CHAPTER – II


2.1. General Agreement on Trade and Tariff - GATT 1947
2.2. Historical Development of the GATT and its Importance
2.3. The Origins of GATT 1947
2.4. The Rise of International Economic Cooperation after the Second World War
2.5. Objectives of GATT 1947
2.6. GATT Rounds
2.7. The Role of the GATT 1947
2.8. National Treatment (NT)
2.9. Structure of GATT
2.10. Does GATT become an International Organization?
2.11. Decision Making Under GATT 1947
2.12. GATT 1947 and Dispute Settlement
2.13. World Trade Organization (WTO) 1994
2.14. The Origin of the WTO
2.15. The WTO’s structure
2.16. Membership
2.17. Decision-Making of WTO
2.18. The Influences of WTO Agreement on the World Economic System
2.19. Conclusion
CHAPTER – II


2.1. General Agreement on Trade and Tariff - GATT 1947

2.1.1. General Introduction

After Second World War, several international measures were undertaken to liberalize trade and payments between nations, initiated by US, these plans envisaged a close economic cooperation of all nations in the field of international trade, payment and investment. In 1944 at the conference on economic matters held in Bretton Woods, conclude to establish institution as (IMF) and (World Bank). The third institution called the International Trade Organization (ITO) was sought to be set-up to handle the trade side of international cooperation. However, ultimately the ITO could not come into existence due to the refusal of the US Congress in 1950 to ratify the treaty for the establishment of the (ITO). GATT was not an international organization but was a legal entity in its own right. It was a multilateral international Treaty, to create an International Trade Organization (ITO) after World War II.1 The GATT 1947 was considered as international trade agreement to determine the rights and reciprocal obligations between the contracting parties in the area of multilateral trade relations.

---

In the final years of World War II there was a growing sense of States to the importance of trade as basis of a strong and solid foundation for development in all areas, and to compensate the lost states of wealth during the war; so the States began to reflect the desire by increasing the volume of trade, held a number of bilateral trade agreements. Those agreements specify the type of goods that are involved and the quantity required and prices.

The World War II had disastrous effects on the economy of UK and its Allies and in the process of extending support to them for their participation in the war. Also the US economy got hard. So the negative effect was very much evident at the end of the war, thus the USA to pursue international multilateral negotiations. The USA had held before the year, 1945, 32 trade agreements with the different trading partners.²

The logical consequence of the trend towards changing the bilateral trade was to search for a large number of partners; because of the bilateral agreements, they cannot have that expansion of international trade, and if they succeeded temporarily in solving the problems of commercial relations for contracting parties, there would be strong wish to pursue serious multilateral trade negotiations. The result of these ideas and collective efforts concluded to establishment of General Agreement on Trade and Tariff (GATT) on 1st January 1948.

2.2. Historical Development of the GATT and its Importance

Beside the establishment of the World Bank and the IMF, the idea of setting up institution for order in the international affairs, International Trade Organization (ITO) as third institution, with the objective of guiding and monitoring international trade order and facilitate flow of goods and services, ensuring equitable trading

system and ensure growth and development of all nations. The ambitious works for preparing a draft charter for establishment of ITO were composed of over fifty countries. In fact, the ITO charter was ambitious and qualitative stage toward reorder of international trade, it embodies different rules on international investment, employment, commodity agreements and services and others. But this entity did not come to existence resulting from the US congress refusal to ratify on ITO charter. In spite of failure to establish the ITO, there were deep desires toward continuous collective effort, which 23 countries decided to negotiate to reduce tariff reduction and bind between negotiated countries.

Negotiations were started on the General Agreement on Trade and Tariffs (GATT) after the end of World War II and came into force from 1st January 1948. The Members of negotiation were 23 countries only. Trade agreements aimed to facilitate the flow of foreign trade between States smoothly, and provide full employment opportunities, even though simplicity and limited scope of agreements in the beginning of its establishment, but over time covered a large part of foreign trade transactions and the development of legal terms and conditions commensurate with the trade and economic developments.

The GATT is the multilateral agreement among countries providing framework for the conduct of international trade. The GATT is considered as one of the most important event of the Twentieth Century. The importance of the GATT lies in the economic and legal long-term gain.\(^3\)

\(^3\) M. Abdel Fattah, INTERNATIONAL TRADE ORGANIZATION AND INTERNATIONALISM, REGIONALISM, 242 (A.M. Mutahar. tr., 2002).
2.3. The Origins of GATT 1947

In fact, the establishment of international economic cooperation, as well as liberalization of international trade, facilitates the flow of goods, which had already begun before World War II in 1939. The States as the United States and European countries begun to realize the extent of the shortage of international trade, because the foreign policies of trade and protectionism, might be overstated by States. Therefore, they began to reflect the benefits of trade liberalization between countries, and not to follow the policy of trade liberalization as a loss to all States without exception. This is reflected in issue of the Reciprocal Trade Agreement Act (RTAA) in 1934 which has been through this legislation on the extent of change in trade policy for United States. This is also reflected in the change of two types of political trade for United States.

Thus the first Article of the US Constitution gives Congress the supreme authority in matters of foreign trade, so the Congress grants some of its powers in this regard, to the U.S. administration; this is the executive power. In addition, the second shift in the concept of openness in trade through bilateral agreements emerged 32 commercial agreements; which were based on reciprocal principles between United States and various commercial parties in the world in 1945.4

The U.S. administration did this in shaping the further liberalization of trade to keep, its leadership to the global economy, which reached its participation to nearly half of the Gross Domestic Product (GDP)5 in the era of the Forties and the subsequent years.6 Therefore the United States called on preparatory meetings which

---

5 The total value of all goods and services produced in a country, in one year, except for income received from abroad.
aimed to establish the International Trade Organization, and held international conference 1947 in Geneva to negotiate on the reduction of tariffs and reducing quantitative restrictions on imports to increase the volume of international trade. As consequence the reached agreements would be the temporarily order to regulate trade, until the States hindsight the position to ratify the Havana Charter that its governing the procedures for the establishment of the International Trade Organization (ITO).

