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An Agricultural Law Research Article

GATT, Agriculture, and Developing Countries

by

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GATT, AGRICULTURE, AND DEVELOPING COUNTRIES

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I. INTRODUCTION

The General Agreement on Tariffs and Trade (GATT) is a unique world agreement that has expanded and flourished.¹ It is the central

1. General Agreement on Tariffs and Trade (GATT), *opened for signature* Oct. 30, 1947, T.I.A.S. No. 1700, 55 U.N.T.S. 188. The text of the GATT agreement is reprinted in KENNETH DAM, *THE GATT: LAW AND INTERNATIONAL ECONOMIC ORGANIZATION* 391 (1970). By October 1992, the following 105 countries and territories were GATT contracting parties: Antigua and Bermuda, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Belize, Benin, Bolivia, Botswana, Brazil, Burkina Faso, Burundi, Cameroun, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Cote d'Ivoire, Cuba, Cyprus, Cze-

body for substantive international trade law.² The GATT is both an agreement and an organization.³ Results of periodic negotiations at the GATT organization, called Rounds, can make differences in the welfare of nations.⁴ This is especially true in the developing, less

choslovakia, Denmark, Dominican Republic, Egypt, El Salvador, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Guatemala, Guyana, Haiti, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Jamaica, Japan, Kenya, Korea, Kuwait, Lesotho, Luxembourg, Macau, Madagascar, Malawi, Malaysia, Maldives, Malta, Mauritania, Mauritius, Mexico, Morocco, Mozambique, Myanmar, Namibia, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Romania, Rwanda, Senegal, Sierra Leone, Singapore, South Africa, Spain, Sri Lanka, Suriname, Sweden, Switzerland, Tanzania, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, United States of America, Uruguay, Venezuela, Yugoslavia, Zaire, Zambia, and Zimbabwe. GENERAL AGREEMENT ON TARIFFS AND TRADE, GATT: WHAT IT IS, WHAT IT DOES 37 (1992) [hereinafter GATT: WHAT IT DOES]. By the same date, twenty seven states, applied for accession and applied GATT rules on a *de facto* basis. They are: Algeria, Angola, Bahamas, Bahrain, Brunei Darussalam, Cambodia, Cape Verde, Equatorial Guinea, Fiji, Grenada, Guinea-Bissau, Kiribati, Mali, Papua New Guinea, Qatar, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Sao Tomé and Príncipe, Seychelles, Solomon Islands, Swaziland, Tonga, United Arab Emirates, Yemen. *Id.* at 38. By April 1993, membership had reached 110 following the accessions of Mali, Swaziland, Saint Lucia, the Czech Republic, the Slovak Republic, and Dominica. *GATT Membership Rises to 110 as Four Countries Accede in April*, FOCUS: GATT NEWSLETTER (GATT, Geneva, Switzerland), vol. 98, 1993, at 1-8. One hundred sixteen countries and territories are participating in the Uruguay Round. *Acceding Countries and Territories to be Associated with Uruguay Round Activities*, NEWS OF THE URUGUAY ROUND (GATT, Geneva, Switzerland), Sept., 1993, at 1. On July 28, 1993, the GATT Trade Negotiations Committee agreed to permit countries negotiating their accession, but not otherwise participating in the Uruguay Round, to formally participate. *Id.* Ten countries and territories are affected: Albania, Bulgaria, Ecuador, Mongolia, Nepal, Panama, Russian Federation, Saudi Arabia, Slovakia, Chinese Taipei. *Id.* The Trade Negotiations Committee of the Uruguay Round contemplates that the European Community (EC) will be signatory to the Uruguay Round agreements. Draft Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, December 20, 1991, GATT Secretariat UR-91-0185, MTN.TNC/W/FA, at 108 [hereinafter *Dunkel Draft*]. The draft is often called the *Dunkel Draft* because it was tabled by Arthur Dunkel, who was the chairman of the Trade Negotiations Committee and also Director-General of the GATT.

2. JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 27 (1989); John H. Jackson, *GATT and the Future of International Trade*, 18 BROOK. J. INT'L L. 11, 15 (1992).

3. The concept of the GATT as an organization evolved after the original agreement was signed. The GATT agreement addresses only "contracting parties." An organization should have "members." It is presently agreed that the GATT is also an organization. See JOHN H. JACKSON, RESTRUCTURING THE GATT SYSTEM 18 (1990).

4. CHAKRAVARTHI RÁGHAVAN, RECOLONIZATION: GATT, THE URUGUAY ROUND AND THE THIRD WORLD 17 (1990). Raghavan writes:

[T]he negotiations are conducted behind closed doors, so they remain hidden from the scrutiny of the world's press and citizen groups. Moreover, the discussions are often conducted with the use of technical terms and strange-sounding acronyms (like TRIPS, TRIMS, and FOGS), giving the impression that the issues are too complex

powerful nations. The nature of GATT—top heavy with the world's industrial giants—has consistently raised questions about the equity in the relationship of GATT and developing countries.⁵ The literature is replete with the view that developing countries⁶ should participate in the GATT world trade system.⁷ That, after all, should mean prosperity for all countries by *laissez-faire* economic principles. However, developing countries contend that the issues most important to them have not been given full attention.⁸ They are concerned, for example, that their products do not have access to the markets of developed countries.⁹

Agriculture is an area of concern for developing countries.¹⁰ Most developing countries have to export primary agricultural products.¹¹ Developing countries do not dominate the market.¹² These nations need the foreign exchange generated by exports to ameliorate their negative balance of payment and balance of trade difficulties.¹³

and beyond the comprehension of ordinary citizens.

Id. See also Walter Russell Mead, *Bushism, Found: A Second Term Agenda Hidden in Trade Agreements*, HARPER'S, Sept. 1992, at 42 (arguing that the President is "using international trade agreements to force changes in U.S. law . . .").

5. GATT arts. XXXVI, XXXVII; ROBERT E. HUDEC, *DEVELOPING COUNTRIES IN THE GATT LEGAL SYSTEM* 16 (1987). Hudec writes: "It is very difficult to convene an enterprise involving rich and poor without having some welfare dimension to the work." *Id.*

6. As used in this article, "developing countries," "less developed countries," and "Third World," etc., are used interchangeably. The term "developing countries" is used for consistency only.

7. See, e.g., JOHN WHALLEY, *THE URUGUAY ROUND AND BEYOND* 25 (1989); Tamotsu Takase, *The Role of Concessions in the GATT Trading System and Their Implications for Developing Countries*, 21 J. WORLD TRADE 67, 77 (1987).

8. In all the Multilateral Trade Negotiations before the Uruguay Round, the tariff reductions on products of the most interest to the developing countries fell short of average cuts, "25 percent versus 33 percent on a weighted [average]." Isaiah Frank, *Trade Policy Issues for the Developing Countries in the 1980s* 4 (World Bank Staff Working Paper No. 478, 1981) (on file with author). In the Uruguay Round, not all the tropical agricultural products from the developing countries are discussed within the framework of tropical products. This is because a number of the products are produced by developed countries or face direct competition with developed country products. Ad Koekkoek, *Tropical Products, Developing Countries and the Uruguay Round*, 23 J. WORLD TRADE 127, 128 (1989).

9. Koekkoek, *supra* note 8, at 128.

10. Developing countries make it clear that they will not sign any final GATT agreement if there is no agreement on agriculture. ROBERT W. JEROME, *WORLD TRADE AT THE CROSSROADS: THE URUGUAY ROUND, GATT, AND BEYOND* 67 (1992).

11. RAGHAVAN, *supra* note 4, at 163.

12. Developing countries that are not oil producers accounted for twenty-five percent of world agricultural trade, the total value of which is \$25.4 billion. Anne O. Krueger, *Global Trade Prospects for the Developing Countries*, 15 THE WORLD ECON. 457, 461 (1992).

13. See *id.*; RAGHAVAN, *supra* note 4, at 160; Carlos Alberto Primo Braga & Geraldo M. Vasconcellos, *Agricultural Trade, the GATT and LDCs*, in *GLOBAL PROTECTIONISM* 256, 256-57 (David Greenaway et al. eds., 1991); Koekkoek, *supra* note 8, at 129.

Although developing countries export mainly agricultural products, they are usually net importers of food.

