
India in the GATT and the WTO

India was one of the 23 founding Contracting Parties to the General Agreement on Tariffs and Trade (GATT) that was concluded in October 1947. The country's leaders served as spokesmen for developing-country concerns in the discussions that led to the GATT, and India has often led groups of less developed countries in subsequent rounds of multilateral trade negotiations (MTNs) under the auspices of the GATT.¹ India's participation in these international economic negotiations is illustrative of its (and other developing countries') ambivalence toward the importance of trade and of the world trading system in accelerating development. This history (recapitulated in detail in an appendix at the end of this chapter) provides a broader sense of why India, along with other developing countries, avoided international integration for decades. The legacy of the colonial era as described in chapter 1 as a determinant of India's distrust of the international economy is but one part of the history.

We begin this chapter with a discussion of the Uruguay Round, the eighth and last round of MTNs under the auspices of the GATT, and assess the wide-ranging agreements of that round, including the creation of the World Trade Organization (WTO) to subsume the GATT in 1995. This assessment leads us to make recommendations for India's role in the new round of MTNs launched by the Fourth Session of the Ministerial of the Conference of the WTO at Doha, Qatar, in November 2001. India's reluc-

1. We have drawn extensively from Srinivasan (1998a) in writing this chapter. In the World Trade Organization (WTO) context, multilateral agreements are those to which all members of the WTO are parties, whereas plurilateral agreements are those to which some but not all members are parties.

tance to endorse this new round until the concluding plenary of the Doha session stemmed from its dissatisfaction with the agreement that concluded the Uruguay Round and also from vestiges of its inward-oriented development strategy from decades before the 1992 reforms.

The Uruguay Round

The Uruguay Round, which turned out to be far-reaching in its scope and coverage of negotiating agenda compared to the earlier rounds, had a bumpy start.

Events Leading to the Round

The GATT ministerial meeting of 1982 was called to examine the functioning of the multilateral trading system since the conclusion of the Tokyo Round in 1979. The preparatory committee for the meeting had compiled a long list of items for the consideration of ministers. The list grew in part because the GATT Contracting Parties felt free to add issues concerning their own parochial interests (e.g., services). Although the United States would have liked the meeting to be the first step toward a new round of MTNs, it did not attract much support at the meeting. Brazil and India led a group of developing countries that were strongly opposed on the ground that they were not ready to negotiate on services on an equal footing with industrialized countries.

These countries' second objection was that the industrialized nations had not lived up to their obligations with regard to trade in textiles and agricultural products. They demanded commitments from industrialized countries to rescind existing GATT-inconsistent measures (the so-called rollback demand) and not to introduce new ones (the so-called stand-still demand). The drafting of a ministerial declaration at the conclusion of the meeting proved contentious, and the final text that emerged at the end of 5 days of the meeting (2 days beyond its scheduled closing) was not a consensus document. The operational part of the final text enunciated a 2-year work program for the GATT (until its next ministerial meeting in 1984) involving 17 topics.

Even before the work program was completed, Japanese prime minister Yasuhiro Nakasone broached the idea of a new round of MTNs in 1983, and the leaders of seven industrialized countries (the so-called Group of Seven or G-7) in their meeting in 1984 agreed to consult among their trading partners about the objectives and timing of a new round. Developing countries, led by Brazil and India, continued to criticize industrialized countries' policies, and the European Commission's (EC's) reservations had not dissipated either.

Nevertheless, informal discussions in the GATT on a new round began in early 1985, and a special meeting of the Contracting Parties was called. The EC, Brazil, and India lessened their opposition and agreed informally to start the new round before the parties met in November 1985. At the meeting, the parties decided to establish a formal preparatory committee to put together a set of recommendations by mid-July 1986 for adoption at the ministerial meeting at Punta del Este, Uruguay, in September 1986.

The preparatory committee ran into many conflicts. The topics before the committee had expanded from the 17 in the work program of 1982 to 31, of which only 19 eventually became the subject of specific negotiation mandates. Four others came to be mentioned in the preamble to the ministerial declaration launching the Uruguay Round. Apart from the committee, individual countries and overlapping groups of countries began to circulate draft texts for the ministerial declaration. These included Australia, Canada, Japan, the Group of Nine (G-9, consisting of Australia, Canada, New Zealand, and the members of the European Free Trade Area); and the Group of Ten (G-10) developing countries, led by Brazil and India and also including Argentina, Cuba, Egypt, Nicaragua, Nigeria, Peru, Tanzania, and Yugoslavia.

Three main texts were presented at the meetings. The G-10 did not attract more members and presented a minority text to the preparatory committee. The G-9, in contrast, was able to attract a group of 20 developing countries to meet with it. The G-9 eventually came to include them and other major industrialized countries, growing to a membership of 40 countries. This Group of Forty, or G-40, chaired by Colombia and Switzerland, presented the majority text. Argentina on its own presented a third text (Low 1993, chap. 10).

Winham (1989) provides a fascinating description of the drama of the Punta del Este ministerial meeting. Without a single agreed-on text from the preparatory committee, the meeting began with three texts, but the main contention was between the G-10 and G-40 texts. The G-10 texts reflected the resistance of some developing countries—India and Brazil foremost among them—to the US demand to include new issues: services, intellectual property, and investment measures. But the G-10 position eroded, and a growing consensus emerged around the US position once the United States, in effect, gave an ultimatum that it would withdraw from the conference altogether if these issues were not included. The EC did not fully accept the position of the G-40 text on agriculture.

After three days of meetings and creative efforts to foster agreements, the negotiation chairman, Enrique Iglesias (then minister of foreign affairs of Uruguay) restricted the debate. Iglesias created a small consultation committee, with membership by invitation only, of 20 nations representing the contending positions at the meeting. In addition, two substantive groups on services and agriculture were established to work simultaneously with the consultation committee. Iglesias, on his own initiative, de-

cided to treat the G-40 text as the basis for discussion in the consultation committee over the protests of those developing countries supporting the G-10 text. He allowed amendments to the G-40 text that in turn drew protests from industrialized countries. Thirty-one amendments were initially offered, and they were subsequently reduced to 14.

Nothing substantial had been decided when the consultation committee met for the last time, less than a day before the ministerial meeting was to end. With the US delegation announcing with great fanfare that it would depart for the United States the next morning with or without a final declaration and threatening to call a vote in the committee rather than achieve a consensus, other members of the committee felt pressured to come to an agreement. India and the United States came to an agreement that the negotiation on services would be undertaken separately.

Other disputed items on the negotiating agenda of the round, such as trade-related intellectual property and investment measures, were quickly settled. An agreement was also reached on agriculture. With the settlement of these major issues, the 14 amendments to the G-40 text were discussed and withdrawn—except for a statement that was included in the objectives section of the final text. It called on nations to link actions on trade liberalization with efforts to improve the functioning of the international monetary system. The draft agreed to by the consultation committee was approved by the full plenary.

Brazil and India, the leaders of the G-10, did not attract more adherents to their main points of view in the prenegotiation phase of the Uruguay Round. Brazil's approach to the issues being negotiated subsequently shifted, reflecting a change of heart about the virtues of inward-oriented development strategies.² In fact, Brazil and India lagged behind other developing countries that had already started down the path toward international integration. Brazil adopted a series of liberalizing reforms only in mid-1991. India, the other major bastion of inward orientation in the G-10 group, initiated, also in 1991, a major dismantling of its barriers to trade and foreign direct investment after facing a severe macroeconomic crisis.

Many developing countries had at last come to understand that for their reforms to succeed, a liberal world trading order was essential, and their full participation in the Uruguay Round was a means of ensuring it. With the realization on all sides that too much was at stake for the round to be allowed to fail, an agreement was eventually reached.

