

Developing Countries in GATT after the
Multilateral Trade Negotiations

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1. This Paper was written prior to the establishment of the Expert Group but was made available to it because of its relevance to the work of the Group.

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I. Introduction

1. A year has passed since the Tokyo Round of Multilateral Trade Negotiations (MTN) was concluded, and numerous assessments qualitative, quantitative and other - have been made of the results. Among these are the "red book" (together with the supplementary report) issued by the GATT Secretariat; the series of papers produced by the UNCTAD Secretariat to enable the Trade and Development Board to make a global assessment in terms of the relevant UN Resolution; and independent evaluations by individuals and organisations in the field. Undoubtedly, the countries that participated - more especially the developing ones - would still be in the process of making their own appraisals with a view to deciding what further action they need to take in pursuance of the decisions reached at the end of the negotiations.

2. In the realisation that the previous rounds of negotiations under GATT auspices had failed to provide solutions to developing country problems - indeed that their objectives were so limited that such solutions could not be hoped for - the Tokyo Declaration of September 1973 sought to define more clearly the objectives of the negotiations in relation to the trade of developing countries. Accordingly, the negotiations were aimed at securing "additional benefits for the international trade of developing countries", and "a better balance as between developed and developing countries" in the sharing of the advantages resulting from the expansion of international trade; tropical products which have been of particular interest to developing countries were to be treated as a special and priority sector in these negotiations; developed countries would not expect reciprocity for commitments made by them in the negotiations to reduce or remove tariff and other barriers to the trade of developing countries; and recognition was given to

the importance of applying "differential measures to developing countries in ways which will provide special and more favourable treatment for them in areas of the negotiation where this was feasible and appropriate".¹

3. There is little difference of opinion about the results falling short of the hopes and aspirations embodied in the Tokyo Declaration. Even the major trading countries whose initiatives led to it were not altogether satisfied; countries like Australia and New Zealand, with their predominant interest in trade in agriculture, were far less than satisfied; and developing countries, seeing little evidence of any 'additional' benefits flowing from the negotiations, seldom lost an opportunity of voicing their disappointment with the outcome, as well as over the fact that they left so many issues of interest to them unresolved. While all the industrialised countries have almost fully subscribed to the various Agreements in the tariff and non-tariff areas, most developing countries have not yet done so and would seem to be feeling their way still.

4. The conclusion of the Tokyo Round has by no means signalled the close of efforts under GATT auspices to deal with the outstanding issues. While certain developed countries would like to carry on with the unfinished negotiations on a Multi-lateral Agricultural Framework and for an Agreement on service industries and perhaps also on the so-called export restrictions, developing countries have numerous unresolved interests, especially in the field of quantitative restrictions, tropical products, safeguards and further reforms to the GATT Framework. The future role of GATT in relation to negotiations on these and other issues becomes all the more significant when it is realised that there is little prospect of a further international effort of the kind just now brought to an end being mounted in the foreseeable future.

1. Paras 2,3 and 5 of the Tokyo Declaration of September 1978.

5. This broad setting has largely determined the scope of this paper. The purpose is not to make any fresh assessment of MTN: indeed, it will barely touch on this aspect - and then, to elucidate the points otherwise sought to be made; consequently a knowledge of the results is assumed throughout the paper. The attempt is rather to deal, firstly, at some length with an area which may have been only partially touched on by most observers and that is the role played - or allowed to be played - by developing countries in the entire negotiations, an examination of which may hold useful lessons for further negotiations in GATT even at the risk of being regarded as somewhat of a belated 'post-mortem'. More importantly, however, it is to take a look at the role of developing countries in GATT as a whole in recent years - and at the prospects for the future while the organisation functions additionally as the continuing machinery for all residuary negotiations.

6. It has been known, of course, that the part played by developing countries in the negotiations was for various reasons severely limited; public knowledge is not as widespread on the role of developing countries in the forum of GATT itself, where they have encountered a variety of difficulties in pursuing their interests and in securing their full share of rights so far. The paper seeks to make out that the shortcomings of the Multilateral Trade Negotiations have been but a manifestation of the normal but comparatively unpublicised working of GATT.

7. Section II of the paper examines to what extent the various mechanisms created through and under the Trade Negotiations Committee were able to serve the purposes of developing countries as envisaged in the Tokyo Declaration. The manner in which the negotiations proceeded as well as the methods and the devices adopted, and how these affected the whole character of the negotiations and the participation of developing countries is also dealt with in this section. An attempt has been made comparing the modalities of the negotiations under GATT with those in other organisations such as UNCTAD.

8. Section III moves on to GATT proper and gives, firstly, a broad picture of the nature of developing country participation in the working of GATT ever since its inception, and proceeds to outline how this is likely to be transformed in the light of the decisions taken at the Multilateral Trade Negotiations.

9. In the fourth Section of the paper, an endeavour is made to bring together, from the point of view of developing countries the various aspects of the negotiations still due to take place under GATT, and to indicate broadly the directions in which the participation may have to be strengthened and improved in the coming years.

10. A short section embodying a resume of the observations and an indication of the outlook concludes the paper.

11. Participation of developing countries in MTN

The negotiating machinery

11. The machinery that was set up for conducting the detailed negotiations of the Tokyo Round was very similar to that during the Kennedy Round. A Trade Negotiations Committee (TNC) was established, and authorised to elaborate and put into effect detailed trade negotiating plans and to prescribe appropriate negotiating procedures, including special procedures for negotiations between developed and developing countries, as well as to supervise the progress of the negotiations. A number of Groups and Sub-Groups in tariff and non-tariff areas, whose scope was gradually expanded over the first few years of the negotiations to take account of additional concerns of both developed and developing countries, were also constituted before long.