It is no wonder, then, that many developing countries participated in the Uruguay Round¹⁴ because agriculture was given a measure of prominence. There is a paucity of literature on developing country perspectives in the GATT.¹⁵ That is not the case with literature explaining the European or the American perspectives.¹⁶ Similarly, most of the writings on the Uruguay Round posit that the successful results of the Uruguay Round will be great for developing countries.¹⁷ How this notion has become so widely accepted is baffling. Contrary opinions are downplayed by scholars and the mass media.¹⁸

This article attempts to show that liberalization will hurt most developing countries. An examination of the history of developing countries in the GATT will show that the GATT is not particularly sensitive to the needs of developing countries. Consequently, the exceptions and exemptions in favor of developing countries in the GATT must stay and be strengthened. What is largely missed in the

14. The Uruguay Round is the latest Round of GATT Multilateral Trade Negotiations. See *infra* Part VIII. A Round is a period when tariff negotiations take place. The statutory basis for negotiations is found in GATT art. XXVIII(b):

The contracting parties recognize that customs duties often constitute serious obstacles to trade; thus negotiations [should be conducted] on a reciprocal and mutually advantageous basis, directed to the substantial reduction of the general level of tariffs and other charges on imports and exports and in particular to the reduction of such high tariffs as discourage the importation even of minimum quantities and conducted with due regard to the objectives of this Agreement *The contracting parties may therefore sponsor such negotiations from time to time.*

Id. (emphasis added).

15. In a recent bibliography, thirteen articles are listed on *all* developing countries, compared to twenty seven articles on the United States and the GATT. *Select Bibliography*, 18 *BROOK. J. INT'L L.* 218-23 (1992).

16. *Id.*

17. See, e.g., Henricus A. Strating, *The GATT Agriculture Dispute: A European Perspective*, 18 *N.C. J. INT'L L. & COM. REG.* 305, 306 (1993) ("[i]n short, no one will gain by a GATT failure."); Jon G. Filipek, *Agriculture in a World of Comparative Advantage: The Prospects for Farm Trade Liberalization in the Uruguay Round of the GATT Negotiations*, 30 *HARV. INT'L L.J.* 123, 162 (1989) ("the benefits of trade liberalization have become more apparent.").

18. Braga & Vasconcellos, *supra* note 13, at 257. The authors write:

There are . . . some myths concerning the appeal of agricultural trade reform for LDCs. One of them, popularized by the [mass] media, is the idea that global trade liberalization in agriculture marshals strong political support all over the Third World. Cases of skepticism with respect to the advantages of trade liberalization are promptly labelled as examples of bad economics

Braga & Vasconcellos, *supra* note 13, at 257.

debate is that trade in itself, regardless of its volume, does not mean development. Development is the growth in the economic, social, and cultural well-being of a nation. In the context of developing countries' history in the GATT, this article will evaluate the Uruguay Round to show that several elements that could have aided developing countries are inadequately addressed, or are not even discussed. In short, for most developing countries, more than tariff reductions is needed for meaningful development through trade.

This article adds a developing country perspective to the wisdom of unfettered trade liberalization in agriculture. It does not reject trade as a vital vehicle for development, but supports only that trade which is useful to a human being's standard of living. Contrary to the emerging orthodoxy, liberalization through the Uruguay Round will not improve standards of living in developing countries. This is in large part because human needs in many countries have given way to debt servicing at the national level. The article then suggests some ways for reaching an agreement that could benefit developing countries.

This paper is organized as follows. Part II looks at the GATT agreement. Part III explores the meaning of development. Part IV examines the role of developing countries in the evolution of the GATT agreement. Part V discusses the special relationship between the GATT agreement and agriculture. Part VI analyzes the responses of developing countries to the developed country regime in the GATT. Part VII assesses the probable effects of trade liberalization on developing countries. This article then surveys the Uruguay Round in Part VIII. In Part IX, the negotiations on tropical products are singled out for examination to illustrate some of the contentious areas in the Uruguay Round as a whole. Part X analyzes the implications for developing countries' agricultural trade in the *Dunkel Draft*. Part XI contains the concluding remarks.

II. THE GATT

A. History

The GATT was born as a result of the failure to establish the International Trade Organization (ITO).¹⁹ The ITO was conceived to be a specialized agency of the United Nations,²⁰ like the International

19. DAM, *supra* note 1, at 11.

20. See GATT: WHAT IT DOES, *supra* note 1, at 2.

Bank for Reconstruction and Development (also called the World Bank) and the International Monetary Fund (IMF). The financial agencies of the United Nations did not cover trade issues. The Havana Charter, upon which the ITO would have been based, was a comprehensive document for regulating world trade. It contained substantive organizational and procedural provisions.²¹ Negotiations were underway in Geneva in 1946 to cut tariffs among twenty-three countries. The trade rules of the ITO relating to tariff concessions were used for the initial negotiations. This was envisaged as one of a number of tariff negotiations to be held under the ITO.²² Rules adopted from the ITO and 45,000 tariff concessions exchanged during the negotiations became known as the General Agreement on Tariffs and Trade.²³

During the United Nations Conference on Trade and Employment,²⁴ countries agreed to a draft of the ITO.²⁵ It was difficult, however, to get countries to ratify it. In the case of the United States, it was impossible.²⁶ It also meant that the existence of ITO was impossible. The United States was the world's greatest commercial power. Without it, most of the world's trade would not be subject to this *international* agreement. In the words of the GATT organization, "[w]hen the United States government announced, in 1950, that it would not seek Congressional ratification of the Havana Charter, the ITO was effectively dead."²⁷

Following the death of the ITO, the erstwhile provisional GATT was heir to the status of the world's sole multilateral trade agreement.²⁸ The ever increasing number of contracting parties bring legitimacy and enormous influence to both the organization and the agreement in the international community. Signatories to the GATT agreement have given up a quantum of their sovereignty in the interest of GATT rules.²⁹ Accordingly, the GATT has progressively

21. See GATT: WHAT IT DOES, *supra* note 1, at 2.

22. DAM, *supra* note 1, at 11.

23. GATT: WHAT IT DOES, *supra* note 1, at 3.

24. This conference was held in Havana in March 1948.

25. See GATT: WHAT IT DOES, *supra* note 1, at 3.

26. See GATT: WHAT IT DOES, *supra* note 1, at 3.

27. See GATT: WHAT IT DOES, *supra* note 1, at 3.

28. The GATT organization is far from ideal although the organization has been successful through trial and error. See Jackson, *supra* note 3, at 45 ("[The] GATT application is still, after 40 years, 'provincial.'"). The ITO on the contrary, would have been a specialized agency of the United Nations. Disputes under the ITO, for example, would have been settled by the elaborate International Court of Justice at the Hague.

29. See JACKSON, *supra* note 3, at 48 ("The concept of sovereignty is changing

blossomed into the corpus of world international trade law with rules touching all corners of the globe. In order to administer the agreement, an organization is part of the GATT reality.

B. *The Organization*

Of course, the source of any organization in the GATT is the contracting parties themselves. Without the parties, there will be no agreement. However, a fairly formal organizational structure has emerged.

Article XXV of the GATT contemplates that:

Representatives of the contracting parties shall meet from time to time for the purpose of giving effect to those provisions of this Agreement which involve joint action . . . with a view to facilitating the operation and furthering the objectives of this Agreement. Wherever reference is made in this Agreement to the contracting parties acting jointly they are designated as the CONTRACTING PARTIES.³⁰

The Session of contracting parties is the highest law making body at the GATT.³¹ It usually meets annually, and consists of representatives of the contracting parties. The Session may waive an obligation otherwise imposed by the agreement, modify articles of the agreement, or settle disputes among contracting parties.³²

Ministerial level meetings are rarely convened.³³ However, the ministerial level meeting is a unit of the GATT organization. A ministerial meeting was convened to declare the beginning of the Uruguay Round. A Round is a period when contracting parties come together to exchange binding concessions that takes place periodically.³⁴ The Uruguay Round is the eighth round of multilateral negotiations in the GATT.³⁵

dramatically, and begins to lose most of its meaning at least in the context of economic affairs, now that the world is so interdependent economically.''). *But see* Peter D. Ehrenhaft, *Restructuring the GATT System*, 86 AM. J. INT'L L. 230, 231 (1992) (book review) ("Jackson . . . barely touches the enduring sovereignty concept . . .").

30. GATT art. XXV(1).

31. GATT: WHAT IT DOES, *supra* note 1, at 12.

32. GATT art. XXV(5).

33. GATT: WHAT IT DOES, *supra* note 1, at 12.

34. GATT: WHAT IT DOES, *supra* note 1, at 22.

35. *See* Part VIII for a discussion of the Uruguay Round. The Round has a new, different negotiating structure from what is addressed in this section. *See* GATT: WHAT IT DOES, *supra* note 1, at 13.

