Chapter 4

Indo-US Diplomacy in Uruguay
Round of Trade Negotiations
The study of bilateral diplomacy between two countries should necessarily take into account the wider economic arena, within which it operates. It is our contention that economic diplomacy has two components—bilateral and multilateral and that one cannot be seen in isolation from the other. Our discussion about bilateral Indo-US trade and investment, and associated diplomatic activities would not be complete without a study of their diplomacy in multilateral fora. The different positions of India and the US came to the fore in the Uruguay Round of multilateral negotiations. This had a cascading effect on the bilateral economic relations.

The significance of economic diplomacy in the multilateral forum stems from the fact that the major issues that affect bilateral diplomacy find expression in the former. The positions of both India and the United States in the multilateral forum were consistent with their bilateral concerns. For instance, the United States pursued a policy of free market and open economy, and India its demand for concessions in the form of quotas, quantitative restrictions in both bilateral and multilateral levels.

For a proper understanding of the happenings in the Uruguay Round of trade negotiations, it is imperative to take into account the larger context and the preceding events leading to it. The first step towards an international trade regime found expression in the multilateral arrangement of the General Agreement on Tariffs and Trade (GATT). It governed the international trade since 1948. Over the
period several rounds of multilateral negotiations were conducted to adapt it to the changing economic conditions. There was limited participation, in the early years of GATT, most of which were from developed nations. In the first round of negotiations held in 1947 only eighteen countries participated. Even as late as 1967, when the Kennedy round of negotiations was concluded, there was a low strength of only 67 countries.¹ This reflects developing countries lack of interest towards GATT. They found GATT regulations to be more of a hindrance to their commercial and development aspirations. However, by the Uruguay round of negotiations, the eighth and the latest in the series, the participation strength had increased to 123.

The importance of the multilateral round of trade negotiations rests on the fact that a wide range of issues could be negotiated and settled among the participants at one go rather than undergo the time consuming process of negotiating each issue with every other country bilaterally. Further, when a whole range of issues were negotiated and advantages gained over a cross-section of areas it was easier to defend the concessions provided as a trade-off. From the point of view of developing countries, it was easier to negotiate in coordination with other countries having similar problems rather than individually with the developed nations.

¹ K.R. Gupta, ed., World Trade Organisation (Successor to GATT) and India (New Delhi,1996), p.11.
But the interests of the developing countries were not always similar. They varied according to their stage of development. While some group of countries found bound tariffs to be a problem as it was difficult to convince the developed countries of the need to increase bound rates. Countries like India and Brazil, which were in a higher stage of development, had a different attitude. They were more concerned about quantitative restrictions, which they felt were unfairly used by the developed countries to deny entry to their goods.

Negotiations in the GATT were held in this background. The first few rounds of GATT negotiations centered around tariff barriers. For the first time issues other than tariffs were discussed in the Kennedy round (1964-67). The Tokyo round (1973-79) marked a major change in GATT negotiations. Non-tariff barriers were included for the first time in the Tokyo round. The issues included subsidies, countervailing measures, technical barriers, import licensing procedures, government procurement, anti-dumping, etc.\(^2\)

The international scenario at the turn of the eighties was reeling under the impact of the two oil shocks of the preceding decade. The developed countries had turned to protectionist policies, adversely affecting international trade. The developing countries suffering from debt crisis too resorted to protective practices. As a result of the GATT success in restricting tariff, the protectionism took the form of non-

\(^2\) Bibek Debroy, *Beyond the Uruguay Round: The Indian Perspective on GATT* (New Delhi, 1996), pp.26-27.
tariff barriers. Also, the period saw the development of new areas outside the purview of GATT such as international investments, intellectual property rights, service industry etc. These developments were seen by developed countries like the United States as warranting a new round of negotiations. Under these circumstances, the United States in an effort to bolster its trade initiated steps towards the launching of a new round of trade negotiations.

...the idea was pushed by the United States as part of its three pronged strategy to shore up its economy. One of the prongs was to start a new round of multilateral negotiations with services, intellectual property protection and investment regimes as integral parts of the new trade regime...The second prong was to sharpen the U.S. Trade Act instrumentalities so as to unilaterally pry open the markets of other countries who would not be required to do it under the prevailing discipline of GATT. And the third was to launch the process of regional integration in North America.³

In 1982, the proposal to start a new round of multilateral trade negotiations was stalled due to the rigid positions of various countries. The major stumbling blocks were the US-EU disagreement over the issue of agricultural subsidies and the US proposal to set up a study group on services under the GATT. This latter aspect was stoutly opposed by the developing countries. The major objections of the developing countries were that the promises of the previous round of trade negotiations such as non-discriminatory safeguard measures, phasing out the Multi Fibre Agreement and removing restrictions on the access of their tropical products were not fulfilled.⁴ Further, they

feared that new areas of negotiations pushed through by the United States would adversely affect them. According to B.S. Chimni, the developing countries had three objections:

The first was there was a backlog of outstanding issues lying unresolved since the Tokyo Round of Negotiations and that these needed to be resolved before new issues could be considered. Next, the new issue areas fell outside the ambit of GATT, which was never meant to deal with anything other than the area of goods. Third, if the coverage of the GATT system had to be expanded, it should not be extended to cover issues of interest only to the developed countries.5

