CHAPTER III

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Other than war, perhaps, economy has been the second most important cause and subject matter of international negotiations. Few countries could enjoy economic or even political stability in a world in which the conditions under which financial institutions, business firms, and individuals transact across national borders were highly uncertain. Maintaining sufficient predictability in this respect is, therefore, a natural extension of governmental responsibility for domestic order and stability. In a world of incessant and uncontrollable change, stability can be maintained only by continuing adjustment. In the sphere of international commerce, the countries of the world engage themselves in negotiations for orderly transactions.

It has long been recognized that all trading nations can benefit from the existence of, and adherence to, a multilaterally agreed set of rules and procedures to guide the conduct of international trade in an equitable and efficient manner. The realization of this
fact had much to do with the creation in the late forties of the General Agreement on Tariffs and Trade (GATT) to assist countries to work in a co-operative fashion in refraining from implementing measures to meet their own short term requirements, by imposing costs on other trading nations. In the post second world war era, the most important issue of international business negotiations has been the liberalisation of trade among nations by minimising protectionism.

Protectionism

In broad terms, it may be defined as a policy a country has of helping its own industries by putting barriers against the imported goods. Demands for protection are usually based on the following: (a) support of newly created industries, (b) facilitating adjustments, (c) national security, (d) correction of domestic distortions (second best intervention), (e) prevention of competition from "pauper" labour, (f) exploitation of changes in the terms-of-trade, (g) strategic trade policy.

Of all problems confronting the international economy, none has been more tenacious than protectionism. At the time of GATT formation the main tool of trade barrier was tariff.
The tariff is essentially a tax levied on the import or export of goods entering a country, in transit within a country or leaving a country. It has been characterised by a multiplicity of forms, the most common of which has been the ad valorem tariff levied as a percentage of the total value of the commodity. Less common has been the duty levied on individual units of a commodity, known as a specific tariff. Occasionally compound duties have been imposed consisting of a combination of a specific and an ad valorem tariff. Commodities have been defined in tariff schedules with varying degrees of detail subject to frequent revision, re-definition and adjustment. In addition to the different types of tariff, different tariff rates may be imposed depending on the country of origin of the commodity.

In the 1930s country after country sought to escape from the gathering storm of the Great depression by sealing of its domestic markets in a frantic scramble to save incomes and jobs. But since the World War II, the series of multilateral trade negotiations conducted under GATT has virtually eliminated tariffs.
The Dillon Round (1960-61) formally initiated the process and built upon earlier agreements to free capital and trade flows. By the close of Kennedy Round (1967) average tariffs had been reduced to 10 percent. The Tokyo Round (1974-79) guaranteed that average tariffs on industrial country dutiable imports would be 6 percent by 1988. Since the variance of tariffs has been reduced, it is generally conceded that tariff protection in major trading countries is negligible.

Tariff Escalation

A particular problem facing developing countries that would like to expand their manufacturing base by exporting processed versions of their raw materials is tariff escalation. Most countries levy higher tariffs escalation. Most countries levy higher tariffs on manufactures than on the raw materials used to make them. This means that the effective protection, or protection given to domestic value added, is much higher than the nominal tariff. This discriminates against processing in developing countries. The Tokyo Round

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did little or nothing to reduce tariff escalation. However, the general trend up to the early 1970s was one of liberalisation. The lowering of tariff barriers agreed to in various negotiations produced and symbolized the withering of the 'old protectionism' that had reached peak in the 1930s.

New Protectionism

Since the mid 1970s, the trend towards trade liberalisation appears to have been reversed, or at least, arrested in industrial countries. In a turn towards what has become known as the 'new' protectionism, growth in the international division of labour and production has slowed. An important difference between the 'old' and the 'new' protectionism is that the latter relies more on non-tariff barriers than on traditional import tariffs as measures to increase protection. "New" thus refers both to the recent change in the acceptability of trade restrictions and to the change in the composition of the restrictive measures adopted. In addition, and of the greatest pertinence for the study at hand, the "new" protectionism has increasingly been turned against the industrial exports of developing

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2Ibid., pp.139-40.
countries. Recent moves against the growth of imports from the newly-industrializing countries (NICs) contrast with imports from such countries often having received preferential treatment by industrial countries in the past. As long as the exports of developing countries had remained unrestricted, they had stood to gain from trade restraints imposed by industrial countries on each other. Furthermore, the extent developing countries were allied with industrial countries either as ex-colonies, "frontline" States, or hemispheric partners, they had long enjoyed special access to the markets of those countries. These privileges too have been eroded by the "new" protectionism.

Non-Tariff Barriers

Non-tariff barriers have constituted an area of continuing interest and concern. In broadest terms, non-tariff barriers refer to governmental policies and practices that operate in such a way as to distort the

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volume, direction or product composition of international trade.  

Major Non-Tariff Barriers

The array of governmental non-tariff barriers to trade is very wide. For example, the table of contents of the inventory of non-tariff measures which is used by the GATT Secretariat in its Report of the Group on Quantitative Restrictions and Other Non-Tariff Measures enumerates more than forty categories of measures.  

While there is room for debate about the composition of a complete set of NTBs, our selection, drawn from official definitions and based on official sources, represents a minimum list of non-tariff trade policies. It comprises five groups of the most common and explicit border measures used to control the inflow of foreign goods.

Quantitative Import Restrictions

(a) Prohibition and Embargoes on the Import of a


product. A prohibition may be total, may admit exceptions at the discretion of the competent authority, or may operate only under certain conditions.

(b) Quotas. Ceilings (specified in value or quantitative terms) are imposed on the importation of a product for a given period of time; they may be global, country-specific, or seasonal.

(c) Discretionary Import Authorizations. Permission to import is granted at the discretion of competent authorities. These are often used for the administration of quantitative limits.

(d) Conditional Import Authorizations. Permission to import is subject to the importer undertaking commitments in areas other than importation, or to specified overall economic conditions (such as export performance, or the purchase of an equivalent quantity of domestic output) or the unavailability of domestic supply.

2. "Voluntary" Export Restraints

"Voluntary" export restraints (VERs) are agreements between an exporter and an importer as to the maximum amount of exports (specified in value or quantity terms) to be purchased within a given period of time. This category includes, inter alia, bilateral agreements
on textile trade reached within the framework of the Multifibre Agreement (MFA) that indicate specific limits, consultation levels, and export controls. Although voluntary export restrictions are administered by exporting countries, they are monitored by importing countries, and their imposition is the result of successful protectionist requests in importing countries. 7

3. Measures for the Enforcement of Decreed Prices

(a) **Variable Levies.** Import charges set periodically to equalize the import price with a decreed domestic price.