The Council of Representatives takes care of GATT business between sessions.³⁶ It is made up of representatives of the GATT contracting parties and high-level career civil servants at the GATT.³⁷ The career officials appear to set up the agenda, which usually includes settling trade disputes, accession of new members to the GATT, waivers, and consideration of the reports of working parties.³⁸ It meets about nine times a year.³⁹

GATT standing committees are another aspect of the organization.⁴⁰ They were set up to administer the Tokyo Round⁴¹ agreements such as the Multi-Fibre Arrangement.⁴² A standing committee typically administers the organization's budget.⁴³

Working parties, another unit of the organization, take up current issues, for example, requests to accede to the agreement.⁴⁴ Often, Panels are established by the Council or other GATT units to provide decisions on disputes.⁴⁵

GATT decisions are reached by consensus.⁴⁶ Typically decisions are reached by a simple majority.⁴⁷ Each party to the agreement has one vote.⁴⁸

The GATT is administered day-to-day by staff members.⁴⁹ The staff is headed by a Director-General.⁵⁰ About 400 persons constitute the GATT staff.⁵¹ The staff assists with the technical aspects of

36. GATT: WHAT IT DOES, *supra* note 1, at 12.

37. Loretta F. Smith, Comment, *The GATT and International Trade*, 39 BUFF. L. REV. 919, 929-30 (1991).

38. GATT: WHAT IT DOES, *supra* note 1, at 12.

39. GATT: WHAT IT DOES, *supra* note 1, at 12.

40. GATT: WHAT IT DOES, *supra* note 1, at 12.

41. The Tokyo Round of Multilateral Trade Negotiations took place between 1974-79. Agriculture and Tropical Goods were distinct negotiating groups.

42. GATT: WHAT IT DOES, *supra* note 1, at 12.

43. GATT: WHAT IT DOES, *supra* note 1, at 13.

44. GATT: WHAT IT DOES, *supra* note 1, at 13.

45. GATT: WHAT IT DOES, *supra* note 1, at 13.

46. GATT: WHAT IT DOES, *supra* note 1, at 13.

47. GATT art. XXV(4). In exceptional circumstances, two-thirds majority is required. GATT art. XXV(5).

48. GATT art. XXV(3).

49. GATT: WHAT IT DOES, *supra* note 1, at 14. This is often referred to as the GATT Secretariat.

50. There have been four director generals of the GATT since 1947: Sir Eric Wyndham-White 1948-68, Olivier Long 1968-80, Athur Dunkel 1980-93, and Peter Sutherland 1993 to the present. Mr. Sutherland was appointed on June 9, 1993. *Peter Sutherland Takes Over*, FOCUS: GATT NEWSLETTER (GATT, Geneva, Switzerland), vol. 100, 1993, at 1.

51. GATT: WHAT IT DOES, *supra* note 1, at 14.

negotiations such as drafting and secretarial duties.⁵² The role of the staff includes promoting the GATT and advising developing countries.⁵³ To understand the GATT, it is important to understand its philosophy.

C. *The GATT's Philosophy*

The GATT was established in an era when it was believed that widespread protectionism led to the depression of the 1930s.⁵⁴ The famous "Most Favoured Nation" clause of Article I of the GATT demonstrates this philosophy. This clause means that "all contracting parties are bound to grant to each other treatment as favourable as they give to any country in the application and administration of import duties and charges."⁵⁵ The clause utilizes the laissez-faire economic philosophy. Central to this philosophy is the concept of "comparative advantage," which means that countries create wealth by specializing in what they produce best. Nations that so concentrate produce particular products more efficiently than other nations. Such countries generate wealth by selling their products to the rest of the world. Other countries benefit from the import of their commodities by countries that do not produce them. In this manner, all nations are supposed to be better off.

This philosophy has important implications for national development. On its face, it means that developing countries should simply not venture into industrial production since developed countries do it more efficiently.

An important GATT philosophy is reciprocity. This concept means that nations should make arrangements to give and take concessions towards lowering tariff levels around the World. The Preamble of the GATT agreement reports the desire of the contracting parties to enter "reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade"⁵⁶

The GATT has important rules for maintaining the basic free trade philosophy. Tariffication is an important GATT rule. It pro-

52. Smith, *supra* note 37, at 931.

53. Smith, *supra* note 37, at 931.

54. DIANA TUSSIE, *THE LESS DEVELOPED COUNTRIES AND THE WORLD TRADING SYSTEM: A CHALLENGE TO THE GATT* 13 (1987).

55. GATT: WHAT IT DOES, *supra* note 1, at 6.

56. GATT, preamble.

vides that when protection of a domestic industry is effected, it must be done by tariffs. Tariffs are visible forms of protection and are preferred to other forms of protection that are hard to identify. The GATT abolished special national treatment in trade. Once a good has entered the market of a country from another, it should be treated the same as goods produced in the importing country.

Furthermore, these tariffs must be "binding." A tariff level is bound at the end of a GATT Round of negotiation and every contracting party is bound by it until it is re-negotiated. This is deemed to create a stable basis for trade. In a little tinkering with otherwise purist trade liberalism, the GATT provides measures for ensuring fair trading. The anti-dumping provisions of the agreement illustrate this. These principles are reflected fully in the agreement.

D. *The Agreement*

The GATT agreement has thirty-eight articles arranged under four parts. Part one spells out the philosophy of the agreement. Article I explicates the contracting parties' duties to maintain the Most Favored Nation principle. It also abolishes discriminatory national trade practices, and provides exceptions. Article II calls for transparency through tariffication.

Part II is made up of Articles III through XXIII. Its major articles include the prohibition of anti-dumping and countervailing duties,⁵⁷ the elimination of quantitative restrictions,⁵⁸ the balance of payment escape provisions,⁵⁹ and the nullification and impairment provisions.⁶⁰ The provisions of this part are binding if they do not conflict with national legislation, and a country may accede (join) the GATT provincially without complying with this part.⁶¹

Part III contains Articles XXIV to XXXV. Included in this part are rules for forming customs unions and free trade areas,⁶² granting of waivers,⁶³ withdrawal of concessions,⁶⁴ modifying a negotiated

57. GATT art. VI.

58. GATT art. XI.

59. GATT arts. XII and XVIII(2)(b) (with Article XVIII addressing developing country concerns).

60. GATT art. XXIII.

61. TUSSE, *supra* note 54, at 14.

62. GATT art. XXIV.

63. GATT art. XXV(5).

64. GATT art. XXVII.

concession,⁶⁵ and accession to the GATT,⁶⁶ among others provisions.

Part IV was established as a result of pressure from developing countries who felt that the GATT agreement did not adequately address their concerns. It was not instituted until 1965. This part specifies that developing countries do not have to offer reciprocal concessions during trade negotiations. As written, it was largely laudatory.⁶⁷

Anyone in doubt about the initial ambiguity of this part is invited to read its "commitments" provision. It states in part: "The developed contracting parties shall [assist developing countries] to the fullest extent possible—that is, except when compelling reasons which may include legal reasons, make it impossible [to] give effect [to the commitments]."⁶⁸ One other article states the principles and objectives of the part.⁶⁹ The last GATT article calls for joint action among contracting parties to achieve the objectives of the part.⁷⁰

Article XXXVI provides that "raising of the standards of living and progressive development . . . is particularly urgent for less-developed contracting parties."⁷¹ However, what is progressive development? Does development really differ from raising standards of living? Most writers agree that raising standards of living is part of development.⁷² The next section discusses development and the role of the law in it.

III. DEVELOPMENT AND THE ROLE OF LAW

A. Development

Every country which elects developing country status, by definition, purports to develop. Development means different things to different people but almost everyone agrees it includes, for example, the absence of massive starvation.⁷³ International development thought

65. GATT art. XXVIII(1).

66. GATT art. XXXIII.

67. Smith, *supra* note 37, at 929. Any binding force was established through developing countries' demands and further action by the GATT. See *infra* Part IV.

