I. The UR and the WTO: Launching Background and Characteristics

1. General Agreement on Tariffs and Trade (GATT)

By the end of the war tremendous advances in transportation and an unprecedented surplus of merchant shipping set the stage for a new era in trade. But at the same time the international trade during the inter-War and the Second World War period was characterised by trade strifes, various kinds of discriminations and trade restrictions erected under high protectionist walls. Right before the Second World War ended, allied states concluded that the protectionist trade policy of each nation in the face of the Great Depression was a main cause to wage the war.¹ This made governments aware of the need for a multilateral discipline in the field of international trade.² There was a proposal to establish an International Trade Organisation (ITO) as a specialised agency of the United Nations (UN). The ITO Charter was finally agreed at the UN Conference on Trade and Employment in Havana in March 1948. But many countries could not procure its ratification in their domestic legislatures.³ When the United States' government announced, in 1950, that it would not seek Congressional ratification of the Havana Charter, the ITO was effectively dead. In spite of its provisional nature, the General Agreement on Tariffs and Trade (GATT) remained the only multilateral instrument governing international trade from 1948 until the establishment of the

The GATT was founded to pursue the objective of free trade in order to encourage growth and development of all member countries. It set out world trade rules to ensure competition in commodity trade by bringing down tariff levels. It entered into force in January 1948. But the GATT was not an organisation; it was only an agreement.

The GATT is based on the principles of non-discrimination, transparency and reciprocity. Non-discrimination includes national treatment and most-favoured nation treatment. Foreign goods should be considered as equally as domestic goods in any GATT member according to the 'national treatment' principle which is in the Article III of the GATT. Moreover, if a state called "A" treats a trading country identified "B" on the basis of trade conditions favourable to "B", then the rest of the countries having trade relations with "A" should be treated as equally as "B" by the 'most-favoured-nation' principle which is in Article I of the GATT.

According to the principle of transparency trade barriers should be regularly notified to those who are affected by them as well as through the GATT. Tariffication of barriers has been considered as the way of ensuring transparency.

According to the principle of reciprocity a state making concessions to a trading country should receive equally-estimated concessions from the trading country to which it gave trade concessions. Concessions from both negotiating countries may contribute to the reduction of tariff barriers.

The basic approach of the GATT has been that goods should have free entry into the importing country. However, tariff can be imposed at the border. The GATT provided a

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framework for negotiations on the levels of tariff. It also permitted countries to apply, under certain situations, some non-tariff measures (NTMs) to directly restrain imports. Besides, it provided for protection against unfair trade and disguised obstructions to trade.

Table I-1. Multilateral Trade Negotiations under GATT

<table>
<thead>
<tr>
<th>Period</th>
<th>Venue</th>
<th>Number of Participating Nations</th>
<th>Items for tariff Concession</th>
<th>Tariff cut (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1st Apr-Oct, 1947</td>
<td>Geneva</td>
<td>23</td>
<td>45,000 (Tariff)</td>
<td>n.a.</td>
</tr>
<tr>
<td>2nd Apr-Oct, 1949</td>
<td>Annoccy (France)</td>
<td>(extension)</td>
<td>5,000 (Tariff)</td>
<td>n.a.</td>
</tr>
<tr>
<td>3rd Sep,1950-Apr,1951</td>
<td>Torquay (England)</td>
<td>34</td>
<td>8,000 (Tariff)</td>
<td>n.a.</td>
</tr>
<tr>
<td>4th Jan-May, 1956</td>
<td>Geneva (Switzerland)</td>
<td>(after 5 years)</td>
<td>3,000 (Tariff)</td>
<td>n.a.</td>
</tr>
<tr>
<td>5th May, 1961-Jul,1962</td>
<td>&quot;</td>
<td>45</td>
<td>4,400 (Tariff)</td>
<td>7 %</td>
</tr>
<tr>
<td>6th May, 1964-Jun,1967</td>
<td>&quot;</td>
<td>48</td>
<td>30,000 (Tariff &amp; Anti-dumping)</td>
<td>35 %</td>
</tr>
<tr>
<td>7th Sep, 1973-Apr,1979</td>
<td>&quot;</td>
<td>99 (after 6 years)</td>
<td>27,000 (Tariff, non-tariff &amp; &quot;framework&quot; agreement)</td>
<td>33 %</td>
</tr>
<tr>
<td>8th Sep, 1986-Dec,1993</td>
<td>&quot;</td>
<td>(117) (after 7 years)</td>
<td>(33%)</td>
<td></td>
</tr>
</tbody>
</table>


The first seven GATT trade rounds sought to stimulate international trade through reduction in tariff and lowering of non-tariff restrictions on imports. Up to the beginning of the seventies, the main concern of the GATT had been to reduce the tariff levels in various countries so that trade in goods might be facilitated. Thereafter, the concerns
have been wider. This first round of negotiations in 1947 resulted in 45,000 tariff concessions affecting $10 billion – or about one fifth of world trade. The second round resulted in 5,000 tariff concessions in 1949, the third round in 8,000 tariff concessions in 1951 and the fourth round in 3,000 tariff concessions in 1956. But a common tariff-cutting formula for almost all of the protected products was introduced in the Dillon round (the fifth round) and implemented in the Kennedy Round (the sixth round). The tariff-cutting formula in the Kennedy Round was to reduce duties on all manufactured goods by 35 percent. Under this approach, tariffs on all products were to be reduced according to the tariff-cutting rule and any industry opposing such a reduction must make a special case against doing so. This approach significantly increased the depth of duty cuts.5 (Table 1-1)

In the Tokyo Round (the seventh round), apart from the reduction of tariffs, a major exercise was undertaken to strengthen disciplines on non-tariff measures, on counter-action against unfair trade and on the prevention of disguised obstructions to trade. That Round resulted in a number of agreements, popularly known as Tokyo Round Codes. These agreements covered the areas of subsidy, dumping, government procurement, technical barriers to trade, customs valuation, import licensing, civil aircraft, dairy products and bovine meat. Import duties of the industrial nations on manufactured goods were reduced about 33 percent in this Round. The Members of the GATT were not obliged to join these new agreements of the Tokyo Round. Only those that were prepared to accept the rights and obligations of the new agreements joined them. The final position was that developed countries, with very few exceptions, joined these agreements, but only very few developing countries joined them. Many of them

probably thought that the new obligations were too severe, or that the benefit flowing out of them was not great enough.

On the other hand it was appreciated that the poor countries that did not have much production and trading capacity needed some special consideration within the framework of the GATT. With this problem in view, Part IV was incorporated into the GATT in the early sixties. Later, in the Tokyo Round, differential and more favourable treatment to developing countries was given formal recognition.\(^6\)

However as tariffs came down, world trade exploded. Over the period 1980-92, world trade increased at an average annual rate of 4.9 per cent, although world output only increased at an average annual rate of 3.0 per cent. In fact, in earlier decades like the 1950s, the 1960s and the 1970s, world trade had increased at even faster rates. These earlier decades were years in which tariffs in developed countries had come down the most. The liberalisation in world trade, such as through a reduction in tariffs, cannot have been the only reason for the explosion in world trade. But it was certainly a contributory factor. This is substantiated by the fact that the growth in trade was fastest for manufactures and it is in this sector that GATT has been the most successful in bringing down tariffs or non-tariff measures\(^7\).

The GATT rules, however, did not work effectively to absorb the complexities of world trade both in terms of commodity coverage and the nature of regulators.\(^8\) At the same time the GATT was not an equitable arrangement from the perspective of the developing countries for the following reasons:

(i) It did not include provisions on the stabilisation of the commodity prices;

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\(^6\) Bhagirath Lal Das, ibid.
\(^7\) Bibek Debroy, "Beyond the Uruguay Round: The Indian Perspective on GATT", Sage Publications, India, 1997, pp.1-16
(ii) Two sectors of principal export interest to developing countries i.e., Textiles and Agriculture, were excluded from the GATT disciplines; and

(iii) The liberalisation achieved through 'request and offer' basis and Most Favoured Nation principle benefited mostly those countries which could compete in producing manufactured goods—by definition, 'the industrial countries'.