In November 1982, after long negotiations on the issues mentioned, the ministers attending the conference shifted the venue from the large conference hall to two small chambers on the grounds that the conference hall was too large for face-to-face interaction. The idea was that it could discuss the issues separately. This enabled the United States to deal with the EEC and the developing countries separately, thus avoiding any joint posture by the two groups and mixing of the issues. The US argument with respect to the developing countries was that they would be better off in a multilateral trading system rather than deal with each country bilaterally, which would be

5 B.S. Chimni, "Political Economy of the Uruguay Round of Negotiations: A Perspective", International Studies, vol. 29, no.2, April-June 1992. Similarly, Sumitra Chisti remarks "... they argued that services could not be brought under the multilateral trade negotiations (MTN), for the simple reason that the GATT was mandated only to deal with merchandise trade and border measure tariffs and quotas. Given the wide variety of services, they could not be included in the agenda for negotiation. Further, there was a lack of clear understanding and knowledge about a wide variety of services and their international aspects. Hence there was a great deal of reluctance on the part of the developing as well as some developed countries to negotiate on this issue." Sumitra Chisti, "Globalisation, International Economic Relations and the Developing Countries", International Studies (New Delhi), vol.33, no.9, July-September 2002.
tedious and difficult. The EU supported the US in its stand towards the developing nations in the hope of gaining concessions in the issue of agricultural subsidies.\(^6\)

The US also used retaliatory threats to break the solidarity of the developing countries. The Indian Ambassador, Bhagirath Lal Das, prepared the draft declaration of the conference.\(^7\) His intervention prevented the introduction of several new pernicious elements into the draft, including, the graduation theory\(^8\) meant to divide the developing countries, the slogan of 'north-south dialogue' meant to dissipate a concerted attack by the group of developing countries, and trade related performance requirements and 'trade in services' question. While the first two were kept out of the text, the last two were allowed to come in only after their harming influence were blunted.\(^9\)

The major achievements from the Indian point of view were

- strong call for implementing more effectively Part IV of GATT committing developed countries to assist developing countries,

- committee on trade and development to undertake an examination of the prospects of increasing trade between developed

\(^6\) Times of India, 29 November 1982.
\(^7\) Economic Times, 27 November 1982.
\(^8\) This means to divide the developing countries into more developed and less developed countries. The more developed among them would not be granted concessions.
\(^9\) Times of India, 30 November 1982.
and developing countries and the role that GATT could play towards that,

- decision to develop a comprehensive understanding on 'safeguards' not later than the next annual session in 1983. It was made clear that the new understanding on safeguards should be based on the principles of GATT and should include objective criteria for safeguard action,

- decision to carry out priority study of the impact which the MFA had on world trade and to pursue measures aimed at liberalizing the trade in textiles and clothing.\(^\text{10}\)

According to Muchkund Dubey, "In the Programme of Action that emerged at the end of the GATT Ministerial Meeting in November 1982, the developing countries succeeded in substantially underplaying the new areas introduced by developed countries and keeping the limelight focused on them (developing countries)."\(^\text{11}\)

This was followed by intense lobbying by the developed countries to undertake a new round of trade negotiations. Towards this end Arthur Dunkel, Director General of GATT, Deputy US Trade Representative Michael Smith and Japan's Foreign Minister Mizoguchi visited India in September 1984. They argued that the depressing

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\(^\text{10}\) Times of India, 3 December 1982.

scenario in the world trade warranted a new round of trade negotiations. India was opposed to such an idea. India insisted on the implementation of existing commitments before moving into new areas.12

In December 1984, representatives of ninety nations met in Geneva. A compromise agreement was reached in the meeting regarding trade in services. The compromise was reached between the United States and the developing countries led by India and Brazil. During the meeting the United States threatened unilateral action if GATT did not respond to its demands. The Director General of GATT set up an expert committee, which gave its strong backing to United States move for a new round.

In 1985, the United States was insistent on at least holding a preparatory committee meeting for a new round of trade negotiations. The Swedish Foreign Trade Minister Mats Hellstrom met India's Finance Minister V.P. Singh during his visit to New Delhi. He extended invitation to V.P. Singh for the proposed talks in Stockholm. He also stressed that a new round of trade talks was in the interest of the developing countries. V.P. Singh while accepting the invitation emphasised the need to implement the work plan rather than having a fresh round of negotiations to extend the GATT system to new areas such as services. The work plan was intended to dismantle trade

barriers in the markets of the developed countries for products in which the developing countries had a comparative advantage.  

13 The United States also endeavoured to enlist the support of other industrial nations for the launching of a new round of trade negotiations in the Bonn Summit held in May 1985.

In the informal meeting of twenty nations in Stockholm it was agreed to start negotiations for finalising the agenda for a new round of trade negotiations. This was made possible by a change in the position of Brazil, which agreed to discussions on liberalising trade in case they were non-binding. On the controversial issue of inclusion of services, it was suggested that negotiations on services be held separately outside the forum of GATT.  

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In November 1985, five countries including India called for a firm commitment from all members of the GATT to reverse the protectionist measures. Brazil, Argentina, Yugoslavia and Egypt were the other countries. The group made this appeal after a meeting of a high level group. The group deliberated on the subjects and procedures for a new round of talks on trade liberalisation.  

