Chapter 1

ORIGIN AND EVOLUTION OF GATT

The origin of the GATT may be traced to the Atlantic Charter issued on 14 August 1941, by the President of the United States and the Prime Minister of the United Kingdom. (1) Points 4 and 5 of the Atlantic Charter read as follows:

They (the United States and the United Kingdom Governments) (2) will endeavour, with due respect for their existing obligations, to further the enjoyment by all states, great or small, victor or vanquished, of access, on equal terms, to the trade and to the raw materials of the world which are needed for their economic prosperity.

They desire to bring about the fullest collaboration between all nations in the economic field with the object of securing, for all, improved labour standards, economic advancement and social security.

The idea was further developed in Article 7 of the Mutual Aid Agreement concluded in February 1942 between the United States and the United Kingdom. The prospects of a successful termination of war brought the attention of the world towards the problems of peace. (3) It was widely recognised that political security could not be achieved without financial and commercial stability.

Following the establishment, in 1946, of the International Monetary Fund and the International Bank for Reconstruction and Development to deal with the financial aspects of international economic relations, a third organisation was required to look after the trade


(2) Words within parenthesis added.

problems of the world. The United States gave the lead and, in December 1945, published a document, prepared in consultation with the United Kingdom, entitled 'Proposals for Expansion of World Trade and Employment.' It sent copies of this document to other governments for their consideration. The proposals put forward the idea of establishing an International Trade Organisation. The member countries were to conduct their commercial relations in accordance with the rules and regulations provided in the charter of the Organisation. The proposals contained provisions relating to trade barriers, restrictive business practices, intergovernmental commodity arrangements, international aspects of domestic employment policies and the structure of the suggested International Trade Organisation.

In February 1946, the Economic and Social Council of the United Nations, at its first meeting at the initiation of the United States, passed a resolution calling for an international conference on trade and employment to consider the question of establishing an International Trade Organisation. It established a Preparatory Committee consisting of nineteen countries to arrange for the Conference and to prepare a draft Charter for such an organisation. The Secretary-General of the United Nations sent invitations to nineteen members for participation in the Preparatory Committee. All members except the USSR agreed to participate in the work of the Committee. The USSR did not attend because at that time it could not find it possible to devote sufficient preliminary study to the serious and far-reaching questions which were to be discussed in the Committee. The First Session of the Preparatory Committee was held in London from 15 October to 26 November 1946. Some
members of the United Nations (viz. Columbia, Poland, Peru, Mexico and Syria) which were not invited on the Preparatory Committee sent official representatives to observe the proceedings of the First Session. Representatives of some intergovernmental organisations (viz. FAO, IBRD and I.M.F.) attended and participated in the First Session. Representatives were also sent by some non-governmental organisations viz., the International Chamber of Commerce, the International Co-operative Alliance, the World Federation of Trade Unions, and the American Federation of Labour.

Before the Preparatory Committee met, the United States prepared a Suggested Charter for the International Trade Organisation. It was an elaborated version of the Proposals, cast in charter language. Copies of the Suggested Charter were sent to the Secretary-General of the United Nations and to the governments invited by the Economic and Social Council to serve on the Preparatory Committee. The Suggested Charter was prepared by the most competent and experienced technical staff of the United States Government. This was to serve as a basis for discussion and not as the fixed and final views of the United States Government. (4) Some other governments also submitted documents. A Draft Charter was submitted by Brazil. India submitted a detailed Commentary on the United States Proposals. The United Kingdom submitted a Memorandum on the employment policy. Long and detailed discussions were held on the basis of these documents, particularly on the United States Suggested Charter. A draft charter was prepared in this Session. This draft was incomplete in certain respects. There was division

of opinion and no agreement could be reached on voting and other organizational questions. Provisions on state trading and treatment of non-members were not worked out. Several technical articles also remained incomplete. The First Session appointed a Drafting Committee to prepare a Draft Charter upon the report and other documents of the First Session, to edit for clarity and consistency the portions of the text on which the Preparatory Committee came to a substantial identity of views, to prepare alternative drafts of those portions on which there remained a division of opinion and to prepare suggested drafts covering such incomplete portions as were referred to it by the Preparatory Committee, together with such explanatory notes and commentaries as the Drafting Committee might consider desirable and useful. (5) The Drafting Committee was entrusted also with the work of preparing a more detailed draft of the General Agreement on Tariffs and Trade, based upon the outline drafted at the First Session.

