underlying approach was to: strengthen existing rights, create a right where none exists, establish norms, standards and legal procedures and enforce model law through the mechanism of cross-retaliation (Shukla, 2000: 51)

To summarise, the implications of old and new disciplines contained in the WTO Agreement though claimed to be a paradigm shift in multilateral trade regime, it faltered on the basic logical premise of treating unequals equally. The myths and mirages created on the central pillar of the 'level playing field' metaphor have been exposing black holes of global capitalism during the PUR phase. It is true that while the new phase of multilateral trade under the WTO regime has been integrating economy, culture and governance, it has also been fragmenting societies (UNDP, 1999: 43- 44). The growing digital divide among the member countries and the unabated polemical positions on the controversial issues such as agriculture, investment, intellectual property rights and services during the PUR phase underline the fragility of the framework of the Agreement in ushering a trade oriented growth from the angle of the less privileged countries. The agenda and outcome of the four Ministerial Conferences concluded after the Marrakesh meeting echoed the concerns of highly polarised groups of member countries for modifications, concessions and obligations too!

Post-Marrakesh Ministerial Conferences: A Postscript

The Article IV of the WTO Agreement stipulates that a Ministerial Conference composed of trade and commerce ministers of the member countries shall meet at least once in every two years. In these biennial conferences, decisions will be taken on all matters under any of the existing multilateral trade agreements and new agreements, if any. Accordingly, four Ministerial Conferences were held at Singapore (December 9-13, 1996), Geneva (May 18-20, 1998), Seattle (December 1-3, 1999) and Doha (9-14, November, 2001) after the Marrakesh conference in April, 1995. Though the scope, agenda, and outcome of the four Ministerial Conferences varied, the Singapore and Doha Conferences assume importance for different reasons.

The Singapore Conference set the tone and tenor of the future priorities of the contentious groups to be brought under the reinvigorated multilateral trading system. The Singapore Conference was focused on four major issues, *viz.*, (i) assessment of the implementation of commitments under the WTO

Agreements and decisions; (ii) review of the ongoing negotiations and work programme; (iii) examination of developments in world trade; and (iv) address the challenges of an evolving world economy. The Singapore Ministerial Declaration negotiated by the trade ministers of 128 member countries consisted of 23 aspects (WTO, 1996:1-13). The highlights of the Declaration included six contentious issues with serious implications on the sovereign decision making process in the member countries and the mandate of the new multilateral trading arrangements under the WTO. Among the six issues, four were new proposals related to core labour standards, investment, competition policy and government procurement whereas the two remaining were the perennial problem areas of implementation issues related to agriculture and textiles and clothing.

A highly polarised perception on the sensitive issue of linking core labour standards to trade did not lead to any consensus[13]. The Declaration was confined to a reaffirmation of the International Labour Organisation (ILO) to deal with the issue and a commitment to continue the existing collaboration between the WTO and ILO secretariats (*ibid).* The Declaration on issues related to investment and competition policy was also reflective of a virtual absence of any concrete proposals other than the establishment of two working groups to study the nuances and intricacies of the issues with an overt undertaking to draw upon the work done by the UNCTAD. As in the case of investment and competition policy, the issue of transparency in government procurement was also declared to be studied by a working group. However, the major difference was that there was a clear statement on using the results of the study for inclusion in an appropriate agreement. In sharp contrast to the focus given to the four new issues, the Declarations on the two old problem areas, *viz.,* textiles and clothing and agriculture, were notable for the absence of relevant measures for overcoming the barriers for meaningful implementation.

The highlights of the Second Ministerial Declaration of Geneva coinciding with the commemoration of the 50th anniversary of the multilateral trading system included: (i) an acknowledgement of the successful conclusion of negotiations on basic telecommunications, financial services and the implementation of the Information Technology Agreement; (ii) a renewed commitment to achieve progressive liberalisation of trade in goods and services; (iii) concerns over the crisis in financial markets of a number of member countries; and (iv) providing guidelines for the implementation of the existing agreements/decisions and the work programme initiated at Singapore for the benefit of the General Council (WTO, 1998: 1-4).