15 This continued in all the talks that were held on the issue. No concrete solution came out of the meetings that were held in the following days.

14 Hindustan Times, 14 June 1985.
15 Indian Express, 2 November 1985.
In this background, developing countries led by Brazil and India urged that the new round should concentrate on the issues of evolving an effective safeguard discipline. In the words of S. P. Shukla, this was to be based on

...the fundamental principles of GATT, of ending the MFA and integrating the textile trade with GATT, of crying halt to competitive subsidization of agricultural production and exports by industrialised countries. Moreover, in order to build confidence in the multilateral process, the new round should start with a strict commitment on the 'standstill' and the 'rollback'. In other words, all participants should bind themselves not to take any unilateral measures, not permissible under GATT, to increase restrictions during the pendency of the negotiations and to agree to rollback those that were already in force.\(^\text{16}\)

Such demands put forward by the developing countries ran counter to the interests of the US. As a result the US was keen to break the solidarity of the developing countries. Towards this end the US used the bilateral diplomacy to good effect. It dealt with each country separately, exerting pressure on them to toe its line. S. P. Shukla opines that:

The years 1985 and 1986 witnessed increasing bilateral pressures on many developing countries. The capacity to withstand such pressures was not uniform in the developing world. Moreover, the fear of immediate adverse implication for trade with or aid from the industrialised countries weighed far more with the decision makers than the perception of the long term threat to autonomous policy making in the economic sphere. The possibility of unilateral action by a major trading entity like the U.S.A. withdrawing the GSP benefit or even sanctioning retaliation further contributed to the weakening of the resolve of many. Most important, the political equations which finally determined the stance of the participants in the

trade negotiations varied substantially for different developing countries. The net result was that on the eve of the Ministerial Meeting convened at Punta-del-Este in Sept. 1986 to consider launching of the new round, the developing world was split.\textsuperscript{17}

The strategy of the few developing countries led by India and Brazil was also to incorporate like-minded developed countries in its opposition to United States sponsored agenda for the Uruguay Round of trade negotiations.

One of the important contributory factors which helped the small group of ten developing countries led by India and Brazil to hold on to their stand in the face of the U.S. opposition and despite the serious split in the developing world, needs to be recognised. In the period leading to the Punta-del-Este Ministerial meeting, India and Brazil had succeeded in developing a degree of understanding with the EEC on the issues of mutual concern. It should be remembered that the EEC's position on the services issue had not fully emerged from that time. ...All in all, the EEC showed a degree of understanding and sympathy for the concerns which India and Brazil were expressing on the subject of the new round and the new issues. In this background, it was possible for India and Brazil to work out with the EEC the outline of a possible compromise outcome which would be mutually acceptable.\textsuperscript{18}

\textbf{Preparatory Committee}

In November 1985, the Session of the Contracting Parties established a Preparatory Committee. The work of the Committee was to 'prepare recommendations on the objectives, subject matter, modalities and participation for such a round.'\textsuperscript{19} The Chairman of the Committee was Arthur Dunkel. The committee dealt with the following areas:

\textsuperscript{17} ibid., p.99. GSP- Generalised System of Preferences.
\textsuperscript{18} ibid., p.100.
- the general objectives of the Round;
- the identification of subjects in the traditional GATT areas for inclusion in the Round (here the 1982 work programme was of special influence and benefit);
- how the trade round should be related to the general economic background taking into account, for instance, the links between trade, finance and debt;
- how to handle new areas like trade in services or trade-related intellectual property rights;
- the position of the less-developed countries in the Round;
- the basis for an agreement on 'standstill' (meaning a freeze on any further restricting trade measures inconsistent with GATT commitments) and 'rollback' (the progressive dismantling of existing trade restrictions which are inconsistent with the GATT);
- organisational matters including the nature of the Ministerial Meeting its site, its chairman, as well as the negotiating structure of the trade round, its timing, participation and other matters.\textsuperscript{20}

There were serious differences of opinion on 'the nature of the commitment to standstill and rollback, the handling and pace of negotiations on trade in agriculture and the extent to which trade in services could be treated within the umbrella of trade round.'\textsuperscript{21}

\textbf{Framework of Negotiations}

The negotiations were conducted under the supervision of Trade Negotiations Committee (TNC). It was an umbrella body monitoring the complete negotiations of the Uruguay round. It was political in character and met once or twice in a year.

\textsuperscript{20} ibid., p.7.
\textsuperscript{21} ibid., p.8.
There were two groups that worked under the TNC. They were the Group of Negotiations on Goods (GNG) and the Group of Negotiations on Services (GNS). They were known as Tracks I and II respectively. The GNG was concerned solely with trade in goods, whereas the GNS was concerned with services. The GNG dealt with fourteen areas. They were tariffs, non-tariff measures, tropical products, natural resource based products, textiles and clothing, GATT articles, safeguards, MTN agreements and arrangements, subsidies and countervailing measures, dispute settlement, trade-related intellectual property rights, trade-related investment measures and functioning of the GATT system. Separate groups negotiated on all the fourteen issues and reported to the GNG and TNC. The GNS negotiated on the issue of services.\textsuperscript{22}

\textbf{Group of Negotiation on Goods}

The Punta del Este declaration had kept a deadline of December 1986 for approval of detailed negotiating plans. However, differences of opinion between the developed countries and the major third world countries stalled any progress. The issues that had to be resolved were surveillance mechanism for implementation of the standstill and rollback commitments, negotiating plans for each of the fourteen subjects included in the multilateral trade negotiations on goods,

\textsuperscript{22} ibid., p.13.
establishment of negotiating structures and naming of chairmen for them.