(b) **Minimum Price Systems.** A minimum import price is set by the importing country, and import prices below the decreed minimum trigger an additional duty or some other penalty.

(c) **"Voluntary" Export Price Restraints.** This category covers agreements between the exporter and the importer on the minimum price to be observed by the exporter.

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4. Tariff-type Measures

(a) Tariff Quotas. Two tariff rates are applied, the higher rate coming into operation when the quantity of imported goods exceeds a specified level.

(b) Seasonal Tariffs. Different tariff rates are applied to the same (agricultural) product according to the time of the year.

5. Monitoring Measures

(a) Price and Volume Investigations, Surveillance

Formal investigations of charges by domestic producers about unfair trading practices of an exporting country; formal monitoring of the evolution of imports of sensitive products with or without prior import authorization being required. While an investigation is obviously necessary to determine the facts, there is evidence that the inquiry process itself has a protective effect, independent of the eventual findings.8

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The investigative process or continued surveillance generates uncertainty about an exporter's continuing access to the market and creates an incentive for the exporting firm to raise its price, whether or not it is guilty of an illegal practice. A surveillance process is often the means by which a government monitors "voluntary" price maintenance agreements or volume restraint agreements contracted between exporting and import-competing industries or governments. Surveillance is often the precursor to more formal import restrictions, or a signal to exporters to practice "self-restraint" to avoid a more formal "voluntary restraint". "Automatic" import licensing procedures are often restrictive; for example, they serve to police bans on imports from certain countries or to funnel all imports of a product through a government-authorized association of import-competing local producers of that product or of producers of a finished good made from that product.

(b) Antidumping and Countervailing Duties

In theory, anti-dumping duties are levied on a product that is sold in the importing country at a lower price than in the exporting country. Countervailing duties are levied to offset export rebates or subsidies with the rationale that such measures create a situation which more closely approximates the outcomes
that would exist under free and fair trade regimes. William Dickey's study of anti-dumping practices in the United States\(^9\) finds that such measures have a greater disincentive effect on imports than do comparable "fair trade" (mainly anti-trust) regulations on domestic firms' sales and that they do, in fact, constitute protection of domestic producers. There is evidence that the outcome of the pricing test in dumping and countervailing duty cases is significantly influenced by the economic variables usually used in the parallel injury test to measure injury, i.e. that the economics of dumping and countervailing duties is much the same as the economics of safeguard cases.\(^{10}\)

While our selection of NTBs includes a broad range of policies, it still constitutes only a subset of the trade restrictions included in the GATT and United Nations Conference on Trade and Development (UNCTAD)

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lists. For example, it does not include domestic policy measures (such as subsidies to import-competing producers, government procurement, or restrictions on domestic sale of foreign goods), generalized procedure applying to all imports, restrictive business practices, the use of technical or sanitary requirements as barriers to trade or subtle forms of import restriction such as changing ports of entry; any of these could seriously affect the level of international trade.

Even without going into details about the extent of NTBs, four major points can be made. First, the extent of NTBs is indeed large. At least 27 percent of the sixteen major industrial economies' imports, some $230 billion of 1981 imports, would have been covered by one or more of the selected NTBs as they applied in 1983. NTBs are particularly widespread in agricultural products, textiles and clothing, mineral fuels and iron and steel. Second, quantitative controls appear to be the most prevalent of individual NTBs - much more so than price controls, which are applied mainly to agricultural imports. Third, NTBs are significantly

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more prevalent on imports from developing economies than from industrial ones. In relative terms, developing economies face more barriers than industrial ones in manufactured trade and fewer in agricultural trade. Finally, the use of NTBs has increased and has done so at a significant pace. In the period from 1981 to 1983, a net increase of 2,486 NTBs covering $12.8 billion of 1981 imports was observed.

The declining tariff levels, increasing rigidity and the failure of tariffs to provide import competing suppliers a reliable source of relief, have given a fillip to the growth of NTBs as a logical alternative for securing increased protection. Moreover, as the institutional resistance increases in tariff levels, import competing groups have preferred to seek relief from competition through a less direct and short-cut path for exerting protectionist pressures to gain some of the lost tariff protection. As a consequence of these developments, the relative, actual and potential importance of NTBs has risen as the tariff levels have fallen, and they will continue to receive greater attention in future trade negotiations.

The agenda for the Uruguay Round makes it very clear that non-tariff obstacles to international trade
are substantial and have been growing in importance.

Prices in International Business Negotiations

Prices constitute another core issue in international business negotiations. In the North-South dialogue the commodities' prices bargaining has been a dominant feature. The origin of the concept of the new international economic order-(NIEO) may be traced back to the sixth special session of the United Nations General Assembly in 1974 which was devoted exclusively to problems of raw materials and development. It was preceded by unilateral price rise of petroleum by the organisation of Arab Petroleum Exporting Countries in October 1973. Later on, the wider OPEC increased the price of oil very substantially. The price of crude oil was increased from $3.00 to $5.11 barrel at the Vienna meeting of OPEC in October 1973. Just two months later, in Tehran a further increase was agreed to $11.65 making almost four-fold increase overall.\(^\text{12}\)

Very much against their will the developed countries were forced to call a Conference on International

\(^{12}\)Lars Annel and Birgitta Nygreu, The Developing Countries and the World Economic Order(London.: Frances Pinter, 1980),p.102.
Economic Co-operation (CIEC) to discuss wider range of questions. At the conference the developed countries led by USA wanted the negotiation confined to energy issues. However, the developing countries led by Algeria were heavily committed to the broader view that all commodities should be considered. The meeting ended in disarray. But in the seventh special session of the UNGA, the U.S. position appeared to soften. Henry Kissinger conceded that instability of prices and export earnings harmed both producer and consumer countries, and agreed that the time had come for LDCs to have more say in the administration of international economic institutions.  

In 1976, the UNCTAD Conference at Nairobi discussed the integrated programme of commodities. The IPC was intended to promote international commodity price stabilization.

The agreement for establishing the Common Fund for commodities, which was concluded in June 1980, provides for the pooling of contributions from UNCTAD sponsored

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International Commodity Agreements (ICAs).