12. For reasons by now too well-known to need repetition, commencement of substantive negotiations had to wait almost till 1977, although the TNC's Groups and Sub-Groups did meet from

time to time even in the initial years and in most cases maintained no more than a semblance of negotiating activity. Some of them did succeed in moving forward a few ideas and concepts, a little at a time, without tackling the central and more important questions. Thus the question of how agricultural products should be dealt with had to await the resolution of both substantive and procedural differences between the two super trading powers, namely, the EEC and USA; issues relating to the sector approach were no more than tinkered with in the multilateral sense, only to be abandoned in the later stages.

13. The Trade Negotiations Committee itself met often enough during the initial period of 3-4 years, but there was nevertheless no indication of the Committee trying by itself to put into effect negotiating plans of any kind, although such meetings as it held could be interpreted as having dealt with the question of progress and of the obstacles thereto. Indeed, right up to the end, the Committee itself never drew up any negotiating plans in the tariff field or as between developed and developing countries or in any other area - and on the few occasions in which it was convened in later years, it either noted what was happening or gave de facto approval to what had happened and heard complaints from developing countries about continued lack of progress and of consideration for their problems.

14. Although little of substance emerged from the meetings of several of the Groups and Sub-Groups during the first four years of the negotiations, a veil of secrecy was drawn over their proceedings, on the ground that negotiations were the concern of participating sovereign countries and that there was no need for others to be informed of how they were progressing. This was said at the time to have been mostly at the instance of two or three of the most prominent developed trading countries, but was in consonance with the traditional manner of work in the servicing Organisation, which tended to restrict rather de-restrict information. Attendance at meetings was

understandingly limited, of course, to participating countries; as regards observership, while the IMF had ready and unquestioned access to every one of these meetings, presumably in view of its special relationship with GATT, the most important organisation outside GATT dealing with trade and development matters, namely, UNCTAD which had a specific mandate from member countries to provide assistance on MTN matters to developing member countries, were placed in the invidious position of seeking permission to send its representatives to each meeting, although such permission was invariably granted and, in any case, documentation seems have been supplied freely.

15. Such documentation as came out of these meetings of Groups and Sub-Groups from time to time had procedural rather than substantive content. In several instances, the summaries of the proceedings of meetings were described at the time by some participants as models of 'non-information', mentioning only the fact of the meeting, the issues discussed, sometimes the points of view put forward, and some procedural matters like dates of future meetings. Developing countries which could participate in meetings had thus little access to information from the most authentic source on what was happening.

16. It would thus appear that although the machinery for conducting negotiations was in place from the beginning - with additions later on - the manner in which it functioned made it difficult for most developing countries - especially those who were represented in Geneva - to keep abreast of events with a view to deciding on ways of strengthening their participation. An argument frequently made at the time was that the complexities of the issues involved, the variety of interests and the flow of international events during the first years of the negotiations were such as to make it impossible for the latter to move smoothly or evenly; but the feeling among developing countries at the time - by no means mitigated even later - appeared to be that there should have been much greater regard on the part of developed countries for the even more adverse

situation in which developing countries were placed in the same international context, and the constraints on active participation which they were working under.

Negotiating modalities - Bilateralisation and its consequences

17. The Tokyo Round began with a fair number of developing countries - some seventeen to eighteen in the first two or three years when negotiations had barely begun, and increased to sixty-nine in the closing stages, as against the total of ninety-nine participating countries. It very soon appeared, however, that this number remained largely nominal and that developing countries participating actively or continuously in the negotiations did not number more than ten to fifteen almost right up to the end.

18. Among the reasons for this limited participation was of course the fact that many developing countries (especially of the Commonwealth) did not have, and still do not have, Resident Missions in Geneva, and that few of them could afford the expenditure involved in sending representatives from capitals, even on occasions. Furthermore, the limited manpower in countries which have become members of GATT in recent years, especially the smaller ones and the land-locked and island developing countries, operated as a serious disability for them. An added reason ascribed by many developing countries to this restricted participation was the fact that meetings and discussions in connection with the negotiating issues were mostly fixed at short notice and to a certain extent simultaneously and there was little certainty of conclusive discussions or negotiations taking place at most meetings, at least in the first few years of the Round. Any attendance of representatives from the capitals would in the circumstances have been regarded as unproductive and wasteful expenditure. As against this, many developed countries had either well-staffed and separate MTN Missions in Geneva with experts in each field, or had

adequately strengthened their existing Missions. (Even among these, Australia at one stage reduced the size and level of its special MTN Mission on the ground that little progress was being made). Few, if any, of the developing countries had the corresponding possibility of strengthening their staff in the Geneva Missions. The inequality in the nature and degree of participation of the two groups of countries was thus evident from the very beginning.

19. It could be argued - as was indeed argued at the time - that the inability of many developing countries to participate adequately in physical and even substantive terms was no fault of the developed countries, and that appeals had been made from the beginning and time and again, for their joining and fully taking part in the negotiations. As against this, however, developing countries contended that the manner in which negotiations went on, in an on-again-off-again atmosphere, and with abrupt stoppages and later sustained bilaterals, were not conducive to any organised participation on their part, even if they had the required manpower at their disposal and had the capacity to field reasonably well-equipped teams, and that due account should have been taken of the situation of developing countries in the process of organising the negotiations instead of concentrating on the convenience of the major participant.