The third world countries met informally and discussed several of the informal proposals (including one by Japan and Sweden) were discussed and a consensus was evolved. The proposals were on the need for an effective surveillance mechanism and a central role for the GNG over the MTNS and its negotiating groups. The group asked the Chairman Ambassador S.P. Shukla of India to convey these views on its behalf to the GNG. In this meeting Dunkel reported on the various consultations held till then and S.P. Shukla presented the views of the third world group. On the issue of surveillance mechanisms, he said, third world countries felt that it should be set up, if not prior to, at least simultaneously with the commencement of negotiations in various areas of trade in goods. The procedures for surveillance should be based on principles of transparency and multilateralism, and these should also govern the procedures for rollback of protectionist measures. The surveillance body to be established should reach conclusions in its deliberations and be in a position to make recommendations to the GNG and the Trade Negotiations Committee (TNC) the overall body to conduct the Uruguay round. The US was opposed to the Surveillance body reaching any conclusions or making recommendations. It also did not want any role for the GNG in this area.
The main feature of Shukla’s exposition in the meeting were as follows:

(1) in the implementation of standstill and rollback, as provided in the Ministerial declaration, particular care should be taken to avoid disruptive effects on the trade of the third world countries;

(2) GNG should have an “important and central role” in carrying out the programme of the negotiations;

(3) separate negotiating group should be established for each of the 14 subjects, and “there should be no discrimination in treatment of any of the subjects of negotiations, including textiles and clothing”;

(4) need to establish techniques and modalities for appropriate practical application of the principle of “more favourable and different treatment in favour of developing countries in all areas of trade negotiations” as agreed to in the Ministerial declaration.

These were in direct opposition to the stand of the United States. It was attempting to reverse an earlier GNG decision on negotiating groups. It favoured the establishment of a separate group on textiles and clothing. Towards this end various suggestions were mooted as a moderating influence. They included postponement of the naming of a separate group on textiles to a future date and combining its chairmanship with that of some other group or groups. Such
suggestions were summarily rejected by the third world countries as evident from the opinion echoed by S.P. Shukla on their behalf.

**Mid-Term Review of the Uruguay Round**

The mid-term review of the Uruguay Round was held in December 1988. It was envisaged in the Punta del Este declaration 'in order to make a collective assessment of the work done so far and to give a necessary push towards a more substantive negotiating phase'. In preparation for the review by the Ministers each negotiating group was to prepare a report to be approved by the GNG before being tabled in the mid-term review.

The talks floundered on the issues of agriculture, textiles, intellectual property rights and safeguards with various groups reiterating their known positions. The United States had adopted an intransigent position and made it known on the opening day of the meeting itself.

In 1989, Dunkel held consultations on the four subjects over which the talks foundered in the Mid-Term Review of the Montreal Meeting. In the case of agriculture it was mainly bilateral talks held between the United States and the EEC. As far as the other issues were concerned they posed a united front against the developing

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countries. Based on these consultations, Dunkel presented his compromise formula for resolving the deadlock. However, the third world countries saw the paper as partisan and favouring the developed countries. During the meeting of the High officials in the Trade Negotiations Committee in April when the above issues were discussed the United States and other developed countries were also involved in a misinformation campaign.

The United States also used the provisions of Super 301 and Special 301 to break third world unity as far as TRIPs were concerned. The Indian approach to the negotiations was ambiguous and conciliatory to the Dunkel draft. Though the Indian officials maintained that their stand remained the same, other third world participants were not confident about India’s support. In the consultations held between the developed countries and India and Brazil both acquiesced and accepted the draft.

Thus, one finds that prior to the mid-term review of the Uruguay Round, the developing countries led by India and Brazil had posed a unified front to the United States led developed countries. However, the same solidarity was found wanting after the mid-term review. In the words of Bhagirath Lal Das,

25 Raghavan, n. 3 p. 259.
26 Deccan Herald, 14 April 1989.
27 Deccan Herald, 14 April 1989.
By the time the Uruguay Round negotiations reached mid-course, there was almost total disintegration of solidarity among developing countries. In this situation, countries like India did not have any more role as sponsors of stands which would be in the common interest of a larger number of developing countries. There was no role for India's negotiators to co-ordinate, covertly or overtly, the entire developing country group or even a small core group in the WTO. Each developing country (perhaps with the exception of the ASEAN countries, which worked as a group) turned into a lone fighter for its interests. 29

**Dunkel Draft**

The Uruguay Round almost collapsed in 1990 because of differences between the United States and Europe over farm subsidies. "...the draft treaty finalised last December by GATT Director-General Arthur Dunkel, now under discussion in Geneva, is a last-ditch attempt to obtain agreement and thus conclude the present GATT round successfully. To this end, The Dunkel draft cleverly attempts to narrow the differences between Europe and the U.S. by being more generous to the former than expected on farm subsidies, but balances this by being more generous to the U.S. on all the other issues, mainly at the cost of the developing countries. This has been done by ignoring almost all the provisions entered in square brackets by the developing countries in the earlier draft at the negotiating stage." 30