2. Edwards (1995) argues that soul-searching about development began in Latin America in the early 1980s. It was driven by the failure of heterodox stabilization programs in Argentina, Brazil, and Peru; a realization of the contrast between Latin America's failure, by and large, with inward-oriented policies and the rapid growth of East Asia with outward-oriented policies; and a better appreciation of the Chilean experience with market orientation.

The Uruguay Round Agreement, India, and Developing Countries

The Uruguay Round Agreement (URA) as a single undertaking includes agreement on traditional GATT issues such as reductions of tariffs and tariff bindings, a not completely successful attempt to bring agricultural trade under multilateral disciplines, a major revamping and strengthening of the Dispute Settlement Mechanism (DSM), phasing out of the Multi-Fiber Arrangement (MFA) that was an egregious violation of GATT principles, an agreement on Trade-Related Investment Measures (TRIMs) and Trade-Related Aspects of Intellectual Property Rights (TRIPS), and a new General Agreement on Trade in Services (GATS). Since the conclusion of the Uruguay Round as envisaged, multilateral agreements on Financial Services and Telecommunications have been concluded as part of the GATS. In accord with the built-in agenda of the URA, a review of the agreements on agriculture and TRIPS was initiated in 2000. Negotiations on leftover items of the GATS (e.g., movement of natural persons and maritime services) have been folded into the post-Doha negotiation. We return below to the balance, from the perspective of developing countries, of the benefits and costs of implementing the commitments undertaken by the signatories of the URA.

The DSM of the WTO is stronger than the one in the GATT that it replaced. The GATT process was essentially political. A country against which a complaint was lodged could prevent the establishment of a panel to examine the complaint or veto the acceptance of the panel's report if one were established. The DSM of the WTO is a legal process: no member can prevent the establishment of a panel, and a consensus is needed to overturn the report of its Appellate Body if a party to a dispute appeals against the decision of the panel.

Although it is a good sign that many developing countries, including India, are using the process and that powerful countries such as the United States and the European Union members are abiding by its decisions, there is a serious danger of the DSM becoming inequitable. Because the dispute settlement process is more legal than political, an adversarial system has become its operating framework. Only those countries that can afford the costs of recognizing and litigating the violation of their rights by others, as well as defending themselves in cases brought against them make use of the system. Also, the DSM's Appellate Body has become very powerful, and in its interpretations of the GATT articles, particularly of Article XX, seems to have gone beyond what the GATT founders intended. Besides, it has chosen to accept amicus briefs from parties that do not represent WTO members. These are disturbing developments.

India stands to gain significantly if the market access commitments of the URA are implemented in full and in good faith. Bergsten (1999) cites

estimates of gains, ranging from 0.5 percent to more than 4.5 percent of GDP for South Asia. Canonero and Srinivasan (1995) estimate that India's bilateral trade with the United States and the European Union in textiles and apparel will increase by 2.6 percent and 4.3 percent respectively once the MFA is phased out. François et al. (1996) estimate gains to South Asia in the range of 0.44 to 4.10 percent of GDP from the phaseout of the MFA. Much of the gain to South Asia is likely to accrue to its dominant economy, India.

However, these estimates do not take into account the likely impact of China's accession to the WTO in 2002. Ianchovichina and Martin (2002) estimate the impact on India's per capita income during a 12-year period (1995–2007) after the start of the implementation of the URA as minus 0.4 percent, with most of the loss coming from India's losing a large part of its textile and apparel exports to China after the phaseout of the MFA on January 1, 2005. China's deeper tariff cuts also contributed to India's loss. However, the overall loss is small and could easily be reversed if India were to open its economy beyond its commitments under the URA.

The realization of these potential gains will depend on two factors: on Indian producers continuing to be or, if necessary, becoming internationally competitive; and on industrialized countries not circumventing the phaseout of the MFA through other means. There are reasons to worry on both grounds. India has not in the past utilized its MFA quotas in full in several products and has recently been losing its market share to its competitors. As the estimates of Ianchovichina and Martin (2002) indicate, China's being internationally competitive means that once it is in the WTO, India will lose its share even more, unless India takes steps to become competitive. The industrialized countries are attempting to circumvent their commitment to liberalize trade in textiles and apparel by using WTO legal antidumping measures. For example, the EC recommended the imposition of antidumping duties on gray cotton cloth exports from India and a few other countries. This is egregious—after all, an exporter with a binding quota on exports has nothing to gain by dumping. Fortunately, the EU Council of Ministers rejected the EC's recommendation.

India's full integration with world markets could potentially have significant effects on world prices of certain agricultural commodities (e.g., rice, vegetable oils, and fats). Also the needed adjustment—in the form of shifting cultivated area away from crops in which India is unlikely to have comparative advantage and toward those in which it has—would be painful in the short run. There is the further problem that there is substantial variation across states in India in the productivity of crops, and shifts in cultivated areas across crops will also imply that in some states cultivation of certain crops might have to be abandoned altogether.

Notwithstanding the possible terms of trade effects and adjustments, Indian farmers will benefit from full integration with world markets, assuming that industrialized countries, including the members of the Euro-

pean Union and the United States, will phase out their distortionary interventions in the market for agricultural commodities. In our view, it is in India's own interest to join with other major agricultural traders of the Cairns Group in any future negotiations to press for the complete elimination of interventions in agricultural trade and for bringing such trade fully under the WTO disciplines that apply to trade in manufactured goods.³

Uruguay Round commitments by India have begun to affect its trade policies, but there is still substantial trade protection in place. India increased the proportion of tariff lines it bound from 6 percent before the Uruguay Round to 67 percent as part of its commitments in the agreement concluding the round. Tariffs for nonagricultural goods, with few exceptions, were bound at 40 percent for finished goods and 25 percent on intermediate goods, with the reductions from applied levels to the bounds to be completed by 2005.

After some hesitation, and after having been ruled against by the WTO's Dispute Settlement Mechanism (DSM) on a complaint from the United States, India has finally brought its domestic patent laws into conformity with what is required under the TRIPS agreement. Under the TRIMs agreement, India notified the TRIMs maintained by it and has since eliminated them. Under the Information Technology Agreement, India is committed to eliminating tariffs on 95 tariff lines by 2000, on 4 lines by 2003, on 2 lines by 2004, and on the remaining 116 lines by 2005.

Reforms have been slow, however. India invoked the balance of payments provision of Article XVIII(B) of the GATT in an effort to delay the implementation of its commitment to phase out its existing quantitative restrictions (QRs) on about 2,300 tariff lines consisting mostly of consumer goods. It entered into bilateral agreements with Australia, Canada, Japan, and the European Union for the phaseout of QRs after these countries had filed a complaint against India with the WTO. The United States, however, persisted with its complaint, and the DSM ruled against India. India appealed against the ruling on the grounds that the DSM has no jurisdiction for ruling on the use of balance of payments provisions and that the WTO balance of payments committee should handle the matter. India lost this appeal, and all the QRs were phased out (partly in fiscal 2000 and partly in 2001).

The GATS, unlike the GATT, allows greater freedom to exempt particular services from the principles of the most favored nation (MFN) and national treatments (NT). It allows countries to choose sectors in which they take on commitments. India has made commitments in 233 activities.

3. The Cairns Group is named after Cairns, the town in Australia where it first met. As of March 2001, it included Argentina, Australia, Bolivia, Brazil, Canada, Chile, Cambodia, Costa Rica, Fiji, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, Philippines, South Africa, Thailand, and Uruguay.