20. A more serious obstacle appeared when the tempo of negotiations was speeded up in the last two years of the negotiations. When it was found that negotiations were not making any progress and a decision was taken at the highest level to speed them up at that stage, the three major trading Groups involved, namely, USA, EEC and Japan, pushed through the negotiations mostly among themselves. Very often, the negotiations turned out to be a US-EEC bilateral, with Japan joining at some stage, and other developed countries being brought in later still as considered necessary or inevitable. This seems to have happened so often that even countries like Australia and New Zealand and some of the Nordic Countries are

known to have voiced private complaints about their not being brought into the picture in time to enable them to participate effectively.

21. The situation with reference to developing countries as a whole was predictably much worse, except perhaps to the extent that some advanced developing countries like India, Brazil, Mexico and sometimes a few African and South East Asian countries, were brought in at later stages, mostly bilaterally or plurilaterally, to be informed of the results of the more restricted negotiations. Several of the bilateral and plurilateral negotiations among the super trading powers were in fact held in Washington or Brussels, thus leaving even the GATT Secretariat in the dark, and sometimes, developing country Missions in Geneva were bypassed and Ministries in their capitals contacted by the major trading countries like USA on bilateral basis for seeking support for propositions worked out elsewhere. This served to shut out, at least temporarily, several of the all-too-few developing country Missions in Geneva.

22. A stage arrived also in the negotiations in the concluding years when an informal Group called 7 + 7 (consisting of seven industrialised and an equal number of developing countries) was brought into being and convened from time to time at the instance of the Director-General of GATT to discuss and try to resolve controversial issues. The USA, EEC and Japan were of course permanent members of this Group while India and Brazil normally attended. The selection of other developed and developing country representatives varied from time to time depending on the nature of the issues discussed, although quite often Canada, one of the Nordic countries, and either Australia or New Zealand (especially when discussions on agriculture took place) did attend these meetings, and a few additional developing countries, depending again on the nature of the issues discussed, were brought in as part of the developing seven.

23. It was not surprising, therefore, that the great majority of developing countries felt completely shut out of the negotiations, and very often did not have information as to what was happening either during or after these intensive negotiations. To a certain degree also, membership of the 7 + 7 Group tended to establish some kind of vested interest among the countries actually participating (developed or developing), and thereby helped in the maintenance of a degree of confidentiality which may not have been fully intended. All this gave rise to the feeling that agreements arrived at in whatever manner among the Big Two or Three, or some such restricted Group, were handed down as the outcome of the whole negotiating process.

24. Almost all the more important issues, such as the tariff reduction hypothesis, subsidies and countervailing duties, safeguards, agriculture, etc. were discussed in restricted conclaves. In regard to tariffs, any pretence of involving developing countries was cast off after the initial series of discussions when a tariff reduction hypothesis was agreed on by the main industrialised countries without giving consideration to the various ideas put forward by developing countries (such as including a special factor in the various tariff reduction) It was of course decided that the tariff reductions would be implemented by the developed countries without asking for similar action by developing countries; however, in the course of bilateral negotiations, a degree of quid pro quo was expected and asked for from developing countries. In the tropical products field there were hardly any negotiations in the strict sense; after the process of submission of request lists was gone through, there were consultations as between the industrialised and developing countries concerned, almost exclusively bilaterally, and thereafter the concessions were announced unilaterally, purporting to be immutable in their content. Also, whereas it had been hoped that the concessions eventually granted would be non-reciprocal, a measure of reciprocity was sought and obtained from developing countries

in the course of bilateral negotiations between them and a few developed countries.

25. In regard to other major issues the situation was hardly different. Whether it was in relation to safeguards, or subsidies and countervailing duties, or anti-dumping, the substantive discussions leading to negotiated conclusions were limited to few developed and developing countries, with not more than a handful of delegations being involved in respect of certain issues like safeguards. Negotiations on issues like Technical Barriers to Trade and Government Procurement, however, continued mostly through the machinery set up for the purpose.

26. Developing countries thus became convinced well before the concluding stage was reached that the tendency had been accentuated of agreements and conclusions being reached in limited groups with hardly any information coming out until some kind of package was evolved and announced for acceptance by the rest of the participants. The first signs of unease on the part of developing countries appeared during the middle of 1977 and early 1978, when their representatives pointed out the absence of any opportunity even to voice their complaints. Indeed when the Trade Negotiations Committee, which met fairly frequently during the earlier part of the negotiations, was not convened over long periods in the later stages, developing countries shortcircuited the Committee by availing themselves of a meeting of the GATT Committee on Trade and Development in late 1977 to voice their complaints at some length. Even thereafter, no formal meeting of the TNC was convened, and only an 'informal' gathering was called, at which developing countries repeatedly referred to lack of transparency in the negotiations, to the 'marginalisation' of developing countries in the whole process and to the almost total abrogation of the multilateral character of the negotiations. Some modification in the attitude of industrialised countries seems to have taken place after this,

and an approach made by some participants like the USA to a number of developing countries again bilaterally - to redress the situation. This, however, did not serve to remove the disappointment among most developing country participants which surfaced even at the conclusion of the negotiations.

