GATT, WTO AND THE DEVELOPING COUNTRIES

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Foreword

Since 1992 VANI is working and responding to questions related to the Structural Adjustment Programme (SAP) commonly known as the New Economic Policy. As part of a wider initiative to inform, educate and sensitise those who are involved in voluntary action and through them the common people of the country about issues and process of economic and social policy and its impact on them. VANI since its inception is collecting, analysing and disseminating information related with macro-issues.

Till now, VANI has published a number of such booklets. This booklet is a part of this on-going process.

VANI was inspired to publish this booklet during a meeting organised jointly by VANI and VAN-Bihar (a network of voluntary organisations of Bihar) on "New Economic Policy and Role of Voluntary Organisations" held in Madhupur, Bihar during November 19-20, 1994 wherein a large number of questions were raised by participants related with Dunkel, GATT and WTO.

Inspite of the brain-storming sessions, it was generally felt that there is still confusion about these issues as various views of activists, media, politicians were cited - some of them contradictory to each other. The participants felt that there is a need for critical analysis of the issue which should be published in the form of a booklet. Shri Anil Rajimwale who participated in this meeting as a resource person volunteered to prepare a critical analysis of GATT and its impact on the developing countries.

In this booklet he has analysed the Dunkel Proposal in detail and its impact on India and the third world countries. This booklet also contains changes in the Patent Act and the World Trade Organisations (WTO). VANI has published this booklet to provide better understanding for voluntary activists. The views expressed in this booklet are those of the author and not necessarily of the organisation.

VANI is thankful to Shri Anil Rajimwale for preparing this booklet in a short span of time and helping VANI in its initiative of informing, educating and sensitising voluntary activists. VANI is also grateful to VAN-Bihar and its members on whose initiative this booklet is published.

New Delhi
March 1995

Anil K. Singh
Executive Secretary

List of Abbreviation

AMS	Agregate Measurement of Support.
BOP	Balance of Payments.
EC	European Community.
EMS	Equivalent Measurement of Support.
EU	European Union.
FAO	Food & Agriculture Organisation.
FTAs	Free Trade Areas.
GATT	General Agreement on Tariff and Trade.
IC	Integrated Circuits.
IMF	International Monetary Fund.
IPRs	Intellectual Property Rights.
ITO	International Trade Organisation
LDC	Least Developed Countries.
MFA	Multi-Fibre Agreement.
MFN	Most Favoured Nations.
MNCs	Multi-National Companies.
MTO	Multilateral Trade Organisation.
NAFTA	North American Free Trade Area.
OGL	Open General License.
PBMs	Price Based Measures.
SCM	Subsidies & Countervailing Measures.
TMB	Textile Monitoring Body.
TRIMs	Trade Related Investment Measures.
TRIRPs	Trade Related Intellectual Property Rights.
US	United States.
WB	World Bank.
WP	Working Party.
WIPO	World Intellectual Property Organisation.
WTO	World Trade Organisation.

GATT, WTO AND THE DEVELOPING COUNTRIES

GATT (General Agreement on Tariffs and Trade) was established in 1947 with the aim to reconstruct the postwar world economy. To settle disputes and keep peace, the United Nations was set up, IMF was established to remove exchange controls, World Bank (Originally International Bank for Reconstruction and Development) was formed to help investment needs of the poor and devastated countries and to dismantle trade restrictions International Trade Organisation (ITO) was planned. In fact, originally, the ITO was proposed by the USA, but the U.S. Congress refused to ratify it. The Congress felt that ITO would restrict its ability to adjust its tariffs in accordance with the needs of its own economy. Therefore, a provisional organisation to adjust world tariffs and trade came into being, known popularly as the GATT.

Thus, we find that attempts to create a more harmonious world trade and economic relations was favoured by most of the nations and opposed by the US when things came to be more concretised. It should be noted that China was the founding member of the GATT but withdrew in 1953 when its conflicts with the U.S. sharpened and when rigid positions were adopted by the USA on the one hand and Chinese government on the other. It is symptomatic of a changing world that today China is desperately trying to re-join the GATT/WTO while the USA, according to Chinese government's versions, is putting hurdles.

The GATT is the main forum for laying down rules and standards of world trade. These are set through periodic multilateral negotiations. The latest rounds of negotiations are called Uruguay Round because they were launched in a place called Punta del Este in Uruguay, a Latin American country, in 1986. It was attended by 105 countries. The rounds culminated in Marrakesh (Morocco) in April 1994 attended by the representatives of 125 countries. Marrakesh declarations or documents signed by the 125 are known as the Final Act of GATT which decided to establish World Trade Organisations (WTO) on 1 January 1995.

The inter-governmental consultations became more important when the industrial countries began taking protectionist measures in the 1970s. It thus came to be known as the "era of protectionism". The developing countries were particularly hard hit. Therefore, they demanded greater share and participation in world trade and simultaneously reductions in tariffs and duties. This was how the crisis in the international trading system was solved. The collapse of the socialist system and the end of cold-war has enabled a large number of east European countries to apply for GATT membership and to press for its further democratisation. Thus they form an important pressure group.

The seven previous rounds of GATT mainly discussed substantial reduction in tariffs and other barriers to trade.

But the latest Uruguay Round is a considerable improvement. Earlier, sectors like agriculture and taxtiles were excluded from the GATT. These and other sectors were considered exclusive domains of national legislation and at the same time mainly manipulated by the developed industrialised nations. Now, the situation has changed. The Uruguay Round, including the Marrakesh one, has decided to cover the following: Trade in services, intellectual property rights (IPRs), international investment flows, agriculture, health, environment, etc. Textiles and clothings were governed since 1974 by what is known as Multi-Fibre Arrangement (MFA). There

followed long struggles and hassles in the MFA. The positive result was that, under The pressure of the developing countries, the MFA was included in the GATT.

This has helped regularise trade to the benefit of developing countries in several areas.

The Draft Final Act adopted at Marrakesh, is also known as the Dunkel Draft after chief GATT negotiator, Arthur Dunkel.

Expanding World Market and its Integration

The abovementioned points have not been the only factors for the emergence of the GATT. As recognised in the preambles to the various GATT documents, the world trade and the world market has been expanding very rapidly in the post-second world war period. Processes of integration and globalisation have set in. Greater numbers and quantities of goods are being produced. Far greater items are being used by the society. Technological revolution has contributed to far higher levels of production and wealth. Production and information technologies are changing fast contributing to an unparalleled expansion of services. Information revolution has interconnected various sectors of world economy as never before. The movements of money, capital and commodities have reached unprecedented scales. Communications of electronics age have created unified share, capital and goods market.

In this situation, increasing number of countries realise that the different kinds of barriers hindering the movement of money, capital and goods must be removed. These barriers interfere with production and sale as also with communication. They realise that some kind of general guidelines must be evolved, which facilitate, and not hinder, the movements in the world economy. One should adopt integral or global approach rather than protectionist one. The present scenario of economy and technology opens up new possibilities of growth and expansion for the developing countries. Hence the realisation for lowering of tariffs and other barriers.

GATT, USA and third World

It has been propagated that the GATT is against the interests of the third world countries, and therefore they are opposed to it.

But this is not a fact. It is interesting to note that of all countries, it is the USA which found it hard to ratify the GATT. There were acrimonious debates within the American Senate on whether to join it.

The protectionists and opponents of GATT in the big business and political circles in that country argued that the previous seven rounds of negotiations had done nothing to lower the US trade deficit, and that the US manufacturers would lose heavily if American and NAFTA (Noth American Free Trade Area) were opened to the countries of Asia, Africa and Latin America.

Their arguments are not baseless. It is to be noted that the USA is the single biggest debtor country in the world. Therefore, there is always a fear of this debt increasing further if its markets are opened. And this is precisely what India, China, other developing countries and the European Union are demanding.

Clinton administration has managed to convince the American law makers of the perils of economic isolation. It has worked on the premise that the GATT would create half-a-million new jobs and mean an annual increase of $ 150 million in US economic growth over the next decade when the deal is fully implemented. The US administration also promises opening up of Asian markets for the American manufacturers.

By ratifying the GATT and joining World Trade Organisation (WTO), the USA has managed to come out of isolation.

On the other hand, most of the third world countires have been demanding their inclusion in the GATT. They are pressing for its expansion, strengthening and demosratisation. They remain within it because it would give them lot of access to world market, want to they would like to bargain within the GATT, not outside it. The number of signatories is a testimony to this fact.

World Trade Organisation (WTO)

It is the successor to the GATT by latter's decision. In GATT documents it was named as MTO: Multilateral Trade Organisation. The WTO came into being on 1 January 1995 with 85 countries joining even before it came into being. Other countries are joining after making necessary arrangements.

We have already mentioned that but for the opposition by the USA, the WTO would have emerged in 1947 itself as ITO. The WTO is different in several senses from the GATT, eg in the following aspects:

WTO has far wider scope by bringing in areas like trade in services and other ones mentioned already.

WTO has a prospective membership of around 150 countries, which is likely to reach in near future.

WTO is a full-fledged regular organisation. It has a unified package of agreements to which all members are committed. In the old GATT there were many side rules and commitments limited to a few countries. Export restraints on textiles and clothings would be gradually phased out.

