

INTELLECTUAL PROPERTY RIGHTS

PAPER – III

TOPIC : NEGOTIATING HISTORY OF WORLD TRADE ORGANISATION
AND DUNKEL DRAFT

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NEGOTIATING HISTORY OF W.T.O AND DUNKEL DRAFT

I. INTRODUCTION:

In this project I have briefly discussed the relative success of the negotiating forum of the WTO — an organization that intends to supervise and liberalize international trade. The organization officially commenced on 1 January 1995 under the Marrakech Agreement, replacing the General Agreement on Tariffs and Trade (GATT), which commenced in 1948.

Secondly, Dunkel draft¹ is an agreement written in 1991 during the negotiations of the Uruguay Round by GATT Director-General Arthur Dunkel, incorporating all that had been so far agreed and filling in gaps with his proposed text. This was "an historic turning point" in the negotiations that led to the creation of the WTO.

But first I would like to explain in brief what is WTO, its function and relevance to Intellectual Property Rights.

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. The goal is to help producers of goods and services, exporters, and importers conduct their business.

There are a number of ways of looking at the WTO. It's an organization for liberalizing trade. It's a forum for governments to negotiate trade agreements. It's a place for them to settle trade disputes. It operates a system of trade rules.²

1 <http://www-personal.umich.edu/~alandear/glossary/d.html>

2 <http://www.wto.org>

A negotiating forum: Essentially, the WTO is a place where member governments go, to try to sort out the trade problems they face with each other. The first step is to talk. The WTO was born out of negotiations, and everything the WTO does is the result of negotiations. The bulk of the WTO's current work comes from the 1986-94 negotiations called the Uruguay Round and earlier negotiations under the General Agreement on Tariffs and Trade (GATT). The WTO is currently the host to new negotiations, under the “Doha Development Agenda” launched in 2001. Where countries have faced trade barriers and wanted them lowered, the negotiations have helped to liberalize trade. But the WTO is not just about liberalizing trade, and in some circumstances its rules support maintaining trade barriers — for example to protect consumers or prevent the spread of disease.

It's a set of rules: At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations. These documents provide the legal ground-rules for international commerce. They are essentially contracts, binding governments to keep their trade policies within agreed limits. Although negotiated and signed by governments, the goal is to help producers of goods and services, exporters, and importers conduct their business, while allowing governments to meet social and environmental objectives.

The system's overriding purpose is to help trade flow as freely as possible — so long as there are no undesirable side-effects — because this is important for economic development and well-being. That partly means removing obstacles. It also means ensuring that individuals, companies and governments know what the trade rules are around the world, and giving them the confidence that there will be no sudden changes of policy. In other words, the rules have to be “transparent” and predictable.

It helps to settle disputes: This is a third important side to the WTO's work. Trade relations often involve conflicting interests. Agreements, including those painstakingly negotiated in the WTO system, often need interpreting. The most harmonious way to settle these differences is through some neutral procedure based

on an agreed legal foundation. That is the purpose behind the dispute settlement process written into the WTO agreements.

II. W.T.O. AND ITS RELEVANCE IN INTELLECTUAL PROPERTY RIGHTS:

TRADE WITHOUT DISCRIMINATION

1. Most-favoured-nation (MFN): treating other people equally:

Under the WTO agreements, countries cannot normally discriminate between their trading partners. Grant someone a special favour (such as a lower customs duty rate for one of their products) and you have to do the same for all other WTO members.

This principle is known as most-favoured-nation (MFN) treatment (see box). It is so important that it is the first article of the General Agreement on Tariffs and Trade (GATT), which governs trade in goods. MFN is also a priority in the General Agreement on Trade in Services (GATS) (Article 2) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) (Article 4), although in each agreement the principle is handled slightly differently. Together, those three agreements cover all three main areas of trade handled by the WTO.

Some exceptions are allowed. For example, countries can set up a free trade agreement that applies only to goods traded within the group — discriminating against goods from outside. Or they can give developing countries special access to their markets. Or a country can raise barriers against products that are considered to be traded unfairly from specific countries. And in services, countries are allowed, in limited circumstances, to discriminate. But the agreements only permit these exceptions under strict conditions. In general, MFN means that every time a country lowers a trade barrier or opens up a market, it has to do so for the same goods or services from all its trading partners — whether rich or poor, weak or strong.

2. National treatment: Treating foreigners and locals equally:

Imported and locally-produced goods should be treated equally — at least after the foreign goods have entered the market. The same should apply to foreign and domestic services, and to foreign and local trademarks, copyrights and patents. This principle of “national treatment” (giving others the same treatment as one’s own nationals) is also found in all the three main WTO agreements (Article 3 of GATT, Article 17 of GATS and Article 3 of TRIPS), although once again the principle is handled slightly differently in each of these.

National treatment only applies once a product, service or item of intellectual property has entered the market. Therefore, charging customs duty on an import is not a violation of national treatment even if locally-produced products are not charged an equivalent tax.

FREER TRADE: GRADUALLY, THROUGH NEGOTIATION

Lowering trade barriers is one of the most obvious means of encouraging trade. The barriers concerned include customs duties (or tariffs) and measures such as import bans or quotas that restrict quantities selectively. From time to time other issues such as red tape and exchange rate policies have also been discussed.