27. The bilateralisation of the negotiations meant, according to the developing countries concerned, much more than a serious curtailment of their rights and opportunities. It was pointed out on their behalf that as a rule, bilateral discussions or negotiations as between a powerful trading country or group like the USA, EEC or Japan and any of the individual developing countries, however skilful its team, would inevitably be an uneasy encounter and that the outcome of any such discussion would, in most instances, be to the disadvantage of the developing country concerned. Whereas in a genuinely multilateral forum or in round-the-table negotiations, in which more than one or two developing countries took part, they might have been able to press their interests as a whole as well as in each one's individual interest with some effect, bilateralisation of the negotiations effectively reduced the opportunities for satisfactory results being obtained by developing countries in pursuit of their objectives.

28. Here again, the contention was put forward that it was inevitable, in such complex negotiations of a highly technical character affecting the vital trade interests of the major participating countries, that a comparatively small number of interested countries should get together and negotiate in the first instance and that not every participant could be involved throughout or in every aspect of the negotiations. While the validity of the argument was conceded to some extent, and while it was realised that similar modalities are often employed in other international organisations, the difference in this case according to most developing countries, was that no sustained or visible efforts were made by those who chose to restrict the negotiations to small groups to involve the others as often

as possible and necessary, so as to obtain endorsements on a wider basis. This could possibly have been achieved by more frequent meetings of the Trade Negotiating Committee and of the Groups in the concluding stages of the negotiations.

How developing countries coped

29. There were, however, certain relieving features in this otherwise unsatisfactory situation. A few developing countries did field competent teams in Geneva for handling the negotiations and it was mainly owing to their efforts that the results in some areas such as Subsidies and Countervailing Duties, Technical Barriers to Trade, Import Licensing and Customs Valuation, and the improvement of the GATT Framework were even as moderately satisfactory as they turned out to be at the end.

30. Fortunately, too, developing countries could rely to a considerable extent during all the stages of the negotiations on the technical assistance provided by the agencies involved, namely GATT and UNCTAD Secretariats, as also the Commonwealth Secretariat. There was handsome and universal acknowledgement on behalf of the developing countries of the very valuable technical assistance provided by the GATT Secretariat. The UNCTAD/MTN Project, as well as the UNCTAD Secretariat, dealt not merely with general issues of relevance or interest to developing countries but with wider policy questions and the significance of the proposals sponsored from time to time. The Commonwealth Secretariat Unit in Geneva, in addition to providing developing member countries throughout the negotiations with periodical information on progress, as well as with individual studies and analyses, responded to requests for advice from time to time from a number of member countries in regard to the choices before them. Seminars held by the UNCTAD and Commonwealth Secretariats, and by the regional UN Economic Commissions in

cooperation with these two, at which senior officials of the GATT Secretariat invariably took part, also served to brief developing country representatives on the outstanding issues and how they needed to be dealt with.

Negotiations in GATT and in other forums

31. It would be interesting in this context to compare the procedures and modalities of negotiations in the course of the MTN with those in UNCTAD and other UN organisations. It is well known that neither the industrialised nor the developing countries have established in GATT the kind of caucus or organisation that has evolved in UNCTAD and other UN bodies, which have had well organised group systems for over a decade and a half. Although during the MTN, especially in the later stages, there came into existence an informal group of "less developed countries", which met every now and then in the GATT Secretariat premises under the chairmanship of one or the other of developing country representatives (for a long time Yugoslavia and at the concluding stages Colombia), the group at no time constituted anything corresponding to the '77'. It considered major issues arising in the MTN from time to time and quite often, at the meetings of the Committee on Trade and Development and in the Trade Negotiations Committee itself, statements were made by the Chairman of the Group on behalf of the Group as a whole, although individual countries continued to voice their particular concerns. But it seems that very much unlike the Group of 77 in UNCTAD, for example, there was no question of discussing every issue or the totality of issues or policies, strategies and tactics, at meetings convened before and during every session.

32. Simultaneously with the working of the GATT's informal Group, there was also at work an analogous group in UNCTAD (called the Co-ordinating Group of 77), meeting from time to time at the instance of the MTN Project of that Organisation. Apart from the fact that it was given technical briefing on several issues every now and then, its effectiveness vis-à-vis the negotiations seems to have been no greater than that of the Group within GATT.

33. Among other factors contributing to the absence of any formal group arrangements in the MTN was that the industrialised countries were able to get more or less what they wanted in the course of negotiations by a largely bilateral approach as between themselves and towards developing country problems. In any case, they had their own differences too, as has been indicated already, and in the situation which developed during the negotiations, they could not have much use for any kind of caucus among themselves (like Group 'B' in UN).

34. It has also to be mentioned that GATT, as a largely tradition-bound Organisation, has not encouraged any grouping of countries, and no servicing for Group meetings of the kind provided by UNCTAD is normally available from the GATT Secretariat. It has been argued that the interests of individual developing countries in GATT could be markedly different on different issues; and that the legal position is that they and each one of them, are a contracting party to the General Agreement, each having its own responsibilities and its own rights.

III. Role of Developing Countries in GATT

35. With the GATT itself set to function as the continuing machinery for further negotiations and to work out the future relationship between industrialised and developing countries in the field of international trade, the question arises as to whether the manner in which the organisation itself has been functioning and its procedures and practices are such as to ensure for developing countries a fair and proper participation in its decision making processes.