68. GATT art. XXXVII.

69. GATT art. XXXVI.

70. GATT art. XXXVIII.

71. GATT art. XXXVI.

72. MICHAEL P. TODARO, *ECONOMIC DEVELOPMENT IN THE THIRD WORLD* 87 (1989).

73. See *id.* at 85 ("[D]evelopment economics has no universally accepted doctrine or paradigm. Instead, we have continually evolving patterns of insights and understandings that together provide the basis for examining the possibilities of contemporary development of the diverse nations of Africa, Asia, and Latin America.").

has had a checkered history.⁷⁴ When conscious studies of development began after World War II, experts in developed countries “were caught off-guard.”⁷⁵ They could not easily conceptualize the meaning of progress in these largely peasant states.⁷⁶ Accordingly, scholars felt that since the developed countries were themselves agrarian, it was historical “truth” that all developing countries would “grow” into industrialization.⁷⁷

The development thought that predominated in the 1950s and 1960s focused largely on national output and certain economic indicators. Typically, the nations’ development was measured by the growth in per capita Gross National Product. During this period, agricultural development was discouraged. Industrialization was the paramount aim of development. Agriculture’s share in production and employment was supposed to be reduced in the interest of industrial progress.⁷⁸

Manufacturing and services were supposed to increase.⁷⁹ Non-economic social factors were usually mentioned but not emphasized as indicators of development.⁸⁰ It was thought that gains made nationally, even if by a few individuals within a country, would trickle down “to the masses in the form of jobs and other economic opportunities or create the necessary conditions for the wider distribution of the economic and social benefits of growth.”⁸¹

Traditional doctrine appears to have failed. A large number of developing countries had met acceptable Gross National Products (GNP) “scores” or high rates of growth per capita.⁸² However, standards of living remained dismal in those countries.⁸³ As for trade,

74. See generally Donald Voth, *Overview of Development Thought* (University of Arkansas, Department of Agricultural Economics and Rural Sociology Staff Paper, 1991) (on file with author).

75. TODARO, *supra* note 72, at 64.

76. TODARO, *supra* note 72, at 64.

77. TODARO, *supra* note 72, at 64 (“[This idea] was too irresistible to be refuted by scholars, politicians, and administrators in rich countries to whom people and ways of life in the Third World were often no more real than UN statistics or scattered chapters in anthropology books.”).

78. TODARO, *supra* note 72, at 86-87.

79. TODARO, *supra* note 72, at 87.

80. TODARO, *supra* note 72, at 87.

81. TODARO, *supra* note 72, at 87.

82. TODARO, *supra* note 72, at 87. The Gross National Product of a country is the total production of goods and services produced in that country plus the incomes earned by residents of that country from other countries, minus the income earned in that country which accrues to persons in other countries. TODARO, *supra* note 72, at 628.

83. TODARO, *supra* note 72, at 628.

it was thought that exportation would push overall development forward, but that did not happen.⁸⁴

This situation grew worse in the 1980s in many places where even GNP rates per capita became stagnant or negative.⁸⁵ The success of conservative governments in the most powerful countries in the world brought about a resurgence in trickle-down thinking. This has been called the neo-classical counter-revolution.⁸⁶ These countries—the United States, Canada, Britain, and West Germany—had controlling votes in the World Bank and the International Monetary Fund.⁸⁷ On other fronts, neo-conservative, free-market theorists (including those of the law and economics movement) gathered momentum.⁸⁸ Governments cut back on civil rights, worker rights, and social and economic programs. However, by the late 1980s, many of the developed countries voted moderates into political office. Today, in most developed countries, the fire of the neo-classical revolution has lost its heat.

Since the 1970s, it had been realized that development had to be re-defined; people and provision for their basic needs was to be the goal of development.⁸⁹ More than economic indicators were contemplated: "Development must, therefore, be conceived of as a multidimensional process involving major changes in social structures, popular attitudes, and national institutions, as well as the acceleration of economic growth, the reduction of inequality and the eradication of absolute poverty."⁹⁰

B. *The Role of Law*

In general, law is an authoritative statement, made by fiat or evolved through custom, that is properly instituted and binding on the parties to which it is addressed, the non-compliance with which usually draws sanctions.⁹¹ As an institution, the law may be used in

84. GERALD M. MEIMER, *LEADING ISSUES IN ECONOMIC DEVELOPMENT* 389 (1989).

85. TODARO, *supra* note 72, at 88.

86. TODARO, *supra* note 72, at 82.

87. TODARO, *supra* note 72, at 88.

88. TODARO, *supra* note 72, at 83. The following writers are associated with the counter-revolutionary school: Lord Peter Bauer, Deepak Lal, Ian Little, the late Harry Johnson, Bela Balassa, Julian Simon, Jagdish Bhagwati, Anne Kruger. *Id.* Many of them are associated with the World Bank.

89. TODARO, *supra* note 72, at 87.

90. TODARO, *supra* note 72, at 88.

91. See P. EBOW BONDZI-SIMPSON, *THE LAW AND ECONOMIC DEVELOPMENT IN THE THIRD WORLD* 5 (1992).

the development process by providing the framework and procedures through which different aspects of society are governed (e.g. providing a constitution). The law can be used to accelerate desired policies or conduct, and to impede undesired policies and conduct.⁹² When industrialization is thought to promote development, the law responds by making it easy to establish industries. In this sense, a country might wish to promote local industries (impose high tariffs) or operate an open market (remove tariffs). The law can be used to prohibit trade in particular cultural artifacts. It may be used to set a wage standard. It can also provide ways for dispute resolution. It can be used to define civil rights.

The law may be used to “provide a catalog of substantive rights, obligations and entitlements.”⁹³ Countries give up some amount of their sovereignty when they accede to the GATT. The GATT agreement, and customary international law⁹⁴ surrounding its application, allocate substantive rights and duties on contracting parties. Since the beginning of GATT, developing countries have struggled to carve out legally protected differential relationships within the GATT. Article XVIII and the fourth part of the agreement were added in response to developing country pressure.⁹⁵

The discussions of the GATT are often wrongly viewed only as exercises in economics.⁹⁶ Liberalization offers an assault on the special legal benefits that are part of the GATT agreement that benefit developing countries. Because it is hard to separate the economic from the legal at the GATT, the GATT can create—or redefine—international law from the economics backdoor. To illustrate, a call for unfettered global liberalization is also (but not obviously) a call

92. *See id.*

93. *Id.* at 6.

94. Customary international law is a body of customs that are generally accepted as legally binding among nations. Its authority as a basic source is stated in Article 38 of the Statute of the International Court of Justice:

(1) The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

(a) international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

(b) international custom, as evidence of a general practice as law;

(c) the general principles of law recognized by civilized nations

STATUTE OF THE INTERNATIONAL COURT OF JUSTICE art. 38, *reprinted in* 59 Stat. 1060, TS No. 993, 1976 U.N.Y.B. 1052.

95. *See* JACKSON, *supra* note 2, at 276.

96. *See* HUDEC, *supra* note 5, at 138 (“[Separating] legal and economic issues is difficult because the two sets tend to occupy the same ground.”).

for dispensing with Part IV of the GATT. The call for liberalization is made again and again. Yet, the legal obligations of contracting parties to the GATT are not consistent with unfettered liberalization.⁹⁷

Those who worry about the jurisprudence of the GATT are asked: "[W]hy worry about the legal rules . . . rules don't matter; as long as the participants have the political will to make the system succeed" ⁹⁸ As Professor Jackson points out, this idea is plain wrong.⁹⁹ The GATT as an institution needs laws that are independent of political will.¹⁰⁰ Such rules will guide the institution when the political will is lacking.¹⁰¹ "People and power groups,"¹⁰² writes Jackson, "will always be tempted to undermine the system if by doing so major short-term advantages will be obtained."¹⁰³ The law exists to define rights and duties, to minimize trouble making.

The closeness of law and economics at the GATT has another consequence; computer models and economists are the loudest voices. Yet only countries and territories are contracting parties to the GATT agreement. The GATT is also the body of most international trade law. Any international law is possible because of the acquiescence of states. States, in most cases, are the subjects of international law.¹⁰⁴ In deciding whether or not to preserve an article or principle of the GATT, it is critical that the position of state parties be ascertained.

In the GATT system, developing countries themselves have identified ways through which they could achieve development. To the extent that the GATT elaborates and strengthens the rights and entitlements of developing countries, development needs would have helped define international trade law.

97. HUDEC, *supra* note 5, at 133 ("The legal obligations of the GATT do not require anything even close to a free trade policy.").

