Chapter 11

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As we have seen, the General Agreement was drafted primarily with the interests of the developed countries in view, and adequate consideration was not given to the needs of the developing countries. These countries had therefore been repeatedly expressing their dissatisfaction with the GATT. This necessitated modification of the provisions of the GATT. Some progress towards the appeasement of the developing countries was made at the Ninth Session when the General Agreement was reviewed. This, however, did not fully satisfy them and they continued expressing their dissatisfaction.

Further progress was made at the Ministerial meeting held in May 1963 when, with a view to liberalising imports from developing countries, the Contracting Parties adopted the eight-point "Programme of Action" put forward by the less developed countries. At the meeting, the Ministers "recognised the need for an adequate legal and institutional framework to enable the Contracting Parties to discharge their responsibilities in connection with the work of expanding the trade of less developed countries" and agreed that a Committee should be set up to examine all aspects relating to trade and development of these countries. This Committee submitted a draft chapter on Trade and Development. On 26 November 1964, the text of the New Chapter was adopted and submitted for the approval of the governments. The New Chapter incorporates some of the principles advocated by the developing countries at the UN Conference on Trade and Development.
On 8 February 1965, at the conclusion of a Special Session, the Contracting Parties took formal action to add the New Chapter as Part IV of this General Agreement. The representatives of the Contracting Parties signed a Final Act authenticating the text of the New Chapter and opened for signature the Protocol which would give legal status to these amendments when it has been accepted by two-thirds of the contracting parties. The Contracting Parties also adopted a Declaration providing for the de facto implementation of the new provisions until they enter into force de jure.

On 8 February, the Protocol was signed by twenty-eight governments. Since then many more governments have signed the Protocol. France did not attend the meeting and refused to sign the Protocol on the ground that the text of the New Chapter disregards the true interests of developing countries on various points and that organisation of markets is more important to developing countries than the removal of tariff and non-tariff barriers to their exports. (1) Australia and the Ivory Coast also refused to sign the Protocol. (2) Australia considers that she does not fall within either category - developed or developing, while the Ivory Coast's objection is that the New Chapter has disregarded the question of preferential agreements in the interests of some developing countries, especially those associated with the O.C.

The New Chapter consists of three Articles. The first Article bearing the title "Principles and Objectives" spells out the general principles and objectives which govern the policies of

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(2) Ibid., 16.
the contracting parties in relation to the trade and economic development of the developing countries. The Article recognises that the rules governing international trade should be consistent with the need to promote rapid and sustained expansion of the export income of less developed contracting parties. In this context, it stresses the importance both of favourable conditions of access to world markets for the primary products exported by developing countries and the need for ensuring stable, equitable and remunerative prices for such products. The Article equally emphasizes the importance of promoting the diversification of the economies of less developed contracting parties through the opening of markets to their exports of processed and manufactured products.

The most important provision in this Article is that the developed contracting parties should not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less developed contracting parties. A further paragraph elaborates on this by stating that "the less developed contracting parties should not be expected, in course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments." Thus the GATT, which is fundamentally committed to the principle of non-discrimination, has been specially attuned to cater to the needs of developing countries.

The developing countries are hardly in a position to reciprocate tariff concessions on imports from developed countries because their manufacturing industries are still at the infant stage and cannot survive if exposed to the competition from highly developed
industries. Further, a substantial portion of imports from developed countries is already subject to low tariffs as they consist largely of equipment and capital goods required for the execution of development plans.

The principle of reciprocity, however just it may be when advanced countries are in question, that is to say when equals are concerned, is untenable in the relations between them and the developing countries. The need to deviate from reciprocity when the developing countries are in question was observed on a world scale. It also found its place in the recommendations of the United Nations Conference on Trade and Development.

The second Article headed "Commitments" sets out certain undertakings by the developed and developing countries in pursuance of the agreed principles and objectives. Except where compelling reasons make it impossible, developed countries agree not to increase barriers to exports of products of special interest to the less developed countries and to give high priority to the reduction of existing barriers. High priority is also given in any adjustment of fiscal policies to the reduction or elimination of fiscal taxes which hamper consumption of products exported by less developed countries. A procedure for consultations has been provided to deal with any difficulties which may arise in the implementation of these commitments. This procedure which is an integral part of the commitments in the new chapter is aimed at securing mutually satisfactory solutions for such difficulties on the basis of individual and joint action by contracting parties. In addition to reducing trade barriers the developed contracting parties also
agree to give consideration to other measures aimed at expanding markets for exports from less developed countries.

On their part, the developing countries agree to implement the provisions of the New Chapter for the benefit of their mutual trade in so far as such action is consistent with their present and future development, financial and trade needs, taking into account past trade developments as well as the trade interests of less developed contracting parties as a whole.

The third Article, entitled "Joint Action", provides for appropriate collaboration by contracting parties in promoting measures aimed at improving world markets for primary products, in facilitating a clearer understanding of export potential and market prospects for developing countries and in the action required to realise such export potential and prospects, as well as in furthering the expansion of the trade of less developed countries through the international harmonizing and adjustment of national policies and regulations and the provision of facilities for export promotion.

The Contracting Parties will also collaborate with the UN institutions and other international agencies active in this field.