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Agriculture

The core issues of the Agreement on Agriculture (AOA) were market access, export competition and domestic support. According to the agreement the countries had to grant access of up to 3 per cent of the domestic market to other countries. The export subsidies were cut by 36 per cent while reducing the volume of exports subject to subsidies by 20 per cent in the six-year period till 2001. Also, the Aggregate Measure of Support was to be reduced by 20 per cent over a six-year period. As Abhijit Sen has noted:

The actual benefits were minimal. First, in the case of export subsidies, by defining the cuts in the aggregate rather than the product specific (which was only 15 per cent) way, the measure was biased in favour of cutting the low rather than high tariffs. Consequently, tariffs on products of interest to developing countries, like sugar, tobacco, cotton, cereals and prepared fruits and vegetables had the highest tariff peaks. Second, the actual reduction of export subsidies was avoided by using the "carry over" provision through which unused subsidies of one year could be carried over to another year. It is not often realised that developed country subsidies are concentrated on a few items like cheese, butter, beef and wheat, and tend to be high when world prices are low. Third, the stipulations regarding the reduction in AMS were systematically bypassed by the creation of the various boxes such as the blue box, green box and amber box. This in effect implied that the EU compensation programme under the 1992 CAP and the US deficiency payment programme were not included while calculating the AMS. Such exclusions were typical in the fruition of free trade agreements, which lead to reduced production for domestic producers. Finally, if all other measures failed, direct import restrictions were permitted only to developed countries under the Special Safeguard Clause (SSC) in the case of sudden disruptions due to out of quota imports.31

31 ibid., p.219.
In the Ministerial meeting at Marrakesh, India made a strong case for refining the GATT Agreement on Agriculture to protect the farmers' interests. In his address, Pranab Mukherjee, Minister of Commerce said, 'this would discipline trade distorting practices without affecting the developmental programmes and social objectives of developing countries'.

Trade-Related Intellectual Property Rights (TRIPs)

The issue of TRIPs led to the widening of differences between the developing countries led by Brazil and India and the developed countries led by the United States and Japan. In June 1988, the pharmaceutical industries of United States, Japan and Europe brought out a study, "Basic Framework of GATT Provisions on Intellectual Property". It brought out in detail and clarity of what the position of the developed countries was regarding intellectual property.

The United States wanted to establish a set of standards for intellectual property rights protection, with the GATT’s dispute settlement mechanism overseeing its implementation. India and Brazil vehemently opposed ‘the substantive matters relating to intellectual property protection being brought within the purview of GATT

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Dhar and Rao point out that the developing countries objections were based on the following three points.

1. “it is not within the purview of the GATT to set norms and standards for intellectual property protection.”

2. “the developed country proposal went beyond the Punta del Este mandate.”

3. “excessive protection of intellectual property (as suggested by the developed countries) should not itself become a barrier to trade.”

V.R. Panchamukhi points out that there were differences about the mandate of the group between the developed and developing countries right from the beginning. He notes:

For instance, the developed countries wanted the norms and standards of IPR to be taken up for discussion in this regard, while the developing countries wanted the group to totally steer clear of this issue. It was only after protracted negotiations and considerable pressure from the developed nations, that the developing countries ultimately succumbed at the meeting of

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33 Shukla, n. 16, p.104.
the Trade Negotiations Committee in April 1989, to discuss even norms and standards of IPR under the GATT.36

This was in effect a success for the United States in bringing in the agenda of IPR within the framework of the GATT. The developing countries did not show any unity in their positions after this. Their main concerns were directed towards protecting their interests to the maximum extent possible. India made four proposals regarding, (i) farmers' rights, (ii) working of patents, (iii) patenting of naturally occurring genetic material, and (iv) elimination of pipeline protection.37

According to A. V. Ganesan, India sought the following changes in the draft TRIPs agreement.

1. The provisions of compulsory licensing incorporated in the Paris Convention are not restricted by the TRIPs agreement.

2. There is a linkage between compulsory licensing provisions and public interest concerns in sectors of vital importance to the national economy.

3. Naturally occurring genes, howsoever derived, are not regarded as patentable subject matter.

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4. Farmers’ exemption and Researchers’ exemption are duly recognised in any sui generis system for the protection of plant varieties.\textsuperscript{38}

The negotiations in all these issues faced opposition from the United States. As far as the cases of farmers’ rights and patenting of genes were concerned there was some understanding of the Indian position by the United States. However, India and the United States could not agree upon the language in addressing these concerns. In the case of working of the patent as also in the case of transition period Indian proposal did not have any supporters.\textsuperscript{39}

The results implied that India had to change the Patent Act of 1970 and provide pipeline protection to patents. In the case of sui generis it is considered that the new system would benefit India.