The WTO and its secretariat numbering 450 will function through various committees. It general direction will be significant tarff cuts, generally upto 40%. It will act as watch-dog of world trade.

The new trade body will have power to settle trade disputes among its members. All the GATT members will automatically become WTO members upon acceptance in full of Uruguay Round agreements including GATT 1994.

Another distinguishing feature of the WTO is its higher status. It has been upgraded to the ministerial level with a director-general. So, it will not only be an economic body but also a political one, in certain sense, as far as economic problems are concerned.

Expections from GATT/WTO

The biggest fall-out of the reduction of the world wide trade barriers is estimated to be an increase in world incomes by $ 510 billions per year through trade in goods alone. Market access is expected to reach full proportions by the year 2005 resulting in greater generation of wealth.

In addition to trade in goods, other economic processes are expected to gather speed, eg. movement of money and capital, information, growth of share markets, better trade rules, greater mobility of new technologies, trade in services, greater market access, etc. In short, implementation of GATT/ WTO provisions is expected to stimulate international trade, investment and production.

The annual income gains for different countries or group of countries are expected to be as follows:

Developing and Transition Economies	:	$ 116 billion
European Community	:	$ 164 billion
USA	:	$ 122 billion
Japan	:	$ 27 billion.

Developed countries have agreed to reduce tariffs on industrial goods entering their markets by 40%. They will cut tariffs by 60% on following categories : wood, pulp, paper, furniture, metals and non-electric machinery. The goods from the "most-favoured nations" (MFN) entering developed economies will have zero duties; their proportion will increase from 20% to 44%.

Among the developed economies, the largest cuts in tariffs on industrial products have been made by Japan (56%) and New Zealand (53%).

The total rise in merchandise export volume in the year 2005 will be 23.5% for the whole world.

The MFA had applied lot of restraints on textiles and clothing: They will be eliminated in four steps starting with the establish-

ment of WTO on 1 January 1995 and ending on 1 January 2005. In fact, they were already being phased out during GATT 1994.

Agriculture: There will be a 36% reduction in export subsidies, half of which will have to be borne by the countries of European Union. There will be a total decline in domestic support for agriculture from $ 197 billion to $ 162 billion, a 18% cut. Consequently, market opportunities will be created for 1.8 million tons of warse grains, 1.1 million tons of rice, 8,07,000 tons of wheat and 7,29,000 tons of dairy products.

The trade in agriculture will expand faster than the industrial products because the binding of tariff lines in agriculture will be 100% while that in industrial products will only be 83%.

What does 'binding' mean? If a country agrees to bind a tariff on a product at a certain level, it promises not to raise it. If the country concerned raises the tariff again, its previous concession will be meaning less. Therefore, generally the countries will not try to raise the barrier.

Binding in very important; those agreeing to it are given "negotiating credit" even if it is at a higher level. This provides security of market access.

The proportion of industrial bindings has been raised from 78% to 99% for the developed countries, 21% to 73% for the developing ones, and 73% to 98% for the transitional ones. In other words, nearly all the imports of industrial products into the developed countries, to the tune of $ 737 billion, will be tariff bound, while 3/4th of those into the developing ones, to the tune of $ 352 billion will be tariff bound.

Importance of world market can be gauged from the single fact that cross-border trade in services alone accounts for around $ one trillion a year. GATT is the first agreement covering trade in all service sectors. The institution of WTO will be overseeing almost whole of this rapidly expanding market, and will provide a forum for rule - based conduct of trade relations.

Gains for India

The opening of textile market all over the world, and particularly in the U.S. and the E.U has been the immediate gain from the WTO for India. There was a long-standing dispute with both on the issue. The dispute was hindering easy exports of Indian garments and textiles.

But as a result of the agreements, India gets additional access to the markets for its textile products. According to the compromise reached separately in Washington and Brussels on the eve of the establishment of the WTO, the MFA would be dismantled in phases. India secured a 20% rise in textile exports to the U.S. Many of the benefits relate to the handloom and powerloom sectors. The USA agreed to remove restrictions under category 369(O) ie on several items coming from these two sectors, and this amounts to removal of restrictions on 20% of the total quota. India also got additional 5% on certain readymade garments of handloom industry. The EC has conceded a flexibility of 7000 tons/year in Indian textile including from the handloom sector.

By 2002 all textile goods will be out of banned or negative lists of imports and will be put under open general license.

Certain Implications for Indian Textile Industry

Among the fallouts of the agreements with the US and the EC (EU) is the fact that the polyester staple fibre has been put on the open general license. It means that no license will be required for its import.

The government has fixed import duty on all fibres and yarns at 65%. The countervailing duty is the same as before. The import duty will be gradually reduced to 35% by 1998 and 20% by 2000. All other fibres and yarns are already under the OGL.

There is an apprehension that the imported material will be cheaper than the local. But this is not true. Even after the reduction, upto a certain point, in import duty, the fibre manufactured here will continue to be cheaper. But, no doubt, there will be greater competition.

One result of these measures is that the spinners are asking for a rapid reduction in import duty so that they could get cheaper fibre to manufacture yarn. They suggest a reduction to 45% on import duties. This will bring down the prices of fibre in the domestic market. With the increase in the production of raw materials for fibres in India and all over the world, the prices are going to decline. Their import duties are going to be reduced.

Therefore, on the whole, the measures will cause an increase in the productivity of the textile industry.

Changes in the Patents Act

The trade-related intellectual property rights (TRIPs) of the GATT prescribe certain minimum standards in respect of patents. A transition period of 5 years is available for effecting the changes. If patents are not available for certain products, a further period of 5 years is provided.

The countries entering WTO are expected to provide for filing of patent applications in pharmaceuticals and agricultural chemicals. In the meantime exclusive marketing rights for 5 years or a patent is to be granted.

In India, the Patents Act (1970) and rules (1972) do not grant product patent in these two fields. India government has decided to avail of full 10 years of transition period, after which the Act will stand fully amended. Amendment has been made to provide for patents in the two fields. It also grants exclusive marketing rights for the applicants. The application must be filed in India, and it should obtain patent for an identical invention in any convention country, marketing approval from that country, and obtain marketing approvals in India. Amendments have also been made to ensure government intervention in the matter.

Restrictions on inventions made in India have been removed through following measures:

1) For inventions made in India, the applicant does not have to obtain a product patent and marketing approv-

als in some other country. The applicant has the option of obtaining process patent for identical invention in India.

2) Section 39 of the Patents Act has been deleted. Thus, the restrictions on the applications outside India have been removed.

3) Government reserves the right to direct the sale or transfer of any marketing right if it is against public interest.

4) The amendments will not affect the laws relating to the monopolies and consumer protection.

5) The provisions of compulsory licensing would be extended to exclusive marketing rights also.

6) Facility should not be used to extend the life of the existing patents in other countries or for the non-patentables.

Tariff reductions by India

Among the developing countries, India, South Korea and Singapore will reduce average tariffs on industrial products as follows:

India : 71.4% to 32.4%

South Korea : 18% to 8.8%

Singapore : 12.4% to 5.1%

In the passing, we may note in the above that both Korea and Singapore have already had low tariffs on industrial goods. This may be one of the important reasons for their fast growth in the recent years.

Anti-dumping laws : India has also taken these measures in order to counteract dumping of goods in this country, particularly by the industrialised nations. Such measures are part of the implementation of the GATT agreement. Dumping is a destructive practice indulged in by those countries which are

stronger or better placed in the matter of certain products. The products are sold at less than the actual price or even value and cost in order to undermine other's economy. Anti-dumping guarantees are among important gains of the GATT/WTO for the developing countries as also for the developed ones.

Shedding the "Third-World Syndrome"

Initially, there were several misgivings on the Indian side, particularly on the question of including the services in the GATT. Thus, India, at first, followed a two-TRACK policy insisting that services be kept out of the agreements covered by GATT.

But later on, it was increasingly realised that India's low-level trade performance was less due to its trade partners, much less to GATT, and largely due to its own policies. As a result, it agreed to the inclusion of services in the GATT/WTO.

The government has adopted an inarticulate and apathetic approach to the questions related with GATT or "Dunkel Proposals". It has failed to explain them and clarify the widespread doubts and natural apprehensions. It has not taken them to the people. Same is the case with the ruling party.

Other parties have generally adopted positions of almost total opposition to the GATT. They have not cared to study its documents and their implications in detail. They, too, have not brought the truth to the people. These positions on both sides, to say the least, are not realistic and responsible.

It appears that people and parties in our country and in most of the other developing countries suffer from a psychology of inferiority. We think that in today fast-changing world, we can't do anything, and that we can't progress, and the developed countries and the multinational companies (MNCs) are bound to us. GATT too is seen as an extension of the "neoclonial" policies of the developed industrialised nationals.

As we shall see later, this impression of the GATT's is far from truth. Besides, the developing world can achieve a lot within the GATT. To remain outside will be suicidal. It would be beneficial to remain within and struggle and bargain. In fact, several developing countries are already achieving a lot by way doing so.

A larger proportion of the developing world demand strengthening of GATT. China is one of them, besides India. An increasing number of newly industrialising countries are confident that they will be able to build new levels of productivity, social welfare systems and technology at par with the rest of the world.