The only new ICA to be negotiated under the terms of the IPC is the International Rubber Agreement (INRA). However, prices have been some of the major themes of many international business negotiations.

New Themes

The Uruguay Round, launched in September 1986 at Punta del Este, has added some new themes to international business negotiations. The perusal of various items on the agenda shows a mix of old and new issues. There are the normal issues of market access for products. In the same category, but not entirely, is 'Agriculture', where existing GATT rules and disciplines have not been applied or are treated as an exception, and new rules and disciplines are now envisaged. In the same category perhaps is textiles and clothing, governed for over 25 years by a regime of its own, as a derogation from GATT, enabling imposition of discriminatory restrictions.

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In a second category, are a group of 'systemic' issues about the General Agreement and its provisions. In the third category are the 'new themes'—Trade in services, Trade-related intellectual Property Rights (TRIPs) and Trade-related investment Measures (TRIMs). Strictly, TRIPs and TRIMs are solely in relation to 'goods' and the mandate is derived from Part I of the Punta del Este Declaration. The negotiations on 'services' is provided by part II, and is separate from TRIPs and TRIMs. But they have interconnected effects.\(^{15}\)

The United States which took lead in putting these new issues on the agenda of Uruguay Round treats the three issues as one. Title III of the U.S. Trade and Tariff Act of 1984, particularly the coercive powers vested in the Administration under its 'Super 301' and which have been reinforced and vastly expanded under the Omnibus Trade and Competitiveness Act of 1988 and its 'Special 301', leave no doubt about U.S. intentions.

In the 1981 Omnibus Trade and Competitiveness Act, the U.S. Congress has clearly spelt out the negotiating objectives in services, intellectual property,

high technology goods and investments. The law has provided for unilateral determination of unfair trade practice' by any country that does not yield to U.S. demands in these areas, whether bilaterally or in multilateral negotiations, and for imposing tariff and other trade restrictions.

By the inclusion of these three new themes, the U.S. and other capital exporting developed countries are trying to create new international regime with new definitions of property, with rules about impermissible interference with its enjoyment and with credible enforcement measures through trade retaliation.

The entire TRIPs negotiations are intended to internationalise what so far has been in the domestic domain, namely, establishment of the norms and criteria for industrial(intellectual) property protection, broaden the scope of protection (and thus monopoly rights of the transnational corporations holding the patent) and reduce or eliminate the capacity of the Nation-State to regulate or attack such monopolies.

About TRIMs, the Punta del Este Declaration States, "Following an examination of the operation of GATT Articles related to the trade restrictive and distorting effects of investment measures, negotiations should elaborate, as appropriate, further provisions that may be necessary
to avoid such adverse effects on trade."

The main proponent of TRIMs negotiations, the United States is participating in the Uruguay Round with two objectives:

(i) to reduce or eliminate artificial or trade distorting barriers to foreign direct investment (FDI), to expand the principle of national treatment and to reduce 'unreasonable barriers' to establishment; and

(ii) to develop internationally agreed rules, including dispute settlement procedures, which will help ensure free flow of FDI and reduce or eliminate the trade distorting effects of certain trade related investment measures.

Trade in Services

The United States and the EC, on the one side, and a group of developing countries led by India and Brazil, on the other, disagreed over whether to include services in the Uruguay Round. Subsequently a compromise was worked out in Punta in favour of parallel track negotiations on goods and on services. The Punta del
Este Declaration states:

Negotiations in this area shall aim to establish a multilateral framework of principles and rules for trade in services, including elaboration of possible disciplines for individual sectors, with a view to expansion of such trade conditions of transparency and progressive liberalisation and as a means of promoting economic growth of all trading partners and development of developing countries. Such framework shall respect the policy objectives of national laws and regulations applying to services and shall take into account the work of relevant organisation. 16

The Negotiating Plan agreed to in January 1987 identified, for discussions and negotiations, five elements:

(i) definitional and statistical issues;
(ii) broad concepts on which principles and rules for trade in services, including possible disciplines for individual sectors might be based;
(iii) coverage of multilateral framework for trade in services;
(iv) existing international disciplines and arrangements;
(v) measures and practices 17 contributing to or

16 Ministerial Declaration on the Uruguay Round, op.cit.

17 From the beginning the Third World countries said the mandate and the plan covered not only measures and practices of the governments but of private parties also, meaning TNCs and their Restrictive Business Practices.
limiting the expansion of trade in services, including specifically any barriers perceived by individual participants to which the conditions of transparency and progressive liberalisation might be applicable.

The developing countries aimed to ensure that industrial countries did not seek concessions on services as a price for concessions on goods given to the developing countries. However, the United States considers that they are united by the fact that they report to the same Trade Negotiating Committee (TNC). From the U.S. point of view, if there is no result in the areas of services, most likely it would not accept the package as a whole. 18

It can be argued that concessions on goods were only one possible way of getting the developing countries to make concessions on services; the same result might be achieved by embodying, in an agreement on services, features that would be attractive even though unfavourable, to the developing countries, or by discriminating against countries that did not sign the services agreement.

18 At Punta del Este and afterwards, when a number of Third World countries spoke of the 'delinking of goods and services negotiations,' the U.S. made it very clear that it saw the two as interlinked and that there could be no progress in goods without parallel progress in services, and within the goods without equal progress on the new themes of TRIPs and TRIMs.
TRIPs, TRIMs and services are emerging as major issues of international business negotiations not only at multi-lateral level but bilaterally also. The United States has been pressurising many countries that differ with it on intellectual property rights, investment and services. For instance, the United States has threatened to take retaliatory measures against India under 'Super' and 'Special 301'. As per the latest reports India has entered into bilateral negotiation with the U.S. over the issue.

To sum up, it can be said that TRIPs, TRIMs and Services are going to be major issues in international business negotiations. The three new themes are really inter-connected and constitute a single rubric relating to production, comparative advantage and competitiveness of countries--a result of the fundamental structural changes in global production and trade that have already taken place, and are in progress, due to qualitative changes and advances in information and communications technology and its applications.
The U.S.-Japan Auto Dispute

In the late 1970s, the protectionist mood within the USA found its major prop in the auto-industry, which was seen as losing out to Japanese cars. While the American auto-manufacturers were concerned about their profitability, the United Auto Workers (UAW) was more concerned with job security and the depletion of its rank and file membership, as a result of plant closure and industry-wide lay-offs.