Eighteen countries participated in the Geneva Conference 1947 at the beginning, and the number increased to 23. They negotiated with each other; on the basis of bilateral negotiations, for the exchange of tariff concessions, reducing tariff, reduce quantitative restrictions on imports. The compilation of such bilateral agreements was to be a comprehensive multilateral agreement, be a substitute for the ITO in the case of failure of States in the resolution of ratification.7

2.4. The Rise of International Economic Cooperation after the Second World War

The Atlantic Charter and the UN Declaration (First of January 1942) were behind the establishment of international economic cooperation after World War II. As the agreement of mutual aid between the U.S. and Britain, which took place in February 23, 1942 was a driving force for this cooperation. This agreement was concluded in the end of the Bretton Woods Conference in 1944 in the United States, which generated a 44-nation agreement on the establishment of the International Monetary Fund, and the International Bank for Reconstruction and Development.8 At the same time, the Convention on the Bretton Woods Agreement, focused on the

7 Ibid, 11.
8 M. Abdel Fattah, INTERNATIONAL TRADE ORGANIZATION AND INTERNATIONALISM, REGIONALISM, 425 (A.M. Mutahar. tr., 2002).
return to the old system of trade and international payments and multilateral liberalization of international trade.°

2.5. Objectives of GATT 1947

The Agreement indicates its objectives, which included the full use and development of the resources of the world and the expansion of production and exchange of goods besides reciprocal and mutual advantage involving a substantial reduction of tariffs and a progressive elimination of other barriers to trade.

2.5.1. The main activities of GATT can be summarized as follows:

I. Tariff bargaining;

II. bargaining on non-tariff barriers ;

III. Elimination of quantitative restriction and

IV. Settlement of disputes between contracting parties.10

The central objective of liberalization of international trade, where the establishment of the GATT on the philosophy of trade liberalization of tariff and non-tariff trade as a key objective you hope to achieve and demonstrate its impact on the global trading system, and deem the GATT which is the bigger of international trade, to make liberalization of international trade as a top priority, aspire to achieve and demonstrate its impact on the global trading system.

2.5.2 The GATT has general objectives it aspires to achieve; it can be summarized in the following:

I. the full exploitation and the optimal use of resources and global effort to raise the standard of living in the communities of the Contracting Parties;

---


10 Ibid.
II. the pursuit of full employment levels in the countries of contracting parties;

III. achieving high levels of real income, and stimulate demand for effective products of Parties to the Convention, and increase the chance of Foreign trade;

IV. to continuing increase in production, trade in goods and services, leading to the raising of real national income;

V. economic gains according to the development in each country of the Contracting Parties;

VI. Expanding the production and international trade of goods and encourage the movement of the capital and other matters associated with increase in international investments;

VII. facilitate access to markets and raw material resources;

VIII. following the negotiation as basis and a clear resolution of disputes relating to international trade; and

IX. to protect and preserve the environment.

In fact, the central objective, as mentioned above is the largest amount of international trade between the Contracting Parties; the rest of the goals stated in the preamble to the Convention are only hopes and aspirations of seeking to achieve.\(^1\)

2.6. GATT Rounds

Between 1974 and 1994, the GATT had completed eight rounds of multilateral trade negotiations. Through this period, GATT was successful in bringing about significant reduction in tariffs and non-tariff barrier in the trade of goods.\(^2\)

\(^1\) M. A. Mohammad, WORLD TRADE ORGANIZATIONS; ITS ROLE IN THE ECONOMIC DEVELOPMENT OF ISLAMIC COUNTRIES, 50, 52 (A.M. Mutahar. tr., 2007).

\(^2\) T.K. Bhaumik, A Discordant Orchestra, 30 (2006).
• **The Geneva Round 1947**
  This round had 23 countries participating; the round is part of the establishment of GATT, held between 10th April and 30th October 1947. The outcome of this round was on 45,000 tariff lines.

• **The Annecy Round 1949**
  29 countries participated in this round and only modest concession was possible, the primary purpose was to extend GATT to those countries which could not be part of the Geneva Round.

• **The Torque Round from 1950 to 1951**
  The number of participated countries increases to 32 and 8700 tariff concessions were negotiated, European countries with low tariff levels felt that the Torque negotiations were disadvantageous to them. Form 400 agreements, only 147 could be settled.

• **The Geneva Round from 1955 to 1956**
  Participations decreased to 22 countries in this year; an important event was that US, by wielding its influence, kept agriculture out of GATT negotiations. Most of the countries withdrew form negotiation because of the inadequate scope for tariff reductions.

• **The Dillon Round from 1960 to 1961**
  The participating countries were 39, the European Economic Community (EEC), entered as block; US Government got the authority under Trade Agreement Extension Act.

• **The Kennedy Round from 1964 to 1967**
  This round proposed by US President Kennedy, 74 countries participated in negotiations, 11 industrialized countries decided to give a 50 per cent
reduction offer in industrial tariffs. The 35 Developing Countries participated under special procedures. 4 additional countries negotiated for accession to GATT. Other important event in this round was anti-dumping and customs valuation agreements were finished; also the developing countries agreed to reduce the average tariff by 33 percent.

• The Tokyo Round from 1973 to 1979

This is a major round; 99 countries of different levels of development and economic systems including non-GATT members took part. Many important issues were negotiated in this round such as, non-tariff measures, subsidies, customs valuation, product standards and safeguard, and important licenses. Moreover, there was reduction in tariff by developed countries by an average of 33 percent.

The Tokyo Round is considered as the most comprehensive of all the GATT sessions on multilateral trade. Important role was played by the developing countries in this round.