Changes in the Copyright Act : Changes in the Copyright Act envisage safeguards to copyrights which so far have received very little attention in India. It will, for example, affect Rs. 2000 crore computer software industry, video libraries, music, dance etc. divided into various categories of rights. It for the first time defines what is software, and prohibits piracy. Indian dance and music was never protected but now the act protects improvements and confers rights on the performers.

SOME SALIENT FEATURES OF THE GATT

1994 (THE FINAL ACT)

The parties to the agreement recognised that the relations in the field of trade and economy should be conducted with a view to raise living standards, employment and income and demand, and expand the production and trade in goods and services. They stated that the customs unions and free trade areas had greatly increased in number and importance and that there was the need for closer integration between the economies of the parties. They emphasised that it was necessary to establish multilateral trading system. The developing, in particular the least developed, countries needed special measures to raise them to the world standards and to secure greater share in world trade.

The participants agreed to substantial reductions in tariffs and other barriers to trade and to eliminate dissemination in international trade.

The GATT agreements "establishing the Multilateral Trade Organisation shall be open for acceptance as a whole, by signature or otherwise". At the same time the MTO agreement made it clear that "The plurilateral trade agreements do not create either obligations or rights for members that have not accepted them."

The Final Act also makes it clear in the Article XI (2) on MTO that "the least developed countries recognised as such by the U.N. will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administration and institutional capabilities." (p.8 of MTN/FA II)

Agreement on the interpretation of Art XVII on the government agencies

This article provides for the activities of the government agencies. The members agreed to ensure transparency of the

activities of state trading enterprises which through their purchases or sales influence the level or direction of imports or exports.

It is notable that "This notification requirement *does not apply* to imports of products for immediate or ultimate consumption in governmental use or in use by an enterprise as specified above and not otherwise for resale or use in the production of goods for sale." (p.1 of MTN/FA II-A 1A (b), emphasis added).

It is provided that a council for trade in goods be set up and also a working party W.P within it. The W.P. would also develop kinds of relationships between government and enterprises and the kinds of activities engaged in by these enterprises.

Understanding on the Balance of Payments (BOP) Provisions of the GATT 1994

Certain crucial understandings were reached on the BOP. It was agreed that the members would publicly announce time schedules for the removal of restrictive import measures taken for BOP purposes. Such schedules may be modified to accord with the changes in the BOP situation.

In the measure No. (2) the members agreed to give preference to those measures that have the least disruptive effect on trade. Such measures were named 'price-based-measures' (PBMs). They include: import surcharges, import deposit requirements, other equivalent trade measures influencing prices of imported goods.

New quantitative restrictions would be avoided unless BOP situation became critical. Thus, PBMs are not absolutely obligatory and can be waived if they fail to arrest a sharp deterioration in the external payments position. Restrictive measures for BOP may only be applied to control the general level of imports and may not exceed what is necessary to address the BOP situation.

A committee on BOP would review restrictive import measures. They would be simplified in case of LDCs and developing countries already pursuing liberalisation.

A member shall notify the General Council for any changes in the restrictive import measures re. BOP. A consolidated notification re. changes in laws, regulations, policy statements, public notices, etc shall be made available to the MTO (now WTO) secretariat on yearly basis. Notifications shall include information on tariff time, administration, product coverage, trade flows, etc. (Provision No. 9).

Provision 11 states that the basic document of a members shall include:

a) An overview of BOP situation and prospects.

b) Full description of restrictions.

c) Measures taken since the last consultation to liberalise imports.

d) Plan for relaxation and elimination of restrictions.

In a significant provision (No. 13) the GATT 1994 states that in those cases in which a time schedule has been presented for the removal of restrictive measures re. BOP, a member shall be deemed to comply with GATT 1994 obligations.

Understanding on Interpretation of Article XXIV of GATT 1994

It is significant in many respects. It states that the customs unions and free trade areas had greatly increased in number and importance since 1947 and covered a significant proportion of world trade. The integration between economies would contribute to the expansion of world trade. For this purpose, duties and restrictions on commerce and trade needed relaxation and elimination. Consequently, they agreed on formation of such unions and FTAs (Free Trade Areas).

Duties and other regulations before and after the formation of a customs union shall be based on weighted average tariff

rates and customs duties. The MTO Secretariat would compute the same. 10 years should be the reasonable length of time.

It was agreed that negotiations would be entered into in good faith to mutual satisfaction. Due account shall be taken of reduction of duties on the same tariff line made by other constituents of the customs union upon its formation. The Union may even offer compensation in case of inadequacy (Art XXIV: 6 (5). If Union is not satisfactory to certain members, they are free to withdraw (Do).

Art XXIV : 6 (6) states : "The GATT 1994 imposes no obligation on members benefiting from a reduction of duties consequent upon the formation of a customs union or an interim agreement leading to the formation of a customs union, to provide compensatory adjustment to its counstituents." Obviously, the benefits go either way.

The abovementioned provisions are a realistic and reasonable method of coordinating national economies and makes them act in tandom.

There is an understanding on waivers of these provisions, and these find no mention in the press and propaganda.

Understanding on the interpretation of Article XXVIII of GATT 1994

In (1) it provides that the member having highest ratio of exports affected by the concession (i.e. exports of the product to the market of the member modifying or withdrawing the concessions) to its total exports shall be deemed to have a principal supplying interest.

Therefore, countries like India will be the beneficiary in several sectors like textiles.

The principal supplying interest will concern only the affected product. Clause 4 is one more favouring the developing countries. It states that when a tariff concession is modified or

withdrawn on a new product (i.e a product on which statistics for 3 years are not available), the member possessing initial negotiating rights on the tariff line where the product was classified, shall be deemed to have an initial negotiating right in the concession.

In this way, India and several other countries can have lot of initial bargaining or negotiating powers in the course of diversification, modification and modernisation.

In a further article, provision is made for compensation in case of replacement of tariff concessions by tariff rate quota.

Uruguay Round Protocol to the GATT 1994

It contains the applied part of some aspects of agreements and protocol, and a schedule annexed.

It provides in para 2 for tariff reductions in 5 equal rate reductions "except as may be otherwise specified in a member's schedule. The first reduction would be on the date of establishment of the MTO, and the subsequent ones on Ist January of each of the following years.

The provisions reflect an attempt to create uniform market or one tending towards uniformity.

Any member is free to withdraw concessions for a product not part of GATT schedule.

Agreement on Agriculture (MTN/FA II-A-1-A-3)

It initiates a process of reform of trade in agriculture in tune with the Punta del Este declaration. The purpose is to establish a market-oriented agricultural system through necessary reforms.

For the purpose, progressive reductions in agricultural support and protection sustained over an agreed period are provided for leading to correction and prevention in restrictions and distortions in world agricultural markets.

These measures are of immense value to the developing countries as they provide them an opportunity to enter world market as producers, sellers and consumers on equal footing.

Bindng commitments in each of the areas have been made:

Market access;
domestic support;
export competition;
sanitary and phytosanitary issues.

The members agreed on the fullest liberalisation of trade in tropical agricultural products.

The agreement on agriculture has been subject to various speculations generally based on imagination rather than on concrete documentary proof. Therefore, one should carefully go through the relevant facts before reaching conclusions.

The agreement presents two key concepts in the context of subsidies and support: "aggregate measurement of support" (AMS) and "equivalent measurement of support (EMS). They are annual level of support expressed in monetary terms provided for an agricultural product in favour of the producers of basic agricultural product or non-product specific support provided in favour of agricultural producers in general. The implementation period is 6 to 9 years. According to article 6 of the agreement the members shall not provide support in favour of domestic producers in excess of commitment levels agreed upon.

Market access concessions relate to bindings and reductions of tariffs and to other market access commitments. The members are required not to resort to any measures which have to be converted into ordinary customs duties. These measures include quantitative import restrictions, variable import levies, minimum import levies, discretionary import licensing, non-tariff measures maintained through state trading enterprises, voluntary export restraints and similar border measures other than ordinary customs duties. But the would not include those under BOP provisions or under other

general non-agricultural provisions or of other MTAs of the MTO.

Any additional duty shall only be maintained until the end of the year in which it has been imposed, and may only be levied at a level not exceeding 1/3 of the level of the ordinary customs duty in effect in the concerned year. Additional duties are allowed on certain base trigger levels. Besides, para 5 of Art 5 enumerates calculations under which additional duties are allowed.

Article 6 of Part IV describes domestic support commitments. It clearly states in (2) that government measures of assistance, direct and indirect, to encourage agricultural and rural development are *an integral part of the development programmes of developing countries;* "investment subsidies which are generally available to agriculture in developing country members and agricultural input subsidies generally available to low income or resource - poor producers in developing country members *shall be exempt from domestic support reduction commitments....*" (MTN/FA II-AIA-PP 6-7, emph added).

In paras 3,4 and 5 of article 6 of Part IV, a number of situations have been described in which *exemption from domestic support reduction* have been described.

Para 5 goes strongly against the developed countries. It clearly states that direct payments under production - limiting programs shall not be subject to the commitment to reduce domestic support if such payments are based on fixed area and yields, or such payments are made on 85% or less of the base level of production, or livestock payments are made on a fixed number of head.