Since GATT’s creation in 1947-48 there have been eight rounds of trade negotiations. A ninth round, under the Doha Development Agenda, is now underway. At first these focused on lowering tariffs (customs duties) on imported goods. As a result of the negotiations, by the mid-1990s industrial countries’ tariff rates on industrial goods had fallen steadily to less than 4%. But by the 1980s, the negotiations had expanded to cover non-tariff barriers on goods, and to the new areas such as services and intellectual property.

Opening markets can be beneficial, but it also requires adjustment. The WTO agreements allow countries to introduce changes gradually, through

“progressive liberalization”. Developing countries are usually given longer to fulfil their obligations.

PREDICTABILITY: THROUGH BINDING AND TRANSPARENCY

In the WTO, when countries agree to open their markets for goods or services, they “bind” their commitments. For goods, these bindings amount to ceilings on customs tariff rates. Sometimes countries tax imports at rates that are lower than the bound rates. Frequently this is the case in developing countries. In developed countries the rates actually charged and the bound rates tend to be the same.

A country can change its bindings, but only after negotiating with its trading partners, which could mean compensating them for loss of trade. One of the achievements of the Uruguay Round of multilateral trade talks was to increase the amount of trade under binding commitments (see table). In agriculture, 100% of products now have bound tariffs. The result of all this: a substantially higher degree of market security for traders and investors.

The system tries to improve predictability and stability in other ways as well. One way is to discourage the use of quotas and other measures used to set limits on quantities of imports — administering quotas can lead to more red-tape and accusations of unfair play. Another is to make countries’ trade rules as clear and public (“transparent”) as possible. Many WTO agreements require governments to disclose their policies and practices publicly within the country or by notifying the WTO. The regular surveillance of national trade policies through the Trade Policy Review Mechanism provides a further means of encouraging transparency both domestically and at the multilateral level.

PROMOTING FAIR COMPETITION

The WTO is sometimes described as a “free trade” institution, but that is not entirely accurate. The system does allow tariffs and, in limited circumstances, other forms of protection. More accurately, it is a system of rules dedicated to open, fair and undistorted competition.

The rules on non-discrimination — MFN and national treatment — are designed to secure fair conditions of trade. So too are those on dumping (exporting at below cost to gain market share) and subsidies. The issues are complex, and the rules try to establish what is fair or unfair, and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.

Many of the other WTO agreements aim to support fair competition: in agriculture, intellectual property, services, for example. The agreement on government procurement (a “plurilateral” agreement because it is signed by only a few WTO members) extends competition rules to purchases by thousands of government entities in many countries. And so on.

ENCOURAGING DEVELOPMENT AND ECONOMIC REFORM

The WTO system contributes to development. On the other hand, developing countries need flexibility in the time they take to implement the system’s agreements. And the agreements themselves inherit the earlier provisions of GATT that allow for special assistance and trade concessions for developing countries.

Over three quarters of WTO members are developing countries and countries in transition to market economies. During the seven and a half years of the Uruguay Round, over 60 of these countries implemented trade liberalization programmes autonomously. At the same time, developing countries and transition economies were much more active and influential in the Uruguay Round negotiations than in any previous round, and they are even more so in the current Doha Development Agenda.

At the end of the Uruguay Round, developing countries were prepared to take on most of the obligations that are required of developed countries. But the agreements did give them transition periods to adjust to the more unfamiliar and, perhaps, difficult WTO provisions — particularly so for the poorest, “least-developed” countries. A ministerial decision adopted at the end of the round

says better-off countries should accelerate implementing market access commitments on goods exported by the least-developed countries, and it seeks increased technical assistance for them. More recently, developed countries have started to allow duty-free and quota-free imports for almost all products from least-developed countries. On all of this, the WTO and its members are still going through a learning process. The current Doha Development Agenda includes developing countries' concerns about the difficulties they face in implementing the Uruguay Round agreements.

III. W.T.O. AND ITS NEGOTIATING HISTORY :

The World Trade Organization in current existence provides its membership with forums for three interrelated functions—negotiation, illumination, and litigation—it is probably best known for the first of these. In other words, the organization deals with regulation of trade between participating countries; it provides a framework for negotiating and formalizing trade agreements, and a dispute resolution process aimed at enforcing participant's adherence to WTO agreements, which are signed by representatives of member governments and ratified by their parliaments. Most of the issues that the WTO focuses on derive from previous trade negotiations, especially from the Uruguay Round (1986–1994) which i have discussed herein below.

The current WTO agreements are the legacy of commitments that countries have voluntarily negotiated with each other, on a repeat basis, in the decades since 1947.

The 1930s and 1940s era of the Great Depression and World War II provide important reminders of globalization's last dark episode of protectionism. The U.S. imposition of the Smoot-Hawley tariffs and the international retaliatory response in the 1930s led to the virtual halting of international commerce.