• The Uruguay Round from September 1986 to December 1993

The increase unfair trade practices led to holding a ministerial conference to settle discriminatory trade practices. In 1982 GATT at the Ministerial meeting and in 1986 launching of Uruguay round at Punta de Est. 128 countries participated. In 1994 Ministers met at Marrakesh to ratify the result of Uruguay Round. Resulting from all previous Rounds, the World Trade Organization (WTO) came to existence on January 1st 1995.¹³ Between 1947 and 1994, GATT had completed eight rounds of multilateral negotiations, during this period GATT was successful in bringing about a

substantial reduction in tariffs and covered many rules of trade. Through the GATT Rounds, we notice that the first six rounds were concerned and almost exclusively with the multilateral reduction of tariff. In addition, the non-tariff barriers to trade became the subject of great concern. We notice that after 1990 developing countries participation in dispute settlement talk’s increase and their participation in multilateral trade negotiations exploded also.\textsuperscript{14}

The Tokyo Round from 1973 to 1994, the seventh round was a landmark development in the history of the GATT, which was a comprehensive effort to deal with tariff and non-tariff measures. The Tokyo Round also produced a series of new codes dealing with a variety of non-tariff practices.\textsuperscript{15}

2.7. The Role of the GATT 1947

\textbf{First} role of the GATT was to oversee the proper implementation of the agreements and provisions by the Contracting Parties, and to provide technical assistance in the interpretation of those texts and indicate the most appropriate ways for their realization. \textbf{Second} was to organize rounds from time to time between the Contracting Parties and to supervise progress in the multilateral negotiations, in order to achieve increase freedom of trade among themselves by reductions in tariffs, customs, and other restrictions, such as quantitative restrictions on trade. The results of rounds negotiations in place of implementation, as well as the development of the rules of the agreements itself and expand its work. The \textbf{third} was to provide a framework for the settlement of disputes that arise between the contracting parties; a typical case is any complaint of a party against other parties has caused to nullify the

\textsuperscript{15} Ibid, 22.
benefits provided to it under the agreement or to impair his privileges under the obligations incumbent upon himself. 16

2.7.1. Main Principles of GATT 1947

GATT 1947 is based on a set of principles derived from the philosophy of free market economy that seeks to consolidate its foundations and pillars, to access to the global trading system dominated by multi-lateral commercial freedom. The aim of these major rules that used by the GATT 1947 is to establish the multilateral trading system in its career and its development towards achieving the objectives of the agreements as great targets namely the liberalization of international trade in goods.

2.7.2. Principles of GATT

The GATT aimed to organize the activities of its Contracting Parties in accordance with the general aim of nondiscrimination. To achieve this aim it required that the Contracting Parties organize their commercial relations in accordance with the principles of Most-Favoured-Nation (MFN) and national treatment according to Article I and III of GATT 1947.

Acting with the principles of MFN, leads to the principle of national treatment. This principle required that Contracting Parties alter their domestic taxation and regulation regimes such that foreign and nationally produced products receive equal treatment.

The GATT was a treaty that was collectively administrated by the contracting parties. The text of GATT agreement was complicated, but those agreements generally aimed to implementation according to the fundamental principles of GATT, that trade should be carried on non-discriminatory basis; also the domestic industries

should only be protected by means of customs tariffs. The aim of consultation should be the avoidance of the harm to members’ interest. Beside all principles of GATT served as a framework for negotiations for the matters to reduce tariff and non-tariff barriers.17

2.7.3. Objectives of the GATT

The objectives of the GATT were based on fundamental principles as MFN treatment and National Treatment (NT); those principles formed the core of nondiscriminatory principle.

Through the rules of international trade conduct, essence of objective of GATT as:

- To follow unconditional MFN treatment principle.
- To carry on trade with the principles of nondiscrimination, reciprocity and transparency.
- To impose trade barriers only based on customs’ tariffs.
- To achieve more liberal trade barriers, tariff and non-tariff, only through multilateral negotiations.18

To achieve these objectives of the GATT agreements provide different means such as:

1. Multilateral trade negotiation forum;

2. Consultations and settlement of disputes;19

3. Waivers to be granted in exceptional case. The most important exceptions given by GATT were the special protection for agriculture by most nations and permit many restrictions to protect the farmers. Also there were rules

18 Ibid.
19 Ibid, 13.
made exception in the case of countries with a difficulty in balance of payments.

2.7.4. Benefits arising from the application of the MFN principle

The practice of the trade agreement concluded before the outbreak of the First World War in 1914, text on MFN after growing desire for liberalization of international trade, and when the collective efforts to reflect this desire to reality by reaching to the General Agreement on Tariffs and Trade GATT, was the MFN principle in the introduction Articles, and through this principles the developed and developing countries tried to achieve some benefits such as the following:

- The application of MFN to the principle of equality in business transactions among the parties to the General Agreement;
- The principle MFN will extend the range of mutual trade, between the parties of agreement as a result of elimination of trade restrictions, whether bilateral or multilateral agreements between Parties;
- Equality of the parties of GATT in the conditions of competition, standardization of tariff reduction, including all the privileges granted by new agreements between the Parties to the agreement, has an impact on the force of law to the rest of all the Parties;
- So, the application of MFN standardized qualitative conditions of the customs tariffs of other Parties to the agreement, where is not looking carefully on the origin of products.²⁰

---

²⁰ M. A. Mohammad, WORLD TRADE ORGANIZATIONS; ITS ROLE IN THE ECONOMIC DEVELOPMENT OF ISLAMIC COUNTRIES, 57 (A.M. Mutahar. tr., 2007).
2.7.5. Exception to the Principle of MFN

Under the provisions of Article XXIV of GATT 1947, this was stipulated on “Territorial Application-Frontier Unions and Free Trade Areas”. According to this Article, MFN principle should not be applied in the case of a group of States, as well as land-Self-independence of customs, an economic bloc among themselves take the form of custom Union or Free Trade Area. The Union Customs and Free Area agrees to eliminate tariffs and other customs restrictions, non-tariff barriers between Member States, and to each other, but there is an important difference between these two forms of the bloc economy.

I) In the customs union imposing tariff and non-customs restrictions common between the member states of the Union as a whole on the one hand and the rest of the world on the other hand; in other words to form these states the customs territory in the face of the outside world States.

II) The Free Trade Area (FTA) retained the tariff custom in each of the member states, also the non-tariff restrictions and their own in the face of the world of non-members in the FTA.

III) In this way the Customs Union, is a step more advanced than the Free Trade Area on the way to economic integration.