It was felt by some of the most influential countries that the long time required for the negotiation of the International Trade Organisation should not hold up the action on the reduction of trade barriers, particularly because they considered the immediate postwar period to be the most favourable time for such action. This led to the idea of holding multilateral negotiations for the reduction of tariffs. Just before the end of the session, on 8 November 1946, the United States invited the governments represented on the Preparatory Committee to negotiate tariff concessions with her. The countries invited by the United States

accepted the invitation to participate in tariff negotiations. At the conclusion of the London session, the Preparatory Committee of the International Conference on Trade and Employment passed a resolution expressing the desirability of reciprocal and mutually advantageous negotiations aimed at a substantial reduction of tariffs and the elimination of preferences, and recommending the concerned governments to hold the tariff negotiations under the sponsorship of the Preparatory Committee in connection with, and as a part of, the Second Session of the Committee, in accordance with the procedures recommended in the Memorandum on Procedures approved by the Preparatory Committee at its First Session.

The Second Session of the Preparatory Committee was held in Geneva on 19 April 1947. At this session, the Preparatory Committee completed the Draft Charter which provided the basis for discussion at the World Conference. In addition, at this Session, the General Agreement on Tariffs and Trade was negotiated. In the first instance, it was just a tariff agreement in pursuant to Article 17 of International Trade Organisation Charter providing for negotiations aimed at a reduction of tariffs and other barriers to trade. Rules regarding the conduct of commercial policy were provided just to prevent the tariff concessions from being nullified by other measures of trade policy. (6) The general provisions of the Agreement were very similar to the corresponding provisions of the Geneva Draft of the Charter.

The World Conference was held at Havana on 21 November 1947.

Fifty-six nations sent delegations to the Conference. Some governments sent representatives to observe the proceedings of the Conference. The USSR, again, did not attend the Conference. The heated and protracted discussions ended in the signing of the Final Act of the Havana Conference by fifty-three countries on 24 March 1948. There were six hundred and two amendments to the Geneva draft. Argentina and Poland refused to sign and the transmission of Turkey's authorization was delayed. The Final Act authenticated the text of the Havana Charter but did not bind any government to ratify it.

In 1947, the General Agreement was considered to be a temporary arrangement pending the establishment of International Trade Organisation with wider and more positive objectives than those of the GATT. It was thought that the concrete results of the GATT would facilitate the negotiation of International Trade Organisation. The Preparatory Committee set up by the Economic and Social Council of the United Nations expected that "the task of the world conference would be facilitated if concrete action were taken by the principal trading nations to enter into reciprocal negotiations directed to the substantial reduction of tariffs and to the elimination of preferences on a mutually advantageous basis..." (7) It was envisaged that the GATT would be finally merged into International Trade Organisation. Article XXIX lays down:

1. The contracting parties undertake to observe to the fullest extent of their executive authority the general principles of Chapters I to VI

inclusive and of Chapter IX of the Havana Charter pending their acceptance of it in accordance with their constitutional procedures.

2. Part II of this Agreement shall be suspended on the day on which the Havana Charter enters into force.

Unluckily, the Havana Charter could not come into existence. The controversies which the Charter aroused in the United States caused its ratification to be postponed until 1951 when the Government announced its intention not to resubmit the Charter for the approval of Congress. Almost simultaneously the Government of the United Kingdom declared that "there was no likelihood of the International Trade Organisation mentioned in the Havana Charter being established and developed as an official instrument for the encouragement of international trade," adding that "it would in no case recommend to Parliament that the United Kingdom should ratify the Charter." (8) Most of the other countries did not ratify the Charter because they did not want to create the Organisation without the co-operation of the United States.

Why did the United States not ratify the Charter? The main reason was the strong opposition from the business community. It opposed the Charter on several grounds. The most important criticism was that the Charter contained so numerous exceptions and escape clauses as almost nullified the basic principles and ideals for which it stood. (9) It did not go far enough in removing


trade restrictions. Any country could comply with the provisions of the Charter without removing trade barriers under one or the other escape clause. It permitted the countries to create balance of payments difficulties by adopting domestic programmes for achieving full employment or for economic development and then to use restrictions for safeguarding the monetary reserves. It permitted the countries suffering from balance of payments deficits to discriminate between different products on the basis of essentiality and between different countries during the transitional period. It permitted the old preferential arrangements to continue. It justified the new preferential arrangements leading to the formation of customs unions or free trade areas which might be unduly prolonged. It justified protective measures for economic development and reconstruction. It did not outlaw state trading and combines and cartels. It permitted quantitative restrictions on the importation of agricultural products for the enforcement of domestic price support schemes. It permitted, and also encouraged, intergovernmental commodity agreements for restricting production and raising prices. All these are contrary to the liberal trading principles and a purely competitive market economy. The business community held that the Charter was nothing but a codification of malpractices, that practices which were not considered to be respectable had been made sacred and lawful by being embodied in the Charter.