It is well-known that the United States and several other developed countries periodically carryout measures to reduce or destroy agricultural production and yield areas, as also the livestock. Therefore, this provision is clearly in favour of the developing countries.

Export subsidy commitments

Article 9 of Part V lists export subsidies for reduction commitments:

Direct subsidies to a firm, industry, producers of agricultural products, coops of such producers, marketing board, etc;

sale or disposal for exports by government of noncommercial stocks of agricultural products at a price lower than the comparable price charged for the like product to buyers in the domestic market;

payments on the export of an agricultural product financed by government including an agricultural product from which the exported product is derived; subsidies to reduce the costs of marketing exports of agricultural products other than widely available export promotion and advisory services including handling, transport, freight, etc.;

internal transport and freight charges on export shipments, provided or mandated by government on terms more favourable than for domestic shipments;

subsidies on agricultural products contingent on their incorporation in exported products.

In 2(b) it is provided that in any of the second through fifth years of implementation period a member may provide export subsidies listed above subject to certain conditions.

In (4) the developing countries are not required to undertake commitments in respect of the fourth and fifth export subsidies provided they are not applied in a manner circumventing reduction commitments.

In art. 10 (4) member donors of international food aid ensure that the provision of international food aid is not tied directly of indirectly to commerical exports of agricultural products to recipient countries, and the food aid transactions shall be carried out in accordance with the FAO principles.

Disciplines on export prohibitions and restrictions on foodstuffs are supposed to give due considerations to the effects of such steps on importing members' food security.

Due restraint will be shown during the implementation period, despite the provisions of GATT 1994 on subsidies and countervailing measures, through domestic support measures on non -actionable subsidies for purposes of countervailing duties, exemption of certain provisions of subsidies Agreement, and exemption from actions based on non-violation, nullification or impairment of benefits of tariff concessions. Certain domestic support measures have been exempt in (2) from the imposition of countervailing duties unless due injury is shown. Such measures have also been exempted provided they do not grant support to a specific commodity in excess of that decided during the 1992 marketing year.

Least developed and net-food importing developing countries have got further exemptions and relaxations.

Annex 1 presents a list of products covered.

Annex 2 of the Agreement on Agriculture is very important as it deals with the basis for exemption from the reduction commitments in domestic support. The exemption should claim the following basic criteria: the support provided through publicity-funded government programme not involving transfers from consumers, and the measures not having the effect of providing price support to producers. These, it is thought, would have minimal trade destortion effect on production.

Government service programs for exemption include general services involving expenditures related with the programs of benefits to agriculture or the rural community. They shall not involve direct payments to producers or processors. Such programs will include:

research including that on environment and particular products; pest and disease control; training services; extension and advisory services; inspection services; marketing and promotion services; infrastructural services. In all cases, the expen-

diture shall be directed to capital works only, and shall exclude subsidised provision of on-farm facilities. It shall not include subsidies to inputs, etc.

The exemptions also include public stocks for food security, domestic food aid and certain kinds of direct payments to producers. It is worth-noting that supply of food at subsidised prices to meet the food requirements of urban and rural poor shall be allowed subsidy. The amount of decoupled income support in any given year shall not be related to or based on the type or volume of production (including livestock units) undertaken by the producer in any year after the base period. Besides, no production shall be required in order to receive such payments.

Structural adjustment assistance shall be provided to those who retire or move from marketable agricultural production, or in the course of programs to remove land, livestock, etc. from marketable agricultural production. A restructuring of a producer's operations in response to structural disadvantage shall also be added. Such payments shall not depend on domestic or international prices.

Annex 3 calculates aggregate measurement of domestic support. Fixed reference prices are based on years 1986 to 1988.

Annex 5 is very important as it deals with special treatment on market access in article 4.2 under agreement on agriculture. Section A of the Annex provides that custom duties shall be imposed on any primary agricultural product and its worked or prepared products only if imports comprised less than 3% of corresponding domestic consumption in 1986-88; no export subsidies have been provided since the beginning of the base period; and effective production restricting measures are applied to the primary agricultural product. These and other measures have been termed as special treatment. Other border measures shall be similarly applied.

Section B exempts application of 4.2 to any primary agricultural product that is the predominant staple in the traditional diet of

a developing country. In the event that the special treatment is not to be continued beyound the tenth year, the products shall be subject to ordinary customs duties.

Agreement on textiles and clothing

The agreement seeks during a transition period to integrate this sector with GATT 1994. Small suppliers and commercially significant new entrants are likely to get new access. For this purpose, continuous autonomous industrial adjustment and increased competition is to be facilitated. The MFA will henceforth be replaced by this agreement.

On the date of entry into force of this agreement, such products will be integrated into GATT 1994, which account for not less than 16% of the total volume of imports in 1990. They will belong to four groups: tops and yarns, fabrics, made-up textile products and clothing.

Products not integrated shall be included in three stages : 37th month, 85th and 121st month of the MTO. Thereafter, all the restrictions shall be eliminated.

Nothing in this agreement shall prevent a member from eliminating any restriction maintained, provided an advance notice is given.

With respect to wool products from wool producing developing members whose economy and textile and clothing trade are dependent on wool sector, special consideration shall be given to them when considering quota levels, etc.

For the sake of integration, members shall achieve greater access to markets through tariff reductions and bindings, reduction or elimination of non-tariff barriers, facilitation of customs licensing and other formalities;

ensure fair and equitable trade conditions by taking measures regarding dumping and anti-dumping, subsidies, countervailing measures, intellectual property rights, etc.;

avoid discrimination in imports in textiles and clothing.

A textiles monitoring body (TMB) has been established for the above purpose by the council for trade in goods.

The agreement would be terminated on the first day of the 121st month when the textiles and clothing would be fully integrated with GATT 1994. There would be no extension of the agreement.

The Annex to the agreement gives a list of products covered by the agreement.

Agreement on Technical Barriers to Trade

It deals with technical regulations and standards including packaging, marking, labelling, procedures for technical regulations, so as not to create unnecessary obstacles to international trade. It recognises that no country should be prevented from taking measures necessary to ensure the quality of its exports or for the protection of human, animal or plant life or health, of environment. It favours international standardisation to facilitate transfer of technology from developed to developing countries. Meanings and definitions adopted are those within the United Nations system. All products including industrial and agricultural products shall be subject to the provisions of the agreement.

The agreement ensures that in respect of technical regulations, products imported from the territory of any member shall be accorded the same treatment as accorded to those of the national origin (Article 2). So as not to create unnecessary obstacles, technical regulations shall not be more trade-restrictive than necessary. Members agreed to give positive consideration to equivalent technical regulations of other members even if these regulations differ from their own. They also agreed not to take measures requiring local government bodies or non-government bodies within their territories to act in a manner inconsistent with the agreement. Nothing will prevent members from carrying out reasonable spot checks within their own territory.

In cases where a positive assurance is required that the product conforms with technical regulation standards, members ensure in Article 5 that central government bodies use them or their relevant pacts as a basis for their conformity assessment procedures, except where they are inappropriate for the member/s.

In article 12, members agree to provide differential and more favourable treatment to developing country members. In 12.4 it is recognised that besides the international standards, the developing countries may adopt indigenous technology and production methods and processes due to their particular technological and socio-economic conditions. Therefore, *they should not be expected to use international standards as a basis for their technical regulations or standards which are not appropriate to their development.*

The agreement regularises technical definitions related with processes, production, technology symbols, packaging, marking, labelling, etc.

Where international standards exist or their competition is imminent, they shall be used as basis *except where they or their parts are inappropriate because of insufficient protection or fundamental technological problems* or such other reasons. (Annex 3, emph added) Duplication shall be avoided and national consensus on standards shall be sought.

Agreement on Trade-Related Investment Measures (TRIMs)

The agreement is of the opinion that trade restrictive and distorting effects of investment measures should be avoided. In the course of expansion and progressive liberalisation of world trade and to facilitate investments across international frontiers to enable the growth of all trading partners, certain measures will have to be taken. For this purpose, investment measures related with trade in goods were decided upon.

According to Article 2 no number shall apply any TRIM inconsistent with GATT 1994. At the same time, *"A developing country member shall be free to deviate temporarily from the provisions of"* the article 2 on national treatment and quantitative restrictions to the extent that the BOP provisions permit them to deviate (Article 4, emph added).

The agreement provides that all the TRIMs shall be eliminated-

within 2 years in case of a developed member;

within 5 years in case of a developing member;

Within 7 years in case of the LDCs. (Article 5)

There are extensions for transition period for developing countries in case of difficulties.

Despite the contrary provisions, a member in order not to disadvantage established enterprises which are subject to a TRIM, may apply during the transition period the same TRIM to a new investment -

i) where the products of such investment are like products to those of the established enterprises, and

ii) where necessary to avoid distorting the conditions of competition between the new investment and established enterprises. (Article 5.5)

Agreements on Dumping

It is an important agreement dealing with Article VI of GATT 1994. According to Article 2 a product is considered as being dumped ie, introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price for the like product when destined for consumption in the exporting country.

