Developing Countries and WTO

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15 November 1998

The propensity to truck, barter and exchange one thing for another ... is common to all men, and to be found in no other race of animals

Before dwelling on exploring the specific position of developing countries with the GATT/WTO system (GATT/WTO will be used during this presentation interchangeably) a brief reference to the purposes and aims for which the original GATT was created.

These purposes are very well captured by the above words of Adam Smith with which I had chosen to open my speech. The GATT was meant in 1947 "to re-establish an international market and promote the revival of world trade. It was neo-liberal in conception and a reaction against the disastrous consequences of protectionism in the inter-war period. Its basic principle was non-discrimination and equal access to all national markets. Its objective was to promote the liberalization of trade on as broad a base as possible."

Bearing this goal in mind we now may move to investigate the position of developing countries in the GATT/WTO System. To start with a definition of developing countries is essential. From an economic prospective developing countries are those that have a low GDP resulting in low living standards and usually low wages. Ever since the Havana Conference the debate on whether rules of the sort incorporated in the GATT are suitable for non-industrial developing countries have produced volumes of literature and very heated debates. The debated problems historically had evolved through four Pre-Uruguay Round stages mainly characterized by preferential treatment for the developing countries. In the post Uruguay Round era the trading world is becoming increasingly different and some of the more advanced developing countries as well as those newly industrialized are expected to abide by the general trade rules as incorporated under WTO. Each of these eras has its own characteristics and is better discussed separately.

<u>I. Pre-Uruguay Round:</u>

Ever since the Havan Conference as Prof. Jackson observed ".... several developing countries, particularly Latin American countries, were sufficiently dismayed by the GATT rules that had evolved that they opted to stay out of the GATT system for years and even decades. (Mexico, for example, only recently joined the GATT.) In 1958 the GATT commissioned a special study by a group of eminent experts headed by Gotfried Haberler, to comment on the application of the world trading rules regarding trade of developing countries. the GATT itself had only one provision that explicitly allowed differential treatment for developing countries namely, Article XVIII dealing with governmental assistance to economic development. For the most part,

the GATT rules do not otherwise distinguish between trade of developing and developed countries."

Reference to preferential or differential and favourable treatment accompanied the Tokyo negotiation rounds, where at the launching declaration it was stated that:

> the need [was] for special measures to be taken in the negotiations to assist the developing countries...' It also recognized ' the importance of the application of differential measures to developing countries in ways which will provide special and more favourable treatment for them...."

Using Olivier Long classification and words, the progression toward differential and more favourable treatment for developing countries involved four successive stages: evolution of the doctrine on international trade and the conduct of trade policy; increased flexibility in GATT rules and in their practical application; reform of the legal framework; and inclusion in the new non-tariff barrier agreements of provisions favouring the trade of developing countries.

These are examined below.

A. Evolution of the Doctrine on International Trade Relations:

1. The new doctrine:

In the 1960s a new doctrine began to assert itself. It postulated a link between trade and development. It stressed that differential treatment should be introduced so that trade would become a means of promoting the more rapid economic expansion of developing countries.

Against the background of the disparity in economic structure and potential between the developed and the developing countries, it was argued that, 'however, valid the MFN principle may be in regulating trade relations among equals, it is not a suitable concept for trade involving countries of vastly unequal economic strength'.

This philosophy culminated in the Declaration of General Assembly of the United Nations on the New International Economic Order and, simultaneously there has emerged the 'law of development' and included in it, among other things, the notion of duality of norms.

2. Role of GATT:

Programmes and concepts:

Following the publication of the important Haberler report in 1958, a Programme for International Trade Expansion was initiated in the same year by the Contracting Parties. This was followed in 1961 by a Declaration on Promotion of the Trade of Developing Countries and in 1963 by a seven-point Action Programme, both of which were adopted by Ministers.

An examination of these programmes is revealing. They already contained a number of concepts, principles and proposals which have been absorbed into international language on economic development: preferences for developing countries; duty-free access for tropical products; differential duties; and technical assistance in export promotion.

These concepts were first enunciated in the GATT. It was a pioneer in this area. A considerable amount of its early work was taken up subsequently by other bodies.

3. Preferential treatment:

It should be stressed that GATT's work is carried out in conformity with its specific character as a multilateral agreement which creates legally binding rights and obligations. In other words, evolution in GATT does not take place on the basis of governmental declarations that do not impose conventional obligations on member countries.