This criticism is, however, unjustified. Firstly, it focusses attention on the weaknesses of the Charter and neglects all its good points viz., the most favoured nation treatment, reduction of trade barriers and preferential arrangements, general
elimination of quantitative restrictions, freedom of transit, regulation of the administration of tariffs, and other charges on imports and exports, national treatment of internal taxation and regulations, settlement of differences, provisions concerning full employment etc. Secondly, it neglects the safeguards and limitations to which these exceptions and escape clauses are subject. (10) These minimise the chances of the misuse of the exceptions and escape clauses. Further if a perfect Charter is not possible from the very beginning, it is not wise to forego even an imperfect Charter. (11) Something is better than nothing. Thirdly, it is not correct to assume that all members will continue taking advantage of the exceptions and escape clauses for which they have fought. (12) Many countries fought for these simply because they did not want to tie their hands. This has been well demonstrated by the working of the General Agreement. In fact, the framers of the Charter acted in a very realistic and practical manner. They knew that a rigid body of rules without any exception would not be acceptable to most of the trading countries. Under-developed countries were not ready to consider any proposal prohibiting trade restrictions unless the infant industries were exempted. The United States, the most ardent opponent of trade restrictions, was not ready to accept any proposal which did not permit it to protect its agriculture. Countries suffering from a disequilibrium in the balance of payments wanted permission to apply restrictions on imports to safeguard their monetary reserves.

(11) Ibid., 364.
(12) Ibid., 365.
No country will accept any provision which hinders the preservation of its national security.

A second American criticism was that the Charter imposed one-sided obligations on the United States. This criticism was based, mainly speaking, on two points. Firstly, it was held that the tariff reductions made by the United States would be effective whereas the tariff reductions made by most of the other countries, which were in balance of payments difficulties, or underdeveloped, or in need of special measures for economic reconstruction, would be nullified by the quantitative restrictions which they were entitled to apply under the exceptions and escape clauses. (13) This argument contained an element of truth. But most of these escape clauses were of a transitory nature and would have been terminated eventually. Further, the United States would gain to the extent the Charter regulated these practices; because if the Charter did not come into force, these would have been indulged in without any regulation or safeguard. Secondly, it was argued that whenever there arose certain differences among the members, the United States was likely to be outvoted because it possessed only one vote and not a weighted vote as in the International Monetary Fund. This was particularly important because of the wider responsibilities and powers vested in the Organisation. There is, however, no basis to assume that the United States will always be outvoted. The chances of a defeat in voting are as many for the United States as for any other country; rather the chances of defeat are less for the United States because of her substantial influence over other countries in economic as well as in political

(13) Diebold, n. 9, 20.
spheres. At the Havana Conference, the United States succeeded in getting certain provisions accepted which were sought by her alone viz. the finality of determination on financial matters by the International Monetary Fund, quantitative restrictions on the import of agricultural products to enforce price-support schemes, greater freedom to subsidise exports of primary commodities etc. (14) Further, most of the matters in the International Trade Organisation would be decided by consultation, investigation and co-operation. It is doubtful if voting would decide many issues. Voting has not played a very important role in deciding issues in International Monetary Fund and GATT. (15) There is no reason to expect the contrary in International Trade Organisation.

International Trade Organisation is bound to accept the determination of the Fund in all financial matters and the United States casts a highly weighted vote in it. Further, even if the United States finds itself repeatedly outvoted by a combine of other members, it can withdraw from the Organisation giving six months' notice.

Thirdly, opposition came from the protectionists. Groups having vested interests in the protected industries warned against the danger to American economy from a free import of low-cost foreign goods.

Fourthly, the provisions relating to restrictive business practices were opposed by those who did not favour the anti-trust activities of even their national government. (17)

(15) Brown, n. 10, 375.
(16) Diebold, n. 9, 23.
On the whole, most of the criticisms of the Havana Charter were from those sections whose vested interests were affected by it and did not have much justification, considered objectively. In fact, the government and disinterested sections of society were in favour of the ratification of the Charter by the United States. But business community having vested interests being very powerful in the US, the Charter could not be ratified.