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low

volume of sales in the domestic market of the exporting country, such sales donot permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price. (Article 2.2). It has to be demonstrated that the dumped imports are causing injury, and its effects shall be assessed in relation to the domestic production of the like product. A whole procedure of investigations has been worked out by the Agreement.

The anti-dumping duty shall remain in force as long as and only to the extent necessary to counteract dumping. Anti-dumping duty shall be terminated on a date not later than 5 years.

Agreement on Import Licensing Procedures

The agreement was reached with a view to facilitate trade by relaxing licensing procedures. It recognised that in order to help development needs of the developing countries, automatic import licensing for certain purposes was useful. The flow of international trade could be impeded by the in-appropriate use of import licensing procedures. Non-automatic licensing should not be burdensome. There should be transparency of procedures.

Automatic import licensing meant approval of the application in all cases. The members recognised that it may be necessary whenever other appropriate procedures were not available. In allocating licenses the member should consider the import performance of the applicant. In case of quotas administered through licenses which are not allocated among supplying countries, license or quota holders are free to choose the sources of imports.

Agreement on Subsidies and Countervailing Measures (SCM)

A subsidy shall be deemed to exist if there is a financial contribution by a government or a public body within the country, involving direct transfer of funds, grants, loans, etc.,

government revenue due or foregone, provides goods or services other than general infrastructure, makes payments to a funding mechanism. The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption shall not be deemed to be a subsidy. (Part I, Article 1).

Part II deals with prohibited subsidies. The following subsidies have been prohibited except as in Agreement on Agriculture:

Subsidies contingent, in law or in fact, upon export performance and upon the use of domestic over imported good. In an important stipulation, it is said that when the facts demonstrate the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings, this already makes it factual subsidy. *The mere fact that a subsidy is accorded to enterprises which export does not make it an export subsidy within the meaning of this provision. (emph added)*

Here a clear-cut differentiation is made between subsidies to an exporting enterprise *and* subsidy upon export performance. The former is allowed; the latter has several restrictions or prohibitions.

Part IV deals with non-actionable subsidies i.e those which need not be prohibited. They include assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms if the assistance covers not more than 75% of the cost of industrial research or 50% of the costs of pre-competitive development activity. such assistance should be limited to personnel costs, cost of instruments, land, building, etc., cost of consultancy and equivalent services including technical knowledge, patents, etc, additional overhead costs, other running costs. It also includes assistance to disadvantaged regions of the country, a measurement of economic development, and to promote adaptation of existing facilities. (Article 8).

Part V deals with countervailing measures. Countervailing duty is understood to mean a special duty levied to off-set any

direct or indirect subsidy upon manufacture, production or export. Calculation for this purpose of the amount of a subsidy is to be made by the national legislation. Article 14 describes guidelines which make it clear that the government provision of equity capital *shall not be considered a benefit* unless the investment decision can be regarded as inconsistent with the usual investment practice. Besides, the following are also *not* regarded as benefits :

- a loan by the government unless there is a difference between it and the comparable commercial loan from the market;
- a loan guarantee by the government;
- provision of goods or services or purchase of goods by government.

The countervailing duties would remain in force only as long as and to the extent necessary to counteract subsidisation. A committee on subsidies and countervailing measures and other subsidiary bodies have been proposed by the agreement. *Part VIII - Developing Countries*

It contains very important provisions which have either been overlooked or deliberately suppressed. It provides tremendous leverage to the developing countries and considerable rights too. Article 27 on special and differential treatment for the developing countries clarifies their position on subsidies.

In 27.1 it is recognised that subsidies play an important role in the economy of the development countries. Art 27.2 prevents prohibition of para 1.a of Art 3. Part II in its Art 3 deals with prohibited subsidies. In 3.1 it prohibits subidies upon export performance. But even here, two exceptions are provided for —One, in agreement on agriculture, which is very detailed and significant. Two, footnote no. 4 to this provision states that the mere fact of subsidy being provided to enterprises which export *shall not be considered a subsidy* because it will have to be shown to be tied to exportation or export earnings. (p 3 of SCM)

Art 27.2.(a) prevents subsidy prohibition in the developing Countries referred to in Annex VII which includes a) LDCs b) 20 developing countires including India, which are yet to reach the GNP of 1000 dollars per capita per annum. (SCM p 45, Annex VII).

27.2.(b) gives other developing countries 8 years to apply subsidy prohibition. Also, the prohibition of para 1.(b) of Art 3 shall not apply for a period of 5 years, and for 8 years to the LDCs (SCM, P 30).

27.3 prohibits increase of export subsidies. 27.4 states that a developing country that has reached export competitiveness in any given product shall phase out its export subsidies.

27.5 defines export competitiveness as a country's export in that product having reached a share of least 3.25% in the world trade of that product for two consecutive years. (SCM p 30).

27.8 and 27.9 prohibit disciplinary action simply on the *presumption* of injury due to subsidy. (ibid p 31). 27.12 provides that Part III shall not be applicable to direct forgiveness of debts, subsidies to cover social costs including relinquishment of government revenue, etc. when such subsidies are linked to a privatisation programme. (ibid).

Article 29 is interesting in that it provides for transition from a centrally-planned to a market economy and relaxes or suspends some provisions.

Annex I to the agreement on SCM contains an illustrative list of subsidies to be prohibited:

a) provision by the government of direct subsidies to a firm or an industry contingent upon export performance;

b) currency retention schemes involving bonus on exports;

c) internal transport and freight charges on export shipments, provided or mandated by government, on terms more favourable than for domestic shipments;

d) the government provision of imported or domestic products or services for use in production of exported goods on terms more favourable than in domestic area;

e) full or partial exemption, etc. related to exports, of direct taxes or social welfare charges on industrial or commercial enterprises;

f) allowance of special deductions directly related to exports or export performance over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged;

g) remissions re. indirect taxes related with production and distribution of exported products;

h) remissions on cumulative indirect taxes on products and services in export production and like products for domestic consumption;

i) remissions in import charges in excess of those levied on imported inputs for exportable product;

j) provision by government of export credit guarantee or insurance programs;

k) government grants of export credits;

l) any other charge on public account constituting an export subsidy in the sense of article XVI,

The agreement envisages a situation where the choice between domestic and imported products is unrestricted depending solely on commercial considerations.

Direct taxes mean taxes on wage, profit, interest, rent, royalty, other forms of incomes, and taxes on real property ownership, while indirect taxes mean those on sales, excise, turnover, value added, transfer, border taxes, and all taxes other than direct ones and import charges. The GATT laid down the principle "that prices for goods in transactions between export-

ing enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length." (Annex I, Agreement on SCM, P. 35). Annex II, among others, examines as part of countervailing duty investigation, whether inputs are consumed in the production of the exported product.

It is significant that if the subsidy receipient firm is located in an inflationary economy, the value of the product will be calculated as the receipient firms total sales in the preceding calendar year. This is an important concession as well as an incentive to the particular category of firms of the developing country.

Agreement on Safeguards

It is among crucial agreements as it provides several safeguards against negative effects of globalisation and integration of markets on the economies of the developing countries. It works on the principle of structural adjustment and the need to enhance rather than limit competition in international market. Safeguards are to be applied only if a product is being imported into the country concered in such increased quantity as to harm domestic industry. For the purpose of the agreement, a customs union is taken as a single unit and it may apply measures for the whole union or on behalf of a single member.

Safeguards are to be applied irrespective of its source. A significant overall impairment in the position of a domestic industry would be considered a serious injury. It will be understood on the basis of facts and not allegations. In particular, the share of the domestic market taken by the increased imports will be considered. If a restriction is to be applied, it shall not go below the level of a recent period, which shall be the average of imports in the last three representative years. The total period of safeguard measure is not to exceed 8 years.

An added factor favouring the developing countries is the provision in section IV that safeguard measures *shall not* be applied against a product originating in a developing country as long as its share of imports of the product does not exceed 3% provided that the developing countries with this figure of imports collectively do not account for more than 9% of total import of the product concerned. The section also gives the right to extend period of safeguard by 2 years. Besides, *despite* a restriction in para 14, the developing countries have been given the right in para 20 to apply safeguards, again, even after entry in MTO, after a period of non-application for 2 years.

Any member shall not take or seek any emergency action on imports of particular products, nor maintain any voluntary export restraints, take measures on export or import side except in conformity with the agreement.

The European Community and Japan have been granted one exception to the above stipulation. The Annex mentions passenger cars, off road vehicles, light commercial vehicles, light trucks, and the same vehicles in wholly knocked-down form: the phasing out measures for them for these countries extend upto 31 December 1999(P.9). Otherwise, the phase-out measures are to be carried out within 180 days. This is an important concession to of the developed countries.

General Agreement on Trade in Services

The agreement seeks to establish a multilateral framework for trade in services for liberalisation and economic growth of all trading partners and the development of developing countries.

In this context it is important to note that the defintion of services given in Part I, Article I (b) *excludes* "services supplied in the exercise of government authority" (p.4). Article I(C) further clarifies that services in government authority means any service which is supplied neither on a commercial basis, nor in competition with other services.

Article IV deals exclusively with the "increasing participation of developing countries". It visualises that such a participation shall be facilitated by implementing Parts III and IV of the agreement. The agreements relate to the strengthening of their domestic service capacity, improvement of information networks and liberalisation of market access.

