CHAPTER - VI

INDIA'S ECONOMIC SECURITY POLICY:
GATT AND WTO
Introduction

With the end of the Cold War, the extension of the market economy into nearly all of the formerly communist world, and the intensification of global finance, investment, and production, the case for a wider security agenda has become stronger. The demise of the Cold War has, at least for the time being reduced, though not eliminated, military rivalries among the great powers. Security concerns are more about the consequences of how the open international system operates—a set of issues that affects the strong actors as much as it does the weaker ones. This development is most obvious in the case of the international economy. The rise of economic security is not just a throwback to classical mercantilism. It is a reaction against the various dangers of global liberalization—the risk of becoming a loser; the general hazard of system instability, especially financial; and the dark side of trade in the form of criminal activities in drugs, weapons, and other banned products (e.g., CFCs). The risk is also about the crossover effects of the global economy on environmental issues, domestic political autonomy and stability and military self-reliance. In the post-Cold War world, therefore, there is a need to widen the security agenda beyond the traditional military political understanding of security.

In this context, security is about survival. It is when an issue is presented as posing an existential threat to a designated referent object (traditionally, but not necessarily, the state, incorporating government, territory, and society), the special nature of security threats justifies the use of extraordinary measures to handle them.
The invocation of security has been the key to legitimizing the use of force, but more generally it has opened the way for the state to mobilize, or to take special powers, to handle existential threats. Existential threat can only be understood in relation to the particular character of the referent object in question. We are not dealing here with a universal standard based in some sense on what threatens individual human life. The essential quality of existence will vary greatly across different sectors and levels of analysis; therefore, so will the nature of existential threats.

In the economic sector, the referent objects and existential threats are more difficult to pin down. Firms are most commonly existentially threatened by bankruptcy and sometimes by changes to laws that make them illegal or unviable (as after communist revolutions). But in the market economy, firms are, with few exceptions, expected to come and go, and only rarely do they try to scrutinize their own survival. National economies have a greater claim to the right of survival, but rarely will a threat to that survival (national bankruptcy or an inability to provide for the basic needs of the population) actually arise apart from wider security contexts, such as war. Unless the survival of the population is in question, the huge range of the national economy doing better or doing worse cannot be seen as existentially threatening. As in the political sector, supranational referent objects from specific regimes to the global market itself can be existentially threatened by factors that might undermine the rules, norms, and institutions that constitute them. What constitutes an existential economic threat depends upon the referent object. For individuals, economic security can be understood most clearly in
terms of basic human needs. Individuals live or die (or in the case of malnutrition in children, have their development as human beings compromised) according to the provision of the basic necessities for sustaining human life: adequate food, water, clothing, shelter, and education. So-called food security, and calls to eradicate mass starvation are clearly within the realm of basic human needs, as is disaster relief. But beyond these basics, it is not clear that the individual can legitimately be sensitized in the economic sector. Issues of relative levels of welfare, of differential access to more exotic resources, and even of unemployment may be enormously important to individuals and indeed to societies, but in economic terms they are not about survival. Lacking an existential quality, they remain economic or political (or possibly societal or environmental) issues and not security ones. The logic of economic security for states is similar to that for individuals except that in principle (although rarely in practice) states can form entirely self-contained economic systems. There is, in effect, a state equivalent of basic human needs. Unless a state is self-reliant in the resources required to feed its population and industry, it needs access to outside supplies. If that need is threatened, the national economy can be clearly and legitimately securitized. From this perspective, economic security concerns, access to resources, finance and markets necessary to sustain acceptable levels of welfare and state power. However, economic security is now largely shaped on the basis of liberal international political economy, with the focus first on hegemons and then on regimes and institutions which attempt to implement this agenda in the areas of trade, production, and finance. The particular
characteristics of liberal ascendance mean the contemporary discourse on economic security centres on concern about instability and inequality. Concern about instability raises questions about the relative economic decline of the United States as hegemon and about the domestic and international management problems arising from the increasing integration and liberalization of the world economy. Concern about inequality raises questions domestically about the role of the state and internationally about the disadvantaged economic position of most Third World states.

The relative U.S. decline was an inevitable result of the exaggerated position of global dominance it held in 1944. This position was challenged by both Europe and Japan as they recovered from World War II and by some newly decolonized countries that were finding effective paths to modernization. By the 1970s, some in the United States were already beginning to feel threatened by dependence on imported oil, trade deficits, and pressure on the dollar. The inclination to securitize this process arose in part from sheer U.S. unfamiliarity with the pains of economic interdependence but mostly from concerns about hegemonic declines and the effect of a weaker United States on the global order.

Alongside U.S. decline was the growing integration and liberalization of the global economy, first in trade and, beginning in the 1970s, also in finance. This condition had two effects. First, it meant national economies became progressively more exposed to competition from other producers in a global market and to ever more powerful transnational corporations and financial markets. The effects of the
global economy in promoting unemployment and de-industrialization came to be seen as a threat to both welfare and sovereignty by those who were not doing well within it. Some also saw the global economy as a threat to the state itself or at least to much of the traditional conception of what the state was supposed to do. Second, this condition meant all national economies that had become adapted to an open global trading and financial system were dependent upon its continued stability and smooth functioning. All of these economies were therefore, threatened by the possibility of systematic crises that might disrupt the worldwide flows of goods and capital.

The particular plight of Third World Countries arose from the dependent economic position as suppliers of primary goods many had inherited from their colonial period. These countries found themselves locked into disadvantageous terms of trade that some argued prevented their economic and socio-political development. Viewed from another perspective, these countries found themselves politically independent but heavily penetrated by outside market and political interests and burdened with societies and leaderships whose traditions, skills, resources, and internal divisions often provided poor foundations for the development of a modern political economy. Thus the present condition of the developing countries is not different from what it was twenty-five years ago when they demanded for New International Economic Order (NIEO).
The Rise fall of the New International Economic Order

This represents the price paid by the Third World countries for the launch & conclusion of trade liberalization. After the initial flush of independence & hopes that with independence, economic prosperity would be automatic, disillusionment soon set in. The post-war economic institutions, so assiduously planned by the developed market economies, were chiefly meant to favour speedy reconstruction of war ravaged economies of Europe and their continued prosperity. The vital interests of the developing countries, most of who were still colonies in the immediate post-war years, were largely ignored in the process. This was also observed in the diminishing generosity of the rich, especially the United States, in terms of their net aid to the underdeveloped countries. Secondly, in a sense, the post war national liberation reflected the inadequacy of the older order. Since the developmental strategies were aimed at maintaining neocolonialism, the emergent third world countries increasingly came to demand for a new international economic order which would create opportunities for their growth and development. In this they were joined by the socialist countries which sought a basic change in the entire system of the world division of labour.

The present international economic system is essentially a product of the 1940s and represents an attempt by the dominant powers of the time, pre-eminently the United States, to achieve the following two major objectives:
First, the architects of the present system wanted to establish a world monetary and trading system conducive to a relatively free flow of commodities and private capital. Accordingly the International Monetary Fund (IMF) was launched at Bretton Woods in 1944 and charged with the responsibility for maintaining order in foreign exchange markets (by requiring members to get the prior approval of the IMF to variations in exchange rates beyond certain limits) and providing short-term loans to help member countries overcome balance of payments difficulties. The General Agreement on Tariffs and Trade (GATT) was charged with promoting free trade by generally proscribing import quotas and encouraging the reduction in tariffs through a series of bargaining rounds.

The second objective was to facilitate the post-war reconstruction of Europe and contribute to the finance of development in the newly independent, underdeveloped countries. In a way this was done by creating an International Bank for Reconstruction and Development (IBRD), at the same time and place as the IMF, to provide long-term loans on favorable conditions to finance agreed projects. Yet another way was the pursuance of such bilateral aid programmes as the European Recovery Programme (1948-52), supported by the Marshall Plan.

The ideology of this post-war system is capitalist: free enterprise, freer trade, relatively free movement of currencies across the exchanges. The underlying purpose of the market to determine the pattern of production, the location of economic activity and the distribution of income on a world wide scale.
Most of the developing countries, which were colonies at that time, did not participate in the Bretton Woods negotiations. Such participants as India and the Latin American countries lacked the necessary experience and expertise needed in handling developmental problems. The newly liberated countries in the 1950s and 1960s, by and large, felt that they needed a modicum of political independence to put their national economies in order. The newly found independence, coupled with full-fledged membership of the international community, would help them in improving their lot. Various international and regional development efforts launched from time to time were, therefore, looked with interest.

However, by the end of the 1960s the high hopes gave way to increasing frustration. By the end of that decade, it became clear that the economic situation of most developing countries had worsened in comparison to that of the developed market economies. It appeared that the mechanisms of the international economic system had failed to deliver what they had promised. As an UNCTAD report put it:

"The fact that the developing countries did not share adequately in the prosperity of the developed countries when the latter were experiencing remarkably rapid expansion indicates the existence of basic weaknesses in the mechanisms which link the economies of the two groups of countries......The weakness of this structure, the inadequacy of the mechanisms by which growth in the developed centers is transmitted to the Third World, are manifested in each of the major areas of economic relations between developed and developing countries—in the trade in commodities and in
manufactures, in the transfer of technology and in the provision of financial resources through the international monetary and financial system”

Significantly, this recognition came at a time when it had become increasingly clear that political independence is of no avail unless complemented by a minimum of economic independence—unless the structures of economic dependence that characterise the relationship between developing and developed countries are transformed into structures of interdependence. Economic development henceforth came to be viewed with greater urgency.