India's unweighted average of bound tariffs on manufactured imports was as high as 51 percent (Mattoo and Subramanian 2000, table 2). In agriculture, like most other countries, India has participated in the shameful exercise of "dirty tariffication" and bound its rates at 100 percent on primary commodities, 150 percent on processed goods, and 300 percent on edible oil products. According to Mattoo and Subramanian (2000, table 4) the difference between bound rates and applied rates in 2000 exceeded 50 percent in 656 out of 673 tariff lines. Before the URA, India had bound its tariff at zero for some commodities. Since the URA, these bounds have been renegotiated and set at much higher levels. India, as a developing country, has availed itself of the full range of allowed exceptions and has made no commitments whatsoever with respect to market access or reduction of subsidies or tariffs.

TRIPS and India

In our view, it was a major mistake to have brought intellectual property issues into the WTO through the TRIPS agreement. As the late Nobel laureate Jan Tinbergen (Tinbergen 1952 and 1956) argued in his well-known work on policy assignment, there has to be at least one policy instrument per objective, and trying to use the same policy instrument to achieve more than one objective is a sure prescription for achieving none of the objectives efficiently and in full measure. The same logic applies equally to assignment of responsibility to international institutions such as the International Monetary Fund, the World Bank, the International Labor Organization, the World Intellectual Property Organization, and the agencies of the United Nations. The World Bank and the International Monetary Fund have their own mandates. So does the WTO. Going beyond the mandates of each to achieve unrelated objectives is inappropriate. There were already the World Intellectual Property Organization and the Paris and Bern conventions in the arena of intellectual property. There is the International Labor Organization for labor, and there is the United Nations Environment Program for the environment. There is no reason why these specialized agencies cannot be used as forums for negotiating and creating effective multilateral disciplines on intellectual property, labor, and environmental standards.

It is not too late to take TRIPS out of the WTO and put it into a redesigned World Intellectual Property Organization with a less legalistic and more economic focus as well as a more effective enforcement mechanism—although it is extremely unlikely to happen. We will return to possible amendments to TRIPS to make it more beneficial to India and other developing countries. Apart from the lack of rationale for TRIPS in the WTO, there is no compelling theoretical or empirical argument in favor of a uniform minimum life of 20 years for all patents regardless of

the nature of the invention—or, for that matter, for monopoly rights through patents as necessarily the cost-effective means for encouraging innovation (Srinivasan 2001).

Bhagwati (2001) points out that unlike traditional trade liberalization, in which a liberalizer and its trading partners gain, intellectual property protection through TRIPS involves an unrequited transfer of royalties from user (developing) to producer (industrialized) countries. Maskus (2000, table 6.1) estimates a transfer of \$8.3 billion to just four industrial countries. If one uses a broader measure, namely, net receipts from royalty and license fees, in 2000 only France, Sweden, the United Kingdom, and the United States had positive net receipts. The net *outflow* on this score from low- and middle-income countries amounted to \$9.2 billion (World Bank 2002, table 5.11).

India has a vital interest in ensuring that any future agreement reached on the movement of natural persons is very liberal. It is likely to have comparative advantage in labor-intensive services as well as in certain skill-intensive ones such as software. Software is one of India's fastest growing industries in the electronics sector. Software exports grew by an impressive 43 percent a year between the periods 1991–92 and 1996–97 and by 68 percent in 1997–98. Even in 2001–02, when there was a recession in export markets (particularly the United States), export growth was 23 percent above the previous year. The industry expects export growth of 22 percent in 2002–03 (NASSCOM 2002b).

Although exports of software from a domestic base will continue to grow, provided the industry remains competitive, providing in situ services in foreign markets and keeping up with technological developments require Indian software technicians to have the opportunity to work abroad, without necessarily having to migrate permanently. Most of the Indian engineers entered the United States under a special category of nonimmigrant visas. In 1999, nearly 55,000 visas were issued to Indians, as compared with 6,700 to Chinese. But there is strong pressure to restrict the number of such visas issued. A liberal agreement on the movement of natural persons would facilitate such temporary migration.

Although India is a significant player in the world software market, there are reasons to believe that it may not realize its vast potential unless major policy changes are made. We noted in chapter 2 that a study by McKinsey and Company (2001, vol. 3, 143–61) highlighted this potential. It projects annual revenues of \$87 billion, 2.2 million jobs, and a market capitalization of \$225 billion for the Indian information technology sector by 2010. By the same year, that sector could account for 35 percent of India's exports, attract \$5 billion in foreign direct investment each year, and contribute more than 7.5 percent to the growth of GDP.

In contrast to this potential, the actual situation as of 2001 is sobering: India accounts for less than 2 percent of the world software market. The industry's focus is on proprietary work for foreign organizations, which

is only a small part of the global market. Indian industry has not penetrated the large off-the-shelf software market. India's cost advantage of having inexpensive software professionals will be eroded as other players with similar or lower costs enter the market. The benefits from an efficient software industry are not simply greater export earnings and foreign direct investment but the significant gains in the productivity of resource use in the domestic economy.

The single most urgent policy action needed for India to realize the potential of its software industry is to ensure that a vibrant and efficient world-class telecommunications infrastructure is in place. Unfortunately, a conflict between the Department of Telecommunications (DOT) and the Telecommunications Regulatory Authority of India (TRAI), as it was initially constituted, hampered progress toward an efficient telecom infrastructure. A national telecom policy was announced in 1999. TRAI was reconstituted in 2000, and its dispute resolution powers are now vested in a new quasi-judicial agency. The conflict of interest arising from DOT being both a policymaker for the industry and also a service producer through its overall control of public-sector telecom enterprises is also resolved. DOT as a service provider has been corporatized and separated from its policymaking role. There is reason for cautious optimism that an efficient telecom infrastructure will develop in the near future, as we discuss in chapter 4.

In customized software, India's recent share is a commanding 16 percent. In California's Silicon Valley,

almost 3000 of the region's high-tech companies are run by Chinese and Indian engineers. . . . Apart from generating annual sales of almost \$17 billion last year and providing 58,000 jobs in California's high-tech zone, Asian entrepreneurs have established long-distance business networks especially with Taiwan and India, which offer valuable openings for investment and trade. . . . Chinese and Indian chief executives ran 13 percent of the Silicon Valley technology companies started between 1980 and 1984 and 29 percent of those launched between 1995 and 1998. (*Financial Times*, July 3-4, 1999, 3)

With a liberal multilateral agreement on the movement of natural persons, India could potentially increase its share.

India and the New Round of Multilateral Trade Negotiations

Reminiscent of its lack of enthusiasm for the Uruguay Round, India was reluctant, for several reasons, to endorse the start of a new round of MTNs in the preparatory meetings for the Third Session of the Ministerial of the Conference of the WTO in Seattle during late November 1999. First of all, unlike agreements on earlier rounds of MTNs that largely covered com-

mitments on measures at the border such as tariffs and quotas, the URA involved domestic policy commitments. Implementing the required behind-the-border commitments entailed institutional development—more than merely changing a duty rate in the customs code. The Uruguay Round “overlooked the costs of the institutional construction needed for the least developed countries” (Odell 2002, 403). Signatories undertook several “unprecedented obligations not only to reduce trade barriers, but to implement significant reforms both on trade procedures (e.g., import licensing procedures customs valuation) and on many areas of regulation that establish the basic business environment in the domestic economy (e.g., technical, sanitary and phytosanitary standards, intellectual property law).”⁴

Ostry has aptly described the shift from the GATT to the WTO system: “the inclusion of the new issues and the creation of the new institution, the WTO, was to transform the multilateral trading system. . . . The most significant feature of the transformation was the shift in policy focus from the border barriers of the GATT to domestic regulatory and legal systems—the institutional infrastructure of the economy. . . . Implicit in this shift . . . is a move away from a model of *negative* regulation—what governments must not do—to *positive* regulations, or what governments must do” (2002, 287–88; emphases added). Under the single undertaking rule, participating countries had to accept all the multilateral agreements related to goods and services, and also TRIPS understandings on dispute settlement and on trade policy review mechanisms. Thus they had no option to pick and choose among the many agreements for acceptance. In fact, there were only *four* plurilateral agreements (on civil aircraft, government procurement, dairy, and bovine meat) that did not form part of the single undertaking.