36. From a membership of hardly more than ten when the GATT was first established in the late 'forties, the number of developing countries which are actually members of the organisation, inclusive of those which have a de facto membership, has now risen to eighty-six. Keeping in view the dominant and nearly exclusive role of developed countries and the meagre participation of the developing countries over the first decade of its existence, it used to be said in the early years of GATT that it was essentially a "rich man's club". In spite of the setting up of a number of Committees in subsequent years to take care of the particular concerns of developing countries such the Committee on Trade and Development, the Sub-Group on Tropical Products, the 'Group of Three', etc., the feeling at the time the MTNs were launched remained that the participation of developing countries in the GATT was nowhere near being commensurate with the strength of membership they had attained by then in the Organisation.

37. The manner in which GATT discharges its responsibility through its various organs has contributed in no small measure to the feeling in the past among developing countries that its functioning is not conducive to a successful resolution of their problems. The Annual Meetings of Contracting Parties, the supreme body administering GATT, has rarely taken any substantial decisions itself, and acts generally on the recommendations of the Council. From meetings lasting a week or more in the early years, the Annual Sessions have latterly become purely formal

meetings of 1-2 days (except in the case of the 35th Session in 1979 which had to formalise all MTN decisions); all its powers, including settlement of disputes, have virtually been delegated to the Council, which consequently has emerged as the pre-eminent and most influential body in GATT, where the developed countries' voice is indeed powerful and decisive.

38. Almost all decisions in GATT bodies are by consensus, and opposition or reservation to particular proposals even by a single member, especially the more powerful members, would mean either the postponement of the issue or the rejection of the proposal. Indeed, it has often happened that even in disputes as between the major trading powers like the EEC, USA and Japan any reservation entered by anyone of them against an otherwise unanimous endorsement of a particular view has had the effect of delaying a decision until an understanding is reached between the parties involved. Bilateral approaches, which for developing countries necessarily mean acting from a position of weakness, could lead to compromises which would not necessarily be required to be entered into under the General Agreement and would not be in their interest.

39. At the end of the Tokyo Round, and taking into account the part sought to be played by developing countries in the course of the negotiations, it might have been hoped that there would be a significant augmentation of these countries role in the day to day functioning of GATT, in addition to the part they are to play in the continuing negotiations. This has no doubt happened, but only to a limited extent.

40. The GATT Committee on Trade and Development which was set up mainly to deal with the interests of developing countries has, in pursuance of the decision taken at the 35th Session of Contracting Parties in November 1979, acquired certain additional responsibilities and duties, and has also set up a Sub-Committee in terms of Resolution 131(V) of UNCTAD to deal with Protective Measures. An Agreement on the GATT Framework for the future of international trade, dealing specifically with a

number of concerns of developing countries, was reached at the end of the Tokyo Round, and the Committee on Trade and Development has the responsibility for supervising the implementation of the provisions therein relating to special and differential treatment for developing countries. Its work is to cover, in a vague sense, trade and development policies, including trade liberalisation and the special problems of the developed countries (for which a separate Sub-Committee has been set up). With all this, however, this body remains a kind of 'Grievances Committee' for developing countries where complaints are heard but little action by way of redress seems to emerge.

41. A great deal was expected of the Sub-Committee on Protective Measures which was set up under the Committee on Trade and Development as a result of the MTN, but the circumstance surrounding its establishment were hardly propitious. Even while it was being constituted, developed countries expressed reservations about its being empowered to make recommendations to the Trade and Development Committee, not to speak of taking any decisions. In the absence at its first meeting in July 1980 of any notification about the protective measures introduced by developed countries, the GATT Secretariat had itself prepared a statement for the use of the Sub-Committee of what could be regarded as protective action. However, the sensitivity in this behalf was so great that a qualification was made to the effect that it had been prepared without prejudice to the rights of GATT members and to the views of individual contracting parties as to the nature of nomenclature of the particular measures included in the statement. How far the Sub-Committee, either by itself or through its main Committee, can break through such legacies of past GATT procedures and fulfil its functions remains doubtful.

42. A Management Group, since commonly referred to as the CG-18 ("Consultative Group of Eighteen"), was established by a Council decision of July 1975, to fill what was at that time considered a lacuna in GATT organisation. This arose from the belief that as in the IMF at that time (with its Group of Twenty),

there should be a high-level body in GATT to deal with major policy questions, especially in view of the rising tide of protectionism; and a Group consisting of eighteen member countries was accordingly brought into being on a temporary basis (since made permanent), with equal representation for industrialised and developing countries (EEC being reckoned as one country). The terms of reference are, mainly, to keep under review international trade developments with a view to the maintenance of trade practices consistent with the General Agreement, and to act in order to forestall sudden disturbances in the trade field as far as possible. The Group was expected to take into account the special characteristics of developing country economies and problems, but its working was not to prejudice in any way the rights and responsibilities of contracting parties.

43. The Group has held several meetings - almost once in a quarter, and has been assigned certain specific functions in relation to GATT's post-MTN programmes, such as structural adjustment and trade policies, trade policy aspects of the North-South dialogue, and overseeing the implementation of MTN results. The effectiveness of this body, especially in dealing with the concerns of developing countries remains unclear after some five years of its working, partly because it has so far been able to address itself only to the more general issues and not dealt specifically with developing country problems.