Why did International Trade Organisation fail to come into existence and CATT succeed? There are a number of reasons for this. GATT covers a narrower sphere as compared with International Trade Organisation. GATT deals mainly with tariffs and other matters related to them. In addition to tariffs, International Trade Organisation dealt with employment, commodity agreements, restrictive business practices etc. This, of course, is a matter of expediency rather than of merit. The Agreement, without any doubt, would have been more useful and complete if it could include certain suitable provisions concerning international commodity agreements, restrictive business practices etc., which are very closely related to the provisions of the Agreement. Secondly, participation in CATT does not require any special legislation in most of the contracting parties. They can participate in CATT as in any other commercial agreement just by executive authority. Participation in International Trade Organisation requires legislative approval. Thirdly, commitments in the Agreement are less binding than those in the International Trade Organisation. A contracting party can withdraw from the Agreement by giving sixty days' notice while the Charter requires six months' notice for withdrawal from the International Trade Organisation. This, however, has the disadvantage that it creates an element of
uncertainty. There is always the possibility that a country may withdraw from the Agreement if it finds its immediate interests injured even if the continuation of membership may be in its long-term interest.

In the beginning, only a limited number of underdeveloped countries acceded to GATT as compared with the number of countries in this category which subscribed to the Havana Charter. This has been attributed to the omission of provisions contained in the Havana Charter relating to study and solutions of problems of instability in the world market for raw materials and foodstuffs and the provisions pertaining to economic development. (18)

The Latin American countries form a great majority of those countries which did not accede to the General Agreement. Out of the seventeen Latin American countries which signed the Havana Charter, only three were among the twenty-three original contracting parties, and at present only seven are full members and one has acceded provisionally. In 1954, the Economic Commission for Latin America conducted a survey to find out why some countries joined the GATT and others did not. (19) The seven Latin American countries which were full members of the GATT at the time of the survey joined GATT mainly because of the following considerations:


1. **Within the combined advantages and limitations of the General Agreement,** countries exporting basic products can better defend their interests by becoming members of a world organisation for international trade which also includes the principal purchasers of those products;

2. **Anxiety was felt to improve the tariff treatment accorded by the large buyers to certain exporters of primary products;**

3. **Countries with low tariffs were authorised by the GATT to make an overall increase in their customs duties before joining subsequent negotiations being based on these new tariffs;**

4. **Countries whose tariffs were bound by bilateral treaties would be able to negotiate within the GATT with the parties to such treaties for a reduction of the import schedules covered by consolidation of tariff concessions;**

5. **The objectives of the GATT coincide with traditional national trade policy.**

Those who stayed outside GATT probably did so because of one or more of the following reasons:

1. **Membership of the GATT entailed tariff negotiations leading to mutual concessions, whose results, for various reasons, appeared of dubious value from the standpoint of an effective expansion of national exports;** furthermore, it was doubtful if the economic value of the benefits obtained for exports would compensate for the possible restrictive effects of such membership upon economic development, since the text implied dependence on international approval for the application of certain protective measures covering industrial production.

2. **The commitments of membership - reduction of tariffs through bilateral negotiations, and extension of the resulting concessions to the other contracting parties through the most favoured nation clause - were believed to be incompatible, despite the exceptions permitted under Article V, with the inclination of some countries to reduce the dependence of tariffs on external commitments, in order to use them as an instrument in the diversification of the national economy and in the stabilisation of the balance of payments.**
3. The contractual limitations of trade policy might be intensified if to the commitments involved in bilateral agreements were added a new obligation entailed by membership of the GATT, and rarely included in the treaties concerned, namely, that, of refraining from adopting measures to restrict imports of scheduled goods.

4. The persistent disequilibrium in foreign accounts generally compels the maintenance or the increase of selective measures of various kinds, whose operation within the regulations of the GATT might be neither so far-reaching nor, above all, so well-timed and rapid as Governments deem necessary. In the same connexion, it would not be wise for countries whose external payments situation depends to an appreciable extent upon the income from certain efforts, and on the proportion of convertible exchange received, to incur commitments which might hamper the adoption of their trade policy to changing conditions in world markets.