It is provisions of economic bloc’s exception of the MFN principle; belong to the countries that form an economic bloc among themselves to be in one geographical area that is for developed countries, but not such a condition for developing or least developed countries. There is an exception of a historical character. The application of MFN and so in what situations Preference Case has set out in Article I, section 2, 3 and 4 of the Agreement, and the purpose of these preferences are granted by the Major Powers of the country and the land colonies and accessories to them in the past
from reducing Tariffs customs, as well as agreed by States with links to special linguistic or cultural, geographical, ethnic or historical. It known in this case, as Tariff Preference had applied this exception to the trade between England and the Commonwealth, and between France and its colonies, Netherlands and its colonies, and between the United States and its dependent territories.21

2.8. National Treatment (NT)

The National Treatment is the most important principle. GATT system based on it was contained in Article III of the Agreement under the title of National Treatment on internal taxations and regulation. The principle means that imported goods should be treated the same as the same treatment of the domestic products, so that the only difference to the treatment is tariff duty on imported products. The basic rule is that no law, regulation, or taxation pattern may adversely modify the conditions of competition between imported and domestic market.22 According to Article III of Contracting Parties shall equal the level of market access without any restriction, and the same rights guaranteed to national products. The purposes of Article III are to:

(i) assure that national domestic measures do not subvert the Article II tariff bindings and

(ii) limit national protective measures to border control.23 Accordingly, Article III secures effective equality of opportunity for imported products" to compete with domestic products.24

21 Ibid. 58.
23 Ibid.
24 Ibid.
2.9. Structure of GATT

The structure of GATT was the Session of Contracting parties, which met yearly. Between sessions of the Contracting Parties, the Council of Representative, made up of representative of all members and authorized to act on both routine and urgent matters.

Major GATT standing committees or council were the Committee on Trade and Development, concerned with issues of special interest to developing countries, the Textiles Committee, made up of the Multilateral Fiber Agreement (MFA) signatories, and committee concerned with Tokyo Round agreements. Ad hoc committees deal with specific transitory questions, such as request for accession to the GATT, or study of issues on which members might later make a joint decision. Panels of conciliation were often convened to investigate dispute between particular members. The GATT Secretariat was headquartered in Geneva, Switzerland and constituted the administrative body of the GATT. Headed by an Executive Secretariat, the secretariat was a clearinghouse for the work of the Contracting Parties and was well placed to play an active part in international commercial policy decision.

2.10. Does GATT become an International Organization?

The GATT always suffered from a professor Jackson has termed “Birth defects”, inherent weaknesses that handicapped its operation. These birth defects included:

1. The lack of a charter granting the GATT legal Personality and establishing its procedures and organizational structure:

---

2. The fact that the GATT had only “provisional” application;

3. The fact that the protocol of provisional application contained provisions enabling GATT contracting parties to maintain legislation that was in force on accession to the GATT and was inconsistent with the GATT (so-called grandfather rights).

4. Ambiguity and confusion about the GATT’s authority, decision-making ability and legal status.28

2.11. Decision Making Under GATT 1947

The General Agreement on Tariffs and Trade (GATT) substantially opened industrial country markets and contributed importantly to economic growth in developing countries, particularly in Asia and Latin America. The system worked by consensus, no votes on senseless resolutions, no decision by majority rule. Like William H. and Jayashree Watal point, the consensus rule was not abused. Developed countries, particularly the United State and European Community, drove the GATT agenda and negotiations but did not insist on full participation by all countries.29

2.12. GATT 1947 and Dispute Settlement

GATT 1947 had only two provisions dealing with dispute settlement, namely Article XXII and XXIII.30 However, Articles XXII and XXIII did not contain any specific procedures to be followed by disputing parties or even the Contracting Parties

30 Article XXII deals with consultations, while Article XXIII deals with nullification and impairment. Under Article XXIII, an aggrieved party could make written representations or proposals to another party who is causing harm. If this party did not fully address the situation, the complainant was authorized to refer the matter to the contracting parties who would in turn investigate and make recommendations. Article XXIII: 2 permitted the Contracting Parties to authorize the complainant to suspend the application of tariff concessions or other GATT obligations to the offending member in appropriate cases.
in resolving a dispute. Some formalities were added later on in subsequent negotiation rounds and Ministerial Conferences.\textsuperscript{31} GATT rules and principles were often infringed, if not broken. Two major sectors, Agriculture and Textiles were taken out of its ambit because of pressure from the developing countries.\textsuperscript{32}

The GATT 1947 provided for three remedies only, namely recommendation to comply, compensation and the suspension of concessions or any other obligations under the covered agreements. However, as noted above, these remedies were not effective due to the issue of positive consensus. Thus, it should be noted that from the onset of the governments showed no political commitment to make an effective system of implementation and enforcement of rulings and recommendations. This shows that the weakness of the WTO dispute settlement system is a design and not an accident. However, it is the developing countries who are the biggest losers in this system hence the need to improve the enforcement mechanism.\textsuperscript{33}

2.13. World Trade Organization (WTO) 1994

2.13.1 General Introduction

The World Trade Organization (WTO) provides the institutional and legal foundation for the new multilateral trading system that came into being on 1\textsuperscript{st} January 1995. The agreement establishing the WTO is a comparatively short agreement that sets out its role, structure and powers. It is also the first text of permanent importance in the package of agreements signed in Marrakesh on 15\textsuperscript{th} April 1994 at the end of the Uruguay Round negotiations. Named after the country where it was launched in 1986,
the Uruguay Round came under the auspices of the General Agreement on Tariffs and Trade (GATT). It lasted seven and a half years and it was the last of eight rounds of GATT negotiations.\(^{34}\)

It is also playing a unique role in regional trade affairs. Access to a multilateral dispute settlement system is helping to study and provide more permissive regional discipline.\(^{35}\)

The World Trade Organization has emerged as one of the most important and influential of international organization, following its formal establishment in January 1995 after the conclusion of the Uruguay Round Multilateral Trade Negotiations. It is considered are the youngest of all the major international inter-governmental organizations.