The first salvo in the auto dispute was fired by the UAW in October 1979 and it subsequently maintained consistent pressure in the interest of securing employment in the industry.

The U.S.-Japan auto dispute, in its initial phase, proceeded along two inter-related but somewhat separate tracks. The first, was Japanese investment in the United States; and the second, import restrictions on Japanese cars. When the issue was first raised in October 1979, Douglas Fraser of the UAW called for either Japanese production in the United States or restrictions on car imports.
Up until June 1980, the main thrust of American demand was to pressurise the Japanese manufacturers into local production. This point was raised by Fraser when he visited Japan in February, by President Carter when he met with Prime Minister Ohira in May 1980, and again by USTR Askew during his visit to Japan also in May 1980.

On the occasion of his first summit meeting with Prime Minister Ohira in Tokyo, President Carter pointed out that unemployment in the United States was becoming a political issue, but he also assured the Japanese government that he would not impose any restrictions on Japanese car imports. Instead, he urged that Japan take the following steps to prevent the politicization of the dispute:

1. boost car imports from the United States;
2. undertake investment in the United States;
3. produce in the United States on joint-venture basis.  

It was agreed that negotiations between the two countries on the above points would be undertaken when

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Askew visited Japan later in the month. As a result of talks with Askew, the Japanese government agreed to adopt the following measures:

1. encourage capital investment in the United States;
2. conduct a survey of the U.S. market for production in the United States;
3. improve standards and simplify procedures for U.S. car imports;
4. remove tariffs on auto parts;
5. help increase imports of auto parts from the United States.

In time, demands for import restrictions on Japanese cars began to gain strength and Fraser called this a short-term necessity. The Japanese view, both official and of the industry, was that it was inappropriate to blame Japan for the misfortune of Detroit. 20

However, U.S. car manufacturers argued that if Japanese imports were restricted, they would be in a

position to move in quickly to fill the shortfall in supply since they already had excess capacity.

A task force set up in May 1980 and headed by Transportation Secretary Neil E. Goldschmidt submitted a report to the President on the plight of the American auto industry and on relief measures.

During the summer of 1980, the emphasis of U.S. demands shifted to import restriction. On 12 June 1980, the UAW filed a petition with the International Trade Commission (ITC) for protection for the auto industry on the grounds of damage from Japanese imports. The UAW petition recommended that, as relief measures, the tariff on passenger-car imports be raised from 2.9 to 20 percent and that an import quota be adopted using either 1975 or 1976 as the base year. On 4 August, the Ford Motor Company filed a similar petition for relief, suggesting the following concrete steps:

1. Import quotas using 1976 as the base year—
   - passenger cars 1.7 million units per year.
   - small trucks 260,000 units per year.

2. A 25% tariff on small-trucks imports
Throughout the duration of the auto dispute, President Carter's opposition to quantity restrictions was consistent and unfailing. In September 1980, Japanese Foreign Minister Ito went to Washington and following his meetings with senior administration officials, including President Carter, he held a news conference where he confirmed that he had received no request for Japan to restrict export of cars to the United States.\footnote{\textit{NKS (Chokan)}, 23 September, 1980, p.2.}

On 10 November, the ITC handed down its decision and by a vote of three to two rejected the UAW/Ford petition and absolved Japan of any guilt in the decline of the American auto industry. This closed the door for the administration to negotiate import restriction with Japan. Congressional action, however, was still possible. U.S. auto industry expressed bitter disappointment and vowed to take the fight to Congress.\footnote{\textit{The New York Times}, 11 November, 1980, p.1.}

The Presidential election of November 1980 resulted in a defeat for President Carter. The second Goldschmidt Report, submitted to President Carter in early January
1981 did not, unlike the first one, simply list the various options but strongly urged the President to seek export restraint from Japan for a five-year period. It argued that the Government should negotiate an import restraint agreement with the Japanese which reflects the real time period it will take for U.S. automakers to accomplish the transition. This would define a reasonable period of time for domestic industry to retool without facing the permanent loss of additional market share to Japanese producers. 23

However, the recommendation came too late. Carter, having lost the election, had made it quite plain that he would allow President-elect, Reagan, to seek his own solution to the dispute, rather than negotiate with the weakened powers of a lame-duck presidency. One of Reagan's earliest decisions was to appoint a special task force to study the auto problem and make its recommendations to him. The task force was headed by Secretary of Transportation, Lewis. The task force formally submitted the report on March 19, 1981.

In late March, Foreign Minister Ito revisited Washington to finalize preparations for Prime Minister

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Suzuki's visit in May and met President Reagan on the 24th. The President reiterated his commitment toward preserving the liberal trading order but, pointing to the fever-pitch protectionism in the Congress, signalled strongly that it might be necessary for Japan to exercise VER. The Japanese auto industry itself remained unconvinced on the need to exercise export restraint.

However, after a meeting between Ishihara, Chairman of the Japanese Automobile Industry Association (also President of Nissan Motor Co. Ltd.) and MITI Minister Tanaka Rokusuke in April, it was confirmed that the two men had reached an agreement recognizing that Congress would otherwise take the legislative route if Japan failed to exercise VER. The agreement was only on the principle of VER and the specifics were still to be worked out.

As had been recommended by the Presidential task force, USTR Brock left for Tokyo in late April to negotiate the VER. The final round of negotiations between Brock and MITI began in the early evening of 30 April 1981,

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24 NKs (Yukan), March 25, 1981.

25 NKs (Chokan), April 9, 1981, p.1
which was later described in some detail by Amaya Naohiro, the principal negotiator on the Japanese side. The talks began at 6.30 P.M. with the Japanese side outlining its proposals. 26

Amaya noted that the Japanese offer represented the maximum possible concession and that there was no fall-back position. Brock, however, maintained that the package was still insufficient to block the passage of the Danforth Bill to restrict Japanese car imports. 27

The United States put its own proposals but the Japanese industry sources regarded it as unacceptable. The talk reached a deadlock. After a while they agreed that a change in environment and a more relaxed atmosphere might provide fresh ideas. The negotiators adjourned for dinner and drinks, an important phase in official and private negotiations in Japan, where many deals are successfully negotiated and concluded during a night out on the town. Away from the formal setting of the negotiating table and after everyone had settled down with a drink, informal negotiations started at the initiative of Amaya who tried to play the role of a


27 Ibid., p.106.
mediator between the United States and the Japanese auto industry.

Amaya's negotiating tactic in this final phase was a tried and tested tool of mediation, of threatening each side with dire consequences if agreement could not be reached and presenting to each a picture of the other as totally intransigent, hoping that this would bring forth concessions on both sides.