The GATT has been strengthened and supplemented from time to time. The latest such effort has been in the Uruguay Round of Multilateral Trade Negotiations (MTNs), resulting in the creation of the WTO which has the formal status of an intergovernmental organisation that had not been available to the GATT.

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2. The UR of trade negotiations

The 8th Uruguay Round of GATT was launched in Punta del Este, Uruguay, in September 1986 and concluded in April 1994.

(1) Before launching the UR

The idea of UR of trade negotiations under GATT after the conclusion of the Tokyo Round in 1979, was mooted by developed countries in the early 1980s. This initiative was taken when the economies of major developed countries were still reeling under the severe recession of 1980 and 1981 and when all projections indicated a historically slower rate of growth for these countries in the near future. Such a low rate of growth was not sufficient to maintain the accustomed increases in the already high standards of living nor the social security system. A sluggish growth would not furthermore have enabled these countries to make the long-postponed massive investments in their infrastructure. Due to the constraints of a political and institutional nature—the compulsion to continue the arms race, unwillingness to bring about any change in the pattern of extravagant consumption, rigidity of wage structures, the power of domestic lobbies, etc. they were not in a position to carry out the structural changes in their economies. They, therefore, decided to resort to an external means as a substitute for domestic structural adjustment. A new round of trade negotiations was thus conceived as a solution for the economies of these countries in the early 1980s.10 Especially they started feeling that it would be desirable and necessary to expand the coverage of the

10 M. Dubey, Ibid.
multilateral trading system so as to include new issues such as services, intellectual property rights and investment. This was the background of the developed countries' rapidly enhancing interest in the trade of knowledge-intensive goods, in services, in the protection of intellectual property rights and in the expansion of their investment opportunities. These new issues were increasingly becoming more important for their economies than the traditional trade of goods. Besides, some developed and developing countries which were major exporters of agricultural products had been strongly feeling for sometime that the normal GATT disciplines should also cover the agriculture sector, an area which had earlier been under soft discipline.

The U.S. took a leading role in launching the UR. In 1980s, the U.S. was a declining economic power and was among the bottom ten nations. Its share in international export had gone down to less than 0.5 per cent and foreign direct investment to 0.3 per cent. Its productivity and competitiveness were declining partly due to its military expenditures fuelled by the Cold War and nuclear deterrence. And it had a continuous trade deficit not only with Japan and the European Union but also with several developing countries such as Korea, Brazil, China and India. The recurring balance-of-payments deficit and the declining competitiveness of the U.S. economy were sought to be offset by a combination of bilateral measures and a new round of multilateral trade negotiations to create expanding space for the U.S. goods and services, particularly in the markets of the large size developing countries like India and newly industrializing developing countries like Korea. The UR was designed to dismantle all the defences of the developing countries against the unrestricted entry of the U.S. goods and services in their markets. Particularly, an area in which the U.S. perceived itself to be competitive was agriculture. And here, its interest coincided with that of some of the other low-cost
agricultural producing countries, including some developing countries. This led to the formation of the CAIRNS Group of both developed and developing countries, committed to seeing maximum liberalisation in agricultural trade. That is how agriculture became a key issue in the negotiations having the effect of breaking the rank of the developing countries. Apparently, the UR was held to evolve rules on reducing obstacles to international trade and to encourage global economic growth through greater trade. But in reality, it was designed to capture the domestic markets of South by the world's advanced countries.

The developed countries fully used the GATT forum for putting relentless pressure on the developing countries for launching a new round of trade negotiations. In 1985 their report was issued, stating:

"Today the world market is not opening up. It is being choked by a growing accumulation of restrictive measures. Demands for protection are heard in every country, and from one industry after another...We support the launching of a new round of GATT negotiations,...they are directed toward the primary goal of strengthening the multilateral trading system and further opening world markets...The present accumulation of important trade policy issues in need of resolution is such that we believe a new negotiating round is now needed immediately and should be launched as soon as possible"\(^{11}\).

Muchkund Dubey states that the developing countries, on the other hand, realised that in the proposed new round of negotiations, they had much to lose and very little to gain. They knew by their past experience that the negotiations would not yield many positive results in market access. They, therefore, tried to resist a new round as long as they could. The developing countries believed that GATT should concentrate on accomplishing the tasks remaining after the Tokyo Round. But the developed countries threatened that the entire multilateral trading system would collapse if the new round was not allowed to be launched. The U.S., in particular, held out another threat: the U.S. was in the process of concluding exclusive trading arrangements with Canada and Mexico. Consequently, the U.S. and its partners in such arrangements would withdraw from the GATT system, reducing the multilateral trading system to chaos. When the developing countries were ultimately obliged to yield in Punta del Este in September 1986 as the UR was launched, they tried to safeguard their interest as much as they could in the Punta del Este Declaration.

(2) During the UR

The hostile international economic environment of the early 1980s and the failure of the South-South co-operation had made most of the developing countries more vulnerable to pressure from developed countries. Owing to the harsh economic conditions of the late 1970s and early 1980s, the development process in a large number of these countries had either come to a standstill or suffered serious set-backs. Many of these countries had fallen in the debt trap and had to go to the IMF and the World Bank for monetary and financial accommodation. The conditionalities imposed on them by the
Fund and the Bank had severely curtailed their independence of choice in economic
decision-making. By the time the UR was launched, more than half of the developing
countries had become dependent on developed countries and on the IMF and the World
Bank. In forcing the UR, the developed countries fully exploited this vulnerability and
succeeded in breaking their unity.

By the mid-1980s, the Non-aligned Movement (NAM) and the Group of 77 had
ceased to be forums for effective joint action. The developing countries used to make
very extensive statements for their common positions on major economic issues in the
UR of Trade Negotiations. But at each critical moment in the negotiations, they used to
grow weak under bilateral pressure and give up the common position. The threats of
losing their immediate and short-term advantages in the field of trade and aid obliged
them frequently to lose sight of their long-term interests and to refrain from joining any
strategic coalition formed to safeguard these interests.

The fragile unity of the developing countries in the form of the Group 10 was
maintained almost until the end of the mid-term review of the negotiations at the
Ministerial level in Montreal in December 1988. Up to that time, developing countries
successfully undertook a damage limitation job in the new areas of the negotiation, and
bravely sought to achieve some positive results in the traditional areas, particularly
market access. But the fragile unity of the South in the UR collapsed at the resumed
mid-term review of the negotiations in Geneva in April, 1989. By that time, Brazil and
Egypt had withdrawn from articulating any developing country position. Yugoslavia
was so occupied by internal problems that it took no effective part in the negotiations at
all. That left India and Argentina, two leaders without any follower. After that,

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11 G-10 countries were Argentina, Brazil, Egypt, India, Yugoslavia, Chile, Jamaica, Pakistan, Peru and
Uruguay, with the first five being the most important.
negotiations were conducted by developing countries individually or in coalition with other like-minded countries, both developed and developing.

Between the launching of the UR in 1986 till its formal conclusion in the Marrakesh Ministerial Meeting in April 1994, more than 60 developing countries reported unilateral liberalisation measures to GATT. The basic reason of the active participation of the developing countries in the later phase of the UR negotiations was that for the first time the developed countries took the initiative for a new round of negotiations mainly with the object of prying open the markets of developing countries, and most of the major developing countries negotiated under the pressure of the U.S. The determination of the U.S. for the success of the UR was too strong for the developing countries to resist. In May 1990, the then US President, Mr George Bush, said:

"Our direction is to open markets, expanding trade and negotiating a set of clear and enforceable rules to govern world trade. This is the path to prosperity and growth and high employment. My top trade priority for this year is an ambitious multilateral agreement..."\(^\text{13}\)

He later added,

"...we are striving for free trade not just because it is good for America, but because it is good for all mankind."\(^\text{14}\)

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\(^{13}\) B. Debroy, ibid.