2.14. The Origin of the WTO

The WTO came into existence on 1\(^{st}\) January 1995. But there is a long history attached to the establishment of this organization dating back to 1945. The origin of the WTO is rooted in the GATT 1947, when the practices, procedures and decisions that led to the development of this agreement to the so-called WTO or GATT 1994, and this is the first origin. The second origin is Uruguay Round of Multilateral Negotiations, which culminated in the establishment of the WTO.

2.14.1 The General Agreement on Tariff and Trade 1947

The history of the GATT begins in the 1944 Bretton Woods Conference, where the International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank) were established, the problems of trade had not been taken up as such, but the conference did recognize the need for a

\(^{34}\) B. Lal Das, AN INTRODUCTION TO THE WTO AGREEMENTS, 7, 8 (1998).

comparable international institution for trade to complement the IMF and the World Bank.36

In December 1945 the United States invited its war-time allies to enter into negotiation to conclude a multilateral agreement for the reciprocal reduction of tariff on trade in goods. In July 1945, the US Congress had granted President Truman the authority to negotiate and conclude such an agreement. These multilateral tariff negotiations took place in the context of a more ambitious project on international trade.

At the proposal of the United Nations Economic and Social Committee, adopted a resolution, in February 1946, calling for conference to draft a charter for an International Trade Organization (ITO).37

The efforts were on to form the ITO, effective countries like US, UK, Canada and some other developed countries met on the sidelines and dealt bilaterally on products where the negotiating countries were each other’s principal supplier.

2.14.2. Uruguay Round of Multilateral Negotiations

The seeds of the Uruguay Round were sown in November 1982 at Ministerial Meeting of GATT members in Geneva. Although Ministers intended to launch a major new negotiation, the meeting stalled on the issue of agriculture and was widely regarded as a failure. In fact, the work programme that Ministers agreed formed the basis for what was to become the Uruguay Round negotiating agenda.38

---

37 Ibid. 3-6.
The Punta del Este Declaration\textsuperscript{39} contained a very broad declaration mandate for negotiations. The establishment of new international organization was not however; among the Uruguay Round initial objectives. The Declaration stated that relevant parties Negotiation shall aim to develop understanding and arrangements:

I. to enhance the surveillance in the GATT to enable regular monitoring of trade policies and practices of contracting parties and their impact on the functioning of the multilateral system;

II. to improve the overall effectiveness and decision-making of the GATT as an institution, including inter alia, through involvement of Ministers;

III. to increase the contribution of the GATT to achieve greater coherence in global economic policy-making through strengthening its relationship with other international organization responsible for monetary and financial matters.\textsuperscript{40}

2.14.3. Principles of World Trade Agreements

The WTO agreements are a set of rules, which have to be followed by governments in formulating their policies and practice in the areas of international trade these agreements, which are enforceable within the multilateral framework. The Multilateral Trading System, with the World Trade Organization (WTO) is the center and the most important tool of global economic management and development we possess.\textsuperscript{41}

The main objective is to provide full competitive opportunity of trade among the member countries, following two basic principles, the Most-Favoured-Nation

\textsuperscript{39} Trade Ministerial launched the GATT Rounds at Punta del Este, Uruguay, on 28th January, 1987.

\textsuperscript{40} Ministerial Declaration on the Uruguay Round. GATT MIN DEC, dated 20 September 1986, Part I, Section E, “Functioning of the GATT System”.

\textsuperscript{41} Ibid. 40.
treatment and the National Treatment. In simple terms, the MFN treatment obligation prohibits a country from discriminating between member countries; the national treatment obligation prohibits a country from discriminating against other countries imported products.

Discrimination in trade matters, breeds resentment among the countries, manufacturers, traders and workers discriminated against. Such resentment poisons international relations and may lead to economic and political confrontation and conflict. The importance of eliminating discrimination in the context of the WTO is highlighted in the preamble to the WTO Agreement, where the elimination of discriminatory treatment in international trade relations is identified as one of the main means by which the objectives of the WTO may be attained.42

2.14.3.1. Most-Favoured-Nation Treatment (MFN)

The "General Most-Favoured-Nation Treatment" states in Paragraph 1: with the respect to custom duties and charges of any kind imposed on or in connection with importation or exportation or imposed on the international transfer payments for imports or exports, and with respect to the method of levying such duties and charges, and with respect to all rule and formalities in connection with importation and exportation.43

The MFN principle is a principle of non-discrimination; quite the opposite of special treatment. It is a legal obligation to accord equal treatment to all nations accorded the benefit44

---

43 Article I of the WTO 1994.
2.14.3.2. Exception from MFN Principle

There are some exceptions as follows:

I. Benefits and concessions can be extended to geographically adjacent countries in order to facilitate frontier traffic.\(^{45}\)

II. Some member may enter into arrangement of customs union of free trade areas within which the members eliminate custom duties with respect of substantially all the trade among them.\(^{46}\)

2.14.3.3. Other Exceptions to the Rule

I. Under Generalized System of Preferences (GSP), there can be regional or global arrangements among the developing countries for reduction of mutual tariff. In non-tariff measures, there can be differential and more favorable treatment of developing countries through multilaterally negotiated agreements among themselves for reduction or elimination of non-tariff measures in accordance with the criteria, which may be prescribed. In all these cases, the concession does not have to be extended to other members.

II. Restrictions on the import from specific countries can be imposed for security reasons.\(^{47}\)

III. Charges can be imposed on the import of product from specific country as measures against subsidy by the government or on a product of an entity as a measure against dumping.

IV. In a dispute settlement process, concession can be withdraw from a particular member that has been found to be causing nullification or impairment of benefit to other member.

\(^{45}\) Article XXIV.3 of the WTO 1994.
\(^{46}\) Article XXIV.5 of the WTO 1994.
\(^{47}\) Article XXI of the WTO 1994.
2.14.4. Objectives of the World Trade Organization

The Preamble to the WTO Agreement essentially sets out, in the broadest terms, the objectives of the whole body of agreements reached at the end of the Uruguay Round. Much of the language of the Preamble is taken over from the GATT, with several modifications. Thus, principal objectives of the WTO, as of the GATT, are raising standards of living, ensuring full employment, expanding production and trade, and allowing optimal use of the world’s resources.