Though the Seattle Ministerial Conference was scheduled to be held from November 30 to December 3, 1999, the deliberations in the first day were interrupted by the protest rally organised by various groups. The Seattle Conference is also known for the explicit disagreements among the 135 member countries on the built-in-agenda and the Singapore issues. The declarations of the five Ministerial Working Groups were on agriculture, implementation and rules, market access, Singapore agenda and other issues and systemic issues (Bhattacharyya, 2000[b]: 7). Though no conclusive consensus was achieved, the deliberations of the agriculture group revolved around six major issues, *viz.*, (i) integrating agriculture into the mainstream of WTO rules; (ii) reduction/elimination of export subsidies; (iii) market access; (iv) domestic support; (v) non-trade concerns and multi-functionality; and (vi) developing country issues (WTO, 1999:1-8). In the absence of any discernible convergence of views on the issues, the text was considered only a basis for launching new negotiations. The highlights of the Declaration on the implementation and rules were confined to the operational level constraints in implementing the Agreements on TRIPS, TRIMS, Customs Valuation and objections to certain provisions of Anti-dumping, Subsidies and Textiles Agreements. The outcome on the Singapore agenda and other issues exposed the lingering divergent views, especially; investment, competition policy, government procurement and trade facilitation. The basic issue deliberated in the Working Group on Market Access was the methodology of tariff cutting. The need for a common harmonised approach was highlighted instead of the request-offer basis of the Uruguay Round practice. The discussions on systemic issues centred on de-restriction of documents, WTO organisational structure to improve transparency, decision making and information flows. However, issues like linking labour standards to trade and other issues in the agenda lacked consensus. In fact, the Seattle Ministerial Conference was known more for its failure to agree on a well-defined agenda for future trade negotiations. Prima facie, the failure of the Third Ministerial Conference is rooted in internal dissension and public opposition. In spite of the highly published hue and cry on the outcome, the most sensitive issue which marked the failure of the Seattle Conference was the attempt to link the possible use of trade sanctions to the non-application of ILOs core labour standards (Laird, 2001: 458).

Against the backdrop of the fiasco at Seattle, the Doha Ministerial Declaration can be considered a landmark in the post-Marrakesh Ministerial Conferences due to a relatively more comprehensive and balanced outcome from the angle of the developing countries. The highlights of the Declaration included: (i) the establishment of a Trade Negotiating Committee to supervise the new round negotiations scheduled to be concluded by January, 2005; (ii) inclusion of the four Singapore items (investment, competition policy, government procurement and trade facilitation) in the negotiating agenda of the fifth Ministerial Conference to be held in 2003 compared to the immediate attention required to be given to the issues related to trade and environment; (iii) sidelining the request by the developing countries for the removal of the restrictive provisions in the Agreements on agriculture and textiles; (iv) flexibility given to the TRIPS and public health; (v) provision for negotiations on issues relating to the extension of geographical indications and traditional knowledge other than wine and spirits; (vi) bringing in the disciplines under Agreements on Anti-dumping measures and Subsidies and Countervailing Measures for clarification and improvement; and (vii) keeping the core labour standards out of the purview of WTO (Dubey, 2001:10; Bagchi, 2002: 4782-83; Dhar, 2001: 4343; WTO, 2001[c]: 1-10).

Although the Doha Declaration does not confirm to the articulated pressure and expectations of the developing countries spearheaded by India, it was notable for a few remarkable gains, especially the Declaration on the TRIPS Agreement and public health. The Declaration provided adequate flexibility in the use of the Articles 8 and 31 of the TRIPS Agreement by which compulsory licenses can be given to manufacture drugs domestically under conditions of national emergency or extreme urgency. Functionally, the

Declaration enables the developing countries to override the corporate patents to provide cheap drugs to deal with AIDS, tuberculosis, malaria and other epidemics. Therefore, the potential threats of patent monopoly and the resultant monopoly prices of drugs for the epidemics have been effectively contained in the Declaration. From the Indian perspective, the decision on the negotiations for extension of protection to geographical indications and traditional knowledge provides adequate elbowroom to protect the controversial issues related to basmati rice, Darjeeling tea, neem, turmeric *etc.* The decision for review/renegotiation on certain provisions of anti-dumping measures and subsidies and countervailing measures is also remarkable for the allowance given to the growing importance of developing country concerns. The Declaration has also ensured the exemption for integrated textile products from anti-dumping actions and the negotiation on textile tariff peaks. Conversely, the proposal for the removal of the exemption given to the controversial 'green box' and 'blue box' subsidies was ignored. Though the developing countries were successful in postponing the four Singapore issues, it had to compromise on the proposal for immediate negotiations on issues related to trade and environment. Nonetheless, from a long-term perspective, the major achievement of the developing countries in the Doha Conference is not only the opening up of some important WTO Agreements for further review but also to consider negotiations on outstanding implementation issues as an integral part of new round of trade negotiations.