Table I-2. The major landmarks in the UR chronology

<table>
<thead>
<tr>
<th>Date</th>
<th>Events</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 Sep. 1986</td>
<td>A Ministerial Declaration launches the eighth GATT Round at Punta del Este, Uruguay. 105 countries agree to take part in the negotiations, 94 of whom are GATT members.</td>
</tr>
<tr>
<td>28 Jan. 1987</td>
<td>A negotiating structure with the Trade Negotiation Committee (TNC) at the top is adopted and 15 negotiating groups begin their work.</td>
</tr>
<tr>
<td>5-9 Dec. 1988</td>
<td>A ministerial Conference in Montreal undertakes a mid-term review of the UR.</td>
</tr>
<tr>
<td>3-7 Dec. 1990</td>
<td>Ministerial Conference in Brussels proves to be abortive.</td>
</tr>
<tr>
<td>26 Feb. 1991</td>
<td>The TNC adopts a work programme for resuming the negotiations.</td>
</tr>
<tr>
<td>20 Dec. 1991</td>
<td>Arthur Dunkel prepares a Draft Final Act to aid the negotiations. The Dunkel Draft does not include any market access commitments.</td>
</tr>
<tr>
<td>13 Jan. 1992</td>
<td>The TNC accepts the Dunkel Draft as a basis for beginning negotiations, although the European Community (EC) refuses to accept the package on agriculture.</td>
</tr>
<tr>
<td>13 Apr. 1992</td>
<td>The TNC admits that without bilateral market access negotiations between the U.S. and the EC, the UR will break down.</td>
</tr>
<tr>
<td>28 Feb. 1993</td>
<td>US 'fast track' negotiating authority expires and causes problems for the negotiations.</td>
</tr>
<tr>
<td>8 Jun. 1993</td>
<td>France expresses reservations about the Blair House accord.</td>
</tr>
<tr>
<td>30 Jun. 1993</td>
<td>The U.S. Congress extends 'fast track' negotiating authority to the then U.S. President Clinton, but sets a deadline of 15 December 1993.</td>
</tr>
<tr>
<td>1 Jul. 1993</td>
<td>Peter Sutherland takes over as Director General of GATT.</td>
</tr>
<tr>
<td>7 Jul. 1993</td>
<td>At the G-7 summit in Tokyo, a substantial market access package is agreed upon.</td>
</tr>
<tr>
<td>31 Aug. 1993</td>
<td>An intensified work programme is adopted by the TNC and it is agreed that the negotiations must end by 15 December 1993.</td>
</tr>
<tr>
<td>14 Dec. 1993</td>
<td>The U.S. Trade Representative Mickey Kantor arrives at an agreement with EC Commissioner Leon Brittan.</td>
</tr>
<tr>
<td>15 Dec. 1993</td>
<td>The TNC meets and the UR negotiations end.</td>
</tr>
<tr>
<td>12-15 Apr. 1994</td>
<td>The Ministerial Meeting at Marrakesh, Morocco, ratifies the results of the UR.</td>
</tr>
<tr>
<td>30 Dec. 1994</td>
<td>India accepts membership of the WTO</td>
</tr>
<tr>
<td>1 Jan. 1995</td>
<td>The WTO enters into force</td>
</tr>
<tr>
<td>1 May 1995</td>
<td>Renato Ruggiero assumes charge as Director General of the WTO for four years.</td>
</tr>
</tbody>
</table>

With the collapse of the Soviet Union and the prevailing recession in the American economy, the successful completion of the GATT negotiations had become a matter of life and death for the U.S.. And this was why the then U.S. President Clinton pushed for its acceptance while seeking for its ratification in the U.S. Senate. The negotiations dragged on for one year from 1991 which was the expected time for its conclusion. At that stage, the then Director General of GATT, Mr. Arther Dunkel, presented a Draft Final Act. This was offered as a single treaty—no element of which could be considered as agreed until the total package was agreed. The persisting differences between the E.C. and the U.S. on the Agreement on Agriculture, the attempt of Korea and Japan to retain its rice protection policy, difference between the U.S. and France on the extent of the liberalisation of cinematic material, and the attempt of the U.S. to pressurise the developing countries in the area of TRIPS resulted in a further delay of two years. In 1994, at the end of Uruguay Round, the round was concluded and the World Trade Organisation (WTO) replaced GATT. The Table I-2 gives a chronology of events leading to the completion of procession of Uruguay Round of trade negotiations.

While India was trying to project a developing country viewpoint, Korea, being an export-oriented country, was not active in raising its voice against the motives of the developed countries in launching the UR of trade negotiations. Instead Korea has been an active supporter of the UR since the early stage of discussion. In fact, along with a few other developing countries in the Asia-Pacific region, Korea helped the U.S. and other developed countries successfully promote the launching of the Round by supporting their position on services. This attitude reflected at least three concerns. One was the concern over the continuing deterioration of the international trading
environment and the genuine fear that the multilateral trading system would continue to weaken. There was also the concern with the prospect of increasing bilateral trade policy pressures from the U.S. and other developed countries for liberalisation of Korea’s trade policy regime. It was hoped that multilateral discussions, as well as cooperation with the U.S., would blunt the bilateral offensives. Lastly, Korea had already begun to liberalise its trade policy regime, providing some assurance that it could make some of the requested concessions and also receive some concessions from the developed counties in exchange. Since the early 1980s, Korea has been increasingly active at the GATT and this new activism has continued at the UR. This is shown by the fact that Korea has been participating in the Consultative Group of 18, as well as the so-called Green Room Consultation since 1985. At the UR, Korea chaired two of the 14 negotiating groups. Also, it was a member of the Peace Group which consists of 14 moderate and small countries, developing or developed. The fundamental standpoints of Korea in the UR were to reinforce its exports of manufactured goods while maintaining its national food security. Korea, although being one of the largest food-importing countries in the world with the exception for specific sub-sectors such as rice, tried to make the minimum number of concessions necessary to ensure the conclusion of the UR without any failure. Public consensus and criticism in the country forced the government to promote free trade of manufactured products to satisfy domestic industrialists, while protecting its agricultural markets. In this context, negotiators from Korea tried to establish their positions under the E.U. umbrella in the agricultural negotiations. Finally Korea took the proposal of one-percent immediate imports of rice,

15 Soogil Young, "Trade Policy Problems of the Republic of Korea and the UR", Korea Development Institute, April 1989, p. 57.
increasing the quantity to four percent. However the political response was public demonstrations and outcry on the occasion of the then President Kim Young-sam's announcement of the liberalisation of rice imports. Korea's attitude towards national self-sufficiency partly reflected its cultural recollection of the food shortages stemming from war experience, which is rooted in national politics and ideology.

(3) After the UR

The Final Act embodying the results of the UR was ultimately agreed to on 15 December, 1993 and formally approved and signed at the Ministerial level in Marrakesh, Morocco, on 15 April, 1994. The UR resulted in a comprehensive set of agreements in the areas of goods, services and intellectual property rights. The agreements of the UR came into force on 1 January 1995. In this process, the GATT, which had traditionally been dealing with the trade in goods, got changed into the WTO, with a much wider coverage, including those areas having no direct link with the trade of goods. The UR resulted in major breakthroughs leading to a progressive liberalisation of trade in the agriculture sector. The main characteristics are 1) tariffication of non tariff barriers and the full binding of the new tariffs by developed and developing countries, 2) reductions in the level of domestic support, and 3) reduction in export subsidies.

18 Preeg, Ernest a, Ibid., p. 169.
19 Heesun Chung, "Agricultural Trade Liberalisation and Uneven Development: The Case of South Korea", Louisiana State University, 2000, pp. 53-58.
From the beginning of the GATT to the Tokyo Round and finally to the UR, certain important trends have evolved.

- Various Rounds of MTNs have resulted in the reduction of tariffs. Before the Tokyo Round, the exercise of tariff reduction was mainly done by the developed countries, but in the Tokyo Round, some developing countries also reduced their tariffs. In the UR, a large number of developing countries were forced to make significant commitments on tariff reduction.

- In the non-tariff areas, the Tokyo Round tried to impose the disciplines, introduce clarity in concepts and processes, and enhance objectivity. The UR carried this process further.

- Through improvements in the dispute settlement process, the Tokyo Round tried to impose the enforcement of rights and obligations. This process was fortified significantly in the UR, which introduced specific time frames and automaticity.

- Specific attention started being given to some individual sectors in the Tokyo Round through agreements in these sectors. Now the coverage of sectors has been significantly enhanced by detailed agreements in the agriculture and textile sectors.