Thus, a number of developments converged at the beginning of the 1970s: the political independence of the developing countries; the full recognition of the importance of economic development and the disappointments with the development efforts of the 1960s; and doubts about the propriety of the prevailing development model. It was increasingly felt that the edifice founded by the developed marked economies is not helpful for the developing countries and hence the need for establishing an international framework conducive to development.

As a result, sixth special session of the UN General Assembly was called to take place from 9 April to 2 May 1974. It adopted the ‘Declaration on the Establishment of a New International Economic Order’ and the ‘Programme of Action on the Establishment of a New International Economic Order’. The programme for the NIEO is an effort to outline the changes required in the main areas of North-South interaction—trade and commodities, money and finance,
science and technology, industrialization and transnational enterprises—to make the international economic system maximally conductive to the economic development of the Third World. While the Nonaligned countries played a key role in making the development task a priority item on the international agenda, the Group of 77 (inside UNCTAD) is the principal organ of the Third World through which the concrete actions required for the establishment of the NIEO are negotiated within the framework of the UN system. Briefly, the demand calls for a readjustment of the inequalities and imbalances that characterize the present day relationship between the developed and the developing countries. It recognizes that an unequal and unjust relationship has emerged over the last two hundred years and that in the wake of the emergence of some one hundred independent states since the end of World War II, there is now a justified and necessary case for the redressing of these inequalities. It underlines the fact that the international community is economically and politically interdependent and that it is in the interest of both the developed and the developing countries to restructure the existing world order.

Until the mid-1970s, the South's major effort—through appeals, declaratory statements, and political pressure through resolutions in the UN General Assembly to UNCTAD and elsewhere—was to seek benefits through minor reforms of the international economic systems and their rules. In most cases, this amounted to pleas for special treatment and exceptions favoring the Third World. Some progress was achieved such as in Generalized System of Preferences (GPS), Overseas Development Aid (ODA) targets, and multilateral
concessional financing etc. But there were no fundamental challenges to the system. By the early 1970s, the Third World's reformist approach' gave way to the restructuring phase. The countries of the South had begun to realize that however hard they strove, and whatever the 'special treatment' given to them in principle, they could not develop without changing the asymmetry in international economic relations and systems. The breakdown of the Bretton Woods institutions, and the 1973/74 OPEC action (and the vista it seemed to open of raw material producers joining hands to regain control over their terms of trade), provided the overall setting for the Sixth and Seventh Special Sessions of the UN General Assembly, and the adoption of the NIEO Declaration and Programme of action, and the Charter of Rights and Duties of States.

The NIEO decisions and programmes led to the Paris negotiations at the CIEC ended without results. Beyond declarations and programmes, largely ignored by governments, the sectoral conferences too led nowhere-except perhaps in spawning institutional rivalries and helping the North’s “forum game”. The NIEO issues went back to the UN General Assembly and led to the establishment of the Committee of the Whole (COW), whose attempts to pursue the NIEO Programme and North-South dialogue for restructuring also ended in failure. IMF/IBRD & GATT ignored NIEO. The aim of transfer of 1% GNP of developed countries to developing countries stipulated in the United Nations developmental decades was never fulfilled.
Decline of U.S. Economic Dominance

The postwar economic system was postulated on US power and lead in technology and productivity, the US vision of the world based on self-confidence, and a certain homogeneity of industrial and economic culture and similar levels of development. However, after the collapse of the Bretton Woods system, and the subsequent political and economic upheavals of the 1970s, it is perhaps true to say that the US power had been relatively reduced, in military terms through the Soviet emergence as a nuclear and space power and in Economic terms by the new centers in Europe and Japan.

When the Reagan administration came into the White House, there was an effort to reassert power, but on the basis of waving the flag and resort to some saber-rattling. In the economic arena, there was an effort at blind pursuit of national interest in relations with other powers, in the Industrial and Third World-with confrontation and threats often replacing the post-war efforts at cooperation and consensus. To make up for the lack of vision and a well-thought out programme for reforms for a new system, there was an attempt to propagate globally the ideology of the domestic radical right (that was not always practiced at home), and talk of pushing back the East and the South too. Instead of the NIEO agenda (some of which could be faulted as mere sloganeering) for North-South negotiations and restructuring, the US sought to formulate its own agenda in the political and economic fields. Some of the issues for this agenda had been under discussion within the US establishment for quite a while, and certainly from the 1970s. Ranging from the move in the mid-60s
for the nuclear non-proliferation treaty (which at its core was aimed at preventing the rise of new military powers that would threaten the two super-powers and the North; and with China, which had based its way into the nuclear-weapons field, reluctantly admitted as a member), the gradual shaping up of the so-called ‘terrorism’ agenda, the ‘drugs’ issue (where the South is being asked to control supplies) to the idea of a GATT for investment\textsuperscript{18}.

The US moves, from 1981, have to be seen against this background. In the economic arena, after the ‘adjustment’ forced on the Third World via the IMF and World Bank, the US sought to restructure the international economy and economic relations on the basis of its own agenda. While the agenda involved also US relations with Europe and Japan, the near equivalence of economic power of the three, and mutual conflicts among them, also resulted in a situation of commonality vis-à-vis the new rising competition form the Third World, and the need to reshape the world from the worldview of the North\textsuperscript{19}.

**Why the North Choose GATT to Reshape World Economy**

In order to implement radical changes in the framework of world trade and economy, the Northern countries had to find a ‘vehicle’. They decided that the vehicle would be GATT. The choice of GATT for launching a new round of ‘trade’ negotiations, but with new themes and agenda have to be seen in this perspective. The choice was not by accident.
Firstly, trade (with communication) is biggest interface of nations with others. The Third World nations, struggling to sell abroad and earn foreign exchange to import necessities and investment goods and intermediate inputs, are most vulnerable on this front. One can, by not seeking their resources, at least for a while, defy the IMF and the World Bank, and escape their influence and conditionalities (for opening up the domestic economy to foreign investments and exchanges). But it is difficult for any country to close its frontiers and shut itself off from trade with the outside world. Very large continental economies, with considerable domestic reorganization and repression (political, economic and social), could perhaps do this for a time, but not the vast majority of the Third World nations. Even now, the IMF and World Bank, particularly the latter, though contributing only to about five percent of Third World investment for development, exercise an enormous influence on the economic policies of these countries including in the area of Trade policy. However, while the World Bank is able to hold out a carrot, it is unable to wield the stick, which the trading system and its retaliation provisions provide. One of the efforts in the Uruguay Round (negotiating group on the Functioning of the GATT System, FOGS) is to enable the three to combine forces in influencing trade and economic policy in the countries of the South.

Secondly, among the for a dealing with such issues, the Third World countries are at the weakest inside GATT, in terms of collective organisation and bargaining. They do not negotiate or bargain collectively inside GATT. This is despite the fact that, objectively, all the Third World countries have more fundamental common interests
than their differences on individual trading issues. They have much more at stake, and disunity only means that each is picked separately and coerced in negotiations based on power 20.

**Thirdly**, unlike in other fora where the South can muster at least the verbal and rhetorical support of the Socialists, in GATT, the Socialists' support cannot be counted on. Fourthly, while all inter-governmental negotiations are in private, the GATT processes are the least transparent. With very rare exceptions for ceremonial purposes, all GATT meetings are behind closed doors, without the obtrusive presence of the media or non-governmental organisations of consumers and other public interest groups. Major TNCs and their organisations quite often are around such meetings as advisors to their delegations. GATT documentation are all 'restricted', except when there are specific decisions to be made public, often long after the event21.

Therefore, the initiatives for the new round of GATT have to be seen against the background of the present state of the world economy and the situation of the US which, after being the Centre for well over four decades, now feels its power and hegemony threatened and challenged from diverse sources. To hedge in the challenge it adopted the GATT route.

**GATT**

The Uruguay Round of Trade Negotiations was officially launched on 20 September 1986 with the adoption of the Ministerial Declaration on the Uruguay Round (generally referred to as the Punta del Este
Declaration), but the negotiating process can be considered to have begun as far back as in early 1982 in the preparatory work for the GATT Ministerial session of November of that year, which established the work programme that provided the elements for the Uruguay Round negotiating agenda. Prior to its final meeting in Marrakesh, Morocco, the Trade Negotiations Committee (TNC), set up at Punta del Este, had met twice at Ministerial level, at the Mid-term Review at Montreal in December 1988, and at Brussells in December 1990.

The Trade Negotiations Committee concluded the Uruguay Round in Marrakesh, on 15 April, 1994, with the signing of the Final Act and opening for signature of the Agreement establishing the World Trade Organisation (WTO). Of the 125 countries which formally participated in the Round, 111 signed the Final Act and 104 signed the WTO Agreement, in many cases with the indication that their acceptance was subject to ratification. Seven countries were unable to sign the WTO Agreement because of domestic legislative impediments. In addition, a number of Decisions and Declarations were adopted, including (i) the Marrakesh Declaration containing schedules of concessions on goods; (ii) Decision on the Establishment of the Preparatory Committee for the WTO; (iii) Decision on Acceptance of and Accession to the Agreement Establishing the WTO; (iv) Decision on Trade and Environment; (v) Decision on Trade in Services and the Environment; (vi) Declaration on the Relationship of the WTO with the International Monetary Fund; and (vii) Decision on Organisational and Financial Consequence flowing from Implementation of the Agreement Establishing the World Trade Organisation (WTO). The successful conclusion of the Uruguay Round was expected to result in a
substantial strengthening of the multilateral trading system because the absence of international consensus and workable rules and procedures on specific areas had given rise to frequent trade tensions and disputes which threatened to erode the multilateral system. The Agreement reassert, interpret and expand GATT rules in considerable, even minute details and often address a series of technical and controversial issues. However, the agreement covers seven major areas, such as:

(1) Agriculture;

(2) Textiles and clothing;

(3) Services;

(4) Rule making – This includes subsidies and countervailing measures, anti-dumping, safeguards, reshipment inspections, rules of origin, technical barriers to trade, import licensing procedures, customs valuation, government procurement and GATT articles;

(5) Trade Related Investment Measures (TRIMs) and Trade Related Intellectual Property Rights (TRIPs);

(6) Dispute Settlement and final act, including the functioning of the GATT system; and

(7) Market access.