According to the preamble to the WTO Agreement, the two main instruments, to achieve the objective of the WTO are reciprocal and mutually advantageous arrangement on

- The reduction of trade barriers
- The elimination of discrimination

These were also the two main instruments of the GATT 1947, but the WTO Agreement aims at constituting the basis of an integrated, more viable and more durable multilateral trading system.

In the Doha Ministerial Declaration 2001, the WTO Members stated, with regard to the objective of the WTO and its instruments for achieving these objectives:

We strongly reaffirm the principles and objective set out in the Marrakesh Agreement establishing the World Trade Organization, and pledges to reject the use of protectionism. International trade can play a major role in the promotion of economic development and the alleviation of poverty. We recognize the need for all our peoples to benefit from the increased opportunities and welfare gains that the multilateral trading system generates. The majority of WTO Members are developing countries. We seek to place their need and interest at the heart of Work Programme adopted in this Declaration. Recalling the preamble to the Marrakesh Agreement, we
shall continue to make positive efforts designed to ensure that developing countries among them, secure a share in the growth of world trade commensurate with the needs of their economic development.

We strongly reaffirm our commitment to the objective of sustainable development, as stated in the Preamble to the Marrakesh Agreement.

We are convinced that the aims of upholding and safeguarding an open and non-discriminatory multilateral trading system, and acting for the protection of the environment and the promotion of sustainable development can and must be mutually supportive. 48  

2.14.5. Function of the World Trade Organization

The World Trade Organization (WTO) provides the institutional and legal foundation for the new Multilateral trading system that came into being on 1st January 1995. The function of the WTO is to provide the common institutional framework for the conduct of trade relation among its members in matters related to the agreement and associated legal instruments included in the Annexes to the agreement. 49

Under the Article III of the WTO Agreement has stated its function of the WTO 1995 as:

- Implementing agreements
- Negotiations
- Disputes and policy review
- Developing countries
- Coherence

48 Doha Ministerial Declaration, Wt. /MIN (01)/DEC/1, Para. 1.2 and 6 (20 November 2001).
49 Article II.1 of the WTO Agreement.
2.14.6. Implementing agreements

The first and broadest function is to "facilitate the implementation, administration and operation, and further the objectives, of this Agreement and of the Multilateral Trade Agreements", and to "provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements". This function of facilitating the implementation, administration and operation of the WTO agreements and furthering the objectives of these agreements is an essential function of the WTO.

2.14.7. Negotiations of New Agreements

The WTO's second function is to be a negotiating forum. Again, a distinction is made between negotiations for which the WTO shall provide the forum and those for which it may provide a forum (Article III: 2). This negotiation may concern matters already dealt with in the WTO agreement but may be also concern matters currently not addressed in WTO law.


The third and fourth function of the WTO is to administer the arrangements in Annexes 2 and 3 for the settlement of disputes that may arise between members and for the review of trade policies. As stated in (Article III: II) of DSU: the dispute settlement system of the WTO is central element in providing security and predictability to the multilateral trading system.

2.14.9. The WTO dispute settlement system serves

I. to preserve the rights and obligations of member under the WTO agreement

---

50 Article III.1 of the WTO Agreement.
II. to clarify the existing provisions of those agreements.

The Trade Policy Review Mechanism provides for the regular collective appreciation and evaluation of the full range of individual member’s trade policies and practices and their impact on the function of the multilateral trading system. The purpose of the TPRM is:

I. to achieve greater transparency in and understanding of the trade policies and practices of members; and

II. to contribute, in this way, to improve adherence by all Members to rules, discipline and commitments made under the WTO agreements.  

2.14.10. Developing Countries

The WTO Agreement’s Preamble and Article III are buttressed by two separate texts that were adopted by Ministers on the same day that they signed the Marrakesh agreements. One text, which is of particular importance because it has a bearing on virtually every other agreement in the Uruguay Round package, is a decision on measures in favour of least-developed countries. It is the central point of these countries, as long as they remain in the least-developed category, will only be required to undertake commitments and concessions under the Uruguay Round agreements “to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities” and that the rules and transitional arrangements in the agreements “should be applied to Para.2 (iii). In the Doha session in November 2001, the Ministerial Conference declared that: ‘technical cooperation and capacity building are core elements of the development dimension of the multilateral trading system.”  

As an essential element of the Doha

---

51 Note that it is explicitly stated that the TPRM is not intended to be used as a basis for the enforcement of specific objectives under the WTO agreements or for dispute settlement procedures.
52 Doha Ministerial Declaration, Wt/MIN (01)/DEC/1, Para. 38 (20 November 2001).
Development Agenda, in 2002, the WTO embarked on a programme of greatly enhanced support for developing countries.\(^5\)

**2.14.11. Coherence**

Second ministerial text bearing on the functions of the WTO is a declaration on its role in achieving “greater coherence in global economic policymaking”. As the title of the declaration suggests, it is directly linked with the fifth function of the WTO is to cooperate with the international organizations and the non-governmental organizations. Article III: 5 of the WTO Agreement refer specifically to cooperation with the IMF and the World Bank. Such cooperation is mandated by the need for greater coherence in global economic policy-making. The linkage between the different aspects of global economic policy (financial, monetary, and trade) require that the international institutions with responsibilities in these area follow coherent and mutual supportive policy.\(^6\)


The WTO Agreement provides the new organization with a clear structure, political guidance, proper staff, and appropriate financial arrangements.

The basic structure of the World Trade Organization consists of:

**2.14.12.1. Ministerial Conference**

The highest body of the WTO is the Ministerial Conference, The Ministerial Conference, which is composed of international trade ministers from all member countries. The conference has full powers under the agreement to “carry out the functions of the WTO and take actions necessary to this effect”, and has “the

\(^5\) Ibid Para; 41.