- Earlier, differential and more favourable treatment meant a lower degree of obligation for developing countries. But now, with a few exceptions, it largely means only a longer time frame for implementation of the commitments which are generally applicable to all except the least developed countries.
- The Tokyo Round Codes resulted in weakening the principle of most-favoured-nation (MFN) treatment. But the UR acknowledged the basic principles of MFN treatment and national treatment in the field of services.
- Weaker countries had always been handicapped in the GATT as the only way of enforcing rights and obligations was retaliation, which is difficult for them. This weakness in the GATT system was not tackled in the UR.
- Traditionally, the GATT has been concerned only with the trade in goods. The UR agreements brought some other areas, viz., services and intellectual property rights, within the folds of the WTO. All these areas have been linked through the possibility of cross-retaliation in the dispute settlement process. There is continuing pressure for bringing still other areas within the folds of the WTO.²¹

The unique characteristics of the UR can be summarised as follows. Firstly, the UR of trade negotiations was the only round which the developing countries went on resisting for several years. When they ultimately did agree to its being launched, they saw their main task as minimizing the damage that the Round could inflict upon their economies rather than securing any significant gains for themselves out of it. Secondly, these were the first GATT trade negotiations in which the developed countries, apart from seeking the liberalisation of the agricultural trade, targeted the markets and the economic playing fields of some developing countries, including India, seeking liberalisation for their goods and services. This circumstance gave to these developing countries a bargaining power of the kind they had not enjoyed in any of the previous rounds of

²¹ Bhagirath Lal Das, Ibid.
trade negotiations. Developing countries lamentably failed to take advantage of this unique bargaining power, mainly because under the pressure of the IMF and World Bank, they were already committed to a much extensive programme of unilateral liberalisation. Thirdly, these were the most far-reaching negotiations ever undertaken under GATT. For the first time, it brought agriculture under the discipline of GATT. It established separate rules and regimes in the new areas of TRIPs, TRIMs and Services. The Final Act includes as many as 19 new instruments constituting Multilateral Agreements on Trade in Goods, 4 Plurilateral Trade agreements, an Agreement each on TRIPS and Services, an Understanding on Dispute Settlement, an Agreement on Trade Policy Review Mechanism and numerous Decisions and Declarations adopted at the Marrakesh Ministerial Meeting. Finally, these were also the first GATT trade negotiations which went beyond the traditional GATT jurisdiction and paved the way for a massive intrusion into "the sovereign economic space" of the developing countries. The new regimes under TRIPS, TRIMs and Services provide for right to establishment and operation in the sovereign territory of other states. These regimes will have serious implications in terms of reducing the economic sovereignty of developing counties, upsetting their development priorities and restraining their pursuit of self-reliant growth based on the maximum utilisation of their own material and human resources. They go directly inside the borders of the member states and affect the nation's domestic policies and the lives of its people.

Behind these trade agreements of UR, multinational corporations took a major role. The size of world market expanded as the communist countries collapsed. Since then, multinational corporations have become main actors under this situation. Domestic
pressure groups for multinational companies exercised influence over the foreign policy decision-making. Trade-related Aspects of Intellectual Property Rights (TRIPs), Trade-related Investment Measures (TRIMS) and agriculture in the UR are the cases in which domestic pressure groups influenced over their incorporation into GATT. The motivation of the developed countries on the principle of free trade became obvious when several leading US companies and business organisations announced the formation of a high-powered Multilateral Trade Negotiations Coalition. Chaired by former US Trade Representative William Brock, the group included American Express, General Motors, IBM, General Electric, Cargill, Citicorp, Proctor & Gamble and other companies, as well as the U.S. Council for International Business, American Business Conference, National Association of Manufacturers, Coalition of Service Industries, International Investment Alliance and Intellectual Property Committee. The Coalition was a broad alliance of American private sector interests. And it was formed for furthering its business interests. Mr Brock said:

"agriculture is not the issue...rather it is the lynchpin to agreement on issues of greater magnitude, issues that really matter, like intellectual property protection, services, investment and subsidies." 22

In this way, the MTN Coalition began to actively campaign for pushing through "global economic reforms" under GATT umbrella and the G-7 countries that pledged themselves to the success of the UR. The G-77 counties on the other hand were split and did not put up even limited resistance.

22 Paul R. Krugman, "Competitiveness: A Dangerous Obsession", Foreign Affairs, 73/2, 1994, pp.28-44.
Nilima M. Chandiramani argues that it is Washington which now decides whether a country must have a process patent or product patent; the pattern of investment that a country should pursue; the type of technology it must promote; the industries it must privatise; the agricultural support it must maintain etc. When the treaty came up for authentication and subsequent ratification at a meeting of the foreign ministers at Marrakesh, the then U.S. President Bill Clinton of the United States had remarked,

"Today, we have succeeded in opening the world market for the American products."

This is exactly what the U.S. had been trying for all those years. The ratification of the UR was, therefore, more important to the U.S. and its allies than to any of the developing countries.

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24 Devinder Sharma, Ibid.
3. WTO

At the conclusion of the UR of international trade negotiations, 134 member states agreed to the creation of a World Trade Organisation (WTO) for the implementation and common servicing of all the previous GATT accords. So, the GATT Treaty set up an all-embracing WTO which came into existence at the dawn of 1995. It encompasses: 1) the GATT as modified by the Uruguay Round, 2) all agreements and arrangements concluded under GATT; and 3) the complete results of the Uruguay Round.

The WTO, having replaced GATT, provides a 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 Annexes to the text of WTO (Article II.1). The implementation, administration and operation of plurilateral trade agreements are now administered by the WTO which has extensive powers of surveillance and dispute settlement. Although similar in global status to the World Bank and International Monetary Fund, it is unlike any of them in as much as it is not a United Nations agency. It is headed by a director-general, who is assisted by four deputies from different member states. The director-general is appointed for a period of four years by the General Council after consultation with the member-countries. The General Council is the ruling body of WTO. It comprises each member country's permanent envoy. It meets once a month in Geneva. Its supreme authority is the Ministerial Conference which is held once in two years. The 1st Ministerial Conference was held in December 1996. According to the WTO principle of 'consensus' process of decision making, all key WTO decisions should be made by consensus.
However the limitation of its institutional framework was revealed when the Information Technology Agreement reached in Singapore in December 1996. This was a classic example of how trading super-powers arrive at multilateral accords among themselves without caring about the consent of all the other members. The Quad group (US, EU, Japan and Canada) made a zero-tariff deal for the $600 billion information technology trade. The decision on key elements of the agreement including the product coverage which got enlarged from 210 to 400 items, was taken by these top four world trade powers. The majority of the WTO members looked on mutely. Finally the agreement was forced on all the members with a "take it or leave it" ultimatum.

There are several important bodies in the WTO. The Trade Policy Review Body is another limb of WTO. It reviews the trade policies of all member-states. Major trading powers such as the US, the EU, Japan and Canada are reviewed every two years; others every four years. Other components of WTO are the Council for Trade-Related Aspects of Intellectual Property Rights; the Council for Trade in Services and the Council for Trade in Goods. The Dispute Settlement Body (DSB) is yet another important unit of the WTO. It usually meets twice a month to hear from the member-states, complaints of violation of WTO rules and agreements. Under the WTO's dispute settlement procedure, the complaining country has to make a request for consultation with the country which has violated the WTO rules or agreement. The latter must respond to the request within ten days and start consultation within 20 days of the request. If after 60 days the countries fail to arrive at a suitable solution, the complaining power can ask the WTO's Dispute Settlement Body to set up a panel of experts to study the dispute and to rule on the issue. The final decision of the DSB cannot be blocked; and the decision is binding.
The main elements of the WTO agreements in respect of goods consist of rules and disciplines regarding tariff and non-tariff measures. There is a framework for the reduction of tariffs and commitments on maximum levels of tariff on different products. Unlike tariffs, which are generally allowed, there is no general permission for non-tariff measures. A Member cannot generally prohibit or restrict the import of goods into its territory or the export of goods from its territory. There are specific preconditions for such non-tariff measures, which can be taken only through prescribed procedures. The WTO agreements lay down these conditions and procedures. For example, a Member may raise tariffs or apply quantitative restrictions on imports to safeguard its industry from a sudden surge of imports. Or it may take measures to reduce its imports if it faces balance-of-payments difficulties. The conditions and procedures for such actions have been specified in the respective agreements. To ensure continuance of competitive opportunities, these agreements provide for protection against unfair trade practices. For example, if a government grants subsidies for its exports or if a firm unduly lowers the price of its goods, i.e., by dumping its goods, members that are put to disadvantage have the possibility of taking measures to offset the effects of these unfair trade practices. Sometimes, there may be the fear of disguised obstructions to trade, for example, the provision of unnecessarily high standards of quality or performance, or over-valuation of imported goods so as to charge unduly high customs duties. Besides, governments may sometimes be tempted to curtail competitive opportunities by introducing lengthy licensing procedures or by using state trading organisations. Specific protection against such actions and tendencies has been provided in the WTO agreements. Attention has
also been given to special sectors which have been facing special problems, e.g., agriculture and textiles. The WTO agreements cover the area of trade in services and also the standards of protection of intellectual property rights.