The next morning agreement was reached with Brock on the following main points:28

1. that the VER would be for a three-year period, ending 31 March 1984;
2. the first year quota would be set at 1.68 million units;
3. the second year quota would be at 1.68 million units plus a 16.5 percent share of whatever growth took place in the American market in 1981; and
4. discussion on VER for the third year.

28Ibid., pp.110-12.
The quota of 1.68 million units was the average level of Japanese exports to the United States in the preceding two years and the figure of 16.5 percent represented Japan's share of the U.S. market in 1979, also the average market share for the three years 1978-80. This was intended to reserve for Japan a certain market share, given forecasts of growth in sales in 1981.

Conclusion

On the basis of preceding section, several conclusions can be drawn about the U.S.-Japan auto dispute negotiations.

In the early post-war period and through to the 1960s, both Detroit's auto manufacturers and the UAW had been strong exponents of the liberal trading order - not surprisingly, since the industry stood as the world leader. In the late 1970s, however, they formed the core of the protectionist forces. This shows that the so-called vanguards of free trade and GATT regime don't hesitate to take U-turn when their interests demand so. The VER agreement goes against the doctrine of free trade and the GATT principles.

Second, the whole episode of auto-dispute shows that the domestic politics and leadership play very
important role in a country's choice of protectionist policy. The pressure from UAW and auto-manufacturers of America forced the U.S. Congress to demand important restraints from the Japanese auto-industry. However, the personal inclination of President Carter came in the way of U.S. Administration calling Japan for VER. In contrast, Reagan Administration was favourably predisposed towards VER. The change of leadership in Washington changed the U.S. policy on auto-dispute.

On the Japanese side, it demands some explanation as to why did Japan go for VER when the International Trade Commission had rejected the U.S. petition that charged Japan of unfair trade? Several factors influenced Japanese response to auto-dispute. First, the Japanese knew it too well that if they did not work out a compromise, America could opt for harsher protectionist measure which would have inflicted greater damage to Japanese exports to America. Second, in Japan the defence trade linkage has almost became a fact of life, under which trade concessions are regarded as inevitable.

Thus, only a day after the Japanese voluntary export restraint on autos was announced, the Nihon Keizai Shinbum (Japan's Economic Daily) observed that,
because of the inevitable defence-trade linkage, the argument proffered by MITI that the agreement was necessary in the interest of the long-term stability of the LIEO was only the superficial explanation (tatemae).\textsuperscript{29} It is argued that the principal negotiator from the Japanese side, Amaya, harboured a strong disdain for GATT and did not see much of a future for a multilateral trade regime; preferring instead to emphasize bilateralism that would at least secure access to important markets, even if outside the GATT agreement. This interpretation expressed in Nihon Keizai Shinbun of 2 May, 1981 is deduced from the actual outcome of the auto dispute, and the outcome itself is analysed as a single discrete event. The result, it cannot be denied, restricted the flow of goods across countries and may also be argued to have violated GATT, although not formally. However, if we view the outcome as not just a discrete event, but rather as part of a process, we think it is possible to assert that Amaya was, indeed concerned with strengthening the liberal economic order. In his writings, Amaya distinguished between the short term and the long term and wrote that insistence on strict adherence to the GATT principles might safeguard that institution in the short term but would certainly undermine it in the

\textsuperscript{29} Nihon Keizai Shinbun(Chokan), 2 May, 1981, p.1.
long run. According to him, it was necessary to be flexible and adapt to reality and that the reality of the American industrial decline necessitated a tactical retreat until the foundation had been fortified. Elements within the Ministry of Foreign Affairs, in particular the former Ambassador to the United States, Ushiba, assumed this to be a dangerous strategy, bound to lead to further retreats and eventual collapse of the LIEO. Amaya, later, was to brand all those who had opposed MITI's policy of implementing VER as short-sighted 'soap-nationalists'.

As Amaya saw it, the liberal trading system could not be maintained without strong and effective leadership in the system, a role that only the United States was capable of playing, despite its predicament at that time. His notion of stability and order was based on an analysis of the social structure of Japan during the Tokugawa period, from 1603 to 1867-8. From this period of Japanese history he derived certain lessons for Japan today, which he expounded under the rubric of Chonin no Kokkaron - the theory of the merchant state.


31 Amaya discusses the Chonin no kokka ron in Nihon kabushiki Kaisha(1981), pp.35-44.
For Amaya, there were similarities in the contemporary international system to the Tokugawa social order. Although the United States and the Soviet Union combined all four social classes, since the end of the Second World War Japan had travelled the road of the merchants, but today was at the crossroads where it had to ponder its future direction: whether to acquire political power as well or to continue on the present path.

If the decision was to shun the road to political power, then Japan had to be willing to apply lessons learnt from past experience, where and when applicable. Even if it was to give priority to the acquisition of political power, it was unlikely to come close to the status of the superpowers. Just as the Samurai, in the past, created and sustained a stable social order conducive to the growth of international commerce, the existing liberal trading regime also depended, for its stability, on the United States. When the Samurai fell upon bad times, they turned to the merchants; today, the United States suffered from the pains of industrial decline and Japan had to be ready and willing to help. For Amaya, the auto VER was just one sacrifice. Its immediate effect was to remove a thorn in U.S.-Japan
relations, but if it also aided the revival of the auto
industry in the United States, it would also lead to
the long-term stability of the system. It is in this
sense that Amaya's approach can be seen as a long-term
approach to maintaining the liberal trading system.
Interestingly, Japan's Ministry of Foreign Affairs all
along opposed the VER. The MFA argued that the GATT
rules should be strictly adhered to and that deviance
would invite further departures from the GATT-prescribed
framework for the settlement of trade disputes. However,
the views of MFA did not have much impact on outcome
of auto dispute because from start to finish, the Ministry
of International Trade and Industry (MITI) represented
the Japanese side. The ultimate authority to negotiate
and settle the dispute was with the MITI and not the
MFA. 32

The export restraint agreement on autos was
different from all earlier export restraint agreements.
In the case of Japanese colour television exports to
the U.S., an orderly marketing agreement was reached
in 1977. But the American TV industry unlike the auto-
industry was not particularly concerned about rebuilding
its production base in the United States. In the case
of steel dispute, the industry representatives themselves
proposed to MITI for export restraints due to four major

32 NKS(Chokan), 21 March 1986, p.4.
reasons:

1. the interdependent nature of the industry;
2. sense of indebtedness to the United States for assistance in the early developmental stage;
3. profitability of VER;
4. fear of losing a large and stable market in the United States.  