5. In the opinion of some countries whose exports are definitely at marginal levels within the volume of world supply, the most favoured nation clause on which they had already agreed with the consumer markets would suffice to enable them to participate automatically, without new tariff commitments, in any exemption, consolidation or concessions which these markets accord to their major suppliers, whether contracting parties of the GATT or not. Some countries thought that, if they joined GATT, circumstances might compel them to conclude customs agreements of no real value to their export trade, although causing a reduction both of fiscal revenues and of the margin within which tariffs could be modified by unilateral action.

After Geneva, five more tariff-negotiating sessions were held at Annecy (France) in 1949, at Torquay (England) in 1950-51 and in Geneva in 1956, 1961-62 and 1964. (20) In addition to these conferences, in 1955, tariff negotiations took place among 17 countries in connexion with the accession of Japan. The

(20) At present, another round of tariff negotiations known as the "Kennedy Round" is in progress.
parties to the Agreement meet in regular sessions, at least once a year, to review the working of the Agreement and to carry out the consultation provided in the Agreement. Subsequently, more and more countries joined the Agreement and the original membership of twenty-three countries increased to forty carrying about eighty per cent of the world trade. In the beginning, several countries did not show much enthusiasm for the Agreement. Though welcoming the benefits from tariff concessions, they did not like outside interference in the conduct of their commercial policy. "At best their attitude was one of reluctant acceptance of an apparent necessity." (21) After the acute postwar difficulties were over, the contracting parties started realising the value of the Agreement. Thanks to the realistic and objective approach of the Contracting Parties, GATT, today, has succeeded in firmly establishing itself.

GATT was considered by its creators to be a stop-gap arrangement, pending the coming into existence of the much more ambitious International Trade Organisation. Consequently, it had no organisation, no executive committee and no staff of its own. Its operations were conducted by the contracting parties in occasional plenary sessions. This system continued for eight years. In course of this period, make-shift arrangements shaped by necessity and experience have resulted in the creation of a system which is very similar to an international organisation. An ad hoc committee with limited powers handles the important business in between the annual sessions. Previously, a Secretariat

was borrowed from the Interim Commission for International Trade Organisation. After that, it has been borrowed from the United Nations.

In October 1953, the Contracting Parties decided to conduct, at their ninth session, a comprehensive review of the General Agreement, "upon the basis of the experience gained since it has been in provisional operation, and... in the light of this review to examine to what extent it would be desirable to amend or supplement the existing provisions of the Agreement, and what modifications should be made in the arrangements for its administration, in order that the Agreement may contribute more effectively to early progress towards the attainment of its objective." (22) It being clear that there was no immediate prospect of establishing an International Trade Organisation, the Contracting Parties decided to revise the text of the General Agreement to enable it to operate effectively on a permanent basis. There was also a growing awareness of the disappointment of the developing countries with the working of the GATT. In addition, it was felt that the institutional framework of GATT was inadequate and there was the need for some sort of organisation to administer GATT. It was hoped that this review would end the provisional character of the Agreement and establish it as a regular international organisation.

The developing countries pointed out that the operation of GATT, during the seven years it had been in force, had hindered their commercial and development prospects. In regard to the treatment received by developing countries from the provisions of GATT and their procedural application, on some points the developing countries had common views, but on other points only

(22) GATT, Basic Instruments and Selected Documents, Second Supplement (Geneva, 1954) 29.
certain groups placed special emphasis. The difference of views originated from the particular experience of individual countries and from differences in the degree of economic development among the less developed countries.

The developing countries pointed, inter alia, to the following problems: (23)

1. The procedures for the implementation of the developmental rules of Article XVIII were unduly dilatory and cumbersome. Every time a country decided to institute import restrictions for facilitating economic growth, it had to appear before the Contracting Parties during the annual session in order to explain proposed measures and seek prior approval. The International Committee never made use of its authority to convene a special session of the Contracting Parties for the purpose of considering a request under Article XVIII. In addition, the approval, if granted, might be subject to a number of limitations and qualifications.

2. The measures available under the provisions of Article XVIII were inadequate and included a concept of "infant industry" which in the opinion of the developing countries was extremely restricted since . . . the original text did not make the distinction between economic structures as an aggregate but looked at separate industries as such. (24)

3. The failure to introduce in the General Agreement the provisions of the Havana Charter in respect of commodity arrangements had seriously affected the export interests of the developing countries.

4. While the General Agreement permitted the existing preferential arrangements to continue, it did not allow developing countries to enter into new preferential arrangements aimed at promoting their economic development.