The WTO has five specific functions, as set out in Article III of the Agreement. First, the WTO 'shall facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements, and shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements'. Second, the WTO 'shall provide the forum for negotiations among its Members concerning their multilateral trade relations in matters dealt with under the agreements in the Annexes to this Agreement'. Third, the WTO 'shall administer the Understanding on Rules and Procedures Governing the Settlement of Disputes'. Fourth, the WTO 'shall administer the Trade Policy Review Mechanism'. Fifth, 'with a view to achieving greater coherence in global economic policy-making, the World Trade Organisation shall cooperate, as appropriate, with the International Monetary Fund and with the International Bank for Reconstruction and Development and its affiliated agencies'.

In WTO agreements, two most significant principles are the Most Favoured Nation (MFN) Principle and the National treatment clause. Under the former, no discrimination is to be exercised among member countries; any trade concession offered by one member to another must be offered to all members. Under the latter, imported products and domestic products are to be accorded the same treatment; moreover, besides import duty, no extra tax other than ones also levied on domestic products is to be imposed.
Then the multilateral trade system must be predictable; foreign companies, investors and governments must feel assured that trade barriers (including tariffs, non-tariff barriers and other measures) would not be raised arbitrarily by any trading partner. Lastly, the new trade regime should work to a greater advantage of the less developed countries; they must be given more time to adjust, greater flexibility and some special privileges.25

Gradually, the canvas of WTO negotiations expanded. In the 1999 Seattle Ministerial Conference, non-trade issues, those connected with environment, labour standards, were also raised, mostly by the developed western economies and the U.S..

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4. Agreement on Agriculture

Agriculture sector was brought into the mainstream of GATT only in the Uruguay Round. However, it is not a new inclusion. The original GATT applied to agriculture also. But the application was ineffective, as there were various exceptions to the rules regarding the use of non-tariff measures (NTMs) and subsidies. Prior to the Uruguay Round, the agro-sector received heavy amount of domestic support of various kinds. This support made the imports into the domestic market highly uncompetitive. Apart from the domestic support, export subsidies were given to agro-products, which artificially pulled down the agro prices in the international market. This, in turn, made the agro exports not getting export subsides uncompetitive in the international market. Moreover, the restrictions imposed at the border on imports of agro products were in the form of NTMs. This made entering the market quite difficult and unpredictable for agro products.26

By 1980, almost one third of the agricultural produce in both—the U.S. and the E.U.—was for export. Production and export of agriculture was heavily subsidised by both the groups. The U.S. farmers were receiving nearly $200 billion annually from their governments to subsidise their food products. But the demand for agricultural produce started declining due to the self-reliant development policies pursued by some countries and balance of payment problems in other countries. This resulted in a trade war between the two giant agricultural exporters.

It was the group of the developed countries, primarily the U.S., who sought in favour of non-inclusion of agriculture under the purview of GATT in the 1950s. However, by

the close of the 1980s, when their agriculture had made substantial progress, developed
countries like the U.S. and countries of the E.U. felt the need to find markets for the
export of their agricultural surplus.\textsuperscript{27} Thus, the idea of liberalising trade in agriculture
did not arise out of any concern for the distressing millions who go to bed on an empty
stomach. It was the intense agricultural trade rivalry existing between the U.S. and the
E.U. which necessitated the introduction of the subject of agriculture in the UR. The
U.S. and like-minded countries insisted that agricultural subsidies were to be removed
for the enhancement of world trade. But they failed to recognise a fundamental issue
that developing countries like India and Korea give agricultural subsidies to attain food
self sufficiency and to increase rural employment. Whereas, advanced countries
subsidise agriculture production for export.\textsuperscript{28}

The UR was scheduled to conclude in 1990, but since no agreement could be reached,
especially regarding agriculture, the round extended its life. Primarily, the debate was
between the developed and developing blocks. The demand of the developed block was
the abolition of quota-bound trade in agricultural commodities, while the developing
block had opposed the demand. But soon after this issue had been resolved, conflict
arouse within the developed block itself, especially between the U.S. and the E.U. Since
the cost of agricultural production in the countries of the E.U. is much higher than that
of in the U.S., these countries granted huge amount of subsidies to their producers and
exporters. Owing to this practice of the E.U., the U.S. had to face unnecessary
competition in the export market. The U.S., thus, asked for abolition of any such grant
and support. Finally, a general agreement among the member countries was reached in

\textsuperscript{27} B.K. Kealya, "World Trade Organisation and National Sovereignty", Alternative Economic Survey

\textsuperscript{28} Nilima M. Chandiramani, Ibid., pp.100-112.
1994. The Agreement on Agriculture (AoA) has some basic clauses like market access, domestic support and export competition.\footnote{Anindya Bhukta, "Indian Agriculture under WTO Regime", in G.K. Chadha (ed.), "WTO and the Indian Economy", Deep & Deep Pub., pp.191-192, 2003.}

In some ways, the disciplines in this sector are now more stringent than in the sector of industrial products. For example, all tariffs in this sector have been bound by all members and there are quantitative commitments on the reduction of subsidies. However, the major industrialised countries which have been maintaining high protective barriers and subsidies find it difficult to increase the pace of liberalisation in these areas because of strong agricultural lobbies in these countries.

Those developing countries that are traditional importers fear that this process may result in an increase in the price of agricultural products which will raise their import bill. Several developing countries have a more deep-seated concern. Agriculture in these countries is not so much a matter of commerce; it is intimately interwoven with the pattern of rural life. Many farmers cultivate their land not as a commercial venture, but more as a family tradition. The land has been with their families for generations and they have been cultivating it as they have no other source of income to support their families. Besides, in the process of the division of holdings, a large number of farmers possess only small parcels of land which are not commercially viable. But the small and marginal household farmers are called upon to face the challenge of world competition. Then, there is also the interest of the countries, particularly the developing countries with a chronic shortage of foreign exchange, in the indigenous production of their staple food. It is not practical for them to depend on imported staple food, even though it may be cheaper to import, because they may not have adequate foreign exchange to import the food products. Considering the uncertain nature of their foreign exchange...
availability and the uncertainty in the supply of food grain even if the necessary foreign exchange were available, several countries would like to develop their own production base for their staple food, rather than depend on imports.\textsuperscript{10}

(1) Market Access

On the market access side, the AoA intended a switch from a situation of Non-Trade Measures (NTMs) imposed at the border to that of only tariff. Tariffication implies for each tariff line, the package or protective measures including the existing tariff, is replaced by single new tariff that is estimated to provide substantially the same level of protection as the existing package of measures (tariff equivalent).\textsuperscript{31} Moreover, the tariff rates are bound. That is, the countries have to make a commitment not to increase the tariff levels on particular products beyond the negotiated rate. Moreover, the ceiling rates negotiated ensured the maximum level beyond which tariff on that particular item cannot increase. This was to ensure predictability in the importing country market. The most important part of the market access is that the tariff rates agreed upon are to be decreased over a specified time frame.