This article clearly delineates the role of the developed countries. They, and other members, shall establish contact points within two years to facilitate the access of developing countries' service suppliers to information on markets concerning commercial and technical aspects of supply of services; registration, recognition and obtaining of professional qualifications and availability of services technology (Article IV, (2). If one relates this with the definition of the services mentioned earlier, it will be clear that government will have to enter the market as a competitor in order to improve its services or take the help of private competitors.

Article V deals with economic integration but it does not prevent any member from entering into agreement liberalising trade in services with any other member, provided:

- it has substantial sectoral coverage. It means number of sectors, volume of trade affected, modes of supply. In order to meet this condition, agreements should not a priori exclude any mode of supply (p.7).
- it eliminates all discriminations substantially. Article V bis provides for *full integration of the labour markets* between or among the parties. But such an agreement should exempt citizens from requirements concerning residency and work permits. The agreement on integration of labour markets confers right of free entry to mutual employment markets and includes measures concerning pay, conditions of employment and social benefits. (p.8, emph added).

Article VIII on monopolies warns against allowing them to misuse their position. The Council for Trade in Services would look after the concerned complaints.

Article XI prevents members from applying restrictions on international transfers and payments for current transactions. The agreement should also not affect the rights and obligations of the members of the IMF.

Restrictions have been enumerated to safeguard the balance of payments and to solve external financial difficulties. "It is recognised that particular pressures or the balance of payments of a member in the process of economic development on economic transition may necessitate the use of restrictions to ensure, inter alia, the maintainance of a level of financial reserves adequate for the implementation of its programme of economic development or economic transition." (Article XII).

Consultations on restrictions shall be held under committee on balance of payments restrictions. In such consultations, it is stipulated, statistical and other facts presented by the IMF on foreign exchange, monetary reserves and BOP shall be accepted and conclusions be based upon them. These provisions may cause lot of controversy, particularly in the sense of restricting individual member's rights.

Part III deals with specific commitments on market access and certain other matters, and is therefore among the important parts of the GATT, particularly in trade in services. It limits regional or territorial measures where market access commitments are undertaken. The measures that the members are not expected to take are limitations on total number of service operations, total number of natural persons employed in a particular service sector, limitations on the participation of foreign capital in terms of maximum percentage limit on foreign shareholding or the total value of individual or aggregate foreign investment, etc. (p.17).

These stipulations, again may prove controversial. It is further classified that if a member agrees upon market access in a service and if the cross border movement of capital is an essential part of the service itself, the member thereby commits to allow such movement of capital. A member, similarly, is committed to transfers of capital into its

territory depending on agreement on concerned mode of supply (Article XVI).

In order to achieve progressively higher levels of liberalisation, successive rounds of negotiations will be held, beginning not later than 5 years from the date of MTO (WTO). They will aim at elimination of the adverse effects on trade in services of measures providing effective market access (Part IV, Article XIX). Liberalisation would take place keeping in view the national policy objectives and individual levels of development. Appropriate flexibility has been provided for with respect to individual developing countries for liberalising fewer sectors.

A very important Article XXI provides that a member "may modify or withdraw *any commitment in its schedule, at any time* after three years have elapsed" after the date of commitment. (Article 1-a, emph added).

Annex on financial services clarifies that a member shall not be prevented from taking measures to protect investors, depositors, policy holders, etc, to ensure the integrity and stability of the financial system. It also clarifies that nothing in the agreement shall require a member to disclose information regarding affairs and accounts of individual customers or any confidential or proprietory information in the possession of public entities.

Annex on telecommunications is another important part of the Agreement as it helps clarify a lot of confusion and misconceptions. It applies to measures that affect access to the use of public telecommunications transport networks and services, meaning also their suppliers.

At the same time "this Annex shall not apply to measures affecting the cable or broadcast distribution of radio or television programming" (P.33). The Annex will not require a member to authorise a service supplier of any other member to establish, construct, acquire, lease or supply telecommunications transport networks or services, other than as provided for in its schedule, or those not offered to the public generally. (paras 2.3.1. and 2.3.2.).

Public telecommunications transport service includes telegraph, telephone, telex, data transmission involving real-time transmission of customer - supplied information between two or more points without any end to end change in the form or content of the customers information (Para 3.2).

Agreement on trade-related aspects of intellectual property rights including trade in counterfeit goods

This is among the most controversial and widely publicised and discussed agreements of the GATT. Despite wide publicity, the real contents, favourable or unfavourable, have hardly been brought to light. Controversies have been raging more on assumptions and on measures taken without reference to the actual provisions in the TRIPs. In the process, its real meaning has more or less been lost sight of.

The Agreement aims to reduce distortions and impediments to international trade, to protect intellectual property rights, and to ensure that the IPRs do not themselves become barriers to legitimate trade (MTN/FA II-A 1 C, P.2). It reiterates resolve to apply decisions of previous conventions and agreements and the basic principles of the GATT 1994. It would not be out of context to mention that IPRs and patents have long been subjects of negotiations within and outside GATT in international conferences and fora. The general understanding of such debates have been incorporated in the GATT and WTO documents.

The Agreement on IPRs recognises its multilateral framework and the need to deal with the problem of international trade in counterfeit goods. It recognises that "intellectual property rights are private rights". The objectives of national policy should be protection of intellectual property including developmental and technological objectives. Flexibility is needed in case of LDCs to enable them to develop sound and viable technological base.

The Agreement proposes mutual relationship between MTO (WTO) and World Intellectual Property Organisations (WIPO) and other international organisations.

Which ones exactly are the intellectual property rights (IPRs)? Sections 1 to 7 of Part II describe them in detail. They include copyright and related rights, rental rights, computer programmes and data, sound recordings, trademarks, geographical industrial designs, patents, layout designs of integrated circuits, protection of undisclosed information, etc.

The members are expected to provide treatment to the nationals of other countries no less favourable than that accorded to their own nationals. In the context of the IPR, the nationals of other countries are those who are natural or legal persons who meet criteria of Paris convention (1967), Berne Convention (1971), Rome Convention (1961) and Treaty on Intellectual Property in respect of Integrated Circuits (1989).

These conventions relate to protection of rights in industrial property, literacy and artistic works, performances, broadcastings, etc.

The IPR is expected to promote technological innovation and transfer and dissemination of technology. "The copyright protection shall extend to expressions and not ideas, procedures, methods of operation or mathematical concepts as such." (Part II, Article 9.2, emph added). This clear statement dispels many doubts regarding the nature of copyright and its protection.

Computer programs shall be protected as literary works. Compilations of data or other material which due to selection or arrangement of contexts constitute intellectual creation are to be protected. Such protection does not cover data or material itself, but shall not violate copyright subsisting in them. The members shall provide authors and their successors the right to authorise or to prohibit the commercial rental.

Performers shall have the right to prevent performances and their reproduction, wireless broadcasting and communication

of live performances. Direct or indirect reproduction of phonograms shall be prevented.

Trademarks constitute signs, names, letters, numerals, colours, etc. Actual use of a trademark shall not be a condition for application of registration. An application will not be refused on the ground that the intended use has not taken place before the expiry of 3 years from the date of application (Section 2, Atricle 15.3).

Section 5 deals with patents. What are patentable subjects? Patents are available for any invention, *whether products or processes* in all the fields of technology, provided they are new, involve an inventive step and are capable of industrial application (Article 27.1). *It is to be noted that* ***both*** *products and processes are patentable.* This is in contrast to the commonly held view that only one of these categories is patentable. Besides, according to the same para, patents are available irrespective of place of invention, the field of technology and whether products are imported or locally produced. This goes considerable way in clarifying the problem of domination by large foreign firms and by developed countries.

Article 27.2 is another important clause as it allows the member countries to exclude such inventions from patentability, the commercial exploitation of which within their territory is necessary to protect morality, human, animal or plant life or health, and to prevent environmental hazards.

In a significant provision members have been allowed *exclusion* of the following fields from patentability:

diagnostic, therapeutic and surgical methods of treatment of humans and animals; "plants and animals other than micro-organisms, and essentially biological processes for the production of plants or animals other than non-biological and microbiological processes. However, members shall provide for the protection of plant varieties either by patents or by an effective sui generis system or by any combination thereof." (Article 27.3 (a) & (b)).

This provision should go considerable way to clarify the several confusions regarding application of patents to plants, plant varieties, animals, and several of the processes related with them.

The question of patent is presented in absolutely unambiguous terms by the Agreement on TRIPs when it confers following rights on the patent-holder:

a) prevent the third parties to use the patented product for making, using, selling, importing, etc. without the consent of the holder.

b) If a process is patented, the third party has no right to use it without the holder's consent, and to use, sell, import, etc. at least the product obtained directly by that process. (Article 28).

The applicant for a patent is required to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art and may be required to indicate the best mode for carrying out the invention (P.13).

There are some provisions of other use of a patent without the authorisation of the rights holder including the use by the government. This can be in the following cases:

- on individual merits;
- in cases where authorisation has not been received in time;
- scope and duration are limited;
- in case of semi-conductor technology, it is only for public non-commercial use;
- the right holder receives adequate remuneration;
- legal validity shall be subject to judicial review;

some other cases.