At the conclusion of World War II, twenty-three countries, led primarily by the United States, Canada, and the United Kingdom, negotiated the General Agreement

on Tariffs and Trade. The goal was to create an agreement that would ensure postwar stability and avoid a repeat of the mistakes of the recent past, including the Smoot - Hawley tariffs and retaliatory responses, which had been a contributor to the devastating economic climate that culminated in the death and destruction of the Second World War. The 1947 GATT created a new basic template of rules and exceptions to regulate international trade between members (referred to as contracting parties) and locked in initial tariff reductions that these countries committed to establish. Even as early as 1952, the tariff cuts had reduced average tariffs substantially, as shown in table 1-1, for a number of these countries.

Over the next forty-seven years, more countries signed on to the GATT, and further trade liberalization negotiations ensued.

The GATT contracting parties began and concluded eight separate negotiating rounds of voluntary trade liberalization. The last three of these completed rounds was the Uruguay Round, which ended the GATT era in 1994 by ushering in the World Trade Organization. By 1994, the GATT membership had simultaneously expanded from an initial 23 contracting parties to 128 participating countries. With the number of new members acceding to the WTO since its inception, more than 150 countries have signed the agreement.

The first five rounds of GATT negotiations covering the initial 1947–61 period were typically dominated by major exporting countries, or those with a “principal supplying interest” in a particular product, getting together and negotiating reciprocal market access improvements.³ The initial negotiators under the GATT, especially those with a principal supplying interest, were developed economies. They focused their negotiation efforts on reducing import barriers in other countries that were of primary interest to their own exporters, and they used the political trade-off of expanded market access abroad for exporting industries against increased market access granted at home to foreign industries and thus the losses to industries competing against these imports.

Since the trade barriers targeted for elimination were typically those in the import markets of other developed countries, the primary result was that developed countries were asked to reduce their tariffs. Put differently, since most developing countries were neither principal suppliers nor major importing markets, little was asked of them in terms of their own trade liberalization, and little of what was of direct export interest to developing countries was liberalized by others.

Starting with the Kennedy Round of negotiations in 1964 through the Tokyo Round in the 1970s, countries participating in the trade negotiations used formulaic approaches to reduce further the remaining trade barriers across the board. Certain tariff-cutting formulas can be preferable to reciprocal negotiations between principal suppliers, in that they can serve to reduce average tariff levels as well as their *dispersion*.

The Kennedy and Tokyo Rounds did not turn out to be sufficiently “pure” in practice to fully achieve this effect. In the rounds in which formulas were applied, negotiating countries sought and were granted exemptions for “sensitive products” that they could remove from the list of goods whose import tariffs would be subject to the formula. In this manner countries typically avoided having to reduce the highest tariffs in products that the formulaic approach was trying to attack in the first place. The result is a persistent pattern of protection across countries and industries that likely looks quite similar to the reciprocity-based, bid-offer approach between principal suppliers of different products.

IV. GATT ROUNDS (MULTILATERAL TRADE NEGOTIATIONS):

First five rounds reduced average trade weighted tariff from 50 to 12%

GATT Trade Rounds

The biggest leaps forward in international trade liberalization have come through multilateral trade negotiations, or “trade rounds”, under the auspices of GATT – the Uruguay Round was the latest and most exclusive. Much of this was achieved through a series of eight "trade rounds." These negotiating rounds were:

- First Round: Geneva, Switzerland, 1947
- Second Round: Annecy, France, 1949
- Third Round: Torquay, England, 1951
- Fourth Round: Geneva, Switzerland, 1956
- Fifth Round: The Dillon Round, 1960-61
- Sixth Round: The Kennedy Round, 1964-67
- Seventh Round: The Tokyo Round, 1973-79
- Eighth Round: The Uruguay Round, 1986-1994

The first five GATT negotiating rounds –Geneva(1947), Annecy (1949), Torquay (1951),Geneva(1956) and Dillon (1960-61) – were devoted almost exclusively to tariff negotiations and the accession of new members.

IV.I THE TOKYO ROUND – A FIRST TRY AT REFORMING THE TRADING SYSTEM³:

Most of the early GATT Rounds were devoted to continuing the process of reducing tariffs. Conducted between 1973 and 1979 and with 120 participating countries, the Tokyo Round produced, in addition to important tariff reductions, a series of agreements on non-tariff barriers, in some cases interpreting existing GATT rules and in others breaking entirely new ground.

The results included an average one – third cut in custom duties in the world's nine major industrial markets, bringing the average tariff on manufactured products

3 [Http://www2.econ.iastate.edu/classes/econ355/choi/wtoroots.htm](http://www2.econ.iastate.edu/classes/econ355/choi/wtoroots.htm)

down to 4.7% compared with about 40% at the time of GATT's creation. The tariff reductions, phased in over a period of eight years, involved an element of harmonisation, bringing the highest tariffs down proportionately more than the lowest.

Elsewhere, the Tokyo Round had mixed results. It failed to come to grips with the fundamental problems affecting farm trade and also stopped short of providing a new agreement on “safeguards” (emergency import measures).