These observations also apply to the inclusion in the GATT framework of provisions for preferential treatment and go some way toward explaining GATT's progressive approach in this respect.

Moreover, factors involved in the conduct of trade policy largely govern the incorporation of preferences in the legal framework of GATT. Two of them are discussed here.

Trade policy factors:

First, it is necessary clearly to delimit the differential treatment available to developing countries, so that it does not infringe on trade relations between developed countries. For it is essential that the non-discriminatory liberalization of trade between developed countries remains a firm principle in international trade relations. The same is equally relevant to the application of all other rules and procedures of the General Agreement between these countries.

If the notion of two levels of norms is to give impetus to the trade of developing countries, *a sine qua non* is respect by the developed countries for the norms generally applied. If this respect is not sustained, differential treatment for developing countries could have an opposite, unwanted effect.

Differential treatment: vehicle for development:

A second consideration is that differential treatment should not be construed as an end in itself. It is primarily a vehicle for economic development. Increased competitiveness of developing countries in certain sectors could possibly put them on an equal footing with countries that have extended differential treatment to them.

The two levels of norms must be susceptible, even in the medium term, to possible adaptation and transfer of countries from one category to another.

4. The progressive approach:

These observations explain why inclusion of the concept of differential treatment within the rules and procedures of the General Agreement, which create binding legal commitments, has by the nature of things had to be progressive.

The fluidity in the economic condition of developing countries and the constant expectation that advance in their process of development will enable them to move away from the preferential status, are also important factors in evolutive thought and practice in this area. As will be seen later, the enabling clause is a good example in this respect.

B. Flexibility in the Application of GATT Provisions in Favour of Developing Countries

It became apparent, against the background of the evolution in GATT doctrine and the pressing demands of the developing countries, that, in their early form, certain rules of the General Agreement failed to meet the needs of these countries and, at the same time, imposed excessive constraints on them.

The Contracting Parties have amended some provisions of the General Agreement in response to this demand for reform as explained hereunder.

In actual practice the contracting parties have not opposed measures considered by developing countries to be needed for their economic development, even when such measures were inconsistent with the General Agreement. They have avoided the strict application of the criteria or procedures by which the conformity of a measure is normally judged.

Differential and more-favourable treatment for developing countries has thus become progressively established in GATT practice.

This degree of flexibility *de facto* in the rules has allowed the adoption by developing countries of measures going to the limits of, or even beyond, the legal framework. The contracting parties have acquiesced, through a liberal interpretation of the relevant GATT provisions particularly Articles XVIII and XXV:5.

C. Reform of the Legal Framework

Apart from the fundamental reforms discussed below, several amendments designed to deal with certain specific points relating to economic development have been introduced into the General Agreement. Their purpose is to further the position of developing countries in their trade relations with industrial countries and to provide favourable treatment for them. The following relate to some of these amendments:

- the dispute settlement procedure, improved in 1966 and again in the Tokyo Round "framework" agreements in 1979;
- trade measures taken for balance-of-payments purposes (Article XII and XVIII B, as supplemented by the Tokyo Round "framework" agreements);
- safeguard action for development purposes (Article XVIII) revised a number of times, and again in the Tokyo Round "framework" agreements.

In the context of fundamental reform of the legal framework in favour of developing countries there will be discussed: the recognition of the principle of non-reciprocity; the 'enabling clause'; the notion of 'fuller participation'.

1. Recognition of non-reciprocity:

Part IV of the General Agreement with the title "Trade and Development", was adopted by the Contracting Parties on 26 November 1964 and became effective on 27 June 1966. It added three articles to the General Agreement: XXXVI, XXXVII and XXXVIII.

Adoption of Part IV had important legal and institutional consequences. It resulted in the first substantive reform of a basic GATT principle - the reciprocity of concessions. The developing countries are relieved of this commitment under paragraph 8 of Article XXXVI. The reform in fact gives legal form to a practice already followdd in GATT during the Kennedy Round (1964-1967).

A further consequence, this time of institutional importance, was the establishment of a new permanent organ in GATT: the Committee on Trade and Development. This development is based on paragraph 2(f) of Article XXXVIII which provides that the Contracting Parties shall 'establish such institutional arrangements as may be necessary... to give effect to the provisions of this Part'.

The task of the Committee is to follow the application of Part IV, to examine all questions of interest to developing countries, and to prepare such decisions as the Contracting Parties may be called upon to take in this area. Formally, the Committee reports directly to the Contracting Parties and not to the Council.