**Indo-US Disputes at Multilateral Fora**

The United States has been pressing India to eliminate perceived barriers to free trade. The dispute led to India being listed as a priority country under U.S. trade law, a move that could bring U.S. economic sanctions against Indian goods. U.S. Trade Representative Carla Hills who came on a four-day visit to India in 1991 urged India to adopt tougher patent laws. She met Finance Minister Manmohan


\textsuperscript{39}Ministry of Commerce, n. 37 pp.43-44.
Singh and Commerce Minister P. Chidambaram, who had returned recently from Washington after talks. But, these high-level talks did not lead to any substantial progress on an issue that had been an irritant in Indo-US relations for nearly five years then. Commenting on the outcome of these talks, Hills said, "I thought we had a very good mutual airing of our views on intellectual property... You know, I don't think that we are so far apart." Hills acknowledged that negotiators faced a November 26, 1991 deadline under US law, after which sanctions could be imposed on Indian goods unless the disputes are resolved. Nevertheless, the cleavage between the two nations was evident at this point of time.

One of the key sticking points was the issue of intellectual property rights. According to the Indian six to seven years of patent protection was granted, but the US trade officials favoured 15 years. The issue was highly emotional one in India, where it was widely believed the shorter patent protection helped make inexpensive medicine available to the poor. The issue was seen as one concerning economic sovereignty.

On the other hand, the United States argued that without tough patent and copyright protection, inventors, scientists and other creative people will be unwilling to invest the time, energy and capital

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41 US companies claimed they lost up to $60 billion annually because of copyright and patent violations.
required to bring new products to the market. Hills' contention was that "If we say anyone can take their creativity without paying for it, steal it in effect, you are going to find fewer and fewer companies making the enormous investment it takes to develop new medicines. That's not good for India and that's not good for the United States." 42 She denied tougher patent protection would increase the cost of medicine in India. She said research on the subject showed that patent protection actually reduced the cost of drugs. Hills also said patents had expired on 95 percent of the medicine sold in India, including most of those used to combat disease and infection. She said patents on another $10 billion worth of drugs are to expire in the next four years.

The US tried to project the issue of intellectual property rights as an imperative for future development. More importantly from our point of view, all efforts were taken by US to downplay the differences and instead to highlight the commonality of interests and its mutual benefit for both the nations. Hills said, "I'm hoping that after we share all the data that we have on the subject of intellectual property that our point of view will be India's point of view, not because we suggested it but because it is in India's best interest". 43 Hills contended that increasing copyright and patent protection would also

42 The Hindu, n, 40.
help encourage foreign investment in India, which has been a goal of the government.

In July 1996, the US brought a complaint against India saying that India failed to set up a TRIPs mandated "mailbox" system for filing for patent protection. Under the agreement, during the ten year phase-in period (1995-2005), developing countries that do not have patent protection in place for pharmaceuticals and agricultural chemicals were to set up a system by which companies could file patent applications to be reviewed when patent protection is in place in the country of application. This "mailbox" system allows companies to preserve their original filing dates to substantiate the novelty of their products. Mailbox systems were to be in place by January 1, 1995. India's contention was that it already had an effective "mailbox" system which does not necessitate any new legislation as demanded by the US.

On March 25 the United States agreed to an additional three weeks of talks with India to work out an agreement on how much time India will be given to revise patent legislation for pharmaceutical and agricultural products. Indian government officials cited the recent elections and realignment of the government there as reasons for requesting an extension on bilateral talks.

In 1992, W.R. Grace & Co. obtained a patent for a method it developed for extracting and preserving azadirachtin, the primary
active chemical produced by seeds of the neem tree. A petition was filed against this with the US Patent Office by some environmentalists. According to them, the company obtained the patent 'by copying and claiming as its own procedures that farmers in India had developed over centuries.' The main issue at stake was that the patented a process which was in vogue among the villagers of India for several centuries. The petition states that, "Although W.R. Grace's processes are more technical, they are mere extensions of the same processes that Indian villager haven been using for hundreds of years. ...Patents cannot be granted for trivial changes to known products and processes."  

University of Mississipi Medical Centre, Mississipi filed a patent for use of turmeric powder as a wound healing agent. It was granted in March 1995. It was challenged by the Council for Scientific and Industrial Research (CSIR) of India, on the grounds that it was traditional knowledge and hence did not satisfy the criteria of novelty. The appeal was upheld and the US Patent Office rejected the patent it had given. This was the first instance of a successful challenge of US patenting of traditional third world knowledge. In the words of Director General of CSIR, which hired a US firm to petition against the patent, this is the first case in which a patent on traditional Third World knowledge 'has been contested, and the case

45 ibid., p.7.
has been won... (the decision) sends the signal that if patent cases are fought on well-argued and well-supported techno-legal grounds, then there is nothing to fear about protecting our traditional knowledge base.\(^\text{47}\)

Basmati is another of indigenous product grown in India that was embroiled in a controversy regarding patenting. Ricetech, a Texas based company had patented a new strain of basmati rice and marketed it under the trademark of Kasmati and Texmati as Texas basmati. The argument by the company for patenting it was that it had only patented the seed and that the strain was not spirited from Asia. India's position as enunciated by Kanthi Tripathi, Commercial Affairs Minister at the Indian Embassy in Washington was that 'Basmati' was not a generic term. In her words, "Basmati has value because it is region specific. You can call rice all over the world 'aromatic', but it would not be basmati...It (Texmati) is very good quality, fragrant rice. We are not contesting the quality of their rice. We're just saying you can't call it 'basmati"\(^\text{48}\)

**Textiles and Clothing**

India's position as far as the negotiations on textiles and clothing was that the Multi Fibre Agreement must be phased out