NTMs have to be eliminated or may be converted into equivalent tariffs. The normal tariff and the tariff equivalent of non-tariff measures after conversion, are added together to form the base tariff level. This tariff total has to be reduced over the period of implementation. In this manner, there is a bound tariff level for any particular product which gets reduced from year to year during the implementation period. All tariffs on

\textsuperscript{30} Bhagirath Lal Das, Ibid., pp.227-8.
\textsuperscript{31} Joo-hwa Lee, Ibid., pp. 5-6.
agricultural products have to be bound in this manner by all Members. However, least
developed countries are exempted from tariff reductions.32

If a Member does not convert its non-tariff measures for a product into an equivalent
tariff, it has the option of allowing a certain minimum level of import of that product
each year at a low level of tariff. Only very few countries like Korea and Japan took
recourse to this approach. The Agreement stipulates the immediate dismantling of non-
tariff measures in the agricultural sector. There are, however, three exceptions, viz.:

(i) measures taken under balance-of-payments provisions;

(ii) other measures taken under the general provisions of GATT 1994 or other
WTO agreements;

(iii) special alternative option adopted by a few countries in respect of one or
two products for which tariffication was not adopted but, in lieu of that, a
special minimum access opportunity was provided.

However, ultimately all non-tariff measures, excluding these three types, are to be
eliminated. They have to be converted into equivalent tariffs which are to be added to
the normal customs duties on the respective producers. The resulting tariffs are
inscribed in the schedule of the Member. The tariff equivalent of non-tariff measures is
to be calculated with the data for 1986-8. A Member has to reduce its tariff total every
year over a prescribed span of time, which, for developed countries, is 1995-2000, and,
for developing countries, 1995-2004. The tariff levels on various agricultural products
during each of these years are included in the schedule of the Member and are binding
on the Member. The modalities prescribed an average total reduction of 36 per cent (24

32 Joo-hwa Lee, Ibid., pp. 5-6.
percent for developing countries) over the implementation period, with the condition that there be a minimum reduction of 15 per cent (10 per cent for developing countries) in each tariff line. In the case of products subject only to ordinary customs duties (i.e., not subject to non-tariff measures), the reduction is to be made on the bound duty level. In such cases, if the duty had not been bound, the reduction is to be made with reference to the level on 1 September 1986. In actual practice, major importers of agricultural products have bound the tariffs at very high levels, assuming very high tariff equivalents for non-tariff measures, thus making the entry of imports almost impossible. A United Nations Conference on Trade and Development (UNCTAD) calculation shows some of these typically high tariffs as:

- **Canada**: butter (360%), cheese (289%), eggs (236.3%);
- **EU**: beef (213%), wheat (167.7%), sheepmeat (144%);
- **Japan**: wheat products (388.1%), wheat (352.7%), barley products (361%);
- **US**: sugar (244.4%), peanuts (173.8%), milk (82.6%).

These are the initial-year tariffs, and yearly reductions have been made in relation to this base; therefore, the tariffs on these products, even in the final year of the implementation period, would still be very high.

As the tariffs existing after the tariffication of non-tariff barriers are very high in several cases, there would be no meaningful market access opportunities. Hence, particular provisions were made in the document on modalities for market access opportunities. There are three types of such provisions. Firstly, current access opportunity has to be provided. It means that opportunity has to be provided for a level

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UNCTAD, TD/B/WG.8/2/Add.1, 26 July 1995, Table I.1.
of import equal to the average annual import level during the base period 1986-8. A practical way to do this is by having very low tariffs for imports up to this extent. Besides, imports stipulated in bilateral and plurilateral agreements also have to be facilitated by stipulating conditions not inferior to those which are in those agreements. Secondly, minimum access opportunity has to be provided in 1995 at a level not less than 3 per cent of the annual consumption in the period 1986-8. This level would be raised to 5 per cent by the end of 2000 by developed countries and by the end of 2004 by developing countries. As in the case of current access opportunity, this minimum access opportunity would also be provided by having very low tariffs for imports up to these levels. Thirdly, special minimum access opportunity has to be provided by those countries that have opted for this alternative instead of tariffication. This alternative has been undertaken by only a few countries, and that also for only one or two products: Korea, Japan and Philippine for rice, and Israel for sheepmeat and some dairy products. For developed countries, this special minimum access opportunity means import opportunity in 1995 to the extent of 4 per cent of the annual average consumption in the base period 1986-8, and, thereafter, an increase of 0.8 per cent of the base period consumption every year up to the end of 2000. For a developing country, it means import opportunity in 1995 to the extent of 1 per cent of the annual average consumption in the base period, rising uniformly to 2 per cent in 1999 and then to 4 per cent in 2004.

These access opportunities are to be provided by tariff quotas, i.e., by having very low tariffs up to the stipulated extent of imports, and above that level, having the normal tariffs which, in the case of agricultural products, are generally very high. Article XIII
of GATT 1994 prescribes the discipline that, for such purposes, there should be a global tariff quota which has to be applied on a non-discriminatory basis.

For imposing restraints on market access as a safeguard for domestic production against problems caused by imports, the general safeguard provisions, covered by Article XIX of GATT 1994 and the Agreement on Safeguards, are applicable to agricultural products as well. But, in addition, some special safeguard provisions (SSP) are also applicable under some conditions (Article 5 of the Agreement on Agriculture). The difference between these two alternative steps is that the general safeguard action can be taken only if there is existence of serious injury or the threat of serious injury to domestic production, whereas the special safeguard action can be taken without the demonstration of any adverse effect on domestic production. The latter type of action can be taken if the import price falls below a particular level or if the import quantity rises above a particular level.

(2) Domestic Support

A major issue of contention during the UR of negotiations was the high domestic support being provided to agriculture in the developed countries. It was the U.S. first in the 1950s and the 1960s, then came Japan and the E.U., and more recently, Korea. Quantitative restrictions on domestic support, through the Aggregate Measure of Support (AMS), are one of the important features of the AoA. The AMS is the annual level of support in monetary terms extended to the agricultural sector. Supports

provided to the sector are of two types—product specific with trade distorting effects and non product specific with minimal or no trade distorting effect. The former is often referred to as a 'Amber Box Measures' and the latter as 'Green Box Measures' or 'Blue Box Measures'. Product-specific supports are subsidies given to producers of specific crops, whereas non-product specific supports comprise subsidies on inputs like power, irrigation, fertiliser and credit. The AMS is calculated separately for either type of support. In the AoA, it was decided that in no case, either for product-specific support or for non-product specific support, the AMS was to exceed 10 per cent of the total value of agricultural product for developing countries and 5 per cent for the developed countries. If this stipulated level is exceeded by a developed country, it would have to reduce it by 20 per cent over six years, whereas a developing country will get a ten year's term to reduce it by 13.3 per cent.\(^{35}\) Somasri Mukhopadhyay argues that the disciplining of the domestic support area will result in a competitive environment in the importing country market, thereby, ensuring entry of the developing country products into the developed world market.\(^ {36}\) But the weak ground of this argument will be proved in the fourth chapter. However market access is being enhanced through reductions in domestic support measures, even though it is mainly for the developed countries. Domestic support measures are explained more in detail as follows.

The general scheme of commitments is that a Member limits its domestic support, i.e., subsidies, to agriculture in the first year of implementation, i.e., 1995, to a particular level, and, thereafter, progressively reduces the levels in subsequent years during the period of implementation (up to 2000 for developed countries and 2004 for

\(^{35}\) Anindya Bhukta, Ibid., p.196
\(^{36}\) Somasri Mukhopadhyay, Ibid., pp.208-209
developing countries). The maximum level for each year is mentioned by the Member in its schedule. Domestic support is quantified through what has been called the Aggregate Measurement of Support (AMS). The initial level which forms the basis for the committed levels in the implementation period is called the Base Total Aggregate Measurement of Support (Base Total AMS). It is recorded in the schedule, followed by the Annual and Final Bound Commitment Levels which is the maximum Total AMS level permissible in the last year of the implementation period. In between, there are Annual Bound Commitment Levels which give the maximum permissible Total AMS levels in the respective years during the implementation period.