The seven areas thematically fall into three distinct groups. The first is one of the reducing specific trade barriers and improving
market access. Groups under this general theme are tariffs, non-tariff measures, tropical products, natural resource-based products, textiles and clothing and agriculture. The second theme is one of strengthening GATT disciplines. Groups under this theme are GATT articles, safeguards, MTN (Multilateral Trade Negotiations) agreements and arrangements, subsidies and countervailing measures, dispute settlement and the functioning of the GATT system. Within GATT articles, particular attention has been devoted to the balance-of-payments provisions (Articles 12 and 18), customs unions and free trade areas (Article 24), tariff renegotiations (Article 28) and state trading (Article 17). The third theme is that of new areas and includes TRIPs, TRIMs and trade in services.

These major areas of the multilateral trading system focuses on (I) providing much more detailed rules to govern the application of a variety of trade policy measures, particularly those where weak or unclear disciplines had consistently been a source of trade tensions and the subject of trade disputes; (ii) devising new multilateral trade rules to cover intellectual property and trade in services; (iii) achieving a substantial degree of tariff liberalization so as to maintain the momentum towards ever freer multilateral trade; (iv) reducing the discriminatory aspects of regional trade agreements; (v) effectively raising the multilateral obligations of all countries to broadly comparable levels, with differential and more favourable treatment for developing countries being delineated in a more specific, contractual manner; and (vi) linking together the various agreements concluded within a formal, institutional framework (i.e. WTO), subject to an integrated dispute settlement mechanism. A major result has been
that a range of measures previously viewed as falling within the scope of domestic policy has been brought under multilateral discipline, and linked to the rights and obligations governing international trade and access to markets.

The detailed elaboration and tightening of multilateral disciplines, the introduction of new concepts and detailed criteria for their application and the improvement of the dispute settlement mechanism provide new scope for action against trade-restrictive measures. This can be expected to encourage countries to initiate litigation to assert and clarify these rights and obligations. In many cases, such obligations codify current practices, sometimes so as to legitimize measures that had been the subject of controversy and might have been successfully challenged if countries had more confidence in the GATT system. Many of the Agreements negotiated provide technical solutions to practical problems that have arisen over recent years, particularly as between the European Union and the United States; other solutions reached often represent an alignment with the existing practices of one or the other party, and desire from national jurisprudence. In many cases, such alignment has taken place on those national provisions which involve a relatively higher level of discipline; in other cases, however, it has resulted in obligations of less stringency than in current practice. However, certain provisions may still lend themselves to abuse by providing opening for discriminatory measures and trade harassment. In specific cases, decisions by national authorities are relatively shielded from aspects of the dispute settlement process. In summary, WTO members will only be able to derive and maximize the anticipated benefits from the post-
Uruguay Round system through active assertion and pursuit of their rights\textsuperscript{28}.

**WTO**

In this connection, the main functions of WTO, as defined in article III of the Agreement, are to facilitate the implementation, administration and operation of the Uruguay Round Agreements, and to provide a forum for negotiations among members concerning their multilateral trade relations. The Agreements, in question, which are administered within a single contractual framework and are subject to an integrated dispute settlement mechanism consist of: (a) the General Agreement on Tariff and Trade 1994, which includes the present General Agreement, with its related legal instruments (termed "GATT 1947"), the series of Understandings reached in the Uruguay Round to interpret several GATT articles, and the Marrakech Protocol to GATT 1994 (i.e. the results of the tariff negotiations and other concessions on goods); (b) twelve Multilateral Agreements on Trade in Goods (MTAs) – annex 1A to the Final Act; (c) the General Agreement on Trade in Services (GATS) – annex 1B; (d) the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) – annex 1C (e) the Understanding on Rules and Procedures Governing the Settlement of Deputies – annex 2; f) an agreement on a Trade Policy Review Mechanism – annex 3; and (g) four Plurilateral Trade Agreements – annex 4, accession to which by a WTO member is optional. Although the WTO Agreement (which has been described as a ‘mini-charter’) is strictly institutional and procedural in character, and has no substantive rules or principles other than those which are included in
these annexed Agreements, it commits its members to ensure conformity of their laws, regulations and administrative procedures with the obligations in the Agreements. It also abolishes the "grandfather rights" of the Protocol of Provisional Application which enabled countries to maintain mandatory legislation otherwise inconsistent with their GATT obligations which predated their accession to GATT. The new Organisation, which entered into force as early as 1 January 1995, is to be guided by the decisions, procedures and customary practices of GATT. It provides the framework for the implementation of the results of negotiations, either multilateral or plurilateral, on any issue in the area of multilateral trade relations, and for the linking of such agreements to the overall system of multilateral trade rights and obligations. WTO will cooperate with IMF and the World Bank with a view to achieving greater coherence in global economic policy making. The General Council of WTO will make arrangements with other Intergovernmental Organisations (IGOs) that have related responsibilities to provide for effective cooperation, as well as with non-governmental organisations for consultation and cooperation on matters related to those of WTO. There will be a secretariat of WTO headed by a Director-General.

It is a good thing that unlike IMF and World Bank, the WTO will have one country, one vote. But if it depends on US and other G-7 countries for bulk of its finance, that advantage would be lost. In practice, WTO is likely to be a very powerful body. In cooperation with the IMF and World Bank with their weighted voting it would virtually control all the smaller countries. It is likely to require a much larger bureaucracy than the others which, combined with the already
powerful bureaucracies in IMF and World Bank dominated by the principal providers of finance, will virtually rule the world in economic matters. There are already proposals for further expanding the role of the WTO to the spheres of labour and environment. In theory, this may have some usefulness. But in practice, this will only enable a small group of politicians, bureaucrats and transnational corporations (TNCs) to control the developing countries through these three organizations.

GATT, WTO & Developing Countries With Special Reference To Constraints for India

Many of the developing countries went back from Morocco with grave doubts about the WTO's effectiveness. It was asked: "Will new rules and a new world organisation change the situation and make it conducive to the needs of development of the countries of Asia, Africa, and Latin America? Will not the powerful countries like the USA bend it to subserve their own interests? Are they serious about their commitment to the Marrakesh agreement?" These doubts got strengthened when, on July 31, 1994, the USA gave an ultimatum to Japan to open its market in 60 days for medical and telecommunication equipment or face punitive action. It was a plain and simple case of taking the law into one's hand.

So, developing countries had reasons to be apprehensive. If the USA could threaten a powerful nation like Japan, how could they get protection from the WTO? Besides, like WTO, unlike the erstwhile GATT, has under its purview not only tariffs and merchandise trade but a much wider canvas, including trade in services, intellectual
property rights (IPR) and trade related investment measures (TRIMs). Non-trade related matters like environmental issues and labor standards may also be brought under its umbrella. The WTO is designed to ensure a non-discriminatory international trading system among others, through enforcement of uniform rules and disciplines – common to both developed and developing customs and ensuring market access – to be provided by all contracting parties ("Signatories") over a period through (a) tariff reduction and (b) removal of non-tariff barriers. These measures would mean that developing countries like India, claiming non-reciprocal benefits, will have to get ready to concede the same or similar benefits. In other words, the element of non-reciprocity will be phased out. Further, there would be no scope for negative list nor any high tariff barrier for long. Even the reservations, as existing in many countries like India, for small-scale industries, will have to come to an end over a period. No safeguard or restrictive measure would be allowed on trade or economic ground. Some adjustment period would, no doubt, be permitted to enable "signatories" - specially the developing countries - to conform to the new trading system / new economic order. It is in this context that the apprehensions of developing countries, particularly India, need to be examined vis-à-vis the provisions of GATT and WTO and see whether her interests are going to remain intact or hamper and if the interests would be a casualty then what were the constraints / reasons which compelled her to sign the treaty.

The GATT treaty is the most complex multilateral trade deal. The Text running into hundreds of pages is full of legal jargons. It consists of a maze of agreements preambles, definitions, articles, sub-articles
annexures and ministerial decisions and declarations. Many of its provisions are not compatible with the spirit of the Indian constitutional law (several writ petitions in relation to the GATT agreement are pending in the High Courts of Karnataka, Calcutta and Patna). Others pose serious problems of interpretations as the different Articles in the Final Text are inter-related. It has far-reaching implication on the future development of India having disastrous effects. It is almost impossible to analyse all the complex issues of the Final Text here and therefore, some of the strategic areas such as IPR, Agriculture, Investments, Services, Textiles and WTO have been analysed in order to assess the consequences for India in terms of her national interests.