Part IV also has provisions dealing with action in favour of the trade of developing countries, whether by developed countries individually or through joint action by the Contracting Parties. The objectives and undertakings set down in these provisions are not given the form of precise legal obligations. Nevertheless, as experience has clearly shown, Part IV provides a legal basis and framework for systematic examination of the trade problems of developing countries and the search for solutions to them.

2. The enabling clause:

At this stage, it should be recalled that, through application of the MFN clause, the legal framework created by the General Agreement prescribed non-discrimination in trade between member countries as a basic principle and commitment. There was no provision for preferential treatment, except to validate preferences accorded by certain member countries and in force at the time the General Agreement came into effect. In exceptional circumstances, a contracting party may be relieved of a GATT obligation under the procedure for waivers in Article XXV:5. Such a waiver requires approval by a two-thirds majority of the votes cast which, however, must comprise more than half the contracting parties.

Under the influence of great political and economic changes, pressures progressively built up in favour of action of facilitate expansion of the trade of developing countries through the granting of import preferences to them. This required that countries should be able to give preferential treatment without contravening their obligation to conduct their trade relations strictly in conformity with the principle of non-discrimination.

The Contracting Parties were faced with this question when, in October 1970, the Generalized System of Preferences (GSP) was adopted in an understanding reached within the framework of UNCTAD. Without action by the Contracting Parties, the grant of preferences by developed to developing countries would have been in violation of Article I of the General Agreement.

The Contracting Parties adopted four Tokyo Round agreements with a bearing on the GATT legal framework governing the international trade system. One of these, entitled "Differential and more favourable treatment, reciprocity and fuller participation of developing countries" contains in its paragraphs 1 to 4 provisions that make up what is now known as the "enabling clause".

The "enabling clause" established for the first time in trade relations and in international economic law a permanent legal basis for preferences in favour of developing countries or between them. In its first paragraph the relevant Decision provides that: "Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties".

Paragraph 2 of the Decision provides for differential treatment in the following areas:

(a) "Preferential tariff treatment accorded by developed contracting parties to products originating in developing countries in accordance with the GSP";

(b) "Differential and more favourable treatment with respect to the provisions of the General Agreement concerning non-tariff measures governed by the provisions of instruments multilaterally negotiated under the auspices of the GATT";

(c) "Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the Contracting Parties, for the mutual reduction or elimination of non-tariff measures, on products imported from one another";

(d) "Special treatment of the least developed among the developing countries in the context of any general or specific measures in favour of developing countries".

This list is not exhaustive. A note to paragraph 2 states that the Contracting Parties may examine any proposal for differential and more favourable treatment.

Nor does the list cover so-called "special" preferences such as, for example, those resulting from the first Lomé Convention, which was examined by the Contracting Parties under Part IV of the General Agreement.

Under paragraph 3 of the Decision, differential treatment is designed to promote the trade of developing countries without raising barriers to the trade of other member countries. It must not prevent the reduction and elimination of customs duties or other trade restrictions on a MFN basis. Moreover, preferential treatment shall be designed and, if necessary, modified to meet the needs of the developing countries (paragraph 3(c)).

There are, in paragraph 4 of the Decision, the normal GATT provisions concerning notification and consultation.

3. The notion of "fuller participation" by developing countries:

While the "enabling clause" provides a permanent legal basis for preferences, it does not establish a legal obligation to grant preferences. Hence the name "enabling clause".

Yet the "clause", the "Decision on differential and more favourable treatment...", touches on the delicate question of the incidence economic progress in certain developing countries could have on the nature and content of differential treatment.

Paragraph 7 of the Decision indicates in general terms that these countries, with the progressive development of their economies and improvement in their trade situation, "... would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement".

The notion of "fuller participation" carries with it no obligations. The language relating to it is in the conditional. It is based on the expectation that, to the extent that their trade and economic position improves, developing countries will move progressively toward acceptance of the norms of the General Agreement and play a more important part in the application of the rights and obligations embodied in it.

There is a kind of co-existence between this two-fold notion - economic improvement and compliance with GATT provisions - and the concept of differential and more favourable treatment. It would not be unreasonable to look upon "fuller participation" as being the counterpart of the attribution of legal status to differential treatment.

D. Differential and More Favourable Treatment in the New Legal Framework

The fourth step in the progression toward differential and more favourable treatment was taken with the inclusion in the new non-tariff barrier agreements resulting from the Tokyo Round of provisions for such treatment in favour of developing countries.