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(23) UN Conference on Trade and Development, n. 8, 33-4.

(24) Statement made by Mr. A. Helmi at the ninth session of the Contracting Parties, 10 November 1954.
There were some problems on which certain groups of countries placed special emphasis. Some countries emphasized the difficulties in adjusting bound tariffs, on which they depended much more than on quantitative restrictions. At the time of participation in the early rounds of tariff negotiations, the customs duties of these countries were generally specific and also low. Subsequent development needs, or reduction in effective production resulting from rising prices, led the Governments concerned to apply to the Contracting Parties for authorization to increase certain bound rates. In such cases, the attitude of the developed countries was not sympathetic; they were reluctant to accept modifications in bound rates of duty either during or at the end of the period in which negotiated items remained bound. The Cuban delegate to the ninth session pointed out in this respect that "this negative attitude was shown not only in connexion with exceptional situations, where it was necessary to ask the Contracting Parties for a special authorization to hold the corresponding negotiations, but also when the intention was simply to utilise the procedures established in Article XXVIII of the Agreement, to adjust concessions, once the assured life of the schedules had terminated. (25)

On the other hand, countries that had already achieved a certain degree of economic development and which had engaged in further elaborate development plans, like Brazil and India, laid more emphasis on their dissatisfaction with the provisions

regarding quantitative restrictions. Some countries expressed concern about the manner in which developed countries were making use of Article XI of the Agreement relating to import restrictions on agricultural or fisheries products imposed for the enforcement of domestic marketing or production restriction programmes.

The developing countries also pleaded for an enlargement of the scope of the Agreement to include some provisions of the Havana Charter which had previously been excluded. They stated that the General Agreement, like the Havana Charter, should reflect the organic relationship between international trade and economic development.

In contrast, the developed countries stated that a major modification of the Agreement would impede the attainment of the objectives that had been sought at its inception and some of these countries suggested that the further success in the operation of the GATT depended on maintaining the discipline of its provisions.

The review ended in reaffirming the fundamental rules of the Agreement. The most important amendments adopted at the ninth session can be summarised as follows:

1. Certain drafting changes in the preamble and a reference to economic development.

2. Article XVIII relating to governmental assistance to economic development was completely revised. The revised Article recognised that contracting parties in the early stages of development should enjoy additional facilities to enable them i) to maintain sufficient flexibility in their tariff structure to be able to grant the tariff protection required for the establishment of particular industries, and ii) to apply quantitative restrictions to stimulate specific branches of production and to protect the balance of payments in a manner which takes full account of the
continued high level of demand for imports likely to be generated by their programmes of economic development.

3. Provisions relating to negotiated tariff rates were amended and a new article on tariff negotiations was introduced. It was decided that the periods of "firm validity" should run for three years at the end of which contracting parties have an opportunity to renegotiate individual concessions if required, provided they consult, not only with the contracting party with which the pertinent concession was initially negotiated, but also with a contracting party that is a principal-supplier or has a substantial interest in the concession. If no agreement is reached, the concession can always be withdrawn, but the interested contracting parties are entitled to modify or withdraw concessions accordingly. The revised provisions also permitted a modification or withdrawal of a concession during the period of "firm validity" if the Contracting Parties consent to it.

4. The provisions relating to anti-dumping and countervailing duties were amended in two respects: i) it was made mandatory to grant an importing country permission to impose countervailing duties when it finds that serious injury to third countries exists or is threatened and ii) the importing country was permitted to levy such duties without prior approval when delay would cause serious damage, subject to the condition that it must notify any action taken and withdraw the duty if it is subsequently disapproved.

5. The consultation provisions of Article XII were strengthened with a view to achieving a more effective removal of restrictions as the balance of payments situation improves and to ensuring that the trade interests of other countries receive due consideration.

6. Article XIV, containing exceptions to the rule of non-discrimination, was amended and simplified. Formerly, the article contained three different criteria which, if met, permitted the use of discriminatory quantitative restrictions. The revised Article provides a simple criterion permitting the contracting party to discriminate in a manner having effects equivalent to exchange restrictions which at the time it is permitted to apply under the International Monetary Fund's Articles of Agreement or a special exchange agreement. The contracting parties practising discrimination under Article XIV are required to consult periodically.
7. The provisions of Article XVI were extended and tightened to limit the harmful effects of export subsidies. The Article prohibits the use of subsidies on non-primary products or manufactures after 1 January 1958, or at the earliest practicable date thereafter. In the meantime no new or increased subsidies are to be granted on these products. In respect of primary products, the contracting parties are under an obligation not to use subsidies which increase exports so as to obtain for themselves more than a fair share of world trade.