The schedule on the reduction in domestic support is to be prepared on the basis of the guidelines on modalities which prescribed that the Base Total AMS must be reduced by 20 per cent (for developing countries: 13.3 per cent) over the period of implementation. Thus, for a developed country, the Final Bound Commitment Level, which is the committed ceiling in the final year of the implementation period, should be the Base Total AMS reduced by 20 per cent. The reduction should be done over this period in equal instalments every year so as to reach this targeted reduced level in the final year. It should be recalled that the implementation period for a developed country is 1995-2000 (both inclusive), and for a developing country, it is 1995-2004 (both inclusive).

There may be some types of support which are not product-specific. These are added together to get the non-product-specific AMS. The sum of all product-specific and non-product-specific support is called the Total AMS. If a support measure exists but the method of calculation of the AMS cannot be applied to it, the calculation of an
equivalent measurement of support will be made, and it will also be included in the Total AMS.

Certain domestic support measures are exempted from the commitment of reduction. These are mentioned at two places in the Agreement, viz., in Article 6 and in Annex 2. These measures will, therefore, not be included in the calculation of the Current Total AMS in any year. The exemptions contained in Article 6 are the following:

(i) in the case of developing countries, investment subsidies generally available to agriculture;

(ii) in the case of developing countries, agricultural input subsidies (for example, supply of fertilisers or irrigation at subsidised prices) generally available to low-income or resource-poor producers;

(iii) in the case of developing countries, support to producers to encourage diversification from growing illicit narcotic crops;

(iv) product-specific support which does not exceed 5 per cent of the value of production of that product; For developing countries, this de minimis percentage is 10 per cent.

(v) non-product-specific support which does not exceed 5 per cent of the value of total agricultural production; For developing countries, this de minimis percentage is also 10 per cent.

(vi) direct payments under production-limiting programmes, if such payments are based on fixed area and yields, or if such payments are made on 85 per cent or less of the base level of production, or if such payments are made on a fixed number of heads in the case of livestock payments.
Annex 2 to the Agreement lists a large number of policies and measures which are exempted from the reduction commitment under certain conditions. The basic requirement is that the domestic support measures for which exemption is claimed must not have more than minimal (i) trade-distorting effects, or (ii) effects on production. This appears to be a very severe condition. But, immediately after putting this condition, the Annex goes on to say that "accordingly, all measures ...shall conform to the following basic criteria", and then, it lists two criteria, as follows:

(i) the support must be provided through a publicly-funded government programme, not involving transfers from consumers; and
(ii) the support must not have the effect of providing price support to producers.

Domestic support measures that have, at most, a minimal impact on trade ("green box" policies) are excluded from reduction commitments. Such policies include general government services, for example in the areas of research, disease control, infrastructure and food security. It also includes direct payments to producers, for example certain forms of "decoupled" (from production) income support, structural adjustment assistance, direct payments under environmental programmes and under regional assistance programmes.\(^\text{37}\)

\(^{37}\) Joo-hwa Lee, Ibid., pp. 6-7.
(3) Export Subsidy

When exports are subsidized, the international price gets depressed artificially. This, in turn, makes the subsidised export products artificially competitive in the international market, thus, hurting the other exporters. AoA defines export subsidies as "subsidies depend on export performance." The list covers most of the export subsidy practices prevalent in the agriculture sector. All categories of export subsidies are subject to reduction commitments expressed in terms of both value and volume of subsidised exports and budgetary outlays of these subsidies.\(^{38}\) Outlays on export subsidies by developed countries are to be reduced by 36% of the base period (1986-90) level, with an initial cut of at least 6% and thereafter in equal installments. The volume of subsidized exports must be reduced by 21% from the base period level, with an initial cut of 3.5% in the first year and thereafter unequal installments.\(^{39}\) The cut in export subsidies are to be implemented over the six-year implementation period by the developed countries. The developing member countries are required to reduce direct export subsidies by 24 per cent and the quantity of subsidised exports by 14 per cent, over a period of ten years. The least developed countries, on the other hand, are given total exemption. Examples of some of the prohibitive export subsidies are direct subsidies on exported and exportable items, subsidies to reduce the cost of marketing exports of agricultural products, subsidies in the form of favourable terms of internal transport and freight changes on export shipments, etc.\(^{40}\) The gradual cut in export

\(^{38}\) Somasri Mukhopadhyay, Ibid., p.208.
\(^{39}\) Joo-hwa Lee, Ibid., pp.7-8.
\(^{40}\) Anindy Bhukta, Ibid., p.195.
subsidies is expected to result in a fair international market for agro products, thereby, increasing export prospects of the countries like India.\textsuperscript{41}

\textbf{(4) Food Security}

Food security and protection of the environment have been identified as the major Non-Trade Concerns (NTCs). AoA, however, deals with the issue of food security in a very perfunctory manner. The only support for measures aimed at ensuring food security appears in the form of an exemption from the AMS calculation expenditure made on public stockholding of food grains. Such expenditures made for accumulation and holding of stock of products would be exempt from AMS only if these activities form an integral part of a food security programme identified by national legislation. This may include government aid to private storage of products as a part of such a programme. The stockholding activities for food security have been subjected to several conditions. According to the Agreement, countries will be allowed to make use of public stockholding of grains for food security purposes "providing that the difference between the acquisition price and the external reference price (i.e. the ruling international price) is accounted for in the AMS". There is another provision, that is included in the context of using public stockholding for food security purposes, that the beneficiaries will have to be targeted. Countries have been given the liberty to give food aid to the poor, but the poor will have to be identified on the basis of "clearly-defined criteria related to nutritional objectives". This condition implies that the criteria adopted for identifying the poor must have the approval of the WTO and that the eventual

\textsuperscript{41} Somasri Mukhopadhyay, Ibid., p.208.
decision, as to who should receive food aid, will be made by the multilateral organisation.\(^42\)

**(5) Farmer's Rights**

Living organisms were beyond patentability in most of the countries of the world. So was agriculture. However, in the Uruguay round negotiations, the developed countries put emphasis on the rights to protect intellectual property in the agricultural sector also. As a result, article 27.5.3 (b) of the UR Agreement states that "parties shall provide for the protection of plant varieties by patents or by an effective *sui-generis* system or by any combination thereof." A landmark in the evolution of plant protection was the adoption of the International Convention for the Protection of New Varieties of Plants (UPOV) in 1961.\(^43\) In its first amendment in 1978, the UPOV placed some restrictions on the protected seed while providing two exemptions to PBRs (Plant Breeders' Rights), namely the farmers' exemption and the research exemption. The first exemption allows the farmers to retain part of their harvest for subsequent planting as seed, whereas the second one permits the breeders to use a protected variety in subsequent breeding experiments. However, the 1991 amendment of UPOV put stronger restrictions. In this version, as Suman Sahai and Anindya Bhukta point out, breeders are not exempted from royalty payments for breeding work and the farmers' privilege has become restricted.\(^44,45\)

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\(^42\) Biswajit Dhar & Sachin Chaturvedi, "WTO Agreements and Agricultural Sector: Implications and Options for India", Research and Information System for the Non-Aligned and Other Developing Countries, New Delhi, 1999, pp.20-1.


\(^44\) Suman Sahai, "Protecting Plant Varieties: UPOV should not be our Model", Economic and Political Weekly, Vol. 01, Nos. 41 and 42, 1996 b.

\(^45\) Anindya Bhukta, Ibid., pp.198-199.
(6) **Sanitary and Phyto-Sanitary Measures**

A member may apply trade-restrictive measures for the protection of human life or health and of plant or animal life or health. Earlier, such action could generally be taken under the general exception provision contained in Article XX of GATT 1994. But now, the UR has evolved a detailed discipline in this area which is contained in the Agreement on the Application of Sanitary and Phyto-sanitary (SPS) Measures.\(^ {46} \)

The SPS agreement which reaffirms the right of countries to set their own health and safety standards, provided that they are justifiable on scientific grounds and do not result in unjustified barriers to trade, includes any measures that:

(a) protects animal or plant life or health within the territory of the member from risks arising from the entry, establishment or spread of pests, diseases, disease-carrying organism, or disease-causing organisms;

(b) protects human or animal life within the territory of the member from risks arising from additives, contaminants, toxins, or disease-carrying organisms in food, beverages or foodstuffs;

(c) protects human life or health within the territory of the member from risks arising from disease carried by animals, plants, or products thereof, or from the entry, establishment or spread of pests; or

(d) prevents or limits other damages within the territory of the member from the entry, establishment or spread of pests.\(^ {47} \)

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\(^ {46} \) Bhagirath Lal Das, Ibid., pp.131-3.