IV. Tasks before developing countries - strengthening of their role in GATT

44. After the long and arduous labour involved in the conduct of the Multilateral Trade Negotiations, and with the limits more or less reached for further liberalisation in the tariff field as among the industrialised countries, it seems unrealistic to expect that there will be a further round of multilateral trade negotiations under GATT for at least a decade or more. (Indeed, there is an influential viewpoint that "the international trade negotiating process should be an on-going permanent feature of

the system and not one of periodic trade rounds".)¹ It would therefore be premature at this stage to consider how developing countries may face future ad hoc negotiations like the Tokyo Round, although their experience of these negotiations could have value in the further negotiations undertaken in GATT or elsewhere.

45. Developing countries have a present and continuing task securing the fullest implementation of the MTN results in their favour, negotiating within the GATT machinery the various unresolved problems and strengthening their position and role in the GATT framework.

46. In relation to the implementation of the results, there is comparatively little that can be done in the tariff field since negotiations in this area have been completed, and all that may be practicable is some slight advancing here and there of the staging of the reductions, about which much was heard but little done during the negotiations. In the tropical products area, the understanding still is that the unfulfilled requests of developing countries would continue to be dealt with in the GATT machinery, and this, together with the question of tariff escalation in this area, as well as generally with reference to industrial products, will therefore be among the priority issues to be pressed in the appropriate bodies of GATT. The experience gained by developing countries in MTN would have to be put to use in negotiating these and other issues, so as to avoid as far as possible the dangers of bilateralism and the tendency towards decisions reached among restricted groups being imposed without regard to the interests of parties not so involved.

47. Among the major issues still to be negotiated is the question of safeguards, and the hope that this would be resolved by the end of 1980 has had to be given up in view of persisting differences even as between some developed countries. The present intention would appear to be to reach some kind of

¹See Page 101 of the Article entitled "The Liberal Trade System by Professor J.A. Jackson in the Journal of World Trade Law - March-April 1978.

agreement by April 1981, for which purpose the Committee set up by the Contracting Parties will continue in existence. In any case, the indications are that since some ground has been yielded by developing countries already on the principle of selectivity, there could be more pressures on them in the direction of accepting the EEC position in regard to prior consultation, surveillance, and adjustment assistance measures, thus watering down considerably the stand that developing countries have taken on these issues.

48. The conclusion of a number of Agreements on Non-Tariff Measures has been regarded as a major achievement of the Multilateral Trade Negotiations, marking a significant advance from the objectives and accomplishments of the Kennedy Round. Nevertheless, it is in this area that developing countries have had serious reservations in many cases, and there has been a reluctance so far on the part of most of them to subscribe to Agreements. On balance, however, it would seem that their role in the GATT and their substantive concerns generally could be helped by their subscribing to most of the Agreements, especially as the provisions relating to special and different treatment for developing countries included in some of them are applicable only to signatory countries. Obviously, Agreements like those on Dairy Products and Meat, as also that on Trade in Civil Aircraft, have limited interest for them. In regard to Agreements like those on Technical Barriers to Trade and Government Procurement, the responsibilities that they will be called upon to bear if they subscribe to them may be outweighed in due course by the benefits that they might derive. The Agreements on Import Licensing and Customs Valuation could likewise involve few pronounced disadvantages, and even these may be overcome over a period of time. Some of these Agreements provide for delayed implementation in the case of developing countries, and special provisions for the least developed among the developed countries. It is essential that as and when they decide to participate in these Agreements, developing countries seek from the very beginning to put to use the technical assistance provisions to their fullest extent.

49. The Agreement on Subsidies and Countervailing Duties stands on a somewhat different footing. The USA made it clear from the beginning that it would not apply the provisions of the Agreement to non-participating countries, and consequently the so-called 'injury test' accepted by it under the Agreement in supersession of its domestic legislation would not be applied to countries which either do not accede to the Agreement or are not accepted by USA as partners in the Agreement. Thus, when India acceded to the Agreement earlier this year sometime after USA did, USA invoked the provisions of Article 19(9) to keep India out of its bilateral purview on the ground that no commitment of the kind envisaged under Article 14(5) - to phase out export subsidies - had been undertaken at the time of accession by India. Consequently, countervailing duties were imposed on certain imports from India into the USA without employing the injury test, and the matter has since been referred, at India's instance, to a panel under the provisions of Article XXIII of GATT. Examples like this have given rise to the apprehension that industrialised countries view the provisions of Article 14(5) as mandatory and not just hortatory.¹ They have also added to doubts about industrialised countries being earnest about implementing the provisions of such Agreements in letter as well as in spirit in cases where developing country interests are involved.

50. The circumstances in which it was finally agreed at the 1979 Contracting Parties' meeting that observers could be admitted to the deliberations of the various Committees set up under the various Agreements may have also added to the hesitancy on the part of developing countries to accede to the Agreements. The provision about allowing observers from countries which had not signed the Agreements upto November 1979 (this really meant the great majority of developing countries) was accepted by developed countries only after intensive negotiations, during which the latter had initially insisted on

¹. See Page 104 of the March-April 1980 issue of the Journal of World Trade Law; an Article by Professor Bela Balassa.

restricting access to the Committee meetings only to the signatories. However, with the provision to allow observers from other countries, it should now be possible for the latter to monitor the meetings of Committees to the fullest extent practicable, either through their Missions or through representatives sent specially to the periodic meetings, so as to enable them to decide eventually whether or not to subscribe to them.