\(^6\) That policy is mentioned clearly in the Uruguay Round Declaration on contribution of the World Trade Organization to achieving greater coherence in global economic policymaking.
authority to take decisions on all matters under any of the Multilateral Trade Agreements”. The Ministerial Conference meets at least once every two years. Between sessions of the Ministerial Conference, its functions are exercised by the General Council, also made up of the full membership of the WTO.55

Fig. 2.1: Ministerial Conference & other discussions in WTO from 1996 to 2010

55 Article IV.1.2 of the WTO Agreement.
2.14.12.2. The General Council

The General Council meets more frequently than the Conference, and is in effect the overseer of the WTO’s operations. It is composed of senior representative (usually ambassador level) of all members. The General Council has also been given two additional specific tasks. The WTO Agreement requires it to convene as the Dispute Settlement Body and as the Trade Policy Review Body. These are responsible respectively for the operation of the dispute settlement and trade policy review arrangements of the WTO.\textsuperscript{56} Meetings for these purposes take place much more frequently: experience so far is that the Dispute Settlement Body meets about once a month, and the Trade Policy Review Body still more often.


The Trade policy Review Body is composed of all WTO members, and oversees the Trade policy Review Mechanism, a product of the Uruguay Round. It periodically reviews the trade policy and practices of all member States. These reviews are intended to provide a general indication of how states are implementing their obligations and to contribute to improve adherence by the WTO parties to their obligations.

2.14.12.4. The Dispute Settlement Body

The Dispute Settlement Body is also composed of all WTO members. It oversees the implementation and effectiveness of the dispute resolution process for all WTO agreements, and the implementation of the decision on WTO dispute. Disputes are heard and ruled on by dispute resolution panels chosen individually for each case, and the permanent Appellate Body that was established in 1994. Dispute resolution is

\textsuperscript{56} The WTO Agreements Series, Introduction to the Agreement establishing the WTO, p.3, see also http://www.wto.org/wto/publicat/publicat.htm.
mandatory and binding on all members. A final decision of the appellate Body can only be reserved by a full consensus of the Dispute Settlement Body.\textsuperscript{57}

2.14.12.5. Goods, services and TRIPS councils

The councils on Trade in Goods, Services and TRIPS operate under the mandate of the General Council and are composed of all members. The WTO Agreement provides for three separate sets of subsidiary bodies reporting to the General Council. The most important group, responsible for the main operational aspects of the WTO, consists of the three Councils which supervise work arising from the obligations which all member countries have assumed under the agreements on trade in goods, trade in services, and trade-related aspects of Intellectual Property Rights. A second set of subsidiary bodies is responsible for broad functions that cut across sectorial responsibilities. The third group consists of the bodies established under the Plurilateral Trade Agreements, which by definition contain the obligations that bind only those WTO members that have accepted them. The three subsidiary Councils are the Council for Trade in Goods, the Council for Trade in Services, and the Council for Trade-Related Aspects of Intellectual Property Rights (known for short as the Council for TRIPS). Each operates under the general guidance of the General Council, and is to carry out the functions assigned to it by the goods, services or TRIPS agreements, and by the General Council. The Council for Trade in Goods covers the agreements in Annex IA to the WTO Agreement: that is the GATT itself, and all the multilateral understandings, agreements and decisions reached on trade in goods either as a result of the Uruguay Round, or carried over from earlier years. The Council for Trade in Services oversees the General Agreement on Trade in Services (GATS). The Council for TRIPS oversees the Agreement on Trade-Related Aspects

of Intellectual Property Rights (TRIPS Agreement). Each of the Councils is open to all WTO members who may wish to attend, the Councils are to meet as necessary, and can set up subsidiary bodies.  


The councils on Trade in Goods, Services and TRIPS shall establish subsidiary bodies as required. These subsidiary bodies shall establish their respective rules of procedure subject to the approval of their respective Councils.

2.14.12.7. Committees reporting to General Council

The committee on Trade and Development, The Committee on Balance of Payments Restrictions and The committee on budget, financial and Administration, these committees shall carry out the functions assigned to them by the Agreement and by the Multilateral Trade Agreements, and any additional functions assigned to them by the General Council.  

The Committee on Regional Trade Agreements have been added to set up in 1996 (Article IV:7). All the first three committees had direct counterparts under the old GATT: the difference is that they now have to cover the wider responsibilities of the WTO. Many, or even most, of their tasks are specifically laid down elsewhere in the WTO Agreement, or in its Annexes. However, the Committee on Trade and Development is also required to review periodically the application of the special provisions of the Multilateral Trade Agreements in favour of least-developed countries, and has set up a sub-committee for this purpose (Article IV:7). These permanent committees are open to all WTO members, although it is only the Committee on Trade and Development whose membership approaches in numbers

58 Article IV.5.6 of the WTO Agreement.
59 Article IV.7 of the WTO Agreement.
that of the WTO itself. One important body, the Committee on Trade and Environment, was created under the terms of a Ministerial decision in Marrakesh. Initially established to report to the first meeting of the Ministerial Conference, held in December 1996, its work programme has been further extended.  

2.14.12.8. The Secretariat and Director General of the WTO

The secretariat and Director General reside in Geneva, and has a staff, and undertake the administrative functions of running all aspects of the organization. The secretariat has no legal decision-making powers but provides vital services, and often advice, to those who do.

The main duties of the WTO Secretariat are:

- to provide technical and professional support for the various WTO bodies;
- to provide technical assistance to developing country Members;
- to monitor and analyze development in world trade;
- to advise governments of countries wishing to become Members of the WTO; and
- to provide information to the public and media.

The secretariat is headed by Director General, who is appointed by the Ministerial Conference. The Ministerial Conference adopted regulations setting out the powers, duties, and conditions of service and the term of office of the Director General.

---


2.15. The WTO’s structure

Figure 2.2: The WTO’s structure

Key
- Reporting to General Council (or a subsidiary)
- Reporting to Dispute Settlement Body
- Plurilateral committees inform the General Council or Goods

The General Council also meets as the Trade Policy Review Body and Dispute Settlement Body

All WTO Members may participate in all councils, committees, etc, except Appellate Body, Dispute Settlement panels, Textiles Monitoring Body, and plurilateral committees.