Second, a fairly strong case can be made that the URA was unbalanced: developing countries undertook many costly commitments and obtained only a few commitments in return. Industrialized countries agreed to phase out MFA quotas and undertake a limited liberalization of agricultural trade. In fact, on balance, there was virtually no liberalization of agricultural trade in the URA. Although subsidies on exports of manufactures (which some developing countries offered to their infant manufactured exports) were made WTO-inconsistent, agricultural export subsidies (which were used mainly by industrialized countries, particularly the members of the European Union) were reduced, but not eliminated. It is true that developing countries were given a longer time to implement their commitments as compared with industrialized countries. As the implementation began, however, many developing countries found that even the longer implementation periods might not be long enough. India wanted the issues of imbalance and implementation to be addressed before the start of any new round.

4. Finger and Schuler (2000, 511).

Third, in India's view the mandated review of the agreements on agriculture in the Uruguay Round, TRIPS, services, and the yet to be initiated negotiations on maritime services, would occupy negotiators for some time to come. Also, an agreement on the movement of natural persons is yet to be reached. Fourth, given the problems of implementation of Uruguay Round commitments, India felt that it was too soon to add commitments from a new round of negotiations. India's opposition to the start of a new round of MTNs continued even after the failure of the Seattle ministerial in the period before the fourth ministerial meeting opened in Doha in November 2001. Before turning to India's role at Doha, it is useful to explore the reasons for the failure of the Seattle ministerial.

The Failed Ministerial at Seattle

The first point is that there was no agreement at preparatory meetings on a draft of a ministerial statement for discussion at Seattle. Agricultural protection, in particular, was a divisive issue; agricultural exporters of the Cairns Group, Japan, the European Union, and the United States were deeply divided on the elimination of export subsidies and import restrictions. As was noted above, there was no agreed-on draft at the start of the Punta del Este ministerial—the division on agriculture among the European Union, Japan, and the United States then was equally wide, and developing countries were against the inclusion of new issues such as services in the negotiating agenda. Yet at the last minute, a compromise was reached that launched the Uruguay Round. However, this did not happen in Seattle. Why?

Although the demonstrations and the violence on the streets of Seattle did disrupt the meetings, they had little to do with the failure of the ministerial. It was clear that the demonstrators were merely exploiting for their own purposes the genuine unease in industrialized and developing countries over the impact of the forces of globalization. They did not represent the majority of the population of workers of the United States, let alone of the world as a whole. The position taken by the AFL-CIO labor organization in the United States, a participant in the Seattle demonstration, on linking trade with the observance of "core" labor standards, was not shared by some major labor unions in developing countries, including India. The AFL-CIO represents no more than 15 percent of US workers, and it certainly does not represent organized or unorganized workers in developing countries.

To say that demonstrators represented narrow segments of world opinion is not to say, of course, that all the concerns of the demonstrators were without merit. Indeed, the demand for greater transparency in the processes of decision making in the WTO, particularly of its dispute settlement mechanism, is not without merit. Nevertheless, the allegation that

the WTO is a supranational agency that tramples over the sovereignty of its members to serve the interests of transnational corporations at the expense of the world's workers and the environment had no merit whatsoever. It was, in fact, based on a complete misunderstanding, if not a willful misrepresentation, of the fact that the WTO is simply a facilitating forum for its member governments to ensure that the agreements and commitments into which they have voluntarily entered are kept.

The reasons for failure are elsewhere. The experience of the Uruguay Round encouraged a cautious approach. Many developing countries had concluded that, in retrospect, the URA was unbalanced in that it included TRIPS and TRIMs agreements that overall certainly did not benefit them in the short run (and probably not in the long run) in return for a back-loaded phaseout of the MFA. In terms of market access, even after the URA commitments on reductions were allowed for, tariff peaks and tariff evaluation remained—and they mostly affected the exports of developing countries.

It is plausible that most developing countries did not anticipate the outlines of the eventual TRIPS agreement when they consented to include intellectual property in the Uruguay Round agenda. There was genuine concern among developing countries that the distinction between discussions leading to an agenda for negotiations and substantive negotiations on items to be included on the agenda had become blurred. Further, they were being pressured to bring labor and environmental standards into the WTO. Developing countries justifiably feared that any compromise on their part on issues to be included in the negotiating agenda would hurt them in subsequent negotiations. With the high perceived cost to them of the final TRIPS agreement very much in mind, they were less willing to compromise on including items (e.g., the so-called Singapore issues relating to investment, competition policy, trade facilitation, and transparency in government procurement) in the agenda of any future round for fear that an eventual agreement on some might be costly to them.

Many developing countries also felt that they had no voice in the so-called green room process in which a select group of countries participated in the negotiations and decided on an agenda that they later presented to the plenary. The fact that the leader of the delegation of the most powerful trading nation also chaired the ministerial did not help.

The single most important reason for the failure, however, was the statement by then-US president Bill Clinton that trade sanctions could be used to enforce core labor standards. It ruled out any compromise on the part of developing countries. It is evident that domestic political considerations, particularly ensuring the support of the labor unions for the Democratic Party in the 2000 presidential elections, weighed heavily in his decision to make such a statement. He insisted on linking trade with labor standards from the Seattle meeting until the end of his term. It remains to be seen whether President George W. Bush will also do the same. We hope

that as a self-proclaimed free trader, he would see through the deceptively appealing notion that lower labor standards in a country relative to those of its trading partners confer on it an unfair competitive advantage.⁵

Labor, Environmental Standards, and the WTO: Key Misconceptions

The inclusion of labor standards in international trade agreements dates back to the charter of the International Trade Organization. Article 7 of the stillborn organization stated, “The members recognize that unfair labor conditions, particularly in the production for export, create difficulties in international trade, and accordingly, each member shall take whatever action may be appropriate and feasible to eliminate such conditions within its territory.” The articles of the GATT, however, did not deal with labor standards except to prohibit trade in goods made with prison labor. Various administrations in the United States, both Democratic and Republican, unsuccessfully proposed the inclusion of a labor standards article in the GATT during several rounds of MTNs. Political parties have made similar proposals in national parliaments in several European countries and also in the European Parliament.

The demand for the formal inclusion of a “social” clause in the mandate of the WTO was raised *after* the painful and lengthy negotiations of the Uruguay Round had been completed and almost held the negotiated agreement hostage. The agreement was signed, but with an understanding that the topic of labor standards could be discussed by the preparatory committee for the WTO. At the first two ministerial meetings of the WTO in Singapore and Geneva, in 1996 and 1998 respectively, the ministers firmly shut the door against a social clause in the WTO, a decision that they reaffirmed at Doha. Still, with the United States continuing to push for a social clause—and in fact including clauses relating to labor standards in its bilateral trade agreements—it would be unwise to assume that the issue has lost its salience.