Since the steel industry itself wanted export restraint, MITI went along and as a result of negotiations with the United States a trigger price mechanism (TPM) was agreed upon, which ultimately proved highly beneficial to the Japanese steel industry, since it took away the competitive edge of South Korean steel manufacturers and secured for Japan a stable market share in the United States.

However, in the case of auto VER the Japanese auto industry was strongly opposed to formal export restraints. The position taken by MITI, on the other hand, stressed the importance of a respite for American

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car manufacturers from Japanese imports, allowing them reasonable certainty regarding market standing at a time when additional, yet necessary, investment appeared too risky. Voluntary export restraints had been used in the past, but only in the case of auto VER was MITI favourably predisposed.
International Rubber Agreement

The International Rubber Agreement (INRA) is an important example of complicated prices issue in international business negotiations.

Concluded on 6th October 1979, the INRA came provisionally into force in November 1980 and fully into force in April 1982. The Agreement became operational in November 1981.

A number of factors combined to prompt both producing and consuming countries to examine in a favourable light the possibility of negotiating an UNCTAD-sponsored agreement to stabilize the international market price of natural rubber. These factors were rooted in both the structure of the natural rubber industry itself and the international economic and political climate of the mid-1970s.

The world production of natural rubber is concentrated in three south-east Asian countries: Malaysia (41.5 percent), Indonesia (23.5 percent) and Thailand (13.8 percent). Together, these countries account for over
88 percent of world exports.\textsuperscript{34}

As rubber is important export earner for the governments of the three major producers, the wildly fluctuating price of rubber on the international market has always been of concern. This concern was brought to a head in 1974 when the price of Rubber Smoked Sheet No.1 (RSS No.1) rose to nearly Malaysian (M) 280 cents per kilogram in January 1974 and then dropped to below M 100 cent per kilo in November.

The dramatic fall in prices caused considerable social and political turmoil among producers and forced the governments of the major producing countries to reassess their policies. This was particularly evident in Malaysia where the government introduced a crash programme to withhold rubber from the market in an attempt to raise prices.\textsuperscript{35} The governments of Malaysia, Thailand and Indonesia also conferred in early 1975 in order to explore how their membership in the Association of


Natural Rubber Producing Countries (ANRPC), which also included Singapore, Sri Lanka, India and Papua New Guinea, could be exploited to attack the problem of fluctuating prices. The result was a series of negotiations which led to the signing of an agreement in Djakarta in November 1976. The agreement sought to stabilize prices through a stockpiling mechanism and a supply rationalization scheme. However, with prices rising on the international market in the face of increasing demand and higher prices for synthetic rubber substitutes, the provisions of the ANRPC agreement were held in abeyance.

The producer countries apprehended that restricting production might induce consumers to develop new sources of supply outside the ANRPC - in Liberia, for instance - or to put more effort into producing cheaper synthetic substitutes. So, they were favourably disposed to widening the ANRPC agreement to include consuming countries.

The major consumers of natural rubber are the USA (25 percent), the EEC (23 percent) and Japan (11 percent). The major end user is the automobile industry.

See UNCTAD, International Natural Rubber Agreement, 1979 (TD/Rubber/15), 17 October, 1979, Annex B.
with nearly 65 percent of all natural rubber production used in tyre manufacturing. The main concern of all consumers is an assured supply, preferably at a reasonable price. However, by the mid 1970s a number of factors foreshadowed a possible shortfall of natural rubber beginning in the mid 1980s. The demand for natural rubber appeared likely to rise appreciably. Technical changes and the preference of tyre buyers were forcing the manufacturers to produce more and more radial tyres which required greater quantity of natural rubber than the formerly popular cross-ply tyres. But world production of natural rubber was projected to grow at only a slow steady pace.\(^\text{37}\)

Finally, the governments of most consuming countries felt that the advent of the ANRPC Djakarta agreement forced their hand. Faced with the possibility of a producer association exercising influence in the international market place and the realization that synthetic rubber prices no longer provided an antidote to rising natural rubber prices, many argued that it was better

for them to participate in an international agreement, and thus have an impact on the way the market was manipulated, than merely to stand by and watch.

And so when the Secretary-General of UNCTAD, acting in accordance with the procedures laid down in the 1976 IPC resolution (section IV, paragraph 4) convened a preparatory meeting on natural rubber for January 1977, fifty-four countries including major producers and consumers, sent delegates.

The Negotiation of the Agreement

The INRA negotiations were complex and drawn out. However, some initial clearing of the underbrush was easily done. Both producing countries and consuming countries quickly accepted the need to focus their attention on the international market price of natural rubber.

It did not prove to be especially difficult for the delegates to agree that in general price volatility was their major concern and that price levels that proved remunerative and just for products and equitable for consumers would be in the interests of everyone. The focus of attention, then, turned to solving the problem through some form of price stabilization mechanism.
Although agreement to this course of action was quickly reached, the consensus masked many differences between producers and consumers over their primary goals.

The natural rubber producing countries had a clear idea of their goal and a realistic sense of the strength of their position. Their primary purpose was to set in place a price-support system that would ensure that prices did not fall below a level which represented at least the cost of production plus a small profit.

Moreover, the producing countries felt, that they were in a fairly strong negotiating position. The main producers had forged a common policy that was set out in the ANRPC agreement; they were a few in number and relatively homogeneous in political outlook and economic philosophy; and as members, along with Singapore (the major-trading nation in rubber), of the Association of South-East Asian Nations (ASEAN) they were increasingly being wooed as trading partners by such countries as the United States, Japan and major countries of the EEC. And the ANRPC controlled over 90 percent of the world's exports of natural rubber.

At the second UNCTAD preparatory meeting in June 1977, the delegates from the ANRPC members put
forward a series of proposals for consideration.\textsuperscript{38}

Starting in October 1977, the U.S. delegation presented a number of counter-proposals for establishing a price stabilization mechanism.