**IPR**

Of the several issues that arise in relation to the GATT, the most vexed issue, for India, relates to the provisions regarding the Intellectual Property Rights (IPRs). The topic of the IPRs which had in the past been the concern of UNCTAD and WIPO (World Intellectual Property Organisation) was, for the first time, introduced in the eighth round of GATT negotiations. The subject of the IPRs was crucial for the industrialized countries as they have a near monopoly of knowledge and technology. Realising that in today's world, property in knowledge is more important than property in material things, these countries made a demand for stricter protection of the IPRs. They attempted to thrust a uniform patent system, suited to their needs and development, on all the countries irrespective of the difference in the level of development of these countries. This is totally
unfair because the level of intellectual property protection that a country allows, depends on its level of development. It appears that the advanced countries had forgotten that they had built their technological superiority with the help of patent laws which safeguarded their interests. It becomes necessary to remind them that even they, till recently, did not recognize a product patent in the field of drugs and medicines.

The Patent regime proposed in the Agreement on TRIPs poses a real threat to our sovereign right to design and operate domestic patent regimes that correspond to our national ethos and serve our national needs. The provisions of the Text on TRIPs are inconsistent with the Indian Patent Act, 1970, in practically all important aspects. And, it may be recalled that our Act was the model on the basis of which other developing countries like Argentina, Mexico, Egypt, Brazil and Chile enacted their patent laws. The Indian Patent Act, 1970 is a product of mature deliberation by two expert committees (Justice Bakshi Tek Chand Committee, 1948-50; and Justice N. Rajgopal Ayyangar Committee, 1957-59) followed by a detailed discussion by the Joint Select Committee of Parliament. With the TRIPs agreement coming into force, a repeal will be the fate of our Indian Patent Act.

The agreement on TRIPs reverts our patent system to pre-1970 status. The pre-independence Indian patent and Design Act, 1911 had strangulated our domestic industry and rendered Indian markets subservient to British industry. The foreign patent-holder exploited the needs of the Indian society by importing essential items and drugs at exorbitant prices. Now, the TRIPs text would throttle Indian
scientific and technological capabilities. Prices of essential commodities like food-stuffs and medicines will go beyond the reach of the majority of the people. There will be less of indigenous production, more imports, higher outgoes on royalties and a greater draw on our foreign exchange resources. Access to technology essential for our development, will become a distant dream. Restrictive conditions on technology diffusion will render transfer of technology an illusory goal, devastating our fledging hi-tech companies. Export production and R and D (Research & Development) will come to a grinding halt, hindering our effort to achieve technical self-reliance.

The most disastrous consequences of the Text on TRIPs will be felt in two of our most vital areas, that is, pharmaceuticals and agriculture which affect the health and the well-being of our people. In 1961, the US Senate, Committee headed by Senator Kefauver said, "In drugs, generally, India ranks amongst the highest priced nations of the world". This unfortunate situation was reversed after 1970, thanks to the Indian Patent Act! since the enforcement of this Act, Indian Pharmaceutical and drug industry has developed rapidly and efficiently. And for the past four to five years it has been a net exporter of drugs; annually fetching India Rs. 2600 crores in foreign exchange. Based on processes, indigenously developed, major part of the bulk drugs and practically the entire formulations are being manufactured by the Indian pharmaceutical industry. This had facilitated availability of medicines at prices which are a fraction of what they could have otherwise costed to the consumer. In spite of the fact that drug prices in India are currently the lowest in the
world, only 30 per cent of the country's population can afford modern drugs.

If the new GATT Treaty is accepted, prices of drugs will go up by five to ten times. Another 20 per cent of the population will lose health cover, allowing only 10 per cent of India's population access to modern drugs. This had been admitted by no other than the former Union Minister of State for Commerce - P. Chadambaram. But the initial opposition by the Commerce Minister to the Dunkel package changed when the Federation of Indian Chambers of Commerce and industry came out publicly in favour of the Dunkel Draft. Now the government claims that even if the prices of pharmaceutical drugs go up, the increase will be restricted to only 10 to 15 per cent of the drugs and will have a short-term effect. An increase in prices of even 10 to 15 per cent of the drugs is enormous and unjustified for a country where large masses, having low purchasing capacity, are victims of many diseases. Besides, the public health care system in India is still very inadequate when compared to the advanced countries where the burden of medicines is shared between the customer and the government/insurance companies.

Agriculture is the most vital and promising sector of Indian economy. Majority of our population is dependent on agriculture. It is exactly in this area where the most negative and fearsome impacts of the issue of the IPRs protection shall be felt. Our farmers will be very badly hurt and Indian agriculture will receive a tremendous setback. The TRIPs Text demands that protection be extended to micro-organism, non-biological and micro-biological processes and plant varieties. In regard
to plant varieties, no specific model has been prescribed. Article 27 of the TRIPs Text\textsuperscript{40} states that India may provide for protection of plant varieties either by an effective sui generis system or by any combination thereof. And such a system shall apply at the end of the transitional period of ten years. Traditionally, most patent systems have excluded sections such as agriculture, food and health from their purview. Some of the developed countries created a separate 	extit{sui generis} system (that is, a unique system not classifiable with others), which grants intellectual property rights in plant varieties. It lays down the minimum amount of support and protection to be given to the breeders of new varieties of plants provided that the new variety is distinct, uniform and stable. In 1961, this was codified under the International Union for the Protection of New Varieties of Plants (UPOV). In 1978, the UPOV members made special provisions to allow the USA to accede to the Union without changing its laws. Even today the UPOV continues to be an organisation of mainly advanced countries. In 1991, the UPOV treaty was revised. It now embodies significantly higher standards of protection. It strengthens the monopoly rights of the breeder of a new variety. The Breeder’s exemptions and the farmer’s exemptions have been considerably curtailed. Now, the breeder has to pay royalty to the PBR - holder, if his new variety resembles the protected variety in any trait. Similarly, the farmer is not automatically allowed to use farm saved seeds of protected variety to sow the next crop. He has to either pay compensation for use or obtain the approval of the breeder. Plant breeders are giant MNCs whose only interest is in maximizing their profits. It is illogical to expect them granting such approvals to
farmers, who would otherwise have to purchase the seeds from these MNCs. The UPOV 1991 demands all plant genera and species to be covered over a period of ten years. And the period of protection ranges from 20 to 25 years\textsuperscript{41}.

Patenting or extending the IPRs to plant varieties in the form of PBRs will have the most shattering effect on our farmers. The age-old traditional rights of our farmers to save seeds from their harvest; and to exchange and sell seeds shall be lost. Even if the farmer can save seeds as asserted by the government, he cannot modify his seed to suit local conditions. Nor will it be possible for him to adopt a new variety developed elsewhere through selection, genetic engineering and other technique. So also, the practice of the farmers obtaining new varieties from agricultural universities, multiplying them and then supplying and selling to other farmers in remote and interior regions of the country, will become unlawful. This will indirectly hurt even our agricultural development. These traditional customs of our farmers to save, modify, exchange and sell seed are responsible for successful adaptation of new technology at the village level and for the dissemination of new improved seeds to remote regions of India.

In fact, the very life style of millions of farmers will be completely altered by the GATT treaty. And with the reversal in the burden of proof, our courts, instead of protecting the interests of our farmers will be forced to prosecute them. All that the PBR-holder has to do is to complain that since the farmers are not buying seed from him for every sowing, they must be saving the seeds! Under the GATT, plant varieties and genes also become the private property of the MNCs like
Cargil and threaten our food security. Prices of seeds will go up. The MNCs possessing gigantic financial capabilities, will patent the varieties brought into existence by our farmers; and bring up the genes in their varieties. The Western MNCs will pirate Indian knowledge of plant property for free and seal it safely in their gene bank. This will prohibit Indian scientists from using their own gene material unless they pay hefty royalties. The increased cost of breeding will place constraints on our research budget, hampering R&D efforts. This will finally make us uncompetitive in the world markets and increase our dependence on the MNCs42.

**Agriculture**

The TRIPs Text, along with the Agreement on Agriculture, will undermine the long-term growth prospects of Indian agriculture. Agriculture is a newcomer to the GATT. When GATT was established after World War II, the advanced nations, by mutual consent, had excluded trade in agriculture from the purview of GATT43. The idea of liberalising trade in agriculture, later, arose not out of any concern for the distressing millions who go to bed every night on empty stomach. It was the intense agricultural trade rivalry existing between the US and the EC (European Community) which necessitated the introduction of the subject of agriculture in the Uruguay Round. In 1980, almost one-third of the agricultural produce in both - the US and the EC - was for export. Production and export of agriculture was heavily subsidized by both the groups. But the demand for agricultural produce started declining - thanks to the self-reliant development policies pursued by some countries and due to the
balance-of-payment problems in other countries. This resulted in a trade war between the two giant agricultural exporters. The US having a comparative edge in agriculture, introduced the topic of agriculture in the Uruguay Round. Having once entered, agriculture came to occupy the centre stage of the UR of GATT negotiations. The Agreement brings under its discipline the entire gamut of agriculture, ranging from domestic support, export subsidies and market access to sanitary and phytosanitary measures. The Agreement expects the member-states to make an estimate of the aggregate measure of support (AMS) given by them to agriculture. It permits the AMS to the extent of 10 per cent of the value of production. In other cases, the Agreement proposes domestic farm support to be reduced by 20 per cent and subsidised export of 20 per cent over a period of six years.