The Ministers adoption of the Tokyo Declaration in September 1973 meant that differential and more favourable treatment became a formal commitment and an important element in trade policy.

It was to find a place in the legal framework of all the separate non-tariff agreements, negotiated in the Tokyo Round and incorporated in the framework of the GATT system. The relevant provisions are adapted to the specific nature of each agreement. Their technical characteristics govern the scope of application of differential treatment.

The details of differential treatment in the non-tariff barrier agreements will not be discussed here. They concern, in particular, the time-lag permitted for application of the agreements; increased flexibility in procedures; exceptions to certain rules; and technical assistance on the part of industrialized countries.

The movement toward differential and more favourable treatment was progressive. It was influenced by the conviction held by developing countries that equality among unequals is inequitable.

II. Uruguay Round:

The evolution of the special status of developing countries as described in Long's authoritative above cited account was recently questioned in light of the Uruguay single package idea. Here, countries cannot select the codes to which they would like to adhere. Rather any one country when joining the WTO must adhere to at least 95% of the treaty obligations. The only express exemption awarded to developing countries is that generally, if they so request, will be awarded longer phase-in periods. In addition it is argued that the differential and more Favourable Treatment awarded under the Tokyo Round was conditioned on the notion of gradual full participation by developing countries.

This implies that these countries will stop claiming such preferential treatment and exceptions from the general GATT Rules. This is what is occasionally referred to as the graduation issue. When will the developing countries accept more fully the general discipline of the GATT. It is time for them to graduate.

This conclusion, however, is not free from challenge. The General Agreement on Tariffs and Trade 1994 expressly states that:

> "1. The General Agreement on Tariffs and Trade 1994 ("GATT 1994") shall consist of:
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> (a) the provisions in the General Agreement and Trade, dated 30 October 1947, annexed to the Final Act Adopted at the Conclusion of the Second Session of the Preparatory Committee of the United Nations Conference on Trade and Employment (excluding the Protocol of Provisional Application), as rectified, amended or modified by the terms of legal instruments which have entered into force before the date of entry into force of the WTO Agreement;"

The text continues to include in the scope of GATT 94 certain legal instruments and understandings. Thus, it is arguable that the "Differential and More Favourable Treatment" as an exception to Article I of GATT 1947 is still valid. However, the special provisions concerning developing countries in several Uruguay Round texts will have to suppress any former conflicting provision. A good example is the new subsidy code which would apply to the exclusion of the old one which was more favourable to the developing countries. Arguably under the Uruguay Round understanding on Balance of Payments provisions, developing countries may still maintain discriminatory quotas.

The view supporting maintaining the preferential treatment to developing countries finds further support in the Ministerial Decision on Measures in favour of Least-Developed Countries which recognizes the need for exceptions and does not totally do away with the idea of preferential treatment. This latter agreement is greatly undermined by the limited content of the said Ministerial Decision which states:

> i. Expeditious implementation of all special and differential measures taken in favour of least-developed countries including those taken within the context of the Uruguay Round shall be ensured through *inter alia*, regular reviews.
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> ii. To the extent possible, MFN concessions on tariff and non-tariff measures agreed in the Uruguay Round on products of export interest to the least-developed countries may be implemented autonomously, in advance and without staging. Consideration shall be given to further improve GSP

and other schemes for products of particular export interest to least-developed countries.

iii. The rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the least-developed countries. To this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the least-developed countries in the appropriate Councils and Committees.

iv. In the application of import relief measures and other measures referred to in paragraph 3(c) of Article XXXVII of GATT 1947 and the corresponding provision of GATT 1994, special consideration shall be given to the export interests of least-developed countries.

v. Least-developed countries shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets.

3. Agree to keep under review the specific needs of the least-developed countries and to continue to seek the adoption of positive measures which facilitate the expansion of trading opportunities in favour of these countries.

The fact that exemptions in favour of developing countries are still legitimate practice is quite illustrated by the General Agreement on Trade in Services (GATS). However, the agreement on Trade Related aspects of Intellectual Property Rights (TRIPS) seems to imply the contrary. Each of these relevant provisions will be examined separately hereunder.

A: GATS and Developing Countries

Articles 4 and 5 of GATS allow Developing Countries certain exemptions. Article 4 states that:

"1. The increasing participation of developing country Members in world trade shall be facilitated through negotiated specific commitments, by different

Members pursuant to Parts III and IV of this Agreement, relating to:

(a) the strengthening of their domestic services capacity and its efficiency and competitiveness, *inter alia* through access to technology on a commercial basis;

(b) the improvement of their access to distribution channels and information networks; and

(c) the liberalization of market access in sectors and modes of supply of export interest to them.