NOTES

1. The concept of New Political Economy (NPE) has been defined as a: (i) neo-classical economic theory of politics; (ii) political cousin of structural adjustment programme; (iii) cocktail of the Marxist concept of the State without its class analysis; and (iv) fudged understanding of the political world and its processes by ignorant economists. (For a detailed critical assessment, see, Dasgupta, 1998:19)

2. The circumstances that lead to rent seeking behaviour arise from barriers to entry generally in the form of restrictions on trade and industry. The huge unproductive surplus appropriated with governmental concurrence is distinguished from the creation of economic rent which is considered to be a positive feature by the NPE theorists.

3. Sales of foreign affiliates of the TNCs worldwide during 1999 was US $14 trillion (compared to US $ 3 trillion in 1980) are now nearly twice as high as global exports, and the gross product associated with international production is about one-tenth of global GDP (compared to one twentieth in 1982). The ratio of world FDI inflows to global gross domestic capital formation is 14 per cent (compared to 2 per cent in 1980) and the ratio of world FDI stock to world GDP increased from 5 per cent to 16 per cent during the same period (UNCTAD, 2000:XV).

4. In capitalist history, technological revolutions have been chronologically classified into three phases: The first phase is the era of British domination coinciding with large scale coal production, use of steam power and introduction of railways. The second phase corresponds to the technological revolution which took place in the US with oil and electricity becoming the chief sources of power and the importance attained by automobile and chemical industries. The third phase of technological revolution, based on electronics, teleinformatics and biochemistry started during the Second World War and gathered momentum since the 1980s (Kurien, 1994:60).

5. The UNCTAD definition of the index consists of three ratios: foreign assets to total assets, foreign sales to total sales and foreign employment to total employment (UNCTAD, 2000:78).

6. For instance, in 1999, world's top ten automobile TNCs accounted for 80 per cent of the production compared to 69 per cent in 1996. Similarly, the share of top ten TNCs in world sales of pharmaceuticals was 46 per cent in 1999 compared to 33 percent in 1995 (UNCTAD 2000: 128-129).

7. In the post-war phase, two distinct phases of trade flows had been identified, *viz.*, (i) inter-industry trade in manufactures, based on differences in factor endowments, labour productivity or technological leads and lags during the period 1950-1970; and (ii) intra-industry trade in manufactures, based on scale economies and product differentiation since the 1970s. The hallmark of the current phase of globalisation is that the structure of international trade is dominated by intra-firm trade across national boundaries but between affiliates of the same firm (Nayyar, 1997:22).

8. The IMF was designed to assist in short-term balance of payments difficulties while the World Bank was responsible for long-term micro-level project based lending.

9. For a detailed description of the composition of green box and blue box measures see chapter 2 in volume 2 of this study titled "WTO and Natural Rubber Sector in India".

10. Global exports in commercial services are estimated to have gone up to US $1.4 trillion in 2000. The US commercial services accounted for 20 per cent of world services. In 1999, the relative share of services' sector in the Europe- EMU GDP was 71 per cent and its share in world GDP was 63 per cent (The Hindu, 2001:20).

11. For instance, subsidy given to MNCs per job generated is estimated to vary from US $ 48,000 in UK to US $ 34,00,000 in Germany in the PUR Phase (for details see, Kumar, 2001: 3153).

12. Though the TRIPS Agreement incorporates most of the provisions of the Paris, Berene, Rome and Washington Conventions under the auspices of WIPO, it adds principles and disciplines of the international trading system (UN, 1999: 164-165). The final outcome of the negotiations reflected the tussle primarily between the governments of developing countries and the US based MNCs engaged in pharmaceutical, entertainment and informatics industries. However, the agenda of the latter prevailed. The TRIPS Agreement is considered a notable deviation from the draft Code of Conduct on the Transfer of Technology negotiated in the UNCTAD and draft Code of Conduct for TNCs negotiated in the United Nations, which were designed to protect the national development objectives of the host country (Dubey, 1996:22)

13. The interface between the developed and developing countries on the issue was centred on the trade distorting low-wage exports from developing countries *vis-à-vis* the comparative advantage of lower wages.

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