Some of the liberal optimists believe that India will make substantial gains in the field of agriculture. This assumption is based on two things. One, that India is not hit by the provision demanding a reduction in domestic support as the level of agricultural subsidies in India is far below the 10 per cent cut-off level. This may be true but agricultural subsidies are already being phased out under structural adjustment programmes dictated by the World Bank (WB) / IMF. Availability of fertilizers, water, power, diesel to farmers at the subsidised rates is not longer possible. Moreover, this limit on domestic support for agriculture clearly circumscribes our freedom. A developing country like India gives agricultural subsidies to increase new employment and to attain self-sufficiency in food production, whereas, advanced countries subsidise agriculture because production there is for export. The Agreement in Agriculture fails to
recognize and appreciate this fundamental difference. Two, it is also assumed that the reduction in agricultural subsidies in the advanced countries will boost Indian exports. This assumption is baseless for two reasons. One, the first reduction agreed upon is hardly substantial. Two, whereas world trade is expected to rise by $200 billion, India's gain will be meagre. Even this meagre gain is uncertain because of the stringent sanitary and phytosanitary norms (food, safety and animal and plant healthy regulations) prescribed in the Agreement. The advanced countries will allege that the sanitary and phytosanitary measures adopted by us are not based on international standards, guidelines and recommendations. Above all, the meagre gain in the $200 billion world trade will be by exporting agricultural cash crops (and marine products). There is nothing wrong in exporting cash crops and earning the precious foreign exchange for our industries. But, exporting agricultural products, without looking into the structural aspects of the sector; or ensuring the well-being of the small peasants; or when more than 200 millions in India go hungry every day is and worse still, when thousands die of starvation due to rise in the price of food - all these raise a host of questions such as: whose interest is such an agreement going to serve? And on whom is it going to be imposed? It may be recalled that the heart-rending Bengal famine during the British period was the result of emphasis on export-oriented agriculture, namely indigo.

The provisions of the GATT treaty relating to agriculture will seriously alter our public distribution system (PDS) as only those eligible on the basis of "clearly defined criteria related to nutritional objectives" can be entitled to subsidized food. And PDS will be subject to internal
scrutiny in order to ensure that it caters to the needy section of our population and that in doing so, it fulfills "clearly defined criteria related to nutritional objectives". Moreover, the government purchases are to be made at the current market prices and not at prices fixed by the government. Does this not amount to a gross violation of our sovereignty? Must a multilateral trade council decide the type of PDS which is to operate in our country? It is not disputed that PDS directly benefits the middle class, private traders and the officials working within the system. But by regulating the free market prices, the system has indirectly helped the poor too. And recently, the government has launched a drive to revamp the existing PDS. Out of the 51000 blocks, 1700 blocks located in the most backward, tribal, hilly and remote areas have been selected for special attention. In these selected blocks, new fair price shops are opened. The amount of food allocated to these blocks is increased, without increasing the total amount of food in PDS. The idea is to take away subsidised food from the developed blocks and make it available to the blocks in the backward regions, where it is more needed. And survey conducted in the states of Karnataka and Kerala has revealed that the system is not viable in Karnataka. But in Kerala, it operates as a safety net for the poorest sections of the population and serves to check the open market foodgrain prices. It accounts for 30 per cent of the required foodgrains in Kerala and implies a financial benefit of Rs. 40 per household per month and helps to keep open market prices low. Now under the GATT, instead of strengthening this system so as to make it workable in the other Indian states, we shall be compelled to dismantle it.
One of the most obvious provisions of the GATT Treaty is the one that compels us to provide a minimum commitment on market access. The text prescribes "a compulsory import" of three percent (that is, five million tons of wheat and rice annually) of foodgrains in the first year. This is to be increased to five per cent in the sixth year. Moreover, we have been asked to open up our markets even before the elimination of subsidies in the advanced countries. It is represented that our government plans to take recourse to the balance-of-payment provision and claim relief under it. This is a deliberate misinterpretation of the provisions of the Treaty. The clarification under the "Understanding on the Balance-of-payments provisions of the General Agreement on Tariffs and Trade 1994" clearly says that market access can be restricted only for balance-of-payment consideration and not for protection. Besides, import restrictions on many of our agricultural products like wheat, rice, milk, oilseeds and oil have been imposed on protection grounds. Further still, we have to provide a "minimum commitment" on market access. In the past, under the export promotion schemes, the government used to reimburse the losses on account of exports of agricultural products like wheat or sugar. Not only will this be abandoned under the GATT, but it will also not be possible to canalize exports through a state trading organisation. Indian agriculture, the most vibrant sector of our economy and employing the majority of our population, is targeted at by the Text and TRIPs and is also in the direct line of fire by the Agreement on Agriculture. Must we allow it to be subjected to an international discipline which is concerned with only the interests of the advanced nations and is completely blind to our developmental
needs? Will not our self-reliant agricultural sector once again become import dependent as it was under the US PL-480? 

**Investment**

The specter of declining competitiveness in goods haunted the US in 1980. What it lost through trade in goods, it tried to recover through its trade in services. So, investment measures, though no concern of a multilateral trading system, found their way to the UR of GATT negotiations. The object was to benefit the MNCs who were anxious to invest in the developing countries. But the world was sold the idea that the MNCs with their enormous financial stamina, highly sophisticated technology and powerful marketing facilities would boost the world trade. Article 2 of the TRIMs Text prohibits member countries from applying any TRIM that is inconsistent with the provisions of Article III of Article XI of GATT 1994. Article III is on national treatment. Article XI deals with general elimination of quantitative restrictions. The annex to the Agreement on TRIMs sets out the TRIMs that are inconsistent with Article III.4 and Article XI.1. It may be noted that the TRIMs listed in the annex are merely illustrative and not exhaustive. The text on the TRIMs compels us to give national treatment to foreign capital. It obliges us not to discriminate against it. By intruding into our domestic domain, the Text on the TRIMs deprives us of our sovereign right to control and utilise foreign capital for furthering our developmental needs. It means that:

(1) All restrictions on foreign capital/investor/companies are to be scrapped.
(2) The foreign investor shall be given the same rights in the manner of investment as a national.

(3) There will be no restrictions on the areas of investment.

(4) Nor will there be any limitation on the extent of foreign investment - 100 per cent foreign equity too will be permitted.

(5) Import of raw material and components would be allowed freely.

(6) Foreign investor will not be obliged to use local products and material.

(7) Export of part of the output will no longer be mandatory.

(8) Restrictions on repatriation of dividend, interest and royalty will be eliminated.

(9) There will be a complete exclusion of provisions like phased manufacturing programmes which purport to increase the indigenous content in manufacture.

It may be argued that many of these concessions/privileges are already enjoyed by the foreign investor under the NEP and SAP. We have also amended several of our important pieces of legislation like the FERA, IDRA and MRTP to suit its needs. The point is that under the GATT, these will become a part of a multilateral trading treaty and will be binding on us. Besides, the fear of cross-relation under the GATT will compel us to adhere to them, whereas concessions given under our domestic policy and laws can be changed if we so desire. The implications of these provisions are that, henceforth, the GATT
will decide for us the patterns of investment we should pursue and the type of technology we should promote. Once the GATT comes into force, we will be robbed of our power to regulate the import of technology and to restrict imports in the interest of our development and accentuate the balance-of-payment situation. Our dependency on foreign investment and technology will increase resulting in strengthening the hegemony of the MNCs in India. The unequal competition between these MNCs and domestic industry will result in closures leading to unemployment, inflation and stagnation. Article 4 of the TRIMs Test permits a developing country to apply some of the TRIMs in accordance with the relevant provisions of Article XVIII of GATT, 1994. Article XVIII-B allows a developing country to impose restrictions on imports for balance-of-payment purposes. But it immediately explains that such restrictions should be imposed "in the least trade-disruptive manner and should favour price-based measures" like import surcharges and import deposits, rather than quantitative restrictions. Moreover, the developing country should publicly announce time-schedules for removal of restrictive import measures taken for balance-of-payment purposes. Wherever a time-schedule is not publicly announced, the developing country has to justify why price-based measures are not an adequate instrument to deal with the balance-of-payment situation. And, the committee on balance-of-payment restrictions shall have the power to review all the restrictive import measures taken for balance-of-payment purposes. The treaty allows imports restrictions only for balance-of-payment purposes and not for protection. Restrictions on many goods imported to India are for the purpose of protection as well as for the balance-of-
payment consideration. Further, restrictions on imports must be price-based and not quantitative. And they must be imposed in such a manner so as not to disrupt the international trade. It is observed that in many cases tariff equivalents are not as effective as quantitative restrictions both from the balance-of-payment point of view as well as for the purposes of protection. Moreover, quantitative restrictions are essential because of the internal income distribution; where there will always be some persons who are able and willing to pay extra cost on luxury goods.