Nevertheless, a series of agreements on non-tariff barriers did emerge from the negotiations, in some cases interpreting existing GATT rules, in others breaking entirely new ground. In most cases, only a relatively small number of, mainly industrialized, GATT members ascribed to these agreements and arrangements which, as a consequence, were often referred to as “codes”. The agreements coming out of the Tokyo Round included: Subsidies and Countervailing Measures, Technical Barriers to Trade, Import Licensing Procedures, Customs Valuation, Anti-dumping, Government Procurement, Bovine Meat Arrangement, and Trade in Civil Aircraft. Only the first five were binding on all members, while the others remain plurilateral agreements.

IV.II THE URUGUAY ROUND – CREATING A NEW SYSTEM⁴:

The seeds of the Uruguay Round were sown in November 1982 at a ministerial meeting of GATT members in Geneva. Although Ministers intended to launch a major new negotiation, the meeting stalled on the issue of agriculture and was widely regarded as a failure. In fact, the work programme that Ministers agreed formed the basis for what was to become the Uruguay Round negotiating agenda.

Nevertheless, it took four more years of exploring and clarifying issues and painstaking consensus-building, before Ministers met again in September 1986, in Punta del Este, Uruguay, to agree to launch the Uruguay Round. They were able to accept a negotiating agenda which covered virtually every outstanding trade policy

4 [Http://www2.econ.iastate.edu/classes/econ355/choi/wtoroots.htm](http://www2.econ.iastate.edu/classes/econ355/choi/wtoroots.htm)

issue including the extension of the trading system into several new areas, notably trade in services and intellectual property. It was the biggest negotiating mandate on trade ever agreed and Ministers gave themselves four years to complete it.

A new negotiating round, called the Uruguay Round, was announced in September 1986. It was the most ambitious trade negotiation ever held. The ministers were able to accept a negotiation agenda which covered virtually every outstanding trade policy issue, including the extension of the trading system into several new areas, notably trade in services and intellectual property. Traditionally, the GATT had only covered trade in goods. It was the biggest negotiation mandate on trade ever agreed, and the ministers gave themselves four years to complete it. By 1988 the negotiation had reached the stage of "Mid-term-Review." This took the form of a Ministerial Meeting in Montreal, Canada, and led to the elaboration of the negotiating mandate for the second stage of the Round. Ministers agreed to a package of early results which included concessions on market access for tropical products (aimed to assist developing countries), a streamlined Dispute Settlement system, and a Trade Policy Review Mechanism (TPRM), which provided the first comprehensive, systematic, and regular reviews of national trade policies and practices of members .

IV.III ACHIEVEMENTS PRIOR TO THE URUGUAY ROUND :

The principal mechanism for progress on trade liberalisation within the GATT have been periodic multilateral negotiating rounds. In all, there have been eight such rounds, starting with the Geneva Round of 1947 that established the GATT, and concluding with the Uruguay Round that ended in 1994 after having established the WTO. The primary focus of the majority of rounds has been promotion of multilateral tariff reductions, and the extension of the agreed reductions to all members in accordance with the MFN clause.

V. MINISTERIAL CONFERENCES:

The highest decision-making body of the WTO is the Ministerial Conference, which usually meets every two years. Ministerial Conference, which usually meets every two years. It brings together all members of the WTO, all of which are countries or customs unions. The Ministerial Conference can take decisions on all matters under any of the multilateral trade agreements. The inaugural ministerial conference was held in Singapore in 1996. Disagreements between largely developed and developing economies emerged during this conference over four issues initiated by this conference, which led to them being collectively referred to as the "Singapore issues". The second ministerial conference was held in Geneva in Switzerland. The third conference in Seattle, Washington ended in failure, with massive demonstrations and police and National Guard crowd-control efforts drawing worldwide attention. The fourth ministerial conference was held in Doha in the Persian Gulf nation of Qatar. The Doha Development Round was launched at the conference. The conference also approved the joining of China, which became the 143rd member to join. The fifth ministerial conference was held in Cancún, Mexico, aiming at forging agreement on the Doha round. An alliance of 22 southern states, the G20 developing nations (led by India, China, Brazil, ASEAN led by the Philippines), resisted demands from the North for agreements on the so-called "Singapore issues" and called for an end to agricultural subsidies within the EU and the US. The talks broke down without progress.

The sixth WTO ministerial conference was held in Hong Kong from 13–18 December 2005. It was considered vital if the four-year-old Doha Development Round negotiations were to move forward sufficiently to conclude the round in 2006. In this meeting, countries agreed to phase out all their agricultural export subsidies by the end of 2013, and terminate any cotton export subsidies by the end of 2006. Further concessions to developing countries included an agreement to introduce duty-free, tariff-free access for goods from the Least Developed Countries, following the Everything but Arms initiative of the European Union — but with up to 3% of tariff lines exempted. Other major issues were left for further negotiation to be

completed by the end of 2010. The WTO General Council, on 26 May 2009, agreed to hold a seventh WTO ministerial conference session in Geneva from 30 November-3 December 2009. A statement by chairman Amb. Mario Matusacknowledged that the prime purpose was to remedy a breach of protocol requiring two-yearly "regular" meetings, which had lapsed with the Doha Round failure in 2005, and that the "scaled-down" meeting would not be a negotiating session, but "emphasis will be on transparency and open discussion rather than on small group processes and informal negotiating structures". The general theme for discussion was "The WTO, the Multilateral Trading System and the Current Global Economic Environment"