The fact that the demand for a social clause is unlikely to be given up by its powerful protagonists such as the United States does not necessarily make it legitimate. Indeed, if ethical considerations were the only factor behind this recent interest in labor standards, there would be no rea-

5. Unfortunately, by recently imposing tariffs on steel on the grounds that imports were hurting domestic industry and signing a bill providing large subsidies to agriculture, he has tarnished this image. However there are hopeful signs of change. The recent proposal of the Bush administration in the WTO negotiations on agriculture seeks a “ban on export subsidies, payments provided to increase foreign sales and sharp cuts in domestic support [capping it] at 5 percent of a country’s total farm output, a [cut in] tariffs on farm products from a world-wide average of 62 percent to 15 percent in five years” (*New York Times*, July 24, 2002, A6).

son for demanding a social clause. There are better ways to promote them.

Srinivasan (1998c) has examined the arguments for the use of trade policy instruments for enforcing labor standards and human rights more generally and does not find them persuasive. It is frequently argued that fair trade or level playing fields constitute a precondition for free trade and therefore that the harmonization of domestic policies across trading countries is necessary before free trade can be embraced to one's advantage.

This argument is most manifest and compelling in its policy appeal in the area of environmental standards. It can be shown (Bhagwati and Srinivasan 1996), however, that the arguments in favor of free trade and diversity of environmental standards across countries are essentially robust. This follows from a straightforward extension of the proposition that, under standard assumptions ensuring perfect competition in all relevant markets, free trade is globally Pareto optimal. The introduction of environmental externalities (both domestic and international) necessitates the use of appropriate taxes, subsidies, and transfers to internalize the externality but does not call for a departure from free trade to achieve a globally Pareto-optimal outcome. Although some policy problems do arise in the context of transborder externalities, it suffices here to say that trade policy remedies are rarely the appropriate ones with which to address them.⁶

Although there are far better means than trade sanctions to protect the environment, promote better working conditions, and keep children in school rather than allowing them to work in poor countries, the demonstrators in Seattle—namely, the nongovernmental organizations (NGOs) and unions—were either unaware of them or worse still deliberately ignored them so as to create the impression that they held the moral high ground in agitating for a social clause. By contrast, the traditional protectionist lobbies in industrialized countries could not justify their transparently selfish protectionist objective on ostensibly moral grounds. Bhagwati (2001) suggests that the moral ground claimed for the social clause made it difficult for developing-country delegations to have their voices of opposition heard.

India and Multilateral Trade Negotiations after Doha

Although many of the concerns of India and other developing countries discussed above are legitimate and have some force, it is our view that these concerns are unlikely to be addressed except as part of a new round of MTNs. There are also many other substantial reasons for India (and de-

6. We refer the reader to Bhagwati and Srinivasan (1996) for an elaboration of these problems.

veloping countries) to be in favor of a new negotiating round. Yet, as Panagariya (2002) points out, India joined the Fourth Session of the Ministerial of the Conference of the WTO in Doha in November 2001 with a rather extreme position. India's commerce minister and leader of the Indian delegation at Doha, Murasoli Maran, in his opening statement said, "Rather than charting a divisive course in unknown waters, let this conference provide a strong impetus to the on-going negotiations on agriculture and services, and the various mandated reviews that by themselves form a substantial work program and have implicit consensus . . . [on Singapore issues]. . . . Questions remain even on the need for a multilateral agreement" (quoted in Panagariya 2002, 280).

Though agreeing that India's opposition to the inclusion of Singapore issues is defensible, Panagariya (2002) found India's stance disturbing on three aspects: (1) a failure to lend unequivocal support to liberalization in industrial products and, indeed, outright opposition to such liberalizations where India was concerned; (2) unduly large dispensation of the negotiating capital on the virtually empty box of implementation issues; and (3) posturing that seemed to convey the impression that India was opposed to the launch of the new round altogether. We concur with Panagariya's assessment.

India did not succeed in halting the launch of a new round at Doha. The ministerial declaration at the conclusion of the Doha session not only launched it but also enunciated a work program for the WTO involving the negotiation agenda and steps for meeting the challenges of the multilateral trading system. On the Singapore issues of environment, investment, and competition, the ministers agreed that negotiations would take place on the basis of a decision made by explicit consensus on modalities at the next ministerial conference in Cancún, Mexico, in 2003. India had to content itself with the clarification by the chair of the conference that the phrase "decision to be taken, by explicit consensus" applied to both the start of negotiations and their modalities. The legal standing of this clarification is doubtful; for all intents and purposes, only modalities of negotiations will be decided at Cancún, and negotiations will start thereafter. In the end, Maran joined other ministers in supporting the decision to launch a new round. In fact, he even claimed that the decision is a victory for India!

Briefly stated, on issues of implementation of the Uruguay Round commitments on which India expended so much negotiating capital in insisting that they be resolved—more or less as a "down-payment up front," before the start of any new round of MTNs—the Doha ministerial declaration did not announce any substantive decisions other than the easing of procedural constraints, appeals to members to use restraint in exercising their rights in relation to developing countries, and requests to WTO bodies to examine proposals that may help them (e.g., a request to the council on trade in goods to examine the proposal that when calculating

the quote levels for the remaining years of the MFA, members will apply the most favorable methodologies available).

On agriculture, the ministers, “without prejudging the outcome of negotiations,” committed themselves to “comprehensive negotiations aimed at substantial improvements in market access; reduction of, *with a view to phasing out, all forms of export subsidies*; and substantial reductions in trade distorting domestic support” (WTO 2001, para. 13 and 14; emphasis added). If these new commitments and earlier ones to establish a fair and market-oriented trading system that is free of distortions in agricultural markets were kept, the gains to India and other developing countries would be substantial. On nonagricultural products, the ministers agreed to reduce or eliminate tariff peaks, high tariffs, and tariff escalations on products of urgent interest to developing countries. On TRIPS, the ministers, in their declaration of public health, clarified its compulsory licensing provisions.

It is evident that, tactically, there is very little India (or developing countries that even together do not account for a significant share of world trade) could do to stop a new round if major world trading powers wish to start one. The Uruguay Round drove home this fact. Winham (1989, 54) attributed to one official who was involved in the negotiations that led to the Uruguay Round the following description of those negotiations: “It was a brutal but salutary demonstration that power would be served in that nations comprising five percent of world trade were not able to stop negotiation sought by nations comprising ninety-five percent of world trade.”

This being the case, India’s negotiating capital could have been more wisely deployed to ensure that the negotiating agenda was in its interest rather than to attempt to forestall a new round. After all, India has to remain actively engaged in the multilateral trading negotiations and system in its own interests (Mattoo and Subramanian 2000). Such engagement facilitates and “locks in” domestic reforms, provides a means of making commitments to the pursuit of good policies credible, ensures and expands India’s access to world markets, and above all strengthens the multilateral process against threats of regionalism.⁷

Bergsten (1999) identifies several issues that are of great interest to India and that, in his view, India could present for inclusion in the negotiating agenda of the new round:

- ensuring that high tariffs will not replace, especially in the United States, the MFA quotas on many Indian apparel and textile exports after the phaseout of the MFA;

7. China is in fact using the commitments that it has made in its WTO accession agreement as a means of accelerating and deepening domestic reforms.

- ensuring elimination of the very high tariffs on agricultural imports in many industrialized countries, especially on products of export interest to India (e.g., rice);
- reaching new agreements on foreign direct investment that would both expand its levels and help India achieve a fair share of its benefits;
- instituting tougher disciplines on the use of antidumping duties, especially by the United States and the European Union;
- liberalizing the movement of natural persons, where India has a strong competitive advantage, under the GATS;
- eliminating preferential tariffs in regional arrangements, including the European Union and the North American Free Trade Agreement (NAFTA), that discriminate against Indian exports; and
- further strengthening of the DSM to help protect the rights of countries with lower trade levels.