Committee on Trade Development

A new committee on trade and development has been appointed within the GATT administration for the purpose of getting the New Chapter's objectives realised and to devise measures to ensure their effectiveness. The committee will take over the work done by GATT Committee III and the Action Committee. It will be concerned both with reviewing practical progress in the removal of barriers and the development of other measures for expanding export earnings of developing countries.
An important part of the work of the new Committee will consist in the examination of proposals for the elaboration of new rules and procedures designed to meet the trading needs and problems of developing countries. Thus the Committee will consider and make submissions on proposals relating to the granting of preferences by industrialised countries to less developed countries and by less developed countries to other less developed countries. Some developed countries, notably Britain, have shown their willingness to grant such preferences if others agree to do the same. But other GATT members find it hard to accept such a breach with GATT's traditional most-favoured-nation principle. (3)

The new Committee will also undertake a review of certain important Articles of the Agreement, namely Article XVIII which deals with the use of protective measures by less developed countries to promote their economic development and Article XXIII which deals with procedures for settling disputes affecting the rights and obligations of contracting parties in the General Agreement.

The new Chapter is thus an important step towards solving the trade problems of the developing countries. It would help in removing to some extent the impression in many developing countries that GATT is essentially a club of rich nations, devised to promote trade among the developed countries. However, its limitations must not be ignored.

The Chapter only provides guidelines for the developed countries in the formulation of policies for the purpose of extending assistance to the developing countries in the field of export

promotion. (4) The actual realisation of the hopes of the developing countries will depend upon the attitude which the developed countries may take in this regard. The proviso cited in this Chapter leaves enough scope for a developed country, if it so desires, for not abiding by the commitments. Ultimately, whatever may be the institutional machinery devised, if the required political will is lacking, the objectives sought cannot be realised. If a developed country is genuinely interested in helping the underdeveloped countries, it should not be difficult for it to remove the "compelling reasons" and the "legal reasons." The industrially advanced countries to the end avoided clear formulation of what these "imperative reasons" may be and various interpretations are possible, though this possibility is to a certain extent channelled by the procedure of consultations provided for, during which the advanced countries in question should explain the "imperative reasons" and prove the justifications of their failure to fulfil some of their obligations. (5) No doubt, the provision of a safety clause to cover unforeseen and exceptional circumstances is absolutely necessary, a little scepticism by the developing countries in this regard is not unwarranted in view of their past experience of many developed countries not living up to the spirit of their undertakings under GATT.

The New Chapter does not provide any time-limit for the developed countries to give effect to their undertakings. (6) This

(4) *Commerce* (Belcay) (13 February 1965) 235.
(6) n. 4, 235.
is another ground for the suspicion of the underdeveloped countries because the experience so far shows that the developed countries take too long to remove the shelters provided for some of their manufacturing industries, in which the developing countries have special advantages. It was pointed out that to make really firm commitments towards meeting those demands, the United States, the European Economic Community, and the United Kingdom would have been forced to part with a considerable measure of their economic sovereignty. (7)

No agreement was reached on the degree of flexibility that the less developed countries may be allowed to apply to tariffs, taxes and quotas, with the objective of furthering their development plans. The New Chapter merely notes that the Contracting Parties "may enable less developed contracting parties to use special measures to promote their trade and development."

The New Chapter also leaves open the question of preferential treatment to the exports of semi-manufactured and manufactured products from the developing countries, though the need for this is well known and well recognised. Preferentials found an important place in the deliberations of the United Nations Conference. Unfortunately, owing to the opposition of a small number of countries, the question was left outstanding both at the Conference and in the GATT.

Commenting on the new chapter, the Economist says: (8)

...the actual commitments of the new articles whereby the rich shall help the poor, like the practical steps they propose, are few, vague and

(7) The Indian Exporter and Importer (Bombay) (February 1965) 13.

disappointing. The rich have committed themselves to little more than giving "high priority to the reduction and elimination of barriers to developing countries' trade and these undertakings have been made carefully subject to an escape clause of "compelling reasons, which may include legal reasons"...

Some of the developing country's main demands, however, have either been passed over completely or recorded at inaudibly low voice. The need to diversify the economies of developing countries and encourage their manufacturing industries through removal of foreign obstacles to their export markets is roundly stated in the "Principles and Objectives" and then denied specific mention in the "Commitments" section, which pays most attention to primary products (although it does suggest the removal of restrictions that differentiate between products in their primary and processed forms).

But on preferences, a pet subject of the developing countries, the new articles are silent. Nor do they much have to say about financing trade with developing countries. An article entitled "Joint Action" seems to cover compensation schemes or those elusive commodity agreements, but offers no practical proposals, let alone new ones.

In conclusion, though it does not adequately meet the needs and requirements of the developing countries, the New Chapter is an important step in the right direction. It is expected that the GATT would progress further in this direction in the years to come.

Notwithstanding, the new section is a certain amount of progress by comparison with the hitherto state of affairs. Particularly as the present revision cannot be regarded as the end, but on the contrary, only the beginning of a long-term process of transformation of GATT, transformation which through full liberalization of imports from the developing countries should ensure their more adequate participation in world's commerce and its expansion, and accordingly, their full contribution to the realization of the aims of the General Agreement itself. (9)

(9) n. 5, 2.