---

2.16. Membership

The adjective "globalization" to the World Trade Organization did not come on the improvisation of the moment without planning, where the wish to stand up on the principle of universality of the Organization relatively to expand Membership to include the States in accordance with the prevailing concept in international law. Moreover, it extends to take the customs territory of full independence in managing its external relations and the European Economic Community.

So that the Contracting Parties of the GATT were able to accede to the WTO. The provisions of the GATT co-existed with those of the WTO until the end of 1995, whereupon they became an integral part of the latter’s legal framework. Under the provisions of accession, any state or customs territory wishing to accede to the WTO can do so as long as it has "full autonomy in the conduct of its external commercial relations."^3

On 1st September 2004, the WTO had 147 Members and more than 25 countries were negotiating their accession to the WTO. The Membership of the WTO is quasi-universal. It includes all major trading powers and most developing countries. The Members of the WTO represent 92 per cent of the global population and 90 percent of the world trade. In 2011 the Members of the WTO include:

[^3]: Article XII of the WTO Agreement.
Table 2.1 : Membership of the WTO (as on 10\textsuperscript{th} February 2011)

<table>
<thead>
<tr>
<th>Member*</th>
<th>Year of accession</th>
<th>Member</th>
<th>Year of accession</th>
<th>Member</th>
<th>Year of accession</th>
<th>Member</th>
<th>Year of accession</th>
</tr>
</thead>
<tbody>
<tr>
<td>Antigua and Barbuda</td>
<td>1995</td>
<td>Colombia</td>
<td>1995</td>
<td>Georgia</td>
<td>2000</td>
<td>Latvia</td>
<td>1999</td>
</tr>
</tbody>
</table>


55
2.16.2. WTO Observer Governments

The WTO currently has 153 members accounting for almost 90 percent of world trade.

Figure 2.3: Trade by World’s Leading Countries

Table 2.2: WTO Observer Governments

<table>
<thead>
<tr>
<th>Sl. No.</th>
<th>WTO Observer</th>
<th>Sl. No.</th>
<th>WTO Observer</th>
<th>Sl. No.</th>
<th>WTO Observer</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.</td>
<td>Ethiopia</td>
<td>22.</td>
<td>Samoa*</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers. On 16 December 2011: Ministerial Conference approves Russia’s WTO membership, and also 17 December 2011: WTO membership of Montenegro and Samoa approved. See also http://www.wto.org/english/thewto_e/acc_e/acc_e.htm. Acceded on 09-01-2011. With the exception of the Holy See, observers must start accession negotiations within five years of becoming observers.


2.17. Decision-Making of WTO

The majority of the decisions made in the WTO are done unless specified otherwise, by consensus. Consensus is taken to mean agreement among all excluding those representatives of Members who are not present, or have abstained from participation. Consensus is not understood as unanimity, but rather agreement in the absence of major opposition.\(^69\)

An important provision of the WTO Agreement states that, except as otherwise provided, the WTO is to be "guided by the decisions, procedures and customary practices" followed under the old GATT (Art XVI:1). The implications of this principle for decision-making are spelled out further: "the WTO shall continue the practice of decision-making by consensus followed under GATT 1947"\(^70\).

The WTO continues a long tradition in GATT of seeking to make decision not by voting but by consensus. This procedure allows members to ensure their interests are properly considered even though, on occasion, they may decide to join a consensus in the overall interests of the multilateral trading system. Where consensus is not possible, the WTO Agreement allows for voting. In such circumstances, decisions are taken by a majority of the votes cast and on the basis of "one country, one vote"\(^71\).

One further clarification of the decision-making procedures of the WTO has been reached since the Uruguay Round agreements were signed. As part of the process of drawing up rules of procedure for the various WTO bodies, the member

\(^{68}\) On 17 December 2011: WTO membership of Montenegro and Samoa approved.  
\(^{71}\) Ibid.8, and Article IX.1 of the WTO Agreement.
governments agreed that voting should take place only in the General Council and Ministerial Conference. When an agreement cannot be reached by consensus in a subsidiary body such as the Council for Goods, the matter will be passed up to the General Council for further consideration.  

2.18. The Influences of WTO Agreement on the World Economic System

The effects of accession to the WTO differ from one country to another; the benefits of WTO membership do not focus on a particular State, but extend to the international society. There is no doubt that the degree of benefit will vary from country to country depending on the degree of economic advance.

States with different economic systems have joined with the international community, with belief in the role of GATT, and the benefit that would derive from this joining. Every Member State in the GATT 1994 was equal in the rights, but varied in the obligations and duties. And the developing countries receive many exceptions with concessions with lower tariffs than developed countries, or allow the countries facing the deficit in balance of payments disengage from their obligations to raise tariffs or impose non-tariff restrictions.

As for the point of view, this holds that the agreements have the negative repercussions on the economies of developing countries. Because, developing countries are importing agricultural and food products in general, and as the agreements included the reduction of the support is gradually provided by the States for production of agricultural crops, the cost of imports of developing countries will rise, and then the balance of trade will have negative influence on it, and thus create economic and social problems that had plagued some countries in their application,

---

72 Ibid, 9.
73 M. Abdel Fattah, INTERNATIONAL TRADE ORGANIZATION AND INTERNATIONALISM, REGIONALISM, 490 (A.M. Mutahar. tr., 2002).
installation and adjustment programs implemented by the agreement with the International Monetary Fund.74

2.19. Conclusion

The creation of World Trade Organization (WTO), replacing the GATT 1947, on January 1st, 1995 is a landmark in the history of world trade system. It represents the fruition of effort over long time. The WTO became more extended; it brought, trade in service, intellectual property rights and investments into multilateral trade system.75

The WTO Agreement created the WTO as a new international organization with a legal personality, legal capacity, and sufficient privileges and immunities. It also endowed the WTO with decision-making processes, an institutional structure, and distinctive functions. If it maintains the support of its Members and gains public understanding and support, the WTO will continue to play a key global economic role in the Twenty-first Century. The Multilateral Trade Agreements (MTAs) are main organs of the WTO; it’s the forum for negotiations among its members.

---

74 Ibid. 498.