We would, however, strengthen a few of Bergsten's suggestions and add some of our own.

First, we would suggest that India focus on obtaining greater commitment on the part of industrialized countries to maintain liberal market access. Tariff peaks and tariff escalation continue to limit developing countries' access to industrialized-country markets. In particular, markets for agricultural products, textiles, and apparel have remained closed despite the stated aim of the URA to lower border protection.⁸

Many countries have also resorted to antidumping measures and other nontariff barriers to protect their markets, and India is a frequent target of these trade-preventing tactics. According to the WTO (*Annual Report 2001*, tables IV.5 and IV.6), between July 1, 1999, and June 1, 2000, products exported from India were subject to 11 antidumping investigations, the seventh largest in number. The EU Commission has also recommended the imposition of antidumping duties on gray cotton cloth exports from India and a few other countries, a suggestion that could be attributed only to crass protectionist motives.

Unfortunately, India appears to be emulating the worst practices of industrialized countries. Between the establishment of the WTO in January 1995 and the end of 2001, it initiated 248 antidumping actions, the second

8. According to a recent report by the Organization for Economic Cooperation and Development, or OECD (*Financial Times*, April 11, 2001, 11), the URA has had limited impact—subsidies to producers accounted for as much as 40 percent of farm income in 30 OECD countries, and for more than two-thirds in Japan, Norway, South Korea, and Switzerland. The OECD report concludes that agricultural protection in rich countries is largely responsible for the stagnation at 40 percent of developing countries' share of global agricultural trade, whereas their share of manufactured trade has doubled from 14 to 29 percent in the past two decades.

largest number after the United States (255), and slightly larger than the 246 initiated by the EC. There were 69 antidumping measures initiated against India during the same period (<http://www.wto.org>, July 2002).⁹ We deplore this trend and would recommend that India commit to eliminating the use of antidumping measures and to reducing its own tariffs (still high in comparison to those of other Asian developing economies) in return for market access.

Second, India and other developing countries have to be united in ensuring that the use of trade sanctions—for enforcing non-trade-related objectives such as intellectual property rights, human rights, and labor and environmental standards—do not get legitimized by expanding the mandate of the WTO in any future round. As was mentioned above, the TRIPS agreement has imposed high costs on India and other developing countries. The Trade and Environment Committee of the WTO could also be costly for India because the current linkage between market access and the enforcement of labor standards may offset the comparative advantage of India and other labor-abundant countries in labor-intensive products.¹⁰

These agreements are unlikely to be renegotiated or removed from the international agenda, however, and thus our advice focuses more on ways to mitigate their impact. The Doha ministerial declaration on public health, besides clarifying the compulsory licensing provisions of TRIPS, has extended the time period of implementation for least-developed countries. These are useful steps. More could be done to benefit poor countries.

For example, India could propose two amendments to TRIPS: first, to extend for all developing countries the period allowed to bring national patent regimes into compliance with TRIPS requirements and to institute a peace clause precluding the use of the WTO's DSM for TRIPS disputes for 10 years; and second, to expand the scope of the compulsory licensing provisions to allow countries (mainly very poor ones) that have no production capacity of their own to license to producers in other developing countries with such capacity to produce life-saving drugs under patents for their own use.

The Doha declaration, while taking note of this health issue, left the decision on it to the General Council of the WTO. India, a developing country with production capacity for drugs and pharmaceuticals, would potentially benefit from such an amendment. India should also emphasize its willingness to negotiate on environmental and labor standards in other arenas, such as the International Labor Organization or the United Nations Environment Program.

9. Imports from China were most frequently targeted, with 255 initiations. In May 2001, antidumping duties were imposed by India on imports of phosphoric acid from China, polyester film from Indonesia and South Korea, and ferrocyanide from the European Union.

10. I have elsewhere (Srinivasan 1998c) analyzed the economics of linking market access with the enforcement of labor standards.

Third, India should place negotiations toward further liberalization of movement of natural persons high on its agenda. It has a comparative advantage in labor-intensive services and in some skill-intensive services such as computer software. Though exports of software from its domestic base will continue to grow—to be able to provide in situ services in foreign markets and to keep up with technological developments—it is essential that Indian software technicians have the opportunity to work abroad without necessarily having to migrate permanently. Most Indian engineers entered the United States under a special category of non-immigrant visas, but there is strong pressure to restrict the number of such visas issued. A liberal agreement (as part of the GATS of the WTO) on natural persons would facilitate such temporary migration.

Fourth, India like many other developing countries is moving in the wrong direction by championing regional agreements such as the South Asian Preferential Trade Agreement (SAPTA) and clamoring to become a member of other regional agreements. As happened when the Uruguay Round negotiations were stalled, the failure at Seattle to launch a new round has in part encouraged initiatives for negotiating preferential trade agreements (PTAs) in many parts of the world. India has to recognize that if progress in multilateral liberalization is slow, regional liberalization will become a serious, though much less desirable, alternative to multilateral liberalization.

The threat to the multilateral trading system from the proliferation of PTAs on a regional basis cannot be underestimated. As of mid-2000, there were 114 such agreements in effect and notified to the WTO by one or more WTO members (WTO, *Annual Report 2001*, 37). Virtually all WTO members, other than China (including Hong Kong and Macau), Japan, and Mongolia, were partners in at least one regional trade agreement (RTA).

The European Union is a partner in the largest number of agreements, encompassing Europe, Africa, Asia, and, as of 2000, Latin America. The WTO recognizes that “the trend to the conclusion of RTAs, which took off in the 1990s, continued to be very strong in 2000; indeed, perhaps the term ‘regional’ is increasingly superfluous to describe the plethora of new agreements linking countries around the globe” (WTO, *Annual Report 2001*, 39). In April 2001, US President George W. Bush and the leaders of 33 other nations met in Quebec City, Canada, at a summit. They instructed their ministers to conclude, no later than January 2005, negotiations on a free trade area extending from the high Arctic in the north to Tierra del Fuego in the south. Finally, the expansion of the European Union, with the admission of some Central and Eastern European countries, is likely to take place in the very near future.

It has been claimed (World Bank 2000b) that contemporary RTAs involve benefits from “deeper” integration through the harmonization of standards, competition and investment rules, and so on, and that there are political benefits such as greater national security, greater bargaining

power in global negotiations, and the possibility of “locking in” domestic reforms by invoking commitments undertaken in an RTA. However, no convincing case or evidence has been offered as to why preferential trading is a prerequisite for reaping these unconventional benefits. The argument that preferential trade liberalization on a discriminatory regional basis and on a multilateral, nondiscriminatory basis are mutually reinforcing is utterly convincing. The fact that the results of preferential regional liberalization in South Asia through SAPTA have been very disappointing, and that no other regional agreements appear to be open for India, suggests that India should now become an active promoter, rather than a staller as in the past, of wider and deeper liberalization of trade in the new round of MTNs launched at Doha.

In our judgment, the discriminatory and trade-diverting aspects of PTAs, regardless of whether they are “open” or not, far outweigh any benefits to be reaped. “Open regionalism” is almost an oxymoron—either a trading arrangement is open in the only relevant sense, namely, it does not discriminate among trading partners, or it is regional and discriminates against nonmembers outside the region. It cannot be both. Allowing membership in a PTA to be open for anyone to join it does not eliminate its discriminatory features and cannot make it acceptable in a nondiscriminatory trading system.