98. JACKSON, *supra* note 3, at 54.

99. JACKSON, *supra* note 3, at 54.

100. JACKSON, *supra* note 3, at 54.

101. JACKSON, *supra* note 3, at 54.

102. JACKSON, *supra* note 3, at 54.

103. JACKSON, *supra* note 3, at 54-55.

104. See John Major, *Major on Europe: Raise Your Eyes, There Is a Land Beyond*, THE ECONOMIST, Sept. 25, 1993, at 27 ("the nation state is here to stay"). See also Samuel P. Huntington, *The Clash of Civilizations*, FOREIGN AFF., Summer 1993, at 22 ("nation states will remain the most powerful actors in world affairs"). But see P.K. Menon, *The International Personality of Individuals in International Law: A Broadening of the Traditional Doctrine*, 1 J. TRANSNAT'L L. & POL'Y 151 (1992) (the nation state is no longer the only player in the international plane). A subject of international law has rights and duties in international affairs and can legally discharge them in international fora. A country is a good example of a subject of international law.

Legal rights are not handed out. Securing rights under GATT law is no exception. The next section discusses developing countries' efforts to secure their rights under GATT law.

IV. DEVELOPING COUNTRIES IN THE GATT ORDER

A. *What Is a Developing Country in the GATT?*

The aim of this section is to show that the "developing country or countries" is not a very meaningful term although it is highly convenient. There are often exceptions to every declaration of developing countries' behavior.

Article XXXVI of the GATT agreement speaks several times of "less developed countries" but does not define the term. Part IV of the GATT agreement mentions this term twenty-eight times. Books,¹⁰⁵ articles,¹⁰⁶ and other materials leave the subject alone, and wisely so. The GATT agreement and organization leave the decision to claim less developed country status up to the individual contracting party. By 1964, for example, Greece, Portugal, Turkey and Spain claimed developing country status at the GATT.¹⁰⁷

A lot of developments have made it easier to isolate developing countries. They are usually former colonies, in a developed country's Generalized System of Preferences (a form of development assistance specifically for developing countries, discussed later), and they often depend on mineral or primary product exports for their well being. These states differ in size, levels of development, composition of trade, and indebtedness; in short, the countries have few things in common. Some scholars question the usefulness of the term.¹⁰⁸

The question arises: Why does this nomenclature persist? The answers lie in the historical, emotional, pragmatic, and in plain old orthodoxy. Historically, most of the countries had been under the colonial powers of the developed countries and had weaker economies

105. See generally HUDEC, *supra* note 5.

106. See generally Lyn MacNabb & Robert Weaver, Comment, *The General Agreement on Tariffs and Trade: Has Agriculture Doomed the Uruguay Round?*, 26 LAND & WATER L. REV. 761 (1991).

107. TUSSIE, *supra* note 54, at 8.

108. See e.g., SIDNEY GOLT, *THE GATT NEGOTIATIONS 1973-75: A GUIDE TO THE ISSUES* 51 (1975) ("The problems of producing a resounding package of benefits for the developing countries considered as a unified mass may therefore turn out to be as intractable as ever, and may illustrate once again the *unhelpfulness of this categorization for concrete action on specific policies.*") (emphasis added).

than the industrialized countries. Emotionally, the term appeals to less powerful countries. It provides a coalition, for example, for denouncing the powerful countries. Pragmatically, it provides leverage for less powerful countries to stand up against the powerful in forums such as the United Nations without compromising anything. The term "developing country" is amorphous enough to hypothetically include every non-industrialized country.¹⁰⁹ Also, the unity that exists through the large numbers of the developing countries is necessary to pressure the industrialized countries to accept, for instance, the norms of the New International Economic Order.¹¹⁰ This order, simplified, calls on rich countries to be equitable in dealing with the poor countries. It is orthodox for scholars in international trade to regard the world as having three players: the industrial countries of Western Europe, North America, Japan, Australia, and New Zealand (first world); the socialist states (second world);¹¹¹ and the developing countries (third world).¹¹²

Alternative ways to define the non-industrialized countries in the GATT have been suggested.¹¹³ One method calls for five categories which are not mutually exclusive.¹¹⁴ These are: (a) Newly Industrialized Countries (NICs); (b) middle-income oil importing countries;

109. The only requirement for being a "developing country" is to say so. One of the problems in the Uruguay Round is "graduation." Some countries feel accused of "graduating" to Developed Country status. They plead not guilty in many cases. Note that there are as many differences in "developed countries" as there are within the "developing countries." The conceptual difficulty with "graduation" is that one cannot "graduate" from nothing to nothing.

110. The main principles of the New International Economic Order are: (1) the protection of the economic interests of developing countries by developing countries and developed countries alike, (2) the preferential treatment of developing countries, and (3) non-reciprocity in the relationship between developed and developing countries. Wil D. Verwey, *The Principles of a New International Economic Order and the Law of the General Agreement on Tariffs and Trade, (GATT)*, 3 LEIDEN J. INT'L L. 117 (1990).

111. The former socialist bloc countries are developing countries based on their election to be so recognized under developed countries' Generalized System of Preferences (GSPs). See UNCTAD SECRETARIAT, *REVIEW OF THE IMPLEMENTATION, MAINTENANCE, IMPROVEMENT, AND UTILIZATION OF THE GENERALIZED SYSTEM OF PREFERENCES 27-30* (1993) (listing developing countries benefitting from GSPs).

112. Krueger, *supra* note 12, at 468. In this article, developed countries are the countries of the "first world."

113. See e.g., Roshani M. Gunewardene, *GATT and the Developing World: Is a New Principle of Trade Liberalization Needed?*, 15 MD. J. INT'L L. & TRADE 45, 67 (1991). The article calls for the following categories: "developed, newly developing, developing, and less developed countries." *Id.* It does not define these terms but underscores the need for change of classifications.

114. Krueger, *supra* note 12, at 465-67.

(c) middle-income countries heavily dependent on raw material exports; (d) low income countries; and (e) underpopulated oil exporting countries.

The NICs are predominantly countries of South East Asia. They include Korea, Malaysia, Singapore, and Taiwan.¹¹⁵ These countries, like the United States or Germany, export manufactured products. Accordingly, their interests in world trade transcend agriculture and the scope of this work.

The middle-income, oil-importing countries include the more heavily-indebted countries. Their economies stagnated in the 1980s as oil prices rose and large portions of their national income were used for debt servicing. Argentina, Brazil, Philippines, and Morocco belong to this group. However, some oil importing countries managed relatively stable economies, for example, Columbia and Costa Rica.¹¹⁶

The middle-income, heavily-dependent-on-raw-material exports group includes oil-producing Nigeria and Indonesia. They neglected their agriculture. Commodities producers like Jamaica, Bolivia, and Peru also fall into this category.¹¹⁷

The low-income countries have two sub-groups: (a) those in Asia, and (b) those in Sub-Saharan Africa. The Asian group includes China, Bangladesh, India, Pakistan, Sri Lanka, Nepal, and Afghanistan.¹¹⁸ They are populous countries and have an inward orientation. They have protective domestic policies. Orthodoxy has it that this reduces trade and national welfare.¹¹⁹ Sub-Saharan Africa is the crisis point of the world. Living standards are dropping.¹²⁰ Famine, war, population growth, and political instability have taken their toll. Export earnings are dropping. Many of them are African-Caribbean and Pacific countries.

The oil-exporting countries that are under-populated comprise the final category. They depend solely on their oil exports and may have ignored their agricultural sector. The technological aspects of oil production are imported. Countries in this group include Indonesia, Iraq, Venezuela, Cameroun, and Ecuador.

115. Krueger, *supra* note 12, at 464-66.

116. Krueger, *supra* note 12, at 466-67.

117. Krueger, *supra* note 12, at 466-67.

118. Krueger, *supra* note 12, at 467.

119. See Bela Balassa, *Interest of Developing Countries in the Uruguay Round*, 11 *WORLD ECON.* 39, 40 (1988) (criticizing India for its in-ward orientation).

120. Krueger, *supra* note 12, at 467.

There are other classifications. The Organization for Economic Co-operation and Development (OECD) distinguishes countries based on the Gross National Product per capita. It lists countries in three ways: low-income countries and territories (GNP per capita under \$700.00); low middle-income countries and territories (GNP per capita between \$700 and \$1,300); and upper-middle-income countries and territories (GNP per capita over \$1,300). The World Bank uses similar nomenclatures but different qualifying GNPs. According to the bank's *World Development Report 1993*:

Low-income economies are those with a GNP per capita of \$635 or less in 1991.

Middle-income economies are those with a GNP per capita of more than \$635.00 but less than \$7,911 in 1991. A further division, at GNP per capita of \$2,555 in 1991, is made between lower-middle-income and upper-middle-income economies.