SPS measures include all relevant laws, decrees, regulations, requirements, and procedures including end product criteria; processes and production methods; testing, inspection, certification and approval procedures; quarantine treatments including relevant requirements associated with the transport of animals or plants, or with the materials necessary for their survival during transport; provisions on relevant statistical methods, sampling procedures and methods of risk assessment; and packaging and labelling requirements directly related to food safety. The SPS measures, thus, encompass food additives, contaminants, toxins, drug or pesticide residues in food, certificate of food, animal or plant health safety, processing methods, food labelling, plant or animal quarantine, requirements for prevention, control or establishment of pest or disease and sanitary requirements for imports. Whereas the sanitary provisions relate to food and animal health, the phyto-sanitary provisions cover plant health aspects of products.

The SPS measures can become trade barriers when (i) the domestic standards of importing Members are higher than those of exporting Members, (ii) standard conformity processes differ across countries or (iii) the processes of one country are not recognised by the other. For the purpose of definitions, "animals" includes fish and wild fauna; "plant" includes forests and wild flora; "Pests" includes weeds; and "contaminants" include pesticide and veterinary drug residues. The basic rights and obligations clause allow members to take suitable measures for the protection of human, animal or plant life or health. Such measures are based on scientific principles and do not arbitrarily or unjustifiably discriminate between members where identical or similar

48 Swinbank, ibid.
50 Swinbank, ibid.
conditions prevail. The harmonisation provision calls for members to base their SPS measures on international standards where they exist, though members can adopt more stringent SPS measures if there is a scientific justification as per the agreement. Under the agreement, members are also to recognise the SPS measures of other trade partners as equivalent to their own, if the exporting member objectively demonstrates to the importing member that its measures achieve the importing member's appropriate level of SPS protection. Further, if members wish to apply more stringent measures than the international standards, then they are obliged to base their risk assessment and level of SPS protection on scientific evidence and their levels should not be more trade restrictive. Members are also required to consider objective geographical and ecological conditions rather than national boundaries to apply SPS measures (Regionalisation clause). Under the transparency clause of the agreement, members are to ensure that all SPS measures and changes in them are notified in a transparent manner through a single national enquiry point. Finally, the control, inspection and approval procedures are to be applied in no less a favourable manner for imported products than for similar domestic products.51

Members applying SPS measures must follow the following disciplines regarding the conditions and limitations:

(i) A measure must be applied only to the extent necessary to protect human life or health, animal life or health, or plant life or health.

(ii) A measure must be based on scientific principles, and must not be maintained without sufficient scientific evidence.

(iii) A measure must not be used in a manner constituting a disguised restriction on international trade.

(iv) There must not be any discrimination between Members with similar or identical conditions. This is a modified form of the most-favoured-nation (MFN) principle. It allows discrimination among countries where different conditions prevail.

(v) There must not be any discrimination between the territory of the applying Member and that of other Members.

(vi) Measures must not be more trade-restrictive than required to achieve an appropriate level of protection, taking into account technical and economic feasibility.

(7) **Anti-dumping Measures**

The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 (the Agreement on Anti-dumping Practices or ADP) governs the application of anti-dumping measures by members of the WTO. Anti-dumping measures are unilateral remedies which may be applied by a member after an investigation and determination by that member, according to the stipulated provisions of the ADP, that an imported product is "dumped" and that the dumped imports are causing material injury to a domestic industry producing the like product. The ADP sets out certain substantive requirements that must be fulfilled in order to impose an anti-dumping measure, as well as detailed procedural requirements regarding the conduct of anti-dumping investigations and maintaining of anti-dumping measures. Failure to
respect either the substantive or procedural requirements can be taken to the Dispute Settlement Body and may be the basis of invalidation of the measure.

In general terms, dumping is a situation of international price discrimination, where the price of a product when sold in the importing country is less than the price of that product in the market of the exporting country. Thus one can identify it by simply comparing prices in two markets. However the situation is rarely, if ever, that simple and in most cases it is necessary to undertake a series of complex analytical steps which can enable one to determine the appropriate price in the market of the exporting country (known as the "normal value") and the appropriate price in the market of the importing country (known as the "export price") so as to be able to undertake an appropriate comparison. Normal value of a certain product could refer to the price used or the cost of a particular product in the country of origin or intermediate exporting country, while, on the other hand, "exporting price" is the price at which the product was sold.

Article VI of GATT 1994 (Agreement Establishing WTO) explicitly authorises the imposition of a specific anti-dumping duty on imports from a particular country in cases where dumping causes or threatens to cause injury to a domestic industry. In order to do that, a government intending to impose anti-dumping duties must show that dumping is taking place, calculate the extent of dumping (how much lower the export price is compared to the exporter's home market price) and show that the dumping is causing injury to the importing domestic country. In utilising these measures, countries are often allowed to charge extra import duty on the particular product from the exporting country in order to bring its price closer to the "normal value" or to remove the injury to the domestic industry in the importing country.
As indicated above, calculating the extent of dumping on a product is not enough. There is a further requirement to be met, namely that of a causal link between dumping and injury suffered by the industry in the importing country. From this background it is required that a detailed investigation be conducted according to the specified rules. The said investigation must evaluate all relevant economic factors that have a bearing on the state of affairs in the industry in question. If the investigation shows that dumping is taking place and the domestic industry is being hurt, the exporting company can undertake to raise its price to an agreed level in order to avoid anti-dumping import duty.

Article 5 of the Anti-dumping Agreement establishes the requirements for the initiation of investigations. The agreement specifies that investigations should generally be initiated on the basis of written request submitted "by or on behalf" of a domestic industry. This "standing" requirement includes numerical limits for determining whether there is sufficient support by domestic producers to conclude that the request is made by or on behalf of the domestic industry, and thereby warrants initiation. Based on this, it should be noted that these measures cannot be resorted to if only one or two companies producing a similar product to the imported product are affected. Furthermore, the Agreement, under the Article 5, explicitly establishes requirements for evidence of dumping, injury and causality, as well as other information regarding the product, industry, exporters, importers and other matters in written application for anti-dumping relief. Moreover, the agreement specifies that, in special circumstances when the authorities initiate without a written application from the domestic industry, they shall proceed only if they have sufficient evidence of dumping, injury and causality. Nothing prohibits a company from withdrawing a complaint if it finds that there is a significant
change in the market conditions. According to Article 5.8 of the Agreement on Anti-dumping, the investigating authorities should immediately terminate the investigations in the event that the volume of imports is negligible or the margin of dumping is de minimis, i.e. less than 2% expressed as a percentage of the export price. The same applies if the volume of imports from a particular country is less than 3% of all imports of the like products into the importing country. However this rule does not apply when countries with individual shares of less than 3% collectively account for 7% of imports of the product under investigation or if the injury to the domestic industry in question is negligible.

Since the establishment of the WTO, the use of trade remedy laws to provide domestic protection against foreign imports has been a source of concern to members. However the current anti-dumping rules are still used especially in the developed countries to protect domestic industries from fair and legitimate competition. The increased use of anti-dumping procedures undermines the credibility of the rules-based world trading system.
5. Summary

Being one of the big five of G-10, India successfully opposed the idea of launching a new round, putting across the point of view that the unfinished agenda of the Tokyo Round needed to be addressed first. However, by the mid-1980s, the importance of the big five began to weaken and other developing countries were no longer prepared to accept the leadership of the big five.

Korea, being an export-oriented country, was not active in raising its voice against the motives of the developed countries in launching the UR of trade negotiations. The fundamental standpoints of Korea in the UR were to reinforce its exports of manufactured goods while maintaining its national food security.

Agriculture was brought under the discipline of WTO. But agriculture in India and Korea is not so much a matter of commerce; it is intimately interwoven with the pattern of rural life. This gave fear to the small and marginal household farmers of India and Korea that they would be in great difficulty when they were called upon to face the challenge of world competition.