8. The revised Article XVIII on state trading contains a paragraph recognizing that state trading enterprises may be operated so as to create obstacles to trade and that negotiations to eliminate or reduce such obstacles are important for the expansion of international trade. It establishes a reporting procedure on the operations of state trading enterprises maintained by contracting parties in order to enable interested countries to see that these operations are being carried out in a manner consistent with the provisions of the Agreement.

The foregoing shows that the amendments made in the General Agreement in 1954-55 were of secondary importance and did not take into account the criticisms that had been made of the fundamental assumptions on which the original Agreement has been based. To quote the GATT report:

Probably the most important result was the least tangible since it did not involve any change in the Agreement itself. The original Agreement had been drawn up at a time when governments had been through a major war and were determined to substitute cooperation for economic warfare. After seven years of actual experience with these rules, it was of paramount importance that they be either reaffirmed by governments or reshaped in a form that governments could accept and would undertake to carry out. Essentially, the review resulted in a reaffirmation of the cardinal rules of the Agreement. The amendments that were adopted were designed to make them in some cases more flexible and in other cases more firm, depending upon the lessons of practical experience, but in no case were the fundamental principles discarded. (29)

An important outcome of the review session was the conclusion of an Agreement for the establishment of the Organisation for Trade Co-operation which was to administer the General Agreement and sponsor international consultations and negotiations on trade matters. The agreement for the Organisation was not, however, ratified and, therefore, could not come into existence.

**Certain Features of GATT**

An important characteristic of GATT is its contractual nature. Important consequences follow from this nature of GATT. Firstly, each contracting party has to accept precise commitments. It is held that certain countries cannot become parties to the GATT because they are unable or unwilling to accept firm commitments. Such countries will like an organisation in which all countries can join to discuss world trade problems without accepting any specific commitments. (27) No doubt, objective discussions on trade problems, divorced from politics, are very useful, it is doubtful if much can be achieved without any commitments on the part of any member. Of course, the commitments should not be rigid and must contain some element of flexibility. A better course will be to hold discussions on trade problems which are open to all countries (i.e. contracting parties as well as countries which are not party to the General Agreement) in addition to the present arrangement for meetings of the contracting parties. Such discussions should aim at formulating the general principles which countries should follow as far as possible without making any firm commitments. These will provide an opportunity to

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(27) White, n. 6, 7.
countries to understand each other's viewpoints and problems. It will help in promoting world trade and in maintaining cordial trade relations among different countries.

Secondly, the new members can be admitted only if the agreement is reached between the two-third members regarding the terms of admission. In contrast, in most of the international organisations the accession of the new members is semi-automatic. Once a member is ready to accept the basic objectives and principles and to pay the annual dues, it is not difficult for it to get admission in the organisation. Any country acceding to GATT automatically obtains all the concessions exchanged between different contracting parties. The contracting parties, therefore, can agree to accession only if the applicant is ready to grant equivalent concessions so that a balance is maintained between the concessions granted and received by the old and the new contracting parties.

Thirdly, the organisation has no independent or autonomous role in enforcing the provisions of the Agreement. Action regarding any infringement of the provisions of the Agreement can be taken only at the initiative of the affected contracting party. This has several benefits. It leaves to the judicious judgement of the contracting party whether in any particular case it is worthwhile to take action. The automatic action by the organisation in each and every case may not always be in the interest of the contracting parties. This also makes possible for the contracting parties to settle their disputes 'out of court' through mutual consultation, which is a very desirable course. In actual practice, the number of settlements reached
'out of court' is far larger than the number of those which involved intervention of the Contracting Parties. At the same time, this has the disadvantage that many countries, particularly the weak countries or the countries having differences with the influential countries, hesitate to take initiative to invoke the GATT machinery while they would like the organisation to take action of its own accord.

A fourth consequence of the contractual nature of the General Agreement is that the sanctions available for the non-compliance with the provisions of the GATT are very weak. The only sanction at the disposal of the Contracting Parties is to release the injured party of its obligations towards the defaulting party which may lead to retaliation. This is not of much value to the injured party which is interested in the fulfilment of the contractual obligations.