2. Developed country Members, and to the extent possible other Members, shall establish contact points within two years from the date of entry into force of the WTO Agreement to facilitate the access of developing country Members' service suppliers to information, related to their respective markets, concerning:

(a) commercial and technical aspects of the supply of services;

(b) registration, recognition and obtaining of professional qualifications; and

(c) the availability of services technology.

3. Special priority shall be given to the least-developed country Members in the implementation of paragraphs 1 and 2. Particular account shall be taken of the serious difficulty of the least-developed countries in accepting negotiated specific commitments in view of their special economic situation and their development, trade and financial needs."

According to the International Trade Centre's interpretation, the above cited provision recognizes that there is asymmetry in the development of service industries in developed and developing countries and that this situation will have to be taken into account in the negotiations for the liberalization of trade in the service sector. To assist developing countries in the development of their service industries, it provides for a three-pronged approach.

First, it calls on countries to give priority to the liberalization of access in the modes of supply and service sectors of export interest to developing countries.

Second, it recognizes that in order to promote the growth of their service industries, developing countries may have to maintain higher levels of protection, both overall and in individual sectors. It therefore provides that these countries should have the flexibility to open fewer sectors to import competition and to liberalize fewer types of transaction.

Third, it provides that, while making commitments for liberalization, developing countries could impose conditions requiring foreign suppliers wishing to invest in the service industry and to establish a subsidiary (or other types of commercial presence) in their territory:

- To set up joint ventures;
- To provide the local company access to their technology and/or access to their information and distribution channels.

Pursuant to Articles XIX and XX which allow a country to indicate the limitations under which it will grant market access or national treatment, the developing countries generally have imposed several sectoral or horizontal restrictions. A sectoral restriction applies to a specific sector or activity while developed countries have included in their schedules of liberalized sectors almost all service sectors, developing countries schedules have covered only a limited number of sectors. As for horizontal commitments these cover an entire range of services. Almost all limitations under horizontal commitments apply to services for which a commercial presence in the importing country is necessary, and to the movement of natural persons.

Broadly speaking, developed countries have not specified many horizontal limitations on the establishment of a commercial presence by foreign suppliers. The creation of a subsidiary company or a branch by a foreign supplier to carry out a service activity or to make an investment in the domestic service industry will therefore continue to be permitted under their existing legislations. These, as a rule, provide for the grant of authorization on liberal terms.

However, developing countries have prescribed several limitations under the horizontal commitments. They have taken advantage of the provisions for increasing the participation of developing countries and have specified that permission to establish a commercial presence will be granted on the basis of economic need criteria to strengthen domestic service capacities. The conditions imposed for the attainment of this objective include the following:

- The establishment of commercial presence will be allowed on the basis of a joint venture;
- The foreign supplier will be permitted to have less than a majority share in the equity of such a joint venture;
- A specific number of board members must be nationals of the country;
- The foreign service supplier should use appropriate and advanced technology and managerial experience;
- It should train and pass on the benefit of technology to local employees;
- It should employ, wherever possible, domestic sub-contractors;
- It must furnish accurate and prompt reports on its operations, including technological, accounting, economic and administrative data.

Similarly Article V of GATS gives developing countries special consideration concerning economic integration where sub paragraphs 1-3 respectively state:

> 1. This Agreement shall not prevent any of its Members from being a party to or entering into an agreement liberalizing trade in services between or among the parties to such an agreement, provided that such an agreement:
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>   (a) has substantial sectoral coverage, and
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>   (b) provides for the absence or elimination of substantially all discrimination, in the sense of Article XVII, between or among the parties, in the sectors covered under subparagraph (a), through:
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>   (i) elimination of existing discriminatory measures, and/or
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>   (ii) prohibition of new or more discriminatory measures, either at the entry into force of that agreement or on the basis of a reasonable time-frame, except for measures permitted under Articles XI, XII, XIV and XIV *bis*.

2. In evaluating whether the conditions under paragraph 1 (b) are met, consideration may be given to the relationship of the agreement to a wider process of economic integration or trade liberalization among the countries concerned.