VI. BIRTH OF WTO:

At the Ministerial Meeting in Brussels in December 1990, disagreement on the nature of commitment to future agricultural trade reform led to a decision to extend the Round. By December 1990, a comprehensive draft text of the "Final Act," containing legal text fulfilling every part of the Punta del Este mandate, with the exception of market access results, was on the table in Geneva. For the following two years, the negotiations lurched continuously from impending failure to predictions of imminent success. Several deadlines came and went; farm trade was joined by services, market access, anti-dumping rules, and the proposed creation of a new institution as major points of conflict. Differences between the United States and European Community became central to the hope for a final, successful conclusion. It took until December 15, 1993 for every issue to be resolved and for negotiations on market access for goods and services to be concluded. On April 15, 1994 the deal was signed by ministers from most of the 125 participating governments at a meeting in Marrakesh, Morocco. Despite its provisional nature, the GATT remained the only multilateral instrument governing international trade from 1948 until the Marrakesh agreement established the World Trade Organization in 1994.

For several decades, the General Agreement on Tariffs and Trade was applied on a provisional basis. It was a multilateral agreement containing rules relating to trade in goods, and although it operated like a permanent agreement, it was without a

permanent institutional framework, and was serviced by an ad hoc Secretariat. The WTO now provides a permanent institutional framework for the multilateral trading system, with its own Secretariat. In addition, the WTO not only covers trade in goods, as the GATT rules did, but also trade in services and trade-related aspects of intellectual property rights. Also, the dispute settlement mechanism has been considerably strengthened in the WTO.

VII . THE NEW TRADE AGENDA:

The WTO enshrines a radical new agenda in world trade. Its cornerstones are:

□ Liberalising “services” through General Agreements on Trade and Services (GATS) covering one-fifth of all world trade (US\$1 trillion). This is an *institutional* change masquerading as trade reform. Since financial services are treated as a “commodity” it encapsulates a legal obligation to free capital movement, overriding the legitimate right to national economic sovereignty. Moreover, the definition of exports has been extended in the case of services to include production by foreign-owned subsidiaries in the host country. Trade regulation has thus been extended for the first time to the internal market regimes of member states.

□ A decisive new trade category of Intellectual Property Rights (IPRS). IPRS have as much to do with trade liberalisation as the free transport of slaves. They *outlaw* trade in products embodying any technology less than twenty years old that is, almost everything except as specified by the current owner of the technology. They are an absolute monopoly of the advanced countries: 0.16 per cent of world patents are currently owned by Third World residents. They make the owner of a technical process a separate legal entity distinct not only from the laborer but also the factory or farm-owner and the original inventor. They transform the ownership and control of technology into a marketable instrument of domination. They set in concrete the principal market mechanism that impoverishes the Third World, namely the transfer of technological super profit through trade.

□ Large-scale anti-dumping actions as the preferred protectionist device of the USA, EEC and Australia-New Zealand, a practice baldly described by the World Bank as “a packaging of protectionism to make it look like something different. Before 1986, anti-dumping actions were exceptional events. By 1992 they were universal advanced-country practice. One thousand and forty antidumping actions were initiated by the industrialized countries from 1985–92, over half directed against either Eastern Europe (132), the Third World (137) or the developing Asian countries (297). The non-industrialized countries three-quarters of the world’s people initiated a grand total of 91.

□ The consolidation of a system of trading blocks, Free Trade Areas around the dominant capitalist countries—the EC, NAFTA and APEC—with specific exemption from the measures imposed on all other WTO members. Though Article xxiv of the GATT proposes stringent conditions that a Free Trade Area must satisfy, these are never applied. As of 1990, only four working parties (of a total of over fifty) could agree that any regional agreement satisfied Article xxiv, three of these before 1957. “The GATT’s experience in testing free trade areas and customs unions against Article xxiv has not been very encouraging...It is not much of an exaggeration to say that GATT rules [on regional agreements] were largely a dead letter.” In short, the advanced countries do what the hell they like.

From consensus to compulsion

This disparate series of changes is being cemented by converting a treaty organization the old GATT into a supranational enforcement organization that imposes and legislates not just trading relations but the internal property, tax and subsidy regimes of its members.

GATT held protracted “rounds of multi-party negotiations aimed at the mutual reduction of specific tariffs, subject to consensus. In effect, it was a brokering organization for extending the bilateral arrangements which the big players would have made in any case to a slightly wider circle of participants.

In instances where the choice was between risking serious conflict and attempting to enforce the letter of GATT disciplines for example, on regional integration or subsidies the contracting parties generally ‘blinked’. In large part this reflects the nature of the institution, which is basically a club. The club has rules, but its members can decide to waive them, or pretend not to see violations.

Although historians see the GATT as the principal vehicle of trade liberalization, this was in large measure because the major powers, under US hegemony, wanted to liberalize their own trade in any case to secure a share of exported US capital during the period when it still enjoyed industrial supremacy. GATT simply invited the others along for the ride.