Second Patent

Where such use is authorised to permit the exploitation of a patent which cannot be exploited without infringing on another patent (the "second" and the "first" patents respectively), certain conditions have been stipulated as follows:

a) the invention in the second patent is an important technical advance of considerable economic significance over the first;

b) the first-patent holder will have cross-license to use the second;

c) the use of first patent will be non-assignable except with the assignment of the second. (Article 31).

Judicial proceedings

For the purposes of civil proceedings in case of infringement of the right of the owner, regarding a process patent, the defendent will have to prove that the process to obtain an indentical product is different from the patented process.

Layout designs of integrated circuits

Agreement related with this part agrees to protect IC layout designs and intellectual property in respect of the IC. Protected ICs cannot be imported, sold or otherwise distributed for commercial purposes. An unlawfully reproduced layout design is prohibited.

Acts not requiring the authorisation of the right holder:

At the same time, the agreement protects genuine reproduction by stating that "*no member shall consider unlawful the performance of any of the acts referred to in that article (above mentioned) in respect of an integrated circuit incorporating an unlawfully reproduced layout design or any article incorporating such an integrated circuit where the persons performing or ordering such acts did not know and had no reasonable ground to know, when acquiring the integrated circuit or article incorporating such an integrated circuit, that it incorporated an unlawfully reproduced layout design.* Members shall provide

that, after the time that such person has received sufficient notice that the layout design was unlawfully reproduced, he may perform any of the acts with respect to the stock on hand or ordered before such time, but shall be liable to pay to the right holder a sum..." (Art 37.1, emph added).

Section 7, protects the undisclosed information if it is secret as a body or in precise configuration and assembly of its components. Besides, in case of pharmaceutical and agricultural chemical products utilising new chemical entities the submission of undisclosed test and other data will involve protection against unfair commercial use. In addition, members shall protect such data against disclosure.

For the control of anti-competitive practices in contractual licenses, it was agreed that some licenses or conditions in the IPRs may have adverse effects on trade and dissemination of technology by restraining competition. Members will specify such conditions in their national legislation and conditions. *They are free to take appropriate measures.*

Enforcement of IPRs

Member countries shall ensure that enforcement procedures are available in their national laws. They should be simple and not unncessarily costly and time-consuming. It is made amply clear (Part III,, Section 1, Article 41.5) *that there is no obligation of a judicial system for IPRs distinct from the general laws.* It also does not affect the capacity of the members to enforce their own laws. There is no distribution of resources between enforcement of IPRs and laws in general.

Transitional arrangements

Transitional arrangements in Part VI are meant mainly for the centrally planned economies, such as those of east Europe, and of other regions. No member is obliged to apply the provisions of this agreement before the expiry of a general period of one year after the establishment of MTO. Any developing member is entitled to delay for a further four years the date of application of this agreement. Countries making

transition from centrally planned to market, free enterprise economies and undertaking structural reforms of IPRs and other aspects can take the benefit of the delay.

In another important stipulation, to the extent that a developing country is obliged by the Agreement to extend product patent protection to the technologies which are not so protectable on its territory, it may delay the application of product patents for an additional 5 years (Article 65).

Decision on Possible Negative Effects of Reforms on LDCs and Net Food - Importing Countries

This is one of the crucial decisions of the GATT 1994, which endeavours to protect the least developed countries against the negative impacts of global structural changes GATT document recognises that greater liberalisation of trade in agriculture *may cause such countries to experience negative effects* in availability of adequate supplies of basic foodstuffs from outside on reasonable terms. There may also occur short-term difficulties in financing normal levels of commercial imports of basic foodstuffs. (Para 2).

In order to meet this eventuality, the members agreed to take appropriate measures, and to continue food aid at the sufficient level to meet the needs of the LDCs. For this purpose, committee on Food Aid under Food Aid Convention, and negotiations would establish appropriate levels of aid. Basic foodstuffs would be provided in fully grant form and/or concessional terms. Full consideration to requests for technical and financial assistance to improve agricultural productivity and infrastructure would be given. Similar provisions have been made for certain developing countries.

They would be able to draw upon the resources of international financial institutions, and consultations with IMF and WB. (Para 5)

Understanding on commitments in financial services

This is part of general agreement on trade in services, and among the series of decisions and declarations of the ministers, some of which have been mentioned earlier. This understanding is the basis of an alternative approach to that of the Part III of the abovementioned agreement. The understanding is that the alternative approach should not:

- conflict with provisions of the Agreement;
- prejudice members applying Part III;
- would facilitate applicationon a most favoured nation basis;
- would not presume the degree of liberalisation committed by a member under the agreement.

On market access, in addition to article VIII of the Agreement, the member shall list in its schedule on financial services the existing monopoly rights and shall endeavour to eliminate or reduce them. This applies not only to the government but also to the "public entity" with the guarantee of "using the financial resources of the government"

A country is expected to ensure that financial service suppliers of any other country established in its territory are accorded most favoured nation treatment and national treatment in connexion with purchase or acquisition of financial services by public entities of the member in its territory.

On cross-border trade, each member shall accord the non-resident suppliers of financial services the national treatment. Their rights shall include insurance of risks in maritime shipping, commercial aviation, space launching, freight including satellites, goods in international transit, reinsurance, provision and transfer of financial information and financial data-processing, etc.

Each member is expected to permit its residents to purchase

in the territory of others the financial services described in the commitments.

The participants agreed to grant financial service suppliers from other countries the right to establish and expand commercial presence including through the acquisition of existing enterprises (para 5). Besides, "a member shall permit financial service suppliers of any other member established in its territory to offer in its territory any new financial service (Para 7).

In an important para 8 on the transfers of information and processing of informaton, the members are required not to take measures that prevent transfer and processing of financial information including by electronic means. They should also not prevent transfer of related equipments if needed in the course of ordinary financial business.

"Nothing in this paragraph restricts the rights of a member to protect personal data, personal privacy and the confidentiality of individual records and accounts so long as such right is not used to circumvent the provisions of the agreement".

The member - countries are also required to allow temporary entry of senior managerial personnel, specialists and legal experts in the fields of financial services. They promised to remove or limit any measures affecting finance service activities of other members. They also agreed to provide access to payment and clearing systems operated by public entities and to official funding and refinancing facilities for normal business.

In one of the significant decisions on financial services, the meeting decided that *the members were free to improve, modify or withdraw all or part of their commitments in this sector without offering compensation.* This could be done at the conclusion of a period ending not later than six months after the entry into force of the MTO (para 1, empha sis added).

Conclusions

A study of GATT documents indicate certain important conclusions. There is no evidence in them to suggest that the GATT and the WTO arrangements are generally against the interests of the developing countries. The various agreements and their different provisions mostly, if not fully, seek to protect the interests of the newly industrialising nations in the context of growing integration of world market. One cannot point out any substantial number of arrangements or articles that increase or seek to increase the hold of the multinationals over world economy, particularly over the Third World. The agreements also do not increase the hold of the government and economies of the developed countries over the Third World. Of course, it is not to suggest that the developed countries have gained nothing. But an agreement would not be justified if all the parties do not gain. All the participants in the GATT, and in its continuation the WTO, would find them advantageous. At least the documents are of this nature.

The very aims, at least the declared ones, are to protect the interests of the developing countries. With growth in world market, trends towards liberalisation, and the rapid spread of new technology, it has become imperative to take measures to enable the developing nations to take full advantage of them. They should not be cut off or isolated from new developments and should be able to use new mechanisms to develop their own economies. They should be effective participants in the world economy. The documents discussed clearly suggest that they would be helpful in this endeavour.

It is clearly for those reasons that most of the developing countries want to participate in and activate GATT. Both India and China, too, want to participate in the GATT and have announced their full endorsement of the GATT (or Dunkel Proposals). The complaint of the developing countries is something else: they say that it is some of *developed* countries, notably the USA, which do not want the developing countries to join the GATT on various pretexts. the third world

nations feel that not joining GATT would deprive them world of the many advantages of the agreements.

It is clear from the study of the GATT agreements that most of the opinions are not based on their concrete study. Article, pamphlets and books have mostly been written on the basis of secondary sources and simple general impressions.

If checked up with GATT documents, most of the newspaper articles and utterances of statesmen and leaders are pure figment of imagination. Even the journals considered authoritative have attributed provisions to GATT, which simply do not exist in its agreements. They have given one sided, both real and imaginary, pictures of it valuable and historic documents. One gets the impression that only a handful have really studied GATT/WTO agreements. This attitude is not conducive to engage in realistic dialogue and draw proper conclusions.

To remain within the WTO and to negotiate and struggle for over rights appears to be a better and realistic option. Keeping out would harm the growth of economy in the new world context. It goes without saying that, in practice, many counties and firms, particularly the stronger ones would harm the interests of the weaker/disadvantaged ones in their attempts to get better bargains. They too distort GATT documents for their own ends. It is also possible that some of measures in practice, though favourable to some, would be unfavourable to others. These problems can be faced within the GATT/WTO in the day to day course.