A second outstanding characteristic of GATT is that it is a multilateral agreement. As such it possesses several advantages over the bilateral agreements. More often it is not the monetary burden of tariffs but the rules and regulations governing the administration of tariffs which are a great obstacle to foreign trade. It is not possible to reform the customs administration in bilateral agreements because, generally, no country's trade with any single country is so important as to justify an overhaul of the customs administration. Customs administration can be overhauled only in multilateral agreements where most of the important trading countries simultaneously agree to take such steps. (28)

Recently several advanced countries have shown their willingness to give special concessions to the underdeveloped countries. Such countries will have a greater incentive to offer concessions to the underdeveloped countries if other advanced countries also share the burden with them. Thus the chances of underdeveloped countries getting special concessions from advanced countries are larger in multilateral than in bilateral agreements.

A country having entered into most favoured nation treaties with several other countries is often unwilling to exchange concessions in bilateral agreements because it will have to extend these to several other countries from whom it may obtain no concessions in return. In evaluating the cost and benefit of exchanging a concession, it has to weigh the benefit of obtaining a concession against the cost of giving a concession not only to the country from whom it receives an equivalent concession but also to other countries with whom it has entered into a most favoured nation treaty. In addition, such a country is very cautious in exchanging concessions to reserve its bargaining power for later negotiations. Often countries introduce minute distinctions in tariff schedules to evade the generalisation of concessions to other countries through the most favoured nation clause. This makes the tariffs administration more cumbersome and confusing.

Tariff concessions exchanged in multilateral agreements like the GATT are more stable than those obtained in bilateral agreements. Under a multilateral agreement the tariff concessions agreed to by a country can be withdrawn only by arrangement with
a large number of countries. Under a bilateral agreement agreed rates can be increased by making arrangements only with the party with whom the tariff rates were agreed. Further, violation of bilateral agreements is easier than that of multilateral agreements. Under a bilateral agreement the violating country has to face the opposition of only one country whereas under a multilateral agreement it has to face the opposition of several countries. Under bilateral agreements, the country obtaining the concessions through the J.F.N. clause has no guarantee about the continuance of the concession. If the countries exchanging the concessions terminate the agreement, it loses the concessions automatically. Under GATT, a contracting party making a concession in a tariff or binding a low tariff is bound to all other contracting parties to the Agreement and not only to the party with whom it negotiated the concession. Each contracting party obtains all concessions exchanged between any pair of contracting parties to the Agreement as a direct and independent right. (29) To withdraw a concession the country has to seek the consent not only of the party with whom it was negotiated but also of the other parties substantially interested in it. Thus the modification or withdrawal of tariff concessions is much more difficult in multilateral agreements.

Bilateral agreements cannot provide a forum of the type provided by the GATT for the settlement of international trade disputes.

Under bilateral agreements, a country cannot buy in the

cheapest market and sell in the dearest market. The country may not be able to buy in the cheapest country because it has no trade agreement with it. Similarly, it may not be able to sell in the dearest country because it has no trade agreement with it. The choice of markets for sale and purchase is restricted to countries with whom the concerned country has bilateral agreements. Multilateral trade ensures that a country imports from the cheapest source and exports to the dearest markets.

Bilateral trade agreements restrict the total volume of trade because under these, the surplus with some countries cannot be used to cover the deficit with other countries. If country A has a deficit with country B and a surplus with country C, it may have to restrict its trade with both the countries to achieve an equilibrium in its balance of payments. If countries B and C do not take any steps, the achievement of equilibrium by A will require restriction of imports from B and of exports to C. Under a multilateral system, it can use its surplus with C for covering its deficit with B and thus balance its payments and receipts without restricting trade.

Bilateral trade agreements increase the dependence of the partners on each other. This provides an opportunity to the stronger partner to take an undue advantage of the dependence of the weaker party on it. Thus bilateral trade has often led to the exploitation of the weaker countries by the stronger countries. Bilateral trade may even endanger the political security of the weaker countries.

Bilateral trade agreements, often, involve licensing and rationing with all their evil consequences, viz. corruption, favouritism, black-marketing, bribery etc.
Multilateral trade, of course, is possible only in a world of convertible currencies. The problem of the restoration of the convertibility lies outside the jurisdiction of GATT. In a world of inconvertible currencies, wherever multilateral trade is not possible, bilateral trade, if possible, should be conducted. Bilateral trade, however, should supplement and not supplant multilateral trade.