The WTO marked two decisive changes. Firstly it moved from “result-orientation to “rule-orientation”; trade was now governed by laws and formulas instead of targeted commodities. This extends to legal trade regulations which the WTO obliges member governments to write into their own laws. Most significantly, these rules are now policed.

Formerly the GATT was not an international organization (that is, a legal entity in its own right) but an inter-governmental treaty. As a result, instead of “member states GATT had “contracting parties The WTO is an international organization that administers multilateral agreements pertaining to trade in goods (GATT), trade in services (GATS), and trade-related aspects of intellectual property rights.

If a member country breaches a WTO regulation, an enforcement process is triggered and consensus is required not to implement sanctions but to *prevent* them. If a Third World country seeks exemption to protect its industries or agricultural producers from competition from the technologically more advanced Northern countries, it faces coordinated, punitive trade sanctions from all WTO members.

The reconstruction of the world market

What makes such threats effective is a systematic expansion of GATT and the WTO which has culminated in the reestablishment of a global world market previously sundered in two by the outcome of the Russian revolution, two world wars and the Chinese revolution.

GATT was a minority club with a mere 23 signatories. The balance of forces was so weak that it proved impossible to establish the international trade organization (ITO), called for in the Bretton Woods agreements. In the 1949 “Annecy” round of negotiations a mere 11 countries took part. China withdrew in 1950 and the US, which had followed a fiercely protectionist stance between the wars, abandoned the attempt to secure congressional ratification of the ITO. Though the initial 1947 agreement secured a 21 per cent reduction in tariffs, the next three rounds secured only a further 8.4 per cent reduction.

The term “free trade” has never appeared on GATT’s formal agenda. The GATT-1947 preamble calls for “raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods”. The principal mechanism was to reduce tariffs and eliminate discriminatory treatment.

No planned economy took part until 1967 when Poland joined, and the Third World countries succeeded in neutralizing or blocking the application of the GATT trade agreements to themselves through the non-aligned movement and the 1964 establishment of the United Nations Conference on Trade and Development (UNCTAD) which was formed to press for trade measures to benefit developing countries. The Kennedy Round of 1963 involved 74 countries and spun out for four years. The practice of picking and choosing which GATT regulations to implement was so widespread it was nicknamed “GATT *a la carte*”. The “Tokyo round” of 1973 involved 99 countries but lasted six years and was obliged to legalise preferential tariff and non-tariff treatment in favour of developing countries.

Thus though the developing countries were drawn into GATT's orbit, access to a separate economic system in the USSR and Warsaw Pact countries offered them an important degree of autonomy. Though governed (and impoverished) by the world market they could veto many imperialist proposals, imposing selective controls on trade to protect domestic producers, and limiting the drain of capital brought on by unequal exchange, because they could always resort to (or threaten) trade with the Soviet or Chinese blocs instead. The Third World—a term coined by Mao Zedong—took part in trade negotiations, but acted collectively to veto or water down measures that damaged domestic producers, offsetting—though not overcoming—the impact of the world market on domestic accumulation.

By the end of the Uruguay round, which began in 1986 and ended a grueling eight years later, the scene had changed utterly. There were now 128 member countries including most former Eastern European countries. The former USSR no longer presented an effective alternative outlet or supplier. Aggressive “threat”-based US policies, the debt crisis and the draconian intervention of the IMF with its structural adjustment, export-oriented programmes, produced the “neoclassical counterrevolution”. Keynesians were replaced on the leading world financial institutions, and wave after wave of neo-liberal advisers and political regimes came to the fore in development economics and in the Third World countries themselves. Resistance gave way to capitulation; the new order had arrived.

Divergence, big time

This is the context for intellectual property rights enforcement. This world *market in knowledge* is a major and profoundly anti-democratic new stage of capitalist development. The transformation of knowledge into property necessarily implies *secrecy*: common knowledge is no longer private. In this new and chilling stage, communication itself violates property rights. The WTO is transforming what was previously a universal resource of the human race its collectively, historically and freely-developed knowledge of itself and nature into a private and marketable force of production.

As well as laying the foundation of hi-tech, software and genetic engineering fortunes the new category is transforming the whole nature of agriculture. Small agricultural producers the world over are now being forced, in effect, to abandon natural production from their own seed and pay premium prices for genetically engineered seeds. The consequence is no less than an end to the self-sufficiency of world agricultural production.

The WTO as institutional policeman

The second consequence is that the re-consolidation of a universal world market is, simply, the surest guarantee of the impetuous descent into mass starvation and poverty of the mass of the world's peoples. The only escape for any nation except the small club of leaders is to exempt itself, in one way or another, from the general functioning of the market. This is why the old GATT could not be an enforcement agency and why the new WTO *has* to be an enforcement agency.

The WTO is now the third arm of the IMF and the World Bank, who work in consort to impose a complete institutional policy framework on the world. The banks impose open markets and free trade as a condition of credit and debt relief. But free trade is *defined to mean* a definite institutional regime which overrides the economic sovereignty of all but the largest players. This includes not just full capitalist property rights and the free movement of capital but extends to taxes, subsidies or any measure that can be construed as "unfair" competition, that is, any element of state provision.