**Services**

The economic activity in the industrial countries has undergone a slow transformation. The nineteenth century 'free trade in goods" has gradually given way to "free trade in gods" has gradually given way to "free trade in services" during the twentieth century. There has been a change from industrialization to servicisation. And since then, there has been an increase in the level and share of the services sector in the international trade. But, this rise in the trade and services has been most pronounced in developing countries. And it has been at the cost of the Third World countries. Recognising the growing importance of trade in service in their economic growth and development, the advanced countries included the subject of services in the GATT negotiations at the Uruguay Round. The General Agreement on Trade in services contains a multilateral framework of principles and rules for trade in services. After defining trade in services as "the supply of a service", the Agreement spells out general obligations, disciplines and specific commitments for all participants.
Except for some specific guidelines for negotiations of key sectors, the choice of sectors of services and the extent of opening up is left to bilateral negotiations between the countries. It is significant that the services attempted to be opened up are those that are highly capital and technology-intensive, in which the advanced countries have a distinct competitive advantage. Services areas, like consultancy and construction in which India has a comparative advantage find no mention in the Text. The annex on "Movement of National Persons Supplying Services Under the Agreement" states that "the Agreement shall not apply to national persons seeking access to the employment market of a member. . . " India is rich in its manpower, but free movement of our skilled labour is restricted by formidable and cumbersome immigration laws in the developed countries. The choice of sectors and the extent of opening up has been left to bilateral negotiations. It is argued that safeguards for the developing countries are provided under Article XIX on Progressive Liberalisation. Article XIX states: "The process of liberalisation shall take place with due respect for national policy objectives and the level of development of individual sectors. There shall be appropriate flexibility for individual developing countries for opening fewer sector, liberalising fewer types of transactions, progressively extending market access in line with their development situation. . . " That this provision is a safeguard, is a pseudo-argument, it is a well known fact that the advanced countries pay scant respect to the national policy objectives and the level of development of the Third World countries. And the right of developing country to be "flexible" will ultimately depend upon its bargaining power vis-à-vis the developed countries. The fact that a treaty such as
the revised GATT could be thrust upon us speaks volumes about our bargaining power and our right to be "flexible"!53

Now we are pressurized to remove all restrictions on the entry of foreign services in all areas of financial services, telecommunication, travel, transport, media, education, health, etc. And removal of restrictions will then be justified on flimsy grounds of "fear of isolation" or "our weak bargaining power" or, better still, the removal of restrictions will be demonstrated to be in our own interest! The MNCs, not interested in our national priorities, social commitments and obligations, will indulge in immense profit-making at the cost of social good! One need not feel satisfied by what is stated in the preamble of the GATT and that is: "Designing to facilitate the increasing participation of developing countries in trade in service and the expansion of their service export . . . " or Article IV which talks about "increasing the participation of developing countries". Both the preamble and Article IV are a sop to the developing countries. It may be remarked that both identify the measures to be taken. They do not contain a 'commitment' to adopt these measures. Similarly, Article IX54 pertaining to restrictive business practices of the MNCs is an eye-wash. It merely "recognizes" that certain practices of service suppliers "may" restrict trade in services. But it contains no specific commitment to eliminate these practices except that "each member shall, at the request of any other member, enter into consultations with a view to eliminating (restrictive) practices . . . ."
Textiles And Clothing

Under the GATT Treaty the European Community and the United States have tried to pry open the markets of the developing countries in areas where these advanced countries are strong whereas they have kept their own markets closed in areas where they are weak. One such weak areas is their textile industry. Restrictions in textile and clothing were formalised in 1961 to enable the industrialized world to adjust to the low-cost Third World textile exports. There was no restriction on textile trade between the industrialized countries. But the Multi-Fibre Agreement (MFA), an aberration of the GATT, imposed quotas on developing countries' (including India) textile imports to these advanced countries. Initially the restrictions governed only cotton textiles. Gradually these restrictions extended to all fibres and categories. At present, the product coverage under the Multi-Fibre Agreement is absurdly enlarged. In spite of having had 30 long years to adjust to a multilateral trade rule, these advanced countries did their best and succeeded in extending the MFA for another 10 years. The Indian textile industry is not only our largest industry but also our highest export earner. Textiles form a quarter of India's manufacturing exports. So, India was naturally interested in the immediate dismantlement of the discriminating MFA which covers 85 per cent of the $196 billion annual world trade in textile products. But the Uruguay Round perpetuates the inequities and atrocious order for another 10 years.

It is often argued that India will substantially gain in the area of textiles and clothing under the new treaty. The truth is that we have
got a raw deal in this crucial sector of our economy. And it is ironical that inspite of the extension of the MFA, we are now being compelled to compensate the western countries for their belated compliance with a GATT rule! They have the audacity to pressurize us to liberalize our export in certain categories of special textiles like fire-proof clothing and up-market branded products as a *quid pro quo* for purchasing out of the MFA. Trading in textiles and clothing shall be integrated into the GATT by phasing out the MFA during a period of 10 years. The integration process shall take place in three stages of three, four and five years. The integration percentages of the three stages are 16, 17 and 18 respectively. Thus only 51 percent integration shall be permissible during the transition period. The remaining 49 percent liberalisation is "promised" at the end of the period stipulated for integration. Importing countries may decide which products to integrate into the GATT system from among textiles and clothing (whether currently restricted or not). Since product coverage has been enlarged over the years, members may now integrate those products on which there are no restrictions. Essential items in which India is interested will be left till the end of the period of integration. It is naïve optimism to expect the promised integration of these sensitive items at the end of the transition period. This post-dated promise will certainly be dishonoured under some or the other pretext. The history of the MFA during the past three decades shows that it has been extended time after time in duration and scope in the form of short term and long-term textile agreements. Moreover, there is no doubt that at the end of the transitional period, the US or the EC will use against India a new weapon for its trade armoury. The western
world will raise 'social barriers', 'green barriers' and such other artificial trade barriers for self-serving protectionist purposes. Will it then, be in a position to call off the bluff? In fact at the G-15 summit, held in New Delhi, the Western endeavor was to include working conditions prevailing in the Third World countries as a factor for determining barriers in the overall trading system.

**WTO**

Now the GATT Treaty sets up an all embracing World Trade Organisation (WTO). It will encompass: (a) the GATT as modifier of the Uruguay Round (UR); (b) all agreements and arrangements concluded under the GATT auspices; and (c) the results of the Uruguay Round. The WTO shall provide common institutional framework for the conduct of trade relations among its members in matters related to the agreements and associated legal instruments included in the Annexures to the text of the WTO. (Article II.1). It means that the implementation, administration and operation of plurilateral trade agreements was to be administered by the WTO.

The composition of the WTO is heavily weighed in favour of the developed nations. We will be compelled to accept the hegemony of the advanced countries. Moreover, why should a multilateral trade organization be empowered to sit in judgement over issues that falls within our domestic domain? It is hoped that a stronger multilateral trade organisation will curb unilateral trade actions by the US. It is also believed that Super 301 will not be used in areas which come under the GATT Treaty. This is sheer wishful thinking. The General Council (established to oversee the operation of the agreement and
ministerial discussion) will itself act as a Dispute Settlement Body and a Trade Policy Review Mechanism, which will concern themselves with the full range of trade issues covered by the WTO (Article IV 2.3.4)\textsuperscript{58}. The dispute settlement procedures are heavily biased in favour of industrialized countries. And strong countries will insist on retaining their bilateral and unilateral options. The US trade representatives have been shouting themselves hoarse that the Uruguay Round would in no way impair the effective enforcement of unilateral US trade laws.

The most ominous feature of the GATT is that it provides for cross-relation. By providing a single institutional framework, the WTO promotes the use of cross-relation. Making the agreements and associated legal instruments included in the Annexes, integral parts of the Agreement means that retaliation can be imposed not only in the specific areas in which the offending distortion of trade has taken place, but also in any other area. A country claiming violation of patent right by another country may retaliate against it in the field of commodity trade. It was to keep this instrument of coercion at bay that the developing countries had insisted that all the agreements under the Final Text have separate legal status without any cross linkages. But they failed. Now it is feared that the advanced countries may retaliate in areas which would hurt the developing countries the most. Thus, if our agricultural exports pick up, an advanced country may retaliate against us (for our violation of TRIMS Text) by putting a heavy duty on our agricultural products or by closing its market for these products, thereby severely dislocating our agricultural sector\textsuperscript{59}. Another pernicious aspect of the GATT procedure is the provision
relating to burden of proof. It is totally inconsistent with the fundamental tenets of Indian jurisprudence. Our legal system presumes the accused to be innocent till he is proved guilty. Hereafter, under the GATT treaty, the onus of proving will fall on the defendant and not the complainant. It is the defendant who will have to refute the charges made against him by the complainant. In other words, he will be regarded as guilty unless he proves himself innocent.

It is often suggested that the GATT Treaty the world trade will rise by $200 billion. This increase will undoubtedly benefit the western countries. The developing nations will trade their natural resources while processing, manufacture, distribution and sale of the end products will be the preserve of the developed nations. The revised GATT will pave the way for G-7 to re-establish colonial hegemony over the Third World countries through the trade regime. The Indian balance-sheet of gains and losses from the GATT indicates that the benefits are illusory whereas losses are substantial, if not tremendous. We are better off without GATT than that GATT. We stand to lose more by ratifying the Treaty than by getting out of it.