High-income economies are those with a GNP per capita of \$7,911 or more in 1991.¹²¹

The concept of the least-developed nations emerged from the United Nation's classification system.¹²² The United Nations divides developing countries into three categories: the least developed, the non-oil-exporting developing countries, and the members of the Organization of Oil Exporting Countries (OPEC).¹²³ While membership in OPEC is clear, the United Nations uses self-election to decide which country is least developed. The countries themselves ask to be so considered. This principle that permits nations to choose where they belong is called "self-election."

B. Towards a Juridical Definition of Developing Countries: The Doctrine of Self-Election

None of the efforts to list developing countries have juridical value. They represent, at the very best, localized efforts by countries, organizations, and scholars to make sense out of this difficult subject. The United Nations and the GATT organization have grappled with

121. *Investing in Health*, WORLD DEVELOPMENT REPORT 1993 (World Bank 1993). Note that the figures change annually.

122. See TODARO, *supra* note 72, at 14.

123. See TODARO, *supra* note 72, at 14.

the problem; and there has arisen a juridical principle within the context of the international law of trade preferences.

The GATT system insufficiently concerned itself with their problems, so developing countries turned to a United Nations forum, the United Nations Conference on Trade and Development (UNCTAD) for sympathetic hearing. The conference was established as a permanent organ of the United Nations General Assembly in December 1964, and UNCTAD normally meets every four years.¹²⁴ The UNCTAD is the leading forum for the development of the norms of the international law of trade preferences. It was here that the idea of the Generalized System of Preferences was hatched.¹²⁵ The preferences were proposed for "developing countries." So, within the framework of a world body, the definition of "developing country" had to be confronted.

The vexing question was: Who is a beneficiary developing country? Membership in the Group of 77 was suggested.¹²⁶ Although membership in the group was thought to define developing countries, it was not adequate.¹²⁷ The idea was rejected by the Organization for Economic Cooperation and Development (OECD) because it would exclude four members of the OECD which considered themselves developing countries: Greece, Turkey, Spain, and Portugal.

124. Grant B. Taplin, *Revitalizing UNCTAD*, 29 *FIN. & DEV.* 36, 37 (June, 1992).

125. *See also supra* Section IV(A).

126. Developing countries chose this route in response to GATT's gradualism in dealing with their trade concerns. It was at UNCTAD that the Group of 77 was established, as well as the bloc approach for negotiations at the UNCTAD. Countries were listed in blocs. African and Asian countries and Yugoslavia were under "list A." The developed capitalist countries were listed under "list B." Latin American and Caribbean countries were listed under "list C." "List D" contained the countries of socialist countries of Eastern Europe. The Group of 77 was formed when countries in lists A and C came together to advance their interests. MARC WILLIAMS, *THIRD WORLD COOPERATION: THE GROUP OF 77 IN UNCTAD 79* (1991). There were over 128 members of the group in 1988, including the Palestine Liberation Organization. *Id.* at 78.

127. However, the Group of 77 declared in 1968 that all its members considered themselves "developing countries" entitled to all the benefits that goes with it. ABDULQAWI YUSUF, *LEGAL ASPECTS OF TRADE PREFERENCES FOR DEVELOPING STATES: A STUDY IN THE INFLUENCE OF DEVELOPMENT NEEDS ON THE EVOLUTION OF INTERNATIONAL LAW* 105 (1982). *See also* F.V. GARCIA-AMADOR, *THE EMERGING INTERNATIONAL LAW OF DEVELOPMENT* 60 (1990) ("[I]n only one respect does there seem to be agreement: the term 'developing countries' includes all the members of the so-called 'Group of 77,' i.e., the over one hundred countries integrating the Third World."). However, more countries that are not members of the Group of 77 have emerged principally from the former socialist bloc as developing countries. *See UNCTAD SECRETARIAT, REVIEW OF THE IMPLEMENTATION, MAINTENANCE, IMPROVEMENT AND UTILIZATION OF THE GENERALIZED SYSTEM OF PREFERENCES* 27-30 (1993).

Also, Israel would not accept using membership of the group as a definition of "developing country," because Israel was not a member of the Group of 77, but sought developing country status.¹²⁸ The principle of self-election was the chosen answer.

Under this principle, any country seeking to be considered developing would state so itself. That country would then qualify for the benefits of the status. "The self-election principle presumes that no country will claim developing country status unless there are *bona fide* grounds for it to do so and that such a claim would be relinquished if those grounds ceased to exist."¹²⁹ The principle has worked well with the result that developing country lists have been "gradually expanded and harmonized."¹³⁰

Self-election was endorsed by the GATT contracting parties when the contracting parties granted a waiver of the Most Favored Nation clause of the GATT agreement.¹³¹ This waiver was effected under Article XXV(5) in 1971.¹³² This waiver permitted special treatment for developing countries for ten years. This system did not provide the permanent framework that developing countries sought. So the developing countries continued to pressure for a permanent legal framework. This legal framework, waiving GATT's Article I permanently, was achieved in 1979 when the GATT contracting parties agreed to it.¹³³ Many countries have incorporated the principle of self-election into their national legislation.¹³⁴ The principle of self-election is also used when nations declare themselves least developed.

C. *Developing Countries' Attempt to Reform the GATT*

At the Havana Conference for an International Trade Organization, the United States was opposed to provisions that catered to

128. YUSUF, *supra* note 127, at 104.

129. YUSUF, *supra* note 127, at 105.

130. TRACY MURRAY, TRADE PREFERENCES FOR DEVELOPING COUNTRIES 34 (1977).

131. GATT art. I.

132. *Waivers: Generalized System of Preferences, Decision of 25 June 1971*, BASIC INSTRUMENTS & SELECTED DOCUMENTS (GATT, Geneva, Switzerland), 18th Supp., 1972, at 24.

133. *Differential and More Favorable Treatment Reciprocity and Fuller Participation of Developing Countries, Decision of 28 November 1979*, BASIC INSTRUMENTS & SELECTED DOCUMENTS (GATT, Geneva Switzerland), 26th Supp., 1980, at 203.

134. One example is the United States. 19 U.S.C. § 2462(a) (1988) ("The term 'beneficiary developing country' means any country with respect to which there is in effect an Executive Order by the President of the United States designating such country as a beneficiary developing country . . ."). To be so designated, there shall be from the developing country "an expression by such country of its desire to be so designated." *Id.* § 2462(c).

economic development of any country.¹³⁵ But the developing countries, understandably, had other ideas. Hudec writes:

Developing countries tabled a wide range of proposals, many calling for positive transfers of resources. In the field of trade policy, their demands were focused on securing freedom from the Charter's obligations. They wished to protect infant industries with measures not otherwise permitted; they wished to be permitted to receive new tariff preferences from other developed or developing countries; they wanted the right to benefit from developed-country tariff concessions without having to offer equivalent tariff concessions of their own.¹³⁶

Chapter III of the stillborn ITO, titled *Economic Development and Reconstruction*, was a compromise between the United States, the developing countries, and the European countries sympathetic to the developing countries.¹³⁷ The exceptional measures granted to developing countries did not go far enough to meet stated developing countries' demands.¹³⁸ However, it provided a good measure of privileges for developing countries.¹³⁹ When the ITO died because the United States Senate would not ratify the agreement to set it up, the GATT replaced it.

The GATT itself was supposed to be a stop-gap agreement drafted largely by the United States. It reflected much of the earlier U.S. policy not to concern itself with economic development issues in the area of trade.¹⁴⁰ It is, therefore, not surprising that as originally drafted and practiced, the GATT agreement had no clear provisions for trade and development for developing countries.¹⁴¹

The GATT was established to suit the economic interests of industrial powers after the Second World War.¹⁴² In fact, it has been

135. DAM, *supra* note 1, at 225.

136. HUDEC, *supra* note 5, at 11.

137. HUDEC, *supra* note 5, at 10.

138. See HUDEC, *supra* note 5, at 10.

139. HUDEC, *supra* note 5, at 15.

140. HUDEC, *supra* note 5, at 15.

141. It is true that GATT Article XVIII has an exception for developing countries, but its operation was difficult. It was also discriminatory since it was harder to evoke this article than GATT Article XII which grants exceptions more likely to be used by developed countries.

142. TUSSIE, *supra* note 54, at 11.

criticized as being another rich nations' country club.¹⁴³ At its founding, developing countries were a minority.¹⁴⁴ Time was, however, to change that. In the late 1950s widespread nationalism swept the world. Independence of former colonies followed, bringing about a numerically meaningful number of developing countries. Their large numbers, aided by cold war politics, had empowered these countries by the 1960s. They demanded, and got, some changes in the GATT.