The original GATT agenda sought to avert a repeat of the inter war break-up into hostile trading blocks, and prioritized "nondiscrimination and "reciprocity". Nondiscrimination states that members must make the same trade concessions to all others as to their "most-favoured nations. Reciprocity states that there should be, in some (usually poorly-defined) sense, an equality of loss, which implies an exchange of reductions in barriers. These principles could apply in a small club where they extended essentially bilateral agreements to a wider circle. But in any wider reduction the losses and gains for all partners cannot possibly be the same; there are losers and

winners. This is why GATT functioned as it did, as a negotiating forum whose decisions were quite easy to avoid or bypass.

With enforcement and “rule-based tariff reductions it becomes impossible to ensure that all parties benefit. Therefore, everyone seeks exceptions to the rules. The industrial powers have established two systematic procedures for imposing their exceptions. This is the recourse to anti-dumping legislation, coupled with the GATT provision that exempts “trading blocs” from most GATT regulations. The Third World and transition countries have in contrast lost almost all exceptions they could previously resort to. Moreover, the application of reciprocity is by nature asymmetrical between large and “small nations” where “small”, it should be remembered, has to be translated into the language of money—in which India is one fifth the size of the USA. As Hoekman and Kostecki note: “Fundamentally, it is a fact of life that small economies (that is, most developing countries) have little to bring to the negotiating table”.

This is the background to two further principles which have risen to prominence with the WTO: “fair competition” and “market access”. Under fair competition any non-market production or indeed, any element of subsidy of any good for export is immediately in violation of WTO principles.

But the market access rule involves the most far-reaching consequences of institutional enforcement because of the role played by services, which characterize the new stage of capital exports. Fifty per cent of the global stock of foreign direct investment is now in services.

Most service activities can only be provided locally, so to reach foreign markets a service provider must locate in the host country. On US insistence, the WTO now provides that services provided by a foreign-owned subsidiary constitute exports and must be able to compete on a “level playing field” with domestic producers. If generalized, this principle would mean, for example, that a US health company in the UK could initiate a GATT action against the UK for unfair competition by the National Health Service.

This position is not yet settled. The g-10 group of larger developing countries opposed it vigorously, supported by UNCTAD which proposed to define trade in services as occurring only when the majority of value added is produced by non-residents; a labour-, in fact *human*-based criterion. It embodies the simple principle that a nation's residents should determine what happens in their own economy. The US proposal, a property-based principle, asserts that the economic right of the owner overrules the political rights of the people.

VIII. HOW IS WTO DIFFERENT FROM GATT?⁵

Nature: The GATT was a set of rules, with no institutional foundation, applied on a provisional basis. The WTO is a permanent institution with a permanent framework and its own secretariat.

Scope: The GATT rules applied to trade in goods. The WTO Agreement covers trade in goods, trade in services and trade-related aspects of intellectual property rights.

Approach: Whilst the GATT was a multilateral instrument, a series of new agreements were adopted during the Tokyo Round on a plurilateral-that is, selective-basis, causing a fragmentation of the multilateral trading system. The WTO has been adopted, and accepted by its Members, as a single undertaking: the agreements which constitute the WTO are all multilateral, and therefore involve commitments for the entire membership of the organization.

Dispute settlement: The WTO dispute settlement system has specific time limits and is therefore faster than the GATT system; it operates more automatically, thus ensuring less blockages than in the old GATT; and it has a permanent appellate body to review findings by dispute settlement panels. There are also more detailed rules on the process of the implementation of findings.

5 <http://tradeinservices.mofcom.gov.cn>

IX. THE DOHA ROUND⁶:

The Doha Round is the latest round of trade negotiations among the WTO membership. Its aim is to achieve major reform of the international trading system through the introduction of lower trade barriers and revised trade rules. The work programme covers about 20 areas of trade. The Round is also known semi-officially as the Doha Development Agenda as a fundamental objective is to improve the trading prospects of developing countries.

The Round was officially launched at the WTO's Fourth Ministerial Conference in Doha, Qatar, in November 2001. The Doha Ministerial Declaration provided the mandate for the negotiations, including on agriculture, services and an intellectual property topic, which began earlier.

In Doha, ministers also approved a decision on how to address the problems developing countries face in implementing the current WTO agreements.

X. DUNKEL DRAFT

Two years later, in December 1988, ministers met again in Montreal, Canada, for what was supposed to be an assessment of progress at the round's half-way point. The purpose was to clarify the agenda for the remaining two years, but the talks ended in a deadlock that was not resolved until officials met more quietly in Geneva the following April.

Despite the difficulty, during the Montreal meeting, ministers did agree a package of early results. These included some concessions on market access for tropical products — aimed at assisting developing countries — as well as a streamlined dispute settlement system, and the Trade Policy Review Mechanism which provided for the first comprehensive, systematic and regular reviews of national trade policies and practices of GATT members. The round was supposed to

6 <http://www.wto.org>

end when ministers met once more in Brussels, in December 1990. But they disagreed on how to reform agricultural trade and decided to extend the talks. The Uruguay Round entered its bleakest period.