**Constraints**

India, along with many developing countries, in the first stages of negotiations in the Uruguay Round, refused to enter into substantive negotiations on intellectual property rights, investment arrangements and trade in services within the GATT framework. But by underhand manipulations and exercise of shady influence, developed countries managed to secure the agreement of India to enter into substantive
negotiations on these issues. The Rao government's allibi was that India was too weak to defy the G-7. The Indian negotiating position in GATT was adjusted to this "realistic" position once the so-called structural adjustment programme for the Indian economy drawn up by IMF/World Bank combine was accepted by the Rao government. This set the stage for India to be "advised" by G7, in particular USA, on its negotiating position in the succeeding phases of the GATT Round. The USA, side by side started arms-twisting by confronting India with the new US trade law which provided, under the notorious super and special 301 clauses, trade sanctions against countries which the US administration might hold from time to time to be hurting its trading interests. The US demanded that the laws of other countries should be amended to conform to US requirements. Subsequently, argument on trade in services, such as has been put together by WTO, has bound India to the entry of multinational corporations in banking, insurance and others services as multilateral obligation to be enforced by WTO. India has also been exposed to intense bilateral pressure of USA for special rights and privileges for its services to operate in India. The bargaining position of India in WTO generally and especially in the vital services sector was further impaired. The US administration, in particular, has India in view as a major target in this area. When the GATT Treaty was signed at Marrakesh, negotiations were still to be completed in areas of trade in services, telecommunications and movement of natural persons. This called for yet another round of bargaining. But the government in India, as had become its want and practice, changed course and looked at economic interest in harmony with its perceived
international obligations. Limits were placed on the development of indigenous telecommunications services and doors opened wide for multinational corporations in the area of telecommunications, significantly enough on the eve of P.V. Narasimha Rao's visit to USA61.

In India, a new elite group had emerged with pro-Western economic diplomacy abroad and liberalisation at home. They being: Manmohan Singh, Montek Singh Ahluwalia, V.N. Gadgil, Deepak Nayyar among others. They were agreed on liberalisation but agreed on two issues. These were on the pace of change and the extent of change on the issue of marketisation and welfarism. Some opted for slower pace and welfarism like Deepak Nayyar, while others like Manmohan Singh opted for macro-economic parameters.

Yet, the so-called "social clauses" in trade related matters has emerged as yet another "pressure point" against India and other developing countries. Unilateral action has started to bar access to Indian goods and services in the markets of the developed countries on grounds of employment of child workers, low wage rates for labour and environment pollution. But the question of free movement of natural persons across borders as against the demand of the developed countries from free entry of their corporations into the markets of the developing countries for banking, insurance and financial services in general has become obscure in the WTO agenda. The developed countries especially USA, have rejected openly any binding linkage between negotiations for globalization of financial services and international movement of persons as services providers or otherwise such as India desired. But the transition facility under
accords on product patents was still not taken advantage of by the Rao government, which was too eager to please the multinational corporations and their political patrons abroad for several benefits. It chose to agree to open the services sector for the developed countries without much ado, even when US had walked out of the negotiations conducted by WTO on this issue. The truth too is that the provisions of GATT Treaty and WTO procedures can be and are being flouted with impunity by a handful of the developed countries. This is being done openly in particular by the US administration. The WTO is found to be indifferent or a helpless spectator in the face of such intransigence. But the developing countries, among them India, have been threatened retaliations of the developed countries if the markets of the developing countries are not opened for their highly profitable investment and export of goods and services. The WTO in such cases stands by unabashedly to back the claims of the developed countries. The US administration has not hesitated to invoke from time to time "Special 301" provision of its trade law without any care for the GATT Treaty or WTO. The US Ambassador in India once brashly claimed that US had the right to exercise its sovereign power and apply its domestic laws in dealing with other countries to protect its national interest, notwithstanding the GATT Treaty and its enforcement agency, WTO. But the similar rights and obligations of the independent states in the Third World are cynically denied, indeed sought to be prohibited under the GATT Treaty. India, for this reason, has been made under pressure to enlarge the import of even costly US textiles rather than the other way round as was proclaimed as the major gain for India under the GATT Treaty. It is also being
threatened retaliation in the event of its failure to honour and promote US intellectual property rights, over and above what are stipulated under the GATT Treaty62.

In an interview with Pranab Mukharjee, the then Minister for Commerce, who played a vital role in negotiating the multilateral trade relations under the auspices of GATT along with Mr. A.V. Ganeshan (the then Secretary of Commerce and the First Chief Negotiator for India), Mr. Zutsi (Permanent Representative to Geneva and the Second Chief Negotiator) and a host of other government officials as delegates, he says that "collapse of Soviet Union has brought about a different environment in the international system. To say that it has shifted from bipolar to unipolar would be a hasty conclusion. Rather, it has moved towards a multipolar setting where U.S.A is being challenged from Japan, Germany, EU particularly in economic sector and not military, because U.S.A still possesses 40% of the nuclear weapons under its control.

In such a situation, our basic position with regard to foreign policy has not been altered. India continues to play a major role in the region which it used to even in the bipolar model by maintaining an equitable distance from the power blocs through NAM. Within a span of 10 to 15 years, however, it is likely to emerge as a "middle level economic power". The size, diversification and technological competence would play an important role in achieving this position of India. Therefore, it is possible for India to charter an independent economic and security policy on its own. However, in the global sphere, we face constraints in the economic sphere due to
obligations in the global agreements as all other nation-states
do. But, in case of India these constraints are mostly in the
nature of 'self-imposed restriction or limitations' (emphasis ours).

India has been a signatory of original GATT negotiations ever since
1940s and the action in this direction is not new. But in the vastly
changing international situation, the primary reason for which we
accepted this multilateral negotiation is due to the non-assurance of
imposition of conditions which are much more rigorous in degree in
respect of various obligations. The stronger economic powers in the
bilateral negotiations would have longer capacity to twist our arm.
Besides, we can not just live in a cocoon and isolation if we are
thinking in terms of development. Further, we cannot also enter into
bilateral negotiations with countries which are not economically
sound. Therefore, we have to enter into trade relations with major
economic power centres and in that endeavour, multilateral negation
is better than bilateral negotiations having much worse implications.
For example, China; it is having a worse economic situation now than
it used to have earlier when it was a member of GATT. So, we have
taken a right decision to enter into this multilateral negotiations.

In these kinds of negotiations however, there would be pressure and
constraints always in respect of every country would try to keep its
national interest at the peak. There were pressures from international
fora on the question of NPT, CTBT but we have not signed it. Even in
the recent visit of Clinton, Mukherjee was told that Mr. Vajpayee has
clearly stated not to sign CTBT unless there is a national consensus
on it. Similarly in the GATT negotiations we faced constraints in terms
of three important areas and we have clearly stated not to agree on these areas such as: services, investment and IPR. How these areas are going to affect our country is not the question. There are a lot of interpretations on this. But can we withstand such pressures? It is a hard reality that those who have money, have an advantage over others and that is why industrial countries always try to put their burden on us. Therefore, in this hard competitive, unequal battle, we have to fight them out along with like minded countries by putting counter-pressures on them and not by avoiding to stay out of the game. For example, the in the Patent Act of 1970 - we allow process patenting in areas like drugs, pharmaceuticals, agricultural chemicals but not products patenting. By being a member of this management, we have to amend the Patent Act and allow product patenting. Therefore, limitation on carrying out unilateral action is the biggest constraint that we face. However, I have a feeling that this GATT Negotiations is going to fail soon become of the increasing tussle between USA and European countries on the issue of agriculture.63

There is, under the benign watch of WTO, still fierce competition among TNCs and trade wars have broken out between the developed countries, which have been induced or provoked by TNCs. But the development interests of and gainful opportunities in world trade for the developing countries have been circumscribed and restricted. Independent business enterprise is being strangulated everywhere and local business interests required to function as inconsequential adjuncts of TNCs. India had attempted after gaining political independence to follow an autonomous path of socio-economic development and sought to regulate and restrict the operations of
TNCs in the Indian market, not necessarily with great success or without mistakes and faults. The pressure on India to open up its market for TNCs has intensified after WTO was set up. The globalization designs have already harmed and distorted gravely India's development process and potential. With this globalization process, the Indian economy will be gravely hit, its cultural ethos and identity debased and political independence of the Indian people will be ruthlessly exploited for maximizing the gains of multinational corporations (MNC) and their Indian collaborations. Even the Commerce Secretary in the Government of India had cautioned that "excessive dependence on TNCs can seriously sap the initiative and entrepreneurial potential of citizens of the host country". The much stronger financial clout of large incoming TNCs can lead to development of quasi-monopolies, steam-rolling of domestic entities out of existence through predatory pricing and other restrictive business practices, commandeering of a large share of the host country's natural resources and exploitative, suboptimal tapping of such resources and maximise short or medium term profits, failure to transfer technology to personnel in the host country and generation of large profits through manipulative use of pricing policies which can impose a large draft on the host country's foreign exchange resources. It can be visualised that unless there is adequate strength and clout with domestic entities which can stand upto incoming TNCs, a situation can come about in which TNCs will call the shots and the host economy will become a hostage to the dictates of the TNCs. The Rao government chose wantonly to surrender the high status and strong bargaining positions of India in the GATT negotiations and the
WTO which was set up on that basis. The speed with which it ratified the GATT Treaty and renounced the "transition period facility" for the implementation of many of the provisions of the treaty was, indeed, remarkable. The result has been that India has slipped into the position of an obsequious observer rather than active participant for hard bargaining to safeguard its interests in WTO.

In an interview with Sri S.P. Shukla, the former Finance Secretary of India and a Permanent Representative to GATT at Geneva for several years, he says that "The Uruguay Round (UR) is not simply one more round of multilateral trade negotiations (MTN) following the previous seven round of such negotiations under the General Agreement on Tariffs and Trade (GATT). What distinguishes the UR negotiations from the previous GATT rounds is the new paradigm that has been forced on these negotiations by the industrialized countries.

The previous rounds were carried out essentially within what can be described as 'the border paradigm'.

The UR has completely changed the situations. These negotiations have entered substantially into the domain of the sovereign economic space.