51. Developing countries have repeatedly expressed their disappointment at the final formulations in the GATT Framework Text adopted at the 1979 Session of the Contracting Parties, which resulted in considerably watering down the initial Brazilian proposals. With the textual provisions as they stand, however, it is possible to envisage certain improvements in procedures for obtaining waivers as well as in those adopted for balance of payment consultations (which had been characterised in the past by some developing countries as harassing). It is imperative, therefore, that developing countries invoke the revised provisions in an unflinching manner that whatever has been achieved may be put to maximum use. The dispute settlement mechanism provided for in the text could be especially valuable from the point of view of developing countries, and it has been suggested that this could be used to bring in the so-called 'voluntary export restraints' - for whatever it may be worth.

52. Among the results of the negotiations is a provision for reviewing the working of GATT, keeping in view the demands and aspirations of developing countries, but to what extent and in what manner this will be done is unlikely to be known in the near future. The immediate preoccupation of all concerned, especially the industrialised countries, will obviously be the implementation of the MTN results, the consolidation of the various concessions agreed on and the functioning of the new bodies that have been brought into existence; these could well be offered as a reason for delaying any substantive consideration of major issues such as the further reform of GATT. It would nevertheless be necessary for developing countries to pursue this question sooner than later.

53. The question also arises as to how in the light of their experience of the working of GATT, developing countries may re-adjust their role in the coming years so as to derive the maximum possible advantage. It has been obvious that their rising membership and their predominant strength in numbers have not by themselves achieved an adequate improvement in developing country positions. Indeed, as Mexico recently pointed out when it discontinued the negotiation for GATT membership, "the position of poor countries within GATT is weak because they lack the economic and political potential, because the rules of the game do not favour them, and because the scope of the negotiations is limited". Mexico felt that "outside the General Agreement, on the other hand, they could rely on collective strength, use more appropriate forums, and the scope can be extended including strategies as well as products".¹ The implication is obvious that developing countries will have to continue to seek solutions to their trade problems elsewhere too - as, for example, in UNCTAD in fields like commodities, manufactures, GSP, transfer of technology, etc. and in the UN and elsewhere for fundamental policy changes.

54. Reference has been made in Section II of the paper to the question of organisation of regional and interest groups during the MTN. Considerations mentioned in that context apply *mutatis mutandis* to the normal workings of GATT also. Whatever the points of difference in the way in which developing countries organise themselves in UNCTAD and in GATT, there seems little prospect of any viable or strong group system evolving in GATT as it now functions. The hope that by subscribing to the various Agreements under MTN, developing countries can act as a 'pressure group'² seems rather slim in the circumstances; indeed the fact that many developing countries are still hesitant about signing the Agreements and are adopting a wait-and-see attitude seems to

1. Quotations taken from Page 54 of the Pre-Publication issue of the Journal "South".

2. See Page 118 Journal of World Trade Law, March-April 1980 - an Article by Professor Bela Balassa, entitled "The Tokyo Round and the Developing Countries".

be a measure of their scepticism in this behalf. As pointed out above, the role of developing countries as a whole has not been that of a 'pressure group' in spite of their numbers.

55. There is little doubt, however, that developing countries have to devote increasing attention to building up their individual capacities and skills, and utilising to the greatest advantage the technical assistance provided by GATT, UNCTAD and other similar organizations. Inherent in the process is the need for developing countries, which have so far refrained from bringing before GATT or its various bodies their grievances in the form of concrete complaints about contravention of particular provisions of GATT, to do so, instead of in terms of general complaints and grievances often made in the forum of the Committee on Trade and Development.

56. A feeling does exist that even the limited opportunities provided by the existing framework for securing a redress of their grievances are not being put to use by developing countries fully or by employing the accepted legal procedures. Far more use has been made by the developed member countries, for example, of the provisions of Article XXIII:2 about settlement of disputes than by developing countries. If developing countries are to play their full part in GATT, and the changes brought about in the MTN in the working of GATT organs are not to have merely cosmetic effects, there can be no escape from making as diligent use as possible of the provisions of the General Agreement and the new Agreements under MTN in regard to dispute settlement, as developed countries have invariably been doing all along. This has been rendered somewhat less difficult for them in view of the clearer statements of rights and responsibilities in a number of areas as a result of the MTN, and of the new disciplines introduced in some cases which may conceivably make for less frequent (or less obvious) exercise of power by the strong over the weak.

57. There is again a feeling that the new forums provided under GATT, such as the Sub-Committee on Protective Measures, are not being put to use to the maximum extent. In spite of a number

of communications in the latter half of 1980 from the Chairman of the Sub-Committee and the GATT Secretariat inviting from developing countries (among others) a catalogue of instances of protectionist action taken by industrialised countries, the response seems to have been meagre. This may have been because developing countries have not had the time or the resources to identify and bring to notice such instances; in some cases, too, the matter may not have received the attention it undoubtedly needs.

58. As indicated earlier in this paper, there is very little publicity about matters connected with GATT, especially in relation to developing country problems and how they are dealt with in the Organisation. It may serve developing countries' purposes better if the latter saw to it that their problems - and more especially what they regard as inequalities and imbalances - are brought to public attention as often as possible so that the curtain may at least occasionally be lifted from the normal workings of GATT and make them more responsive to developing country aspirations.