Despite the poor political outlook, a considerable amount of technical work continued, leading to the first draft of a final legal agreement. This draft “Final Act” was compiled by the then GATT director-general, Arthur Dunkel, who chaired the negotiations at officials’ level. It was put on the table in Geneva in December 1991. The text fulfilled every part of the Punta del Este mandate, with one exception — it did not contain the participating countries’ lists of commitments for cutting import duties and opening their services markets. The draft became the basis for the final agreement.

Over the following two years, the negotiations lurched between impending failure, to predictions of imminent success. Several deadlines came and went. New points of major conflict emerged to join agriculture: services, market access, anti-dumping rules, and the proposed creation of a new institution. Differences between the United States and European Union became central to hopes for a final, successful conclusion.

In November 1992, the US and EU settled most of their differences on agriculture in a deal known informally as the “Blair House accord”. By July 1993 the “Quad” (US, EU, Japan and Canada) announced significant progress in negotiations on tariffs and related subjects (“market access”). It took until 15 December 1993 for every issue to be finally resolved and for negotiations on market access for goods and services to be concluded (although some final touches were completed in talks on market access a few weeks later). On 15 April 1994, the deal was signed by ministers from most of the 123 participating governments at a meeting in Marrakesh, Morocco.

The delay had some merits. It allowed some negotiations to progress further than would have been possible in 1990: for example some aspects of services and intellectual property, and the creation of the WTO itself. But the task had been

immense, and negotiation-fatigue was felt in trade bureaucracies around the world. The difficulty of reaching agreement on a complete package containing almost the entire range of current trade issues led some to conclude that a negotiation on this scale would never again be possible. Yet, the Uruguay Round agreements contain timetables for new negotiations on a number of topics. And by 1996, some countries were openly calling for a new round early in the next century. The response was mixed; but the Marrakesh agreement did already include commitments to reopen negotiations on agriculture and services at the turn of the century. These began in early 2000 and were incorporated into the Doha Development Agenda in late 2001.

Though the draft is an attempt to narrow down the differences among and between participating countries yet the developing countries have adopted strong, eloquent and extensive statements reiterating their common position on its main aspects.

Any multilateral negotiation does require mutual adjustments but under no circumstances the developmental interest of less developed countries should have to be sacrificed in the adjustment frame.

X.I THE DUNKEL DRAFT AND CAP REFORM: PAVING THE WAY TO AN AGREEMENT :

At the end of 1991 the director-general of the GATT presented a comprehensive Draft Final Act, known as the Dunkel Draft, in the hope of bringing the Round closer to a conclusion. The Draft covered agriculture, as well as all of the other areas under negotiation in the Round. It included the first complete text on agriculture, in which quantitative proposals were presented with respect to concessions in each of the three major disciplines.

It was internal pressure within the EC to reform the Common Agricultural Policy, that gave the GATT negotiations the momentum that they needed. The MacSharry plan for CAP reform, that was eventually adopted in May 1992, included

proposals that would bring the EC's agricultural policy much closer to meeting the targets outlined in the Dunkel proposals.

The most important element of the MacSharry plan with regards to the GATT was the proposal to substitute a certain amount of domestic price support with direct payments to agricultural producers, as compensation for lower farm prices. These direct payments were to be contingent upon the adoption by EC producers of production limiting measures that would reduce the area of land under agricultural production.

However, although the EC formally agreed to implement the MacSharry plan in May 1992, some obstacles to a GATT agreement still remained. The EC was still reluctant to make substantial cuts in export subsidies, and a question hung over whether the compensation payments of the CAP reform should be subject to domestic support reduction commitments.

XI. CONCLUSION:

Intellectual property rights ultimately involves all the people of our country. It involves, in fact, particularly those people who are disadvantaged, who are backward and who are poor and it is precisely because of this that there should be a national discussion on the Dunkel Draft; people should be allowed to understand what it is all about, before any agreement is reached on this.

The collection of rules that guides the work of this Organization and forms the basis of the multilateral trading system is, to a very large extent, the work of Arthur Dunkel. The Dunkel Draft was burnt in public in some parts of the world, presaging of the demonstrations which are now commonplace in there is a WTO Conference. Here again, Arthur Dunkel's example is inspiring: he did not change course following the fashion of the day, but remained firmly committed to his own belief that a more open and fair trading system is an instrument of peace and prosperity.

The solidity of Dunkel's ideas and the accurateness of his vision are the keystone of an Organization with many remarkable features of the WTO. One of them is the Dispute Settlement Mechanism, which in the last ten years has become a cornerstone in international trade relations. The impressive number of cases treated every year is proof that Members find it reliable and trustworthy. The dispute settlement mechanism has consolidated this Organization's capacity to ensure predictability in trade relations and has given strength to the multilateral rules.

REFERENCES

Internet websites :

- <http://www-personal.umich.edu/~alandear/glossary/d.html>
- <http://www.wto.org>
- <http://www2.econ.iastate.edu/classes/econ355/choi/wtoroots.htm>
- <http://tradeinservices.mofcom.gov.cn>
- <http://www.wto.org>