3. (a) Where developing countries are parties to an agreement of the type referred to in paragraph 1, particularly with reference to subparagraph (b) thereof, in accordance with the level of development of the countries concerned, both overall and in individual sectors and subsectors.

   (b) Notwithstanding paragraph 6, in the case of an agreement of the type referred to in paragraph 1 involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement.

This provision allows the developing countries an exemption to further economic integration.

B: TRIPS and Developing Countries

Unlike the GATS, the TRIPS Agreement will, to a large extent, have a harmonizing effect on standards for the protection of intellectual property rights throughout the world. With the exception of the obligation to protect pharmaceutical products, harmonization can be expected by 2000 when the transition period for the implementation of the Agreement by developing and transitional economies comes to an end. The emphasis of the Agreement on enforcement will result in stricter application at the national level of intellectual property rights both in domestic markets and at the border.

The Agreement will require significant changes in the IPR regimes of many developing countries. Several countries will, for example, need to extend patent protection in due time to pharmaceutical and chemical products, which today are excluded from protection under their national laws. Moreover, modifications will be required in the large number of countries which provide terms of patent protection that are shorter than the 20 years set out in the Agreement, allow exceptions to the 20-year term, or stipulate another duration.

With respect to copyright, arguably the main implication of the Agreement is the extension of copyright protection to software as literary works. A large

number of developing Members (and two developed Members) did not have any type of protection for computer software as of April 1994 and a few countries provided protection through legal instruments other than copyright law.

Another issue of particular interest for developing countries is the protection of plant varieties. The Agreement requires protection of these varieties by patents, by a *sui generis* system, or by a combination of both. Most developed countries, as they are members of the UPOV Convention, accord property rights to plant breeders. By contrast, only a few developing countries are members of UPOV and only a handful have *sui generis* protection systems (e.g. Argentina, Chile, Kenya, the Republic of Korea, Uruguay and Zimbabwe).[1]

This brief description of both GATS and TRIPS according to the International Trade Centre's interpretation of the Uruguay Round reveals a serious difference between the collective approach to either. While the treatment of developing countries under GATS supports the continuation of preferential treatment, that under TRIPS assumes the graduation philosophy. Which of these approaches will prevail as a general policy will be determined by practice in due course.

III. Conclusion:

The question that remains to be answered is whether the GATT/WTO rules are fair to developing countries? The mere fact that these rules do not distinguish between developed and developing countries does not necessarily support an affirmative answer to the previous question. It may be true that the GATT/WTO rules do not explicitly discriminate against the trade of developing countries. However, these rules may still operate in such a way to disadvantage the developing countries. First, the agreements distinguish between primary and non primary goods which adversely affect developing countries primarily exporting raw materials. Here, there a dis-incentive tariff wise to export even semi-processed products. Secondly, large and powerful trading countries could get away with more.

As Jackson observed that these concerns: "... would have to be balanced the observation that many developing countries were able to take advantage of either explicit or implicit exceptions in GATT so as to be able to pursue almost at will any form of trade policy they wish. For example, the balance-of-payments rules of Article XII and XVIII of GATT gave a claim to legitimacy for many measures implemented by developing countries, including quantitative

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1 Source: Carlos Braga, "Trade-Related Aspects of Intellectual Property Rights: The Uruguay Round Agreement and Its Economic Implications" (World Bank conference paper, 26 - 27 January 1995).

restrictions, despite the nominal prohibitions in GATT against such measures, and these texts continue to have some role, under the Uruguay Round.

Of course, any appraisal of the effects of the world trading rules on developing countries must also recognize certain advantages of these rules. For example, flawed as the rules are, the MFN clause does extend many privileges to developing countries (without reciprocal obligations) which might not be available otherwise. A trade "deal" between two large economic entities will often, through MFN, give benefits to economically smaller entities. In addition, the dispute settlement procedures, although also flawed, occasionally gave some added leverage to the trade diplomacy of weaker nations compared to what they would have when acting unilaterally or bilaterally. This was one of the motivations for them to enter the GATT or participate in specific Tokyo Round Codes.

The Uruguay Round strengthened dispute settlement procedures should be even more interesting for the diplomacy of developing countries, as the early cases suggest. (More than a third of the complaints have been brought by developing countries or jointly with developing countries.)"

The real issue for the developing world is that they have **to know the rules of the game well enough to use them for their advantage**. I find no better words to conclude with than those of Livy in his treaties on History stating that

> ***no law can possibly meet the convenience of everyone; we must be satisfied if it is beneficial on the whole and to the majority.***

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