1. *The Panel of Experts*

In 1958, a GATT-appointed group of experts led by Gottfried Haberler released its report. The group of experts were charged with examining development issues in international trade. The group's report, popularly called the *Harbeler Report*, found that developed countries' policies contributed substantially to the dismal economic circumstances of the developing countries.¹⁴⁵ Export earnings of the developing countries were down and their share of world trade plummeted. Some of the policies of developed countries were blamed for this.

As a result of the report's sobering findings, the GATT organization set up three committees.¹⁴⁶ Committee I was charged with arranging another round of multilateral tariff negotiations.¹⁴⁷ Committee II was to assemble data and consider the effect of agricultural protection on trade.¹⁴⁸ Committee III was to report on measures for expanding world trade.¹⁴⁹

Committee III found that developing country exports such as oils, coffee, tea, cocoa, jute, cotton products, and sporting and leather goods, face high tariffs and other non-tariff barriers. It also found that developing countries had particular difficulties in nego-

143. Smith, *supra* note 37, at 920 ("To some developing countries, trade liberalization is a fairy tale because they perceive the GATT organization as an extension of the Organization for Economic Cooperation and Development (OECD) . . .").

144. The original contracting parties to the GATT were: Australia, Belgium, Brazil, Burma, Canada, Ceylon, Chile, China, Cuba, Czechoslovak Republic, France, India, Lebanon, Luxembourg, the Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia, Syria, South Africa, Great Britain and Northern Ireland, the United States.

145. DAM, *supra* note 1, at 229.

146. *International Trade Programme of Action Directed Towards an Expansion of International Trade, Decision of 17 November 1958*, BASIC INSTRUMENTS & SELECTED DOCUMENTS (GATT, Geneva, Switzerland), 7th Supp., 1959, at 27.

147. *Id.* at 28.

148. *Id.*

149. *Id.* at 29.

tiating reductions of these duties under GATT because they had little with which to bargain. For instance, out of the 44,000 tariff concessions made in the Dillon Round,¹⁵⁰ only 160 concessions concerned developing countries.¹⁵¹

Committee III noted discrimination based on the country of origin and degree of processing, qualitative restrictions couched as health regulations, and internal taxes. The work of this committee was largely, but not completely, ignored by developed countries. In 1961, GATT ministers issued a *Declaration on the Promotion of Trade of the Less Developed Countries*, which contained no plans for concrete action in response to Committee III's findings.¹⁵²

2. *A Note on the Expansion of International Trade*

The *Harbeler Report* became the basis for developing country unity in reforming the GATT. A year after it was published, fifteen less developed countries¹⁵³ issued *A Note on the Expansion of International Trade*.¹⁵⁴ This note raised the issue of exported primary products meeting with non-tariff barriers (NTB) and so the less developed countries demanded negotiations on these NTBs. The note also called on developed countries to make unilateral concessions aimed at raising the export earnings of the developing countries. "The note questioned the core principles of the GATT system—reciprocity and equality for the first time."¹⁵⁵

3. *A Program of Action*

In 1963, a group of twenty-one developing countries¹⁵⁶ made another major proposal.¹⁵⁷ The proposal called for:

- (a) a commitment not to introduce new tariffs and non-tariff measures against the trade of developing countries;

150. The Dillon Round of Multilateral Trade Negotiations took place between 1961-62.

151. DAM, *supra* note 1, at 230.

152. TUSSIE, *supra* note 54, at 26.

153. Brazil, Burma, Cambodia, Chile, Cuba, Federation of Malaya, Federation of Rhodesia and Nyasaland, Ghana, Greece, India, Indonesia, Pakistan, Peru, and Uruguay.

154. TUSSIE, *supra* note 54, at 26.

155. TUSSIE, *supra* note 54, at 26-27.

156. Argentina, Brazil, Burma, Cambodia, Ceylon, Chile, Cuba, Ghana, Haiti, India, Indonesia, Israel, Federation of Malaya, Federation of Nigeria, Pakistan, Peru, Tanganyika, Tunisia, United Arab Republic, Uruguay and Yugoslavia.

157. *Ministerial Meeting, May 1963: Conclusions and Resolutions Adopted on 21 May 1963*, BASIC INSTRUMENTS & SELECTED DOCUMENTS (GATT, Geneva, Switzerland), 12th Supp., 1964, at 36.

(b) the elimination of quantitative restrictions inconsistent with the GATT rules on developing country imports within one year;

(c) duty free entry for tropical products by December 31, 1965;

(d) a schedule for the reduction of tariff and other barriers by fifty percent over three years on exports of semi-processed and processed products from developing countries;

(e) the elimination of internal taxes on products wholly or mainly produced in less developed countries;

(f) an annual report to ensure implementation of the program.¹⁵⁸

The ministers of the industrialized countries supported this *Program of Action* in varying degrees.¹⁵⁹ In 1964, GATT's part IV, titled *Trade and Development*, was instituted. This part abolished reciprocity in developing country-developed country trade. This move was not a kind gesture. There were plans underway for establishing the United Nations Conference on Trade and Development. "The mere calling of such a conference meant a challenge to the GATT and its management of trade relations."¹⁶⁰

Instituting Part IV of the GATT did not change much. After the Kennedy Round¹⁶¹ in 1967, for instance, a Peruvian delegate speaking on behalf of the developing countries insisted:

[T]he Kennedy Round negotiations have come to an end. The developing countries participating in these negotiations wish to state that the most important problems of most of them in the field of trade taken up with the framework of these negotiations still remain unresolved. These developing countries deeply regret that they are not in a position to share, to the same extent, the satisfaction of the developed countries at the conclusion and achievements of the Kennedy Round.¹⁶²

158. *Id.* at 36-37.

159. *Id.* at 37-38 ("The Ministers of all industrialized countries, with the exception of the Ministers of the member States of the European Economic Community, agreed to the above Programme of Action . . ."). The European Community Ministers however, "endorsed, in principle, the general objectives of the Programme of Action . . ." *Id.*

160. TUSSIE, *supra* note 54, at 28.

161. TUSSIE, *supra* note 54, at 29 (The Kennedy Round of Multilateral Negotiations took place between 1964 and 1967.).

162. TUSSIE, *supra* note 54, at 29.

The tension between developed countries and the developing countries continues. In 1986, the Uruguay Round of the Multilateral Trade Negotiations was launched in Punta Del Este, Uruguay. Some of the issues raised in the 1963 *Program of Action* are still being negotiated.

D. *Developing Countries and International Trade*

This section will show the extent developing countries are relevant to world agricultural trade. It will also assess the consequence of trade on those developing countries.

1. *The State of Agricultural Trade*

Developing countries depend on the production and export of agricultural products for their foreign exchange earnings.¹⁶³ In 1986, for low income developing countries, nineteen percent of their Gross National Product and sixty percent of their labor force depended on agriculture.¹⁶⁴ In addition, agricultural products accounted for fifty to one hundred percent of total exports by some developing countries.¹⁶⁵ A very large number of agricultural exports originated from developing countries.¹⁶⁶

In the tropical products trade, developing countries, especially the least developed ones, control about sixty percent of the market, which is valued at \$61 billion.¹⁶⁷ This product area accounted for nine percent of total exports of developing countries.¹⁶⁸ Many developing countries depend on a few tropical products for most of their foreign exchange. Examples are: Uganda (eighty percent, coffee), Gambia (seventy percent, groundnuts), Ethiopia (sixty percent, coffee), Malawi (sixty percent, tobacco), and Comoro (fifty percent, spices).¹⁶⁹

A characteristic of developing countries is the very high dependence on foreign trade as a proportion of the Gross Domestic Product.¹⁷⁰ For most developing countries, this dependence is on agricultural

163. RAGHAVAN, *supra* note 4, at 162-63; MARTY STRANGE, *THE GREAT TRADE DEBATE* 7 (1989).

164. RAGHAVAN, *supra* note 4, at 162-63.

165. RAGHAVAN, *supra* note 4, at 163.

166. STRANGE, *supra* note 163, at 7.

167. Koekkoek, *supra* note 8, at 129.

168. Koekkoek, *supra* note 8, at 129.

169. Koekkoek, *supra* note 8, at 129.

170. TODARO, *supra* note 72, at 374.

trade.¹⁷¹ The developed countries depend less on foreign trade. In the United States, for example, exports constitute about five percent of the GDP.¹⁷² In Togo, exports constitute about thirty-five percent of the GDP; in Zaire, it constitutes thirty-six percent; and elsewhere among developing countries, "most . . . nations average anywhere from 20 to 90%."¹⁷³