However, despite differences, there were enough inducements to ensure that serious negotiations took place. \textit{First}, each side fully appreciated the advantage of cooperating with the other. The consumers wanted the producers to ensure long-term supplies; producers wanted consumers to ease the financial burden of operating a buffer stock which defended a floor price. \textit{Second}, both sides felt some pressure to find a consensus before May 1979 when UNCTAD V opened in Manila. With relatively little progress being made on the Common Fund negotiations, movement on at least one ICA was seen as politically necessary. And \textit{third}, further impetus to the negotiating process was provided by differences which gradually emerged within the producer and consumer groups and which allowed for a cross-cutting of interests.

\textit{At the end of third preparatory meeting in early}

\textsuperscript{38}These proposals were laid out in ANRPC, "proposals for International Arrangement on Natural Rubber Price Stabilization" (2nd UNCTAD/77/WP/1), n.d.
1978, it was decided to hold a full negotiating conference. During the first few sessions of the conference, which were held late in 1978 and March/April 1979, the outline of an agreement was pieced together.

The only clouds on the horizon were the outstanding demands of the U.S. delegation. But they were rather substantial clouds.

Although the United States was relatively isolated and its delegates' wish to reopen a number of issues generally unwelcome, it became apparent at a session of the negotiating conference in July 1979 that some of their demands had to be accommodated. The recognition of this fact was reflected, in the final agreement, concluded on 6 October 1979 at the end of a long session.\(^{39}\)

With the formal ratification of the Agreement by the United States on 23 October 1980, the INRA was approved by the necessary number of governments for it to enter into force provisionally.

Conclusion

To recapulate, it may be said that the INRA is an important example of complicated prices issue in

international business negotiations. There were several factors behind the successful negotiation of INRA.

The producers were united and had in place the ANRPC agreement to which they could return if the UNCTAD sponsored negotiations failed. The producers were few in number, they had a well-prepared position, they controlled over 90 percent of world exports and they had a political cohesion based on their common membership in the regional grouping of ASEAN. Yet, although the producers were in a strong position, they recognized that they did not have the financial capability to create a stockpile fund which, in the long term, would ensure a reasonable, and politically acceptable, floor price for small-holders and estates. The producers, therefore, saw the need to reach an agreement with the consuming countries. There can be little doubt that the consumers felt under pressure to participate in the INRA negotiations because of the ANRPC agreement. But of equal importance for consumers was the prospect of long-term shortages and the need to ensure increased future supplies. This problem was underlined not only by the rising of synthetic rubber, but also by the very high prices for natural rubber during 1979 and 1980. In other words, both sides in the negotiating process saw major advantages for
themselves in reaching an equitable agreement. Moreover each side contained relatively few major actors and each appreciated the political as well as the economic benefits of an agreement.
Trade Liberalisation and Unilateral Retaliatory Measures
— A Case Study of 'Super and Special 301'

The recent years have witnessed steady decline of multilateralism and growth of bilateralism in international economic relations. In the post-war world order, unilateral trade and other economic retaliations were replaced by principles of international co-operation in trade, with rules for permitted and non-permitted state actions, for consultations and dispute settlement procedures and mechanisms, with retaliation only as a last resort (by withdrawals of concessions granted) and after collective authorisation by the international community. Now, all this is being reversed. Once considered to be the high priest of multilateralism, the United States is moving fast towards unilateralism. In the field of international trade to get its demands accepted, it frequently uses threat of unilateral retaliation. 'Special 301' and the 'Super 301' of the 1988 Omnibus Trade and competitiveness Act are nothing more than an assertion of unilateral retaliation to secure one's demands. Only instead of use of guns to open up markets 40 there is now talk of using 'crowbars' to

40 See K.M. Panikar, Asia and Western Dominance (George Allen and Unwin, 1953, pp.201-202) for an account of the Commodore Perry expedition and Japan's trade treaty with U.S. followed by similar treaties with other European powers.
The 'Super 301' provisions of the Omnibus Trade and Competitiveness Act 1988 are designed to provide for retaliation against unfair barriers to trade in goods, services and trade related investments that work to the detriment of U.S. business corporations. It directs the U.S. Trade Representative (USTR) to identify U.S. "trade liberalisation priorities ... 'Priority Practices' which, if eliminated, would significantly increase U.S. exports, ... and 'priority countries' taking into account the number and pervasiveness of significant trade barriers." On May 25, 1989 USTR Ms. Carla A. Hills designated Brazil, Japan and India as "priority countries" for negotiations under 'Super 301' provision of U.S. Trade Act 1988. The "priority practices" which attracted the 301 provision differed from country to country. Brazil was named because of its quantitative import restrictions and the list of import prohibitions. Japan was listed for its restrictive policy relating to Super Computers, satellites and wood and paper products.

Testimony of Mrs. Carla Hills, U.S. Trade Representative in the Bush Administration, before Senate in confirmation hearings, "Senate Backs Hardliner as Trade Representative", Financial Times (January 30, 1989).
India was named because of trade related investment measures and trade hampering practices in the field of insurance. India was designated a 'priority country' specially because of ceilings on equity ownership, export commitment requirements and phased manufacturing programme imposed on foreign direct investors and because U.S. insurance firms are unable to enter the Indian insurance market. Unlike 'Super 301', the 'Special 301' provisions are related to only intellectual property rights (IPRs). These include the patent, copyright, trade and service mark related legislation of countries. The law requires that the USTR identify and investigate the practices of those countries that deny adequate and effective intellectual property rights protection or deny fair and equitable market access to U.S. persons who rely on intellectual property rights protection. This is known as the 'Special 301'.

In view of the ongoing negotiations and progress made in 1989 no country was identified as "Priority Countries" under 'Special 301'. Instead, the Administration singled out 25 countries whose practices deserved special attention. In addition to a "Watch List" of 17 countries a "Priority Watch List" of 8 countries was drawn up. India was placed on the priority watch list along with seven other countries viz. Brazil, South Korea, Mexico, China, Saudi Arabia, Taiwan and Thailand because of
deficiencies in intellectual property rights (Patent, Copy Right and Trade Mark) protection. U.S. expects India to (a) remove discrimination against the use of foreign trade marks, (b) improve access and distribution of U.S. motion pictures, (c) improve enforcement against piracy and (d) include an intellectual property annex to the bilateral science and technology Agreement and (e) participate constructively in multilateral intellectual property negotiations.42

India was asked to substantially amend its trade laws latest by November 1, 1989 in the case of Special 301' and by 12-18 months under 'Super 301', failing which the U.S. would consider retaliatory action in the form of tariffs going up to 100% on products imported from India.