59. In the long term, however, all these may tend to be regarded as only modest improvements, whereas fundamental changes will be called for in the approach of GATT to developing country problems by which their role is strengthened. It may be that this will become more feasible if and when the global negotiations such as are envisaged under UN auspices make progress, rather than by efforts from within the Organisation alone.

V. Summary and Outlook

60. The intention in this paper has been to examine the role of developing countries in the Tokyo Round of Multilateral Trade Negotiations, and more importantly, their position in GATT as transformed by its results.

61. Although the objectives embodied in the Tokyo Declaration in respect of trade of developing countries marked a distinct

advance from those in the earlier GATT negotiations, it appeared soon after the commencement of the negotiations that the conduct and management of negotiations resulted in placing developing countries at a disadvantage. The on-again-off-again character of the negotiations in the first few years, and serious differences among the major participants on important issues which lasted almost till the last year of the negotiations contributed to the difficulties experienced by developing countries in organising effectively for their participation.

62. The manner in which the various Groups and Sub-Groups constituted by the Trade Negotiations Committee to conduct negotiations met and transacted business, and the paucity of information coming out of them from time to time in the initial years, and the failure of the Trade Negotiations Committee to discharge its tasks adequately, especially in the later stages, also constituted a serious hindrance to adequate developing country involvement.

63. Not least, the concentration of the negotiations in the final stages in the hands of a few major trading countries, with infrequent and inadequate consultations with developing countries (and sometimes even with other developed countries), confirmed the belief among developing countries that they were being pushed to the periphery in the negotiations. It is true that developing countries had greater opportunities in this Round than in the earlier negotiations, and that there have been certain gains such as in obtaining special and different treatment in particular areas while benefiting from the overall trade liberalisation. This, however, did not serve to mitigate at the time or later, their feeling of inadequate involvement in the negotiations.

64. The manner in which the Multilateral Trade Negotiations were conducted has undoubtedly its close parallel in the way in which GATT itself has generally functioned over the years since its inception. The negotiations, and to a smaller degree the working of GATT in the years preceding them, have led to some

desirable and somewhat marginal changes in the basic philosophy, objectives and goals of the General Agreement; but attitudes and procedures have changed little, if at all, and are still regarded as being more in tune with the permanent trading interests of the rich countries. GATT has thus remained very much the kind of instrument it was to begin with, one devised by industrialised countries for dealing with their mutual trading problems - and the addition of an impressive number of developing countries to the membership of the Organisation has not made the kind of difference that might have been hoped for. It is no coincidence that GATT was bracketed with IMF in the documentation put forwarded by the '77' at the recent special UN Session convened to launch global negotiations, it was an indication that there is close kinship between the workings of the two organisations vis-à-vis developing countries.

65. Developing countries have, all the same, to utilise for their benefit both the Organisation and the new instruments and modalities in the coming years. No ad hoc round of trade negotiations such as have been organised in the past under GATT auspices may reasonably be expected in the near future, and so long as a comprehensive international trade body such as has been envisaged in the past (and even in recent times as in the Brandt Commission report and by the Commonwealth Secretariat Task Force) remains a somewhat distant goal, developing countries will have to operate within the framework that has come into existence with a view constantly to improving it and for obtaining and maintaining their rightful share in decision-making and in securing benefits.

66. Thus, in addition to taking advantage of the modest tariff reductions (MFN as well as GSP), seeking further liberalisation in the tropical products area and continuously striving to secure improvements in the framework of GATT, they might, after a period of watching, decide on which of the MTN Agreements they would participate in. The Committees set up under these Agreements to supervise their working have wide powers, and but for the compromise (somewhat weak as it stands) about their

reporting periodically to the Contracting Parties, they threatened at one time to become completely autonomous and to compartmentalise the working of GATT. Several of the Agreements contain provisions for their amendment, and developing countries may well seek to obtain suitable amendments over a period of time; in any case the provisions in some of the Agreements about special treatment and about technical assistance for developing countries (and to the least developed among developed countries) would have to be fully put to use. The way in which some of the Committees have already functioned and the manner in which the provisions of at least one non-tariff Agreement have been interpreted and used by a major trading country do not augur well for their functioning in aid of developing countries, and this situation seems to call for even greater vigilance on the part of the latter.

67. More intensive and closer participation of developing countries in the working of the GATT Council by the use of such manpower as they possess and such assistance as they can get from GATT, UNCTAD, the Commonwealth Secretariat and other sources would seem to be indicated in the coming years for strengthening the role of those countries in the Organisation as a whole. It seems that the Committee on Trade and Development, although enjoying increased powers as a result of the Tokyo Round, seems destined to remain a body for airing developing country grievances without substantive powers; the hopes raised when a Sub-Committee for Protective Measures was constituted under it for putting protective action by developed countries under the microscope, do not yet seem to be showing signs of realisation, partly because of the developing countries' own inability to bring to notice and to highlight adverse actions the part of industrialised countries. In order that new instrumentalities of this kind may yield adequate benefits for developing countries, it needs to be reiterated that their own efforts in the field of participation will have to be considerably reinforced.

68. With the limitations under which developing countries have operated and will necessarily have to operate in the coming years in the GATT framework, and with no "evolutionary leaps" expected within the Organisation to improve the situation of developing countries, the latter have in the long run to look also for improvements by the exercise of external pressure - among others through the global round of negotiations envisaged under UN auspices in implementation of the New International Economic Order.