The bargaining strength of large trading nations in bilateral and regional negotiation, moreover, is enhanced in comparison with multilateral negotiation. This is already seen in agreements like NAFTA and the United States–Jordan Free Trade Agreement—the United States has been able to incorporate labor and environmental standards into them. For these reasons, India should push to replace Article XXIV of the GATT dealing with customs unions and free trade areas with the requirement that preferences granted to partners in any PTA should be extended on an MFN basis to all members of the WTO within a specified period, say, 5 to 10 years. It should not devote energy to asking for the elimination of preferential tariffs against Indian exports in RTAs and PTAs of which India is not a member.

Fifth, India and other developing countries also have a vital interest in reforming the WTO’s decision-making procedures. It is now a body of 142 members. Satisfying the principles of transparency and representation—while ensuring an orderly and efficient decision-making process in such a large body whose members have diverse interests and resources—is a challenge. Clearly, requiring consensus among all members for any decisions, though it bestows bargaining power to otherwise weaker members of the body, could paralyze decision making in a large body. Other means, such as requiring an appropriately specified majority (e.g., two-thirds of the members of which the proportion of developing-country members exceeds a threshold) could be used to give bargaining power to weaker members.

Sixth, as we noted above, the WTO's dispute settlement mechanism replaced the political process of the GATT with a costly adversarial legal process in which the DSM's Appellate Body has become very powerful. By accepting amicus briefs from groups that do not represent members of the WTO, it has moved into uncharted waters. India could propose a review and rethinking of the DSM.

The possibility of allowing NGOs to be represented in the decision-making bodies of the WTO, of which acceptance of amicus briefs by the DSM's Appellate Body is just one example, is a second important procedural issue to resolve. An affirmative answer implies that national governments do not adequately represent the views of the private groups in their own countries. The NGOs claim "that national pursuit of environmental, labor, and human rights goals are being deflected by economic considerations." Business interests, however, claim "that the government's pursuit of the nation's economic interests is being unduly restrained by concerns about more ephemeral political interests" (Hudec 1999, 47).

We do not deny that the legitimacy of rules, procedures, and practices of the WTO as a body created by treaties among governments ultimately rests on whether such treaties are entered into and ratified by a domestic process in each country that is perceived to be legitimate. But we feel that granting NGOs representation could have potentially serious consequences and that India should strongly oppose it. We take this position for several reasons. First, allowing groups to override their failure in domestic processes through their participation in intergovernmental bodies dulls incentives either to push for sustainable democratic processes or for participation to emerge. Any concession toward participation granted to domestic groups by their government, purely in response to being pressured by such groups in international bodies, is unlikely to be sustained.

Second, allowing nongovernmental participation in international affairs is likely to exacerbate inequalities between citizen groups. India is a pluralistic and participatory democracy and is home to a large number of NGOs involved in social, economic, religious, and charitable activities. A few of them, such as labor unions and lobbying groups, are formally organized, with a constitution, rules for membership, and procedures for making decisions. Most are informal, however, and there is no way of judging whom they represent and whether in any sense their own internal organization is participatory. Even if some reasonably well-defined and verifiable criteria are applied to which organizations will be entitled to send observers to meetings of the WTO, the World Bank, or another comparable body, it is almost certain that governments in power will have to face them at two levels, in the domestic political arena and in an international organization. Third, the possibility that governments' actions taken after due debate at home will be challenged again in international bodies by opponents who failed in the domestic arena is likely to have a significant paralyzing effect on the governments.

Appendix 3.1

Origins and Founding of the GATT

The origins of the GATT can be traced to the Proposals for an Expansion of World Trade and Employment (hereafter, the Proposals) circulated by the United States in December 1945. The United States subsequently invited 15 countries, including India, to participate in negotiations to reduce trade barriers and sponsored a resolution in the United Nations Economic and Social Council calling for a Conference on Trade and Employment with the Proposals as a possible agenda. This conference, prepared by Chile, Lebanon, and Norway as well as the United States and the original 15 invitees, was held in Havana from November 1947 to March 1948. Four more countries—Burma, Ceylon (Sri Lanka), Southern Rhodesia, and Syria—later joined the negotiations on reducing trade barriers. A discussion on a draft charter for an international trade organization (ITO) to be presented to the Havana conference and the negotiations on tariff reduction went on simultaneously in Geneva.

From the outset, in the preparatory committee for the Havana conference, Brazil, Cuba, and India criticized the US proposals as being motivated by a desire of industrialized countries to keep developing countries dependent on them. Development issues inspired the most violent and protracted controversies at the conference itself. The draft charter for the ITO drawn up by the preparatory committee for the Conference was almost unanimously denounced by the developing countries, including India, as being against their interests. Nonetheless, after a prolonged deadlock and a series of compromises, a charter was adopted with only three countries—Argentina, Poland, and Turkey—dissenting (Wilcox 1949). After all this, however, the ITO did not come into being, mainly because some countries (including the United States) did not ratify the charter.

Meanwhile, the Geneva negotiations for reductions in tariffs were successfully concluded with the GATT even before the opening of the Havana conference in November 1947. Some of the signatories to the GATT feared that the trade concessions agreed to in the GATT might unravel if their implementation were delayed until the GATT could be subsumed in the ITO after the Havana conference. Other signatories wished to avoid going through the ratification process twice, once for the GATT and then for the ITO.¹¹ As a compromise, the GATT was brought into force through a provisional protocol of application that was adopted and signed by 23 Contracting Parties, including India, and the newly created Pakistan in October 1947. From October 1947 until the establishment of the WTO in January 1995, the GATT operated under its provisional protocol. The

11. Signatories are “Contracting Parties” in GATT parlance, denoting independent customs jurisdictions such as Hong Kong as well as countries.

attempt in 1955 by the Contracting Parties to create an organization for trade cooperation failed.

In the words of the eminent legal scholar John Jackson (1989, 89), “The GATT has limped along for nearly 40 years with almost no ‘basic constitution’ designed to regulate its organizational activities and procedures.” The convention of arriving at decisions through consensus has given each party near-veto power and has imparted a remarkable stability to the agreement. The only substantial formal amendment to the GATT was a protocol to the articles of agreement adopted in 1965 to add a fourth part dealing with trade and development.

The fundamental principle of nondiscrimination among its Contracting Parties was enshrined in Articles I and III respectively on most favored nations and on the national treatment requirement of the GATT. The first required that any tariff concessions granted by one Contracting Party on imports from another be automatically extended to imports from all other Contracting Parties. The second ensured that once imports from one party entered another party’s markets after the payment of applicable customs duties and other charges at the border, such imports were treated on par with domestic output with respect to *domestic* tax and nontax measures. Although derogations from this principle were already in the GATT (e.g., exceptions for customs unions and free trade areas), they did not seriously compromise it.

The GATT and Developing Countries

The GATT appears to have contributed significantly to the growth of world trade. Eight successful rounds of MTNs on reducing barriers to trade have been concluded under the GATT’s auspices. The volume of world trade grew at an unprecedented average rate of 8 percent a year between the founding of the GATT in 1947 and the first oil shock in 1973. Although the annual rate of growth declined significantly during the period of adjustment to the two oil shocks to 3.7 percent during the period 1973–80 and 4.3 percent during the period 1980–90, it recovered to 6.5 percent during the period 1990–99. In all periods, it still exceeded the rate of growth of world output. In fact, during the period 1950–94 as a whole, the volume of merchandise trade grew to nearly 15 times its level in 1950, while output grew to six times its level in 1950. Against this background, however, India’s share of world trade *declined* from more than 2 percent in the early 1950s to about 0.7 percent in 2000.