Severe U.S. pressure was applied on these countries to reform their regimes for intellectual property rights protection over the last couple of years. This was amply demonstrated when the U.S. imposed prohibitive duties on selected imports from Brazil in retaliation for insufficient protection of intellectual property rights. The fear of such cross-retaliation weighed

42 See Economic News From the United States (USIS, New Delhi, May 1989), pp.6-11.
heavily with some of the other listed countries because their export drive was unduly dependent on the U.S. market.

Both Japan and Brazil had entered into negotiations with U.S. which was keen to get the identified trade barriers removed to promote U.S. exports. In early 1990, Japan reached an agreement with U.S. on the three 'Super 301' issues and was dropped from the list of "priority countries". After prolonged negotiations Brazil also fell in line with Japan and in early May 1990 Brazilian Government eliminated quantitative import restrictions and abolished the list of import prohibitions that were the subject of the 'Super 301' investigation. Thus, both Japan and Brazil came out of the purview of the U.S. trade law.\textsuperscript{43}

The initial response of the government of India was to refuse to negotiate under pressure. India's stand was that solution to these issues should found within the multilateral framework and not through bilateralism, and without compromising on the sovereign

\textsuperscript{43}M.K. Ghosal, "Super and Special 301 and India", in Yojana, (Govt. of India, New Delhi, 1-15 July, 1990), p.9.
rights to follow independent economic policies.

On 'Special 301', India slightly modified her stand by agreeing to discuss TRIPs under the auspices of GATT. In 1990, the lack of forward momentum resulted in only India being retained on the 'Super 301' list. The U.S. however, decided to drop investigations against India under 'Super 301' till the Uruguay Round was over. But India remained on the 'priority watch list' under 'Special 301'.

U.S. Again Lists India under 'Special 301'

In March 1991 the U.S. trade representative told the visiting Indian foreign secretary, Muchkund Dubey, quite categorically that the U.S. was planning retaliatory action against India for what it termed as 'inadequate protection of intellectual property rights'. More recently, the U.S. removed the duty-free access under the Generalised System of Preferences for imports of the anti-inflammatory drug Ibuprofen, among other products from India. Then on April 26, the Bush administration formally placed India along with China and Thailand under the 'Special 301' provisions of the Omnibus Trade and Competitiveness Act of 1988.

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45 Ibid.
The Chinese reacted very sharply by rejecting the U.S. move. The response of Thailand has been moderate. Earlier, Thailand had taken steps to accommodate the U.S. demands except in one area. It is expected that it will make some modification in the remaining 'priority policy' also.

At this point, there was acute political and economic crisis in India. The Chandra Shekhar government was caretaker and so had no power for policy decision. Besides, budget for the year 1991-92 could not be passed in time. The balance of payment situation was quite worrisome. The response of Chandra Shekhar government was ambivalent. The Commerce Ministry under Subramanyam Swami favoured bilateral talks while the external affairs ministry was inclined to fight it out in the ongoing Uruguay Round. The Prime Minister somewhat non-commitally suggested that India had resilience to face the situation. The United States was aware of the compulsions of a Caretaker government and so awaited the outcome of General Elections before tightening the screw further.

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The new government led by P.V. Narsimha Rao had tough choice. While the general elections were in the concluding stage, the Chandra Shekhar Government had to sell/mortgage gold to get some foreign exchange to manage the BOP crisis. By the time new government took over the mantle, the crisis deepened further. India needed urgent loan from the IMF, and it is a known fact that in the world financial institutions U.S. dominates the decision making. So India had to bend before the United States. India agreed for bilateral talks.

A team of U.S. officials visited New Delhi for consultation under the 'Special 301' provisions of the U.S. Omnibus Trade and Competitiveness Act, 1988, on July 1 and 2, 1991. Meanwhile, the government of India introduced drastic changes in the trade regime and industrial policy that would take care of many of the U.S., grievances against India. Import rules have been liberalised, custom duty has been brought down from maximum 3,00 percent to maximum 150 percent, licensing has been abolished except for some sectors, norms for


foreign investment have been further relaxed while Indian Patent Act is being reconsidered.

From this case study several conclusions can be drawn. First, with the decline and demise of socialist system, America has emerged as the only Super Power. The U.S. victory in the Gulf war has further strengthened the U.S. position in the world. However, the United States is facing great economic problems with increasing trade deficit. Its economy is moving fast towards the service economy with the result that its export of manufactured goods has declined. So, the U.S. wants to take advantage of its pre-eminent position in the services sector. Besides, better patent protection and liberal investment norms promise great benefits to the United States. Thus, the current state of U.S. economy and changed world scenario have motivated it press for the liberalization of trade in services, TRIPs and TRIMs, by hook or crook.

Secondly, U.S. move against India and Brazil has much to do with these countries role in the Uruguay Round. India and Brazil have been two major developing countries opposing the U.S. stance on TRIPs, TRIMs and trade in services. The United States wants to pressurise them in order to get its interests served in the Uruguay Round. In this regard it should be noted that the U.S.
had postponed the implementation of 'Super 301' against India with the hope that India would support the U.S. stand in the Uruguay Round.

The decision to rename India along with China and Thailand under 'Special 301' is aimed at putting further pressure on them so that they soften down their tone against the U.S. in the last phase of the Uruguay Round. The change in the Indian response to the fresh move of blacklisting it under "Special 301' can be explained by the political and economic instability within India and the dominance of the U.S. at present. The result is that while India's bargaining strength has declined, that of the U.S. has gone up.

To sum up, it can be said that the use of 'Super and Special 301' by the United States is a unilateral and arbitrary method of resolving trade problems. The U.S. stand on 'Super & Special 301' is that these are supportive and complementary to the Uruguay Round efforts. But, basically the U.S. action is contrary to the letter and spirit of the GATT principle that once the Round is launched, no country would disturb the status quo and do anything to improve its bargaining power in multilateral negotiations. Further, the U.S. has no
moral right to criticise other countries for indulging in restrictive trade practices when the U.S. market itself is protected by regulatory measures which now cover 23 percent of U.S. imports against 12 percent in 1980.