The industrialised countries have sought to bring about this paradigm change in three ways. First, they insisted on bringing the so-called "new issues" of services, investment and intellectual property protection on the agenda of the negotiations. Second, they elaborated on a selective approach to the definition of negotiating objective in
different areas. Last, they worked for an integrated enforcement mechanism for various areas under negotiations.

Since USA was loosing its competitive edge in various sectors and challenges from other economically advanced countries, it resorted to certain areas to be brought within the scope of negotiations where it had its strength like informatics, telecommunication, IPR, investment etc. As a result, there was a perceived danger to the autonomy of countries like India policy making in areas central to its economic development. There was a growing awareness that with the integration of its market with that of the industrialized countries, unequal interdependence would be created rather than benefits to the economy.

**In almost all the areas of this multilateral negotiations, India faced varied constraints which was transpired as a total accommodation of whatever the industrialized countries wanted to negotiate** (emphasis ours). For example, India was put pressure by USA bilaterally regarding the use of Super and Special 301 provisions of their trade act, if it did not fall in line with the USA stand on Intellectual Property Right. Thus, **Indian response has thoroughly been constrained in this negotiation** (emphasis ours).

India is the original signatory of GATT and full member of WTO. There is really no question of the ouster of India from WTO, which requires three-fourth majority of its members to support the expulsion. Means and mechanisms are available to India to rebuff this empty threat. The US, after all, has set up a judges committee of its own for 'authoritative interpretation" of any WTO decision to safeguard its
interests. China has made it clear that it would occupy a rightful place in the global market and secure its entry into WTO but would not trade away its national interests. India government too can and must assert as WTO member its sovereign rights and safeguard the fundamental interests of the people of India. In the Singapore Ministerial Meeting of the WTO in 1997 the transition from GATT to the WTO was virtually completed and the new world trading order under the WTO got firmly entrenched in the international system. Evaluations of the performance of the Indian delegation in the meeting have ranged from "abject surrender" to "substantial success". The truth, as always, lies somewhere in between these extremes. Given the basic constraints, India could not have done better in Singapore than what is reflected in the declaration adopted at the end of the meeting. Not being a major trading partner, India did not have much of a bargaining power. Some of the major developing countries, which had taken a joint stand with India against the inclusion of investment and labour standards on the agenda of the WTO, reversed their position on reaching Singapore, leaving India virtually alone to defend the faith. The Singapore Government was seized by the host country syndrome of ultimately ensuring the success of the meeting and in this endeavor was able to elicit the support of the fellow ASEAN countries, including Malaysia, which at the Harare G-15 Summit was a strong ally of India. By far the most important constraint was that India went to Singapore with the negative mission of preventing the inclusion of certain items on the agenda of the WTO rather than with a proactive agenda of its own to serve its trade and development interest. Unlike several developed countries, India had not presented
a single paper during the preparatory phase of the meeting except the one on textiles presented jointly with other textile exporting countries. Another mistake committed by India was to have taken an unusually strident public position against the inclusion of investment and labour standards. Therefore, when the retreat came, it looked like a total surrender.

In the Singapore meeting, developed countries were able to set the agenda for the WTO for the next four to five years. The relationship between trade and investment and that between trade and competition policy was firmly inscribed on the WTO agenda. The WTO will also pursue its concern in the field of labour standards even while not putting this subject on its agenda. Developed countries succeeded in getting the review under the TRIMs Agreement advanced by three years. As a byproduct, they managed to conclude an agreement, roping in almost all member countries of the WTO, for the elimination of tariffs on trade in information technology products, which are mainly exported by them. On services, they were able to obtain agreement for achieving a successful conclusion of the negotiations on basic telecommunications in February, 1997, for resuming financial services negotiations in April 1997, and for successfully concluding negotiations on maritime transport services in the next round of negotiations on service liberalisation. Negotiations on both financial services and basic telecommunications were held recently, but not allowed to be concluded because the outcome did not come up to the expectations of the US.
On the other hand, most of the issues of interest of developing countries either did not receive any attention or were disposed of through platitudinous expressions of intent. For example, there was no mention of resuming negotiations on the movement of natural persons in spite of the very meagre results achieved in the last round of negotiations. Mainly because of its marginal share of the world trade, there are limits to India influencing the WTO agenda. But there can be no excuse for not anticipating the incoming negotiations and preparing for term, not identifying its interests and taking timely initiatives to pursue them, and not doing adequate homework, including the mobilization of the support of like-minded countries for its position. In future, it will be increasingly difficult for India to prevent the inclusion of new items on the WTO agenda on the ground that this involves an intrusion into the sovereign economic space of the country. The Rubicon of entry into the sovereign economic space was crossed in the Uruguay Round. Now it can be assumed that any subject which is even remotely trade-related and which is of interest to a major section of the WTO membership, particularly developed countries, will be brought on the WTO agenda. Moreover, in the present globalized world economic order, the concept of sovereignty stands substantially whittled down. Because of the modern technological revolution, many untradebales have become tradable and it is therefore a hopeless task to keep them outside the jurisdiction of the WTO.

A draconian international regime has been put in place under the GATT Treaty for WTO to enforce. The establishment of a common dispute settlement mechanism for cross-relation has endangered
independence of policies and administrative action of the governments in the developing countries. The procedure provided in the WTO rules facilitates the process of bringing in new issues within its competence as and when raised by Member-States. The WTO, ostensibly created to promote international trade on the principle of multilateralism, is in fact an instrument to dominate the economy, society and polity of the developing countries by the developed countries, collectively and separately.


Ibid, pp. 104-105.


Before the World War II, the main investment of developed capitalist countries was directed to the colonial and semicolonial and dependent world. Since the end of that war, a new phenomenon started to develop. International capital flow showed a tendency to develop mainly within the developed capitalist countries. To give an example, as the Cuban leader Fidel Castro observed in his Report to the Seventh Summit Conference of Non-Aligned Countries (1983). "In 1946, Latin America absorbed 43% of all direct US investment abroad and Western Europe barely 19%. But in mid-seventies Latin America received only 17% of these investments, while Western Europe was receiving over 37%".


The main characteristic of the prevailing development model is its world-market orientation. The operative assumptions are that the industrial states continue to grow; that this growth translates itself into increased demand for imports from the developing countries; and that this, in turn, stimulates the industrial development of the latter. Experiences of the 1960s however, proved otherwise. Share of the developing countries in world trade decreased continuously. Financial transfers in the form of development assistance stagnated in real terms and decreased in terms of percentage of the GNP of the industrial countries. In the 1970s, the recession in the developed market economies highlighted dependence of the developing countries on the vagaries of the world market, and the increased protectionism raised questions as to the absorption capacity of the developed market economies for industrial products originating in the developing countries. Sauvant, Ibid., pp. 50-53.

Some of the relevant NIEO documents are: UN Declaration on the Establishment of NIEO, adopted by the General Assembly at the 6th Special Session, GA Resolution 3201 (S-VI), 1 May 1974; Programme of Action on the Establishment of a NIEO - 3202 (S-VI) 1 May 1974; Charter of Economic Rights and Duties of States, 3281 (XXIX), 12 December 1974; Development and International Economic Cooperation, 3362 (S-VII), 16 September, 1975, and International Development Strategy for the Second UN Development Decade, 2626 (XXV), 24 October 1970.


Sauvant Karl, Collected Documents, Vol. V. Declaration on establishment of NIEO, pp. 557-559; Programme of Action on NIEO pp. 559-566; Charter of Rights and Duties of States, pp. 567-572.
Twenty seven countries (19 from the South and 8 from the North) participated in the CIEC, which owed its origin to an initiative of French President Giscard d'Estang. The participants were: Algeria, Argentina, Australia, Brazil, Cameroon, Canada, EEC, Egypt, India, Indonesia, Iran, Iraq, Jamaica, Japan, Mexico, Nigeria, Pakistan, Peru, Saudi Arabia, Spain, Sweden, Switzerland, US, Venezuela, Yugoslavia, Zaire and Zambia. The Third World countries had established their own ad hoc secretariat to service them at the meeting. For details of the documents and final communiqué see Collected Documents, op.cit., Vol. VI, pp. 401-572.

Perhaps the only outcome of the CIEC was the impetus it gave to on going negotiations in UNCTAD on Common Fund and on ODA debt of the 'poorer countries'.


There is one exception: GATT 1994 provides legal cover for the U.S. 'Jones Act'.


Ibid.

The Times of India, New Delhi, Jan 15, 1992.


Chandiramani, Nilima, op.cit., p.10


GATT Agreement: Results of the Uruguay Round, op.cit.; pp. 341-343.

Chandiramani, N., op.cit.; p.30


GATT Agreements: Results of the Uruguay Round, op.cit, pp. 15-19.

Chandiramani, N., op.cit., p. 31.

GATT Agreements: Results of the Uruguay Round, op.cit., p. 151.

Ibid, p. 245.


GATT Agreements: Results of the Uruguay Round, op.cit., p. 249.


Ibid.


Chandiramani, N,. op.cit., p. 34..

Ibid, p. 35.


Ibid, p. 10.

An Interview with Mr. Pranab Mukherjee, former Minister of Commerce, Govt. of India at his residence on 28.5.2000 at 11 a.m.


An Interview with Sri S.P. Shukla, former Secretary of Finance, Govt. of India, and Permanent Negotiator to GATT at Geneva for several years at his residence on 27.5.2000 at 6.30p.m.


Ibid, p. 16.