\(^\text{48}\) Times of India, 26 May 1998.
completely and wanted the trade in textiles and clothing brought under GATT. The Dunkel draft provided for the phasing out the MFA over a period of ten years. Though beneficial to the developing countries, the phasing out was favorable to the developed countries in that it was back loaded. In the words of Muchkund Dubey, "...the scheme of phasing out over a ten year period is back-loaded in that it may involve no liberalisation at all on the date of commencement, only marginal liberalisation at the end of three years, and full liberalisation only at the end of ten years."49

But it was still considered advantageous to India. According to Commerce Secretary Tajendera Khanna, there were intense negotiations during the final hours of signing the agreement. There was intense pressure from the United States to provide reciprocal concessions for phasing out the MFA. India argued that the integration of MFA into GATT did not warrant any reciprocity, as it was an exemption from GATT. The move that was directed only at India and Pakistan was effectively countered by both in unison.50

Still India made a commitment to bind tariff at 40 per cent over the ten-year period which included 17 textile products.51 The reduction in transition period from fifteen to ten years was balanced

49 Dubey, n. 11, p.82.
50 Times of India, 15 December 1993.
by the transition period in intellectual property rights. According to the Ministry of Commerce,

A major achievement in negotiations has been the commitment to integrate the textiles and clothing trade in the multilateral framework. This is the first time that the importing countries have agreed to an unequivocal commitment to integrate the textiles trade into GATT. ...the transition period will enable us to devise policies and prepare our industry to obtain the greatest advantage from the integration of textiles and clothing into GATT.52

**Trade-Related Investment Measures**

The stand of the United States regarding trade related investment measures was that there should be reduction or elimination of trade distorting barriers to foreign direct investment. It demanded the extension of MFN principle to foreign investments, identification and prohibition of trade related investment measures and bringing these under the GATT dispute settlement procedure.53 The developing countries were opposed to the discussion of investment measures per se. They argued that only investment measures that were adversely affecting trade should be discussed. They found the developed countries’ approach infringing their sovereign space in policy making. According to Muchkund Dubey,

...during most part of the negotiations on TRIMS, the developing countries took the position that their national policies on investment, industrialisation and treatment of foreign investment could not be allowed to be questioned on the ground that they were trade-related. ...They further argued that

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restrictions on remittances and requirements for technology transfer, exports, local content, etc. related to issues of foreign capital treatment and were within the scope of broader development and industrial policy, and hence not under the competence of GATT.\textsuperscript{54}

According to the draft measures imposed on foreign investors such as obligation to use local inputs, to produce for exports as a condition to obtain imported goods as inputs, to balance foreign exchange outgo on imports with foreign exchange earnings through exports and not to export beyond a certain proportion of the local production are violative of the GATT rules.\textsuperscript{55} These were successfully incorporated into the final Act without much modification. As far as the developing countries were concerned they were provided exemption on the basis of balance of payments position. Further, it does not impose 'controls on foreign direct investment or ceilings on foreign equity holding'. The only restriction was on 'local content' condition.\textsuperscript{56}

Our being a Member to TRIMs Agreement does not in any way compromise our economic sovereignty since no foreigner can claim a right to invest. The country is free to choose and accept only such foreign investment as is mutually profitable. TRIMs only prescribe that once the decision to accept foreign investment had been agreed to, there shall be no conditions that would impede the process of investments across international frontiers.\textsuperscript{57}

\textsuperscript{54} Dubey, n, 11, p.69.
\textsuperscript{55} www.sunsonline.org, accessed on 18 February 2003.
\textsuperscript{57} Das, n, 51, p.114.
Services

The developing countries led by India and Brazil were vehemently opposed to the inclusion of services in the Uruguay round of trade negotiations. During the preliminaries before the Punta del Este it was the main bone of contention between the United States and India and Brazil. Finally due to efforts of India and Brazil, the services negotiations were kept outside the GATT framework. A separate Group of Negotiations on Services were established. However, by bringing it under the Trade Negotiations Committee it was brought it in through the back door. Further, the Dunkel draft brought it under the single umbrella of multilateral trade organisation.

In the initial stages of negotiations, we had opposed the inclusion of trade in services in the UR negotiations as it was apprehended that the results of the negotiations may require across the board opening of the services sector. As negotiations progressed the possibility of selectively opening up services sectors on the basis of negotiations emerged. The framework agreement – the General Agreement in Services (GATS) – has only two across the board requirements. The first is non-discrimination (that all countries will be treated on the Most Favoured Nation basis) and the second is transparency (that all relevant laws and regulations shall be published).  

The offers that India had made were only in area where it is beneficial and they were chosen on the basis of self-interest. India’s main interest in services is the movement of personnel. According to the Ministry of Commerce paper, “...while agreeing to the Ministerial decision on financial services we proposed and obtained agreement that there would also be a Ministerial decision on establishing a

58 Ministry of Commerce, n, 37, p.40.
negotiating group on further negotiations on movement of natural persons."59

The clause on pricing of basic telecommunication was objected to by India as it feared that issues concerning pricing would be brought within the purview of GATS.60 The effort was successful as the clause was dropped.