It would, at the same time, be wrong to place all the blame for our failure on the developed countries and the multinationals. We suffer from a "third world" or "backward" syndrome. We should come out of it. We can achieve lot of things. We can compete at world levels. The third world can also learn and get a lot of things including technology, and market and production management methods, and aid from the developed nations. Multinationals can also be helpful in this regard.

It all depends on how flexibly and pragunatically we move about in the world economy, and decide our own priorities correctly.

A few words about China

There are certain misconceptions about China, as far as GATT and liberalisation is concerned. It's put forward as an example for us in this regard. Some people hold that China is not interested in the Dunkel Proposals. Some others say, it is in a better position to accept them. An opinion looks upon China as the leader of those struggling against GATT/WTO, against liberalisation and against integration/globalisation of markets and economics.

But all this is not true. The relevant Chinese documents and statements of their ministers and leaders do not support these misconceptions. On the contrary, they set an example, in many senses, as to how to go about liberalising and globalising one's economies.

The authoritative English language journals from China e.g *China Daily, China Today, Beijing Review*, etc. provide us lot of insight into Chinese economic thinking. These journals are full of praise for liberlisation and market economy. They advocate full acceptance of Dunkel (GATT) proposals. They clearly say that China is making transition from a planned to a market economy and from a closed to an open economy (*Beijing Review*, Nov. 7, 1994, p. 7). The same article says that there was hidden inflation in the planned economy. Now there is high inflation rate in China, higher than in India. China's inflation rate stood at 21.7% in December 1994, (*Beijing Review*, January 16, 1995, P.5) and it continues to increase rather than decrease.

According to the spokesman of China's State Statistical Bureau, "this is the price we must pay for the country's reforms on taxation and grain prices as well as for the increased wages of state employees and rising bank interest" (ibid).

Chinese Press widely reports largeceale privatisation, liberalisation and the globalisation of the country's economy including industry and agriculture. It emphasises the tremendous advantages of such policy and are all praise for the GATT proposals. One feels that the Chinese economy is under - going a massive structural shift in order to integrate with world economy and to achieve fast economic growth. Their press keeps referring to the "lost years" of the 60s and 70s.

In 1993 overseas computer manufacturers had captured more than 80% of Chinas computer market (*China Today,* October 1994, p.59). Expansion of foreign companies is reported in several other important fields.

China welcomes this trend and hopes to use it to catalyse its own industrial development.

China has officially announced the acceptance of the Dunkel proposals and declares that it wanted to join *the GATT/WTO. China Daily* (3 March 1995 P.1) reported that "the longterm economic and trade interests shared by China and US are the primary basis for the countries reaching last minute agreement on protection of intellectual property rights (IPR)". China says that it is to build market economy, and not to bow to outside pressures that the country took steps to protect IPRs (*China Daily*, 1 March 1995, p.4) It is to be noted that China has made large scale changes in its IPRs in order to join the world economy. "Modern scientific and technological advancement and commodity development are bound to create a need for establishing" IPRs to protect the producers, according to minister for science and technology commission, Song Jian (*Beijing Review*, 16 January 1994, p 8). China has promulgated various laws including trademark law, patent law, copyright law, unfair competition law, etc, and has cracked down upon large numbers of illegal infrigers of copyrights.

The absence of such laws was being used as pretext by the U.S. to prevent China from joining the WTO. With these and other measures path is being cleared for the latter to join the World Trade Organisation.

In brief, China has realised the advantages of GATT/WTO, and has criticised the U.S. for preventing it from joining them, and has announced largescale changes in all the fields of its economy in keeping with the demands of GATT/WTO and of globalisation, while developing its own economic potentials.

VANI-Voluntary Action Network India
STATEMENT OF PURPOSE

Voluntary Action Network India (VANI) is the outcome of the shared need of concerned individuals and voluntary organisations to have a platform for safeguarding and highlighting voluntarism and voluntary action in our country.

VANI is an effort to given collective voice to the experience, achievements, sufferings, hardships, hurdles and togetherness of individuals in voluntary action in India today.

VANI was formed in April 1988, by some concerned and like-minded workers of the voluntary sector in the country. The need for setting up VANI was seen as:

1. To strengthen voluntarism, and to work towards creating an authentic, positive and supportive climate for voluntary action, as well as to protect and promote the political and cultural space for voluntary action in the country.
2. To be a common platform for these concerned about various issues of development affecting the poor in the country.
3. To facilitate the formation of platforms and federations for the promotion of voluntary action in relation to issues affecting the poor.
4. To be a forum for sharing perspectives and analysis of local, national and international forces, laws, policies, programmes and structures, and their implications for people and voluntary action in India and for taking appropriate action.
5. To promote the following values in voluntary action in society.

    - Decentralisation
    - Democracy
    - Freedom from discrimination
    - Freedom of information, independence of thought
    - Gender equality
    - Secularism
    - Simple sustainable lifestyle

6. To identify, address and challenge contradictory tendencies and counter-forces within the voluntary sector.
7. To provide fraternal support and strength to voluntary workers and organisations, particularly at times of hardship.
8. To undertake advocacy on issues of concern to voluntary action with the government, national and international agencies, elected representatives, political parties, trade unions, business and industry, and other structures of power.
9. To facilitate and if necessary coordinate campaigns on emerging issues which affect people and voluntary action in the country.

VANI aims to be not only a voice of those who want to create an atmosphere for value oriented voluntary action, but also a common platform for highlighting the causes, concerns and issues which affect the freedom and space for voluntary action in the country.

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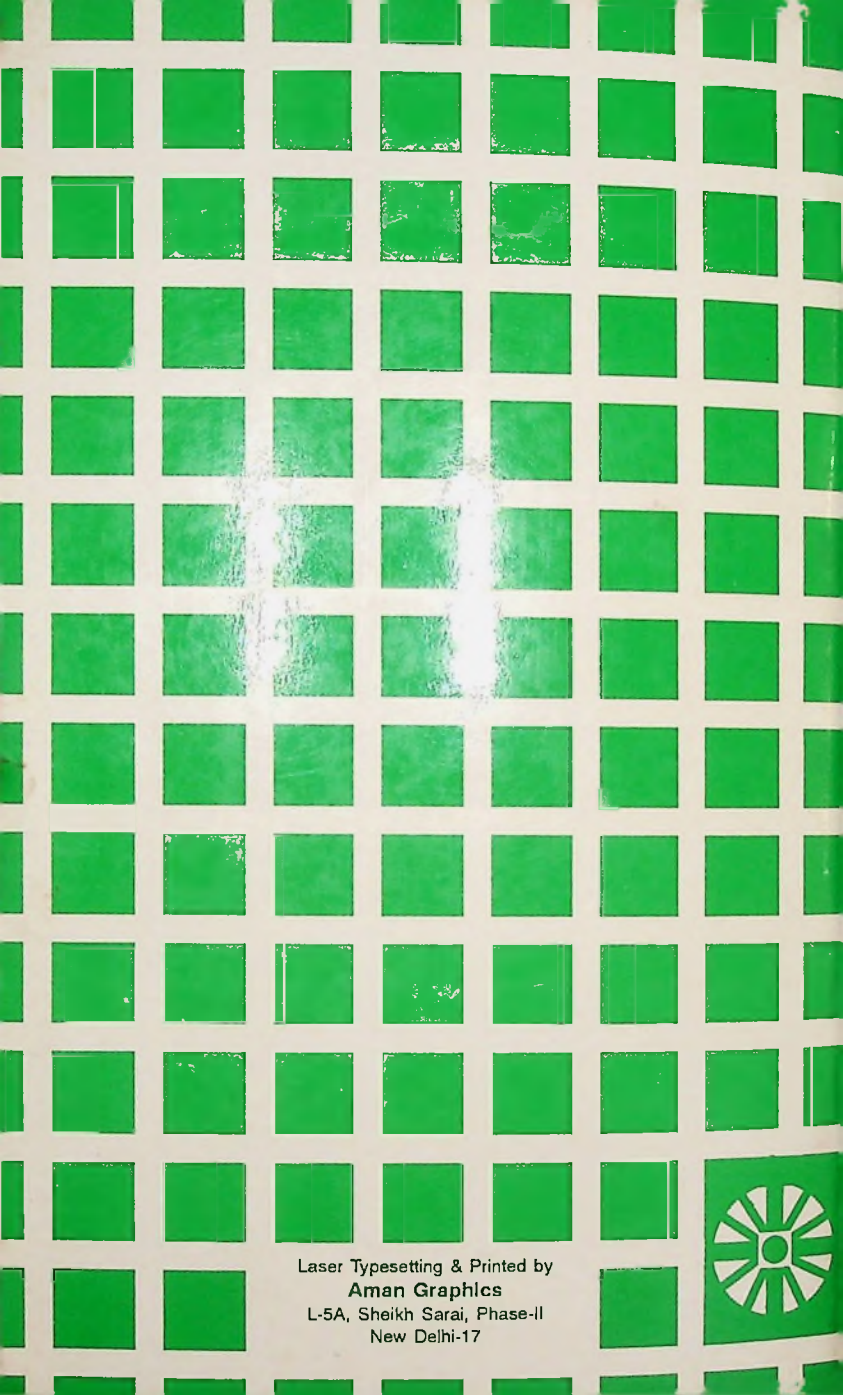

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