India and other developing countries with inward-oriented development strategies have not taken full advantage of this growth in world trade and have acted to counter some of the GATT’s trade-opening influence. In retrospect, it could be argued that the fact that the ITO did not come into existence was fortunate because it would have allowed devel-

oping countries to easily exempt themselves from trade agreements. Wilcox (1949, 148) points out that more than three-fourths of the economic development chapter, consisting of Articles 13 and 15, “[was] devoted to an elaboration of methods by which underdeveloped countries may obtain release from commitments assumed under trade agreements and under the charter with respect to commercial policy.” This conditional and temporary release was considered inadequate at the time by developing countries.

Provisions within the original charter of the GATT have nevertheless allowed developing countries to retain trade restrictions. Article XVIII, a holdover from the above-mentioned Article 13 of the ITO charter, was the principal provision in the GATT dealing with trade problems of developing countries until the adoption of Part IV on trade and development in 1964. Given the consultations, annual reporting requirements, and reviews needed for taking advantage of most sections of Article XVIII for imposing trade-restricting measures for any extended period of time, few developing countries made major use of them. Instead, they availed themselves of its provision under Section B that allowed the use of QRs for containing balance of payments deficits. India invoked this provision as late as in 1998, after 7 years of reforms, to justify its slow pace of phasing out QRs on imports of consumer goods. This was challenged in the WTO by the United States among others, and the Dispute Settlement Mechanism ruled against India. As was noted above, India lost its appeal against this ruling in the DSM’s Appellate Body and had to remove all its QRs in 2000 and 2001.

Developing countries also succeeded later in formally incorporating “a differential and more favorable treatment” for themselves into the GATT in the agreement concluding the Tokyo Round of multilateral trade negotiations. This treatment included not having to reciprocate any tariff concessions by industrialized countries. By demanding and receiving an apparently differential and more favorable treatment, developing countries including India triply hurt themselves: once through the direct costs of their being able to continue their counterproductive import-substitution strategies without fear of retaliation by their trading partners; a second time by having to accept blatantly GATT-inconsistent trade barriers erected by industrialized countries, for example in textiles and apparel, through the MFA; and a third time by giving the opportunity to the industrialized countries to maintain higher than average MFN tariffs on goods of export interest to themselves.

Incorporation of Part IV of the GATT

In 1958, a decade after the GATT’s coming into force, a panel of GATT-appointed experts chaired by Gottfried Haberler examined the trade rela-

tions between less developed and industrialized countries.¹² Their report concluded that barriers of all kinds in industrialized countries to the import of products from developing countries contributed significantly to the trade problems of developing countries. The GATT responded to the Haberler report by establishing the so-called Committee III, which was to review the trade measures restricting less-developed-country exports and to recommend a program for trade expansion by reducing trade barriers.

The response of industrialized countries to the Committee III report, although positive, did not result in substantial reductions in barriers. Indeed, some of the barriers identified by Committee III, such as significant tariffs on tropical products, tariff escalation, QRs, and internal taxes, continued to exist nearly three decades later at the start of the Uruguay Round negotiations. They have not been completely eliminated even after the reductions in trade barriers agreed to in the round.

Twenty-one developing countries, including India—disappointed with the response of industrialized countries to the report of Committee III—introduced a resolution in the GATT in 1963 calling for an action program. This consisted of a standstill on all new tariff and nontariff barriers, elimination within 2 years of all GATT-illegal QRs, removal of all duties on tropical primary products, elimination of internal taxes on products wholly or mainly produced in developing countries, and adoption of a schedule for the reduction and elimination of tariffs on semiprocessed and processed products.

The GATT ministerial meeting of 1963, in response to the demand for an action program, appointed a committee to draft amendments to the GATT to provide a legal and institutional framework within which the GATT Contracting Parties could discharge their responsibilities toward developing countries. Dam (1970) remarks that this step was also a reaction to the preparations already in progress for the first United Nations Conference on Trade and Development. The proposed amendments were approved in 1964 and became Part IV of the GATT, entitled “Trade and Development.”

Dam concludes that apart from its symbolic importance in sensitizing the Contracting Parties to the new role of the GATT in development, less-developed countries achieved little by way of precise commitments (and even these were highly qualified) but a lot in terms of verbiage. Among the major provisions of Part IV is that on reciprocity (or more precisely, non-reciprocity): the industrialized countries decided not to require reciprocity for their commitments to reduce tariff and other barriers from developing countries. Far from benefiting developing countries, this provision actually placed them in a weaker bargaining position to combat GATT-inconsistent barriers in industrialized countries against their exports.

12. The other members of the panel were Oswaldo Campos, James Meade, and Jan Tinbergen.

The Generalized System of Preferences

After the incorporation of Part IV in 1964, the next major GATT event from the perspective of developing countries was the grant of a 10-year waiver from the MFN clause with respect to tariffs and other preferences favoring the trade of developing countries. Under the waiver, any Contracting Party could deviate from MFN for a period of 10 years and charge a lower tariff on imports from developing-country Contracting Parties than on similar imports from other Contracting Parties. The waiver specified that such preferences must be nondiscriminatory.

This so-called Generalized System of Preferences (GSP) was later included under the rubric of the enabling clause of the Tokyo Round (1973–79), which formalized the “differential and more favorable treatment” of developing countries in the GATT. Contrary to the provisions of the waiver, industrialized countries chose the countries to be favored, the commodities to be covered, the extent of tariff preferences, and the period for which the preferences were granted when implementing the GSP.

Some countries, in fact, linked the granting of preferences to the performance of a developing country in non-trade-related areas. The United States, for example, withdrew GSP status from Chile in 1987 because Chile did not provide its workers “internationally accepted” rights. Some of the more advanced developing countries benefited to a greater extent from the GSP and expanded their exports to industrialized countries. This led industrialized countries to demand the “graduation” of such countries from the ranks of those entitled to the GSP. As was the case with reciprocity, the benefits, if any, from the GSP for developing countries were far outweighed by the cost in terms of weakening their case against other GATT-inconsistent barriers in industrialized countries to their exports.

Developing Countries and the GATT: Two Opposite Interpretations

The experience of developing countries in the GATT up to the conclusion of the Tokyo Round in 1979 could be interpreted in two diametrically opposed ways. On the one hand, it could be said that from the Havana conference to now, developing countries again and again have been frustrated in getting the GATT to reflect their concerns. Tariffs and other barriers in industrialized countries on their exports were reduced to a smaller extent than those on exports of industrialized countries in each round of the MTNs. Products in which they had a comparative advantage, such as textiles and apparel, were taken out of the GATT discipline altogether. Agriculture, a sector of great interest to developing countries, largely remained outside the GATT framework. “Concessions” granted to developing countries, such as the inclusion of Part IV on trade and devel-

opment and the Tokyo Round enabling clause on special and differential treatment, were mostly rhetorical. Others, such as the GSP, were always heavily qualified and quantitatively small. In sum, one interpretation is that the GATT was indifferent, if not actively hostile, to the interests of developing countries.

The other interpretation is that developing countries, in their relentless but misguided pursuit of the import-substitution strategy of development, in effect opted out of the GATT. If they had participated fully, vigorously, and on equal terms with industrialized countries in the GATT negotiations and unilaterally adopted an outward-oriented development strategy, they could have achieved far faster and better growth than that achieved by demanding and receiving crumbs—such as the GSP and a permanent status of inferiority under the “special and differential” treatment clause—from the rich man’s table. The experience of rapidly growing economies of East Asia, notwithstanding the financial crisis that engulfed them in 1997, provides evidence in support of this view. Given India’s early start in industrialization before the East Asian countries, India certainly would have grown faster under an outward-oriented policy regime.