Taking all relevant factors into account, we have limited our list of initial commitments in services by excluding from it professional services, certain value added telecommunication services, advertising services, some construction services and by placing a quantitative restriction of 100 titles a year in respect of the audio-visual (motion picture and video tape distribution) services.61

Ministerial Meeting At Marrakesh

In the Ministerial meeting at Marrakesh, India made some damage control exercise in protecting the interests of the developing countries. In the G-15 meeting held in March 1994, it was decided to adopt a unified stand. Narasimha Rao, Prime Minister of India, and Mahathir Mohamad, Prime Minister of Malaysia expressed in a press conference of the endeavour to formulate a common stand.62 Pranab Mukherjee, Minister of Commerce led the Indian delegation. In his address to the meeting in 13 April 1994, he expressed the commitment of India to prevent exploitative pricing of life-saving

59 ibid., p.41.
60 Times of India, 15 December 1994.
61 Ministry of Commerce, n. 37, p.41.
drugs. As far as the issue of linking labour standards with trade was concerned, he argued for internationally recognized labour standards. He also welcomed 'the promise of integration of textiles and clothing sector into the General Agreement'. During the speech, he also said that the G-15 countries would oppose the social clause.

**Signing of the Treaty**

India signed the treaty of GATT on 19 April 1994. Pranab Mukherjee, the Commerce Minister of India, signed it. He said there was no point in staying out of the world economic system. The signing resulted in huge uproar in the Parliament. The opposition criticized the government for signing the agreement.

**United States Strategy**

The objective of the United States in the Uruguay Round was to push through its agenda of including new issues where it enjoyed a superior position compared to other countries. Towards this end, it adopted a strategy of coercion and conciliation. It's main objective in bringing the new issues under the framework of GATT was that the developing countries do not have enough experience in the forum and were not as united in GATT as in UNCTAD. The ploy of the United States succeeded to a large extent as the developing countries could

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64 Ibid., p. Part III, A/1.
not pose a joint front and the only opposition it faced was from a group of 12 countries led by India and Brazil.

Initially, the United States tried to push for a new round of trade negotiations unilaterally. When it faced opposition from various quarters such as the EU and the developing countries, it separated the issues raised by the two groups. By dealing with them separately it actually denied both the opportunity to come together and avoided the intermixture of the issues raised by the EU and the developing countries.

Secondly, during negotiations taking advantage of the lack of unity among the developing countries the United States tried to spread misinformation among the delegates. There are two specific instances of this: one, during the negotiations leading to the Punta del Este and the other, during the post-Montreal negotiations in 1989. While in the first instance the developing countries did not succumb due to constant interaction between the Indian and the Brazilian delegates, in the second instance, the ambiguity that the other third world delegates perceived in India's stand led to the acquiescence of the developing countries.

Thirdly, the United States was not averse to use unilateral measures and threats with the developing countries individually. This was to a large extent successful in inhibiting any concerted action by the developing countries. In fact, during the crucial phase of
negotiations in 1989, both Brazil and India were listed under the Super 301 and Special 301 of the United States Omnibus Trade Act of 1988. This led to the developing countries turning towards protecting their individual interests in the Uruguay round rather than concentrating on group interests of the developing countries. "In order to prevent all possibilities of a global coalition strategy from taking shape the United States singled out countries like Brazil and India, which were capable of providing leadership, for special attention."66

Fourthly, the United States and other developed countries were also successful in drawing a line between the developing countries and the least developed countries.

Fifthly, the United States was able to forge a strong support from other developed countries. The EU and the United States, except for the differences in agriculture, were united on various other issues vis-à-vis the developing countries.

The outcome of the negotiations point out that the diplomacy of the United States was successful though it had to make concession on several issues. "It is instructive that while the negotiations on a new Uruguay Round began in 1986, it was only in 1995 that the Dunkel

66 Chimni, n.5 pp. 142-3.
Draft became the Final Act of the Uruguay Round and the WTO was formed."\textsuperscript{67}

**India's Strategy**

The objective of India was to block the inclusion of new issues such as intellectual property rights, trade related investment measures, services, etc., in the new round of trade negotiations. In fact, India's initial position was against even a new round before completing the commitments of the previous round of trade negotiations. India in its efforts to counter the United States found support in Brazil and ten other developing countries. India was able to provide strong opposition to the United States in the initial stages. This was made possible to an extent because of the US-EU rift over the issue of agriculture. Thus, as much as the cooperation between the developing countries the common cause with the EU helped in the negotiations. However, this was only for a brief period, as once the issue of agriculture was overcome, on other issues the interests of EU coincided with that of the United States.

One of the lapses on the part of India was its failure to portray an unambiguous position in 1989. From, then onwards, India found it difficult to make common cause with other countries and had to approach the negotiations on an issue-by-issue basis. The result was

that India was not able to achieve what it stood for in the beginning of the negotiations. What it achieved was in way of concessions on some issues, thereby protecting its interests to maximum extent possible under the new framework.

Thus, it is clear that the position of India and the United States was in divergence. The United States in its approach to the negotiations was shaped by its hegemonic power status. The new round was pushed by the United States on an unilateral basis with its interests in mind. India's interests were against the stand of the United States and hence opposed it. That India provided leadership to the cause of the developing countries is indicative of India's efforts to protect its interests, even if it meant opposing the United States, its largest trading partner.