In some products such as coffee, rubber and some oilseeds,¹⁷⁴ developing countries accounted for ninety to one hundred percent of the export trade.¹⁷⁵ A study by the OECD shows that developing countries account for fifty percent or more of world exports in only three other areas: fruit, sugar and tropical beverages.¹⁷⁶ The study also points out that developing countries are losing this market.¹⁷⁷ The industrial countries are the major overall exporters—and importers—of world agricultural trade. The developed countries' share of agricultural export has been growing while that of the developing countries has been declining.¹⁷⁸

In the wheat trade, the major exporters are the United States, Canada, France, Australia, and Argentina.¹⁷⁹ In coarse grains, the major exporters are the United States, Argentina, France, China, Canada, and Australia. The top wheat importers are Japan, USSR, Saudi Arabia, Japan, Taiwan, and South Korea.¹⁸⁰ In the rice trade the major exporters include Thailand, the United States, Pakistan, China, Italy, and Burma. Most imports are by developing countries: Brazil, Iran, Iraq, Saudi Arabia, and Vietnam.¹⁸¹ In the oilseeds trade, the United States and the European Community lead exports along with Canada, China, and Brazil. Major importers include the

171. TODARO, *supra* note 72, at 374.

172. TODARO, *supra* note 72, at 374.

173. TODARO, *supra* note 72, at 374.

174. "Oilseed" is a general name for a lot of commodities. Oilseed means "any of several seeds, as the castor bean, sesame, or cottonseed, from which an oil is expressed." RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 1347 (2d ed. 1987).

175. Koekkoek, *supra* note 8, at 129.

176. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, AGRICULTURAL TRADE WITH DEVELOPING COUNTRIES 13 (1984).

177. *Id.*

178. KYM ANDERSON & RODNEY TYERS, GLOBAL EFFECTS OF LIBERALIZING TRADE IN FARM PRODUCTS 1-2 (1991).

179. DALE E. HATHAWAY, AGRICULTURE AND THE GATT: REWRITING THE RULES 45 (1987).

180. *Id.* at 47. The USSR is used in this section because the source was published before the disintegration of the former USSR.

181. *Id.* at 49.

European Community, Japan, USSR, Taiwan, Mexico, and South Korea.¹⁸² Export trade in oil meals is dominated by Brazil, Argentina, Chile and India. Other exporters are the United States, the European Community and China. Poland is an importer of this item.¹⁸³ In vegetables and marine oil trade, Malaysia, Argentina, the European Community and the United States are major exporters. Major importers include India, Pakistan and Singapore.¹⁸⁴

In the beef and veal trade, exporters include Australia, Brazil, New Zealand, Argentina, and Uruguay. The importers include the United States, the European Community, and Japan.¹⁸⁵ In the poultry trade, Brazil, the European Community, and Hungary are major exporters. Major importers include Hong Kong, Japan and Saudi Arabia.¹⁸⁶ In sugar, exports are dominated by Cuba, the European Community, Brazil, and Thailand. Importers are the European Community, the United States, Japan and China. In the cotton trade, Pakistan, China, the United States, and Australia are major exporters. The importers include the European Community, Japan, South Korea, Taiwan, Italy, and Hong Kong.¹⁸⁷

Most African, Caribbean, and Pacific countries are net importers in every category.¹⁸⁸ Almost all Latin American countries are net importers.¹⁸⁹ On the whole, developing countries averaged \$36 billion annually in imports.¹⁹⁰ Total developing country exports have averaged \$15.5 billion.¹⁹¹ Only a few of them are net exporters.¹⁹² When all products are combined, Brazil, Cuba, Malaysia, Mali, and the Philippines are the only developing countries with any claim to being net exporters.¹⁹³

The foregoing illustrates the activity of developing countries in the major commodities trade. The trade between the developed and

182. *Id.* at 51.

183. HATHAWAY, *supra* note 179, at 52.

184. HATHAWAY, *supra* note 179, at 53.

185. HATHAWAY, *supra* note 179, at 60.

186. HATHAWAY, *supra* note 179, at 64.

187. HATHAWAY, *supra* note 179, at 66.

188. See RAGHAVAN, *supra* note 4, at 164-67 (showing in a detailed table, the imports and exports of sixty-one developing countries).

189. RAGHAVAN, *supra* note 4, at 164-67.

190. RAGHAVAN, *supra* note 4, at 168.

191. RAGHAVAN, *supra* note 4, at 168.

192. RAGHAVAN, *supra* note 4, at 168-69. These countries include Argentina, Thailand, and Uruguay.

193. RAGHAVAN, *supra* note 4, at 169.

developing countries is critical in the Uruguay Round. For example, the United States Trade Representative forecasts that a successful outcome of the Uruguay Round would increase U.S. exports to the developing countries by \$125 billion.¹⁹⁴

2. *Some Consequences of Agricultural Trade*

Since 1972, developing country exports have declined.¹⁹⁵ Their expenditures on food imports have doubled since 1975.¹⁹⁶ This is partly because subsidized agricultural commodities from the developed countries often made local production inefficient. Sub-Saharan African countries—among the world's least developed¹⁹⁷—import over one quarter of their cereal requirements. Cereals account for sixty percent of the diet of Sub-Saharan Africans.¹⁹⁸

The growth in developing country imports is not even.¹⁹⁹ "Half the people—590 million—in 30 of the poorest nations of the world did not get enough food by 1980."²⁰⁰ Therefore, supply has met with effective demand only in the developing countries that can afford the foreign exchange to import.²⁰¹ Even within the more "affluent" countries—developed or developing—food is accessible only to those who can afford it.²⁰²

However, in some areas of the developing countries, there has been growth in agricultural production. Farm output increased in Asia, in South America, and in many African countries. In addition, China, India, Brazil, Argentina, and Thailand enjoyed some measure of growth.²⁰³ At the same time, developed countries' continuing

194. JEROME, ED., *supra* note 10, at 173.

195. ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, *supra* note 176, at 24-25.

196. STRANGE, *supra* note 163, at 2.

197. Koekkoek, *supra* note 8, at 132.

198. STRANGE, *supra* note 163, at 2.

199. STRANGE, *supra* note 163, at 7 (citing WORLD BANK, POVERTY AND HUNGER: ISSUES AND OPTIONS FOR FOOD SECURITY IN DEVELOPING COUNTRIES (1986)).

200. STRANGE, *supra* note 163, at 7.

201. STRANGE, *supra* note 163, at 7. This raises serious questions of the distribution of food. Sellers want buyers who can pay. Therefore, poor persons who cannot afford to pay go hungry unless they get assistance outside the normal scope of capitalism. The same is true of countries. Arthur Dunkel's proposals to ameliorate this situation are wholly welcome. See *Dunkel Draft*, *supra* note 1, at B.1 & L.53. See also, Asbjorn Eide, et al., *Food Security and the Right to Food in International Law and Development*, 1 TRANSNAT'L L. & CONTEMP. PROBS. 418-23 (1991).

202. Eide, *supra* note 201, at 418.

203. STRANGE, *supra* note 163, at 7.

restrictions on agricultural imports escalated,²⁰⁴ preventing these countries from exporting some of their goods.

Apart from export restrictions, other factors were responsible for agricultural growth not improving well being. In oil producing countries, like Nigeria, agriculture had been simply ignored.²⁰⁵ Therefore, any growth would not suddenly correct years of neglect. In some other countries, population growth surpassed agricultural growth.²⁰⁶ This is true of most African countries.²⁰⁷ Further, in some areas where agricultural growth out paced population growth, the emphasis on exportation has caused social dislocations and political inequities.²⁰⁸

The recession of the 1980s devastated the economies of many developing nations. These developing countries sought "help" from the financial organizations in the developed countries. African countries were the hardest hit.²⁰⁹ The World Bank and the International Monetary Fund responded with structural adjustment programs. These programs promoted exports to the detriment of people. In Africa, the financial institutions' programs have failed.²¹⁰ This failure occurred after putting the world's poorest people through extremely harsh times.

Many developing countries are under intense pressure by international creditors to structure domestic policies that promote exports,²¹¹ so the countries could service their debts.²¹² Developing countries have responded by growing food for foreign exchange earnings rather than for the food needs of people. This practice is termed the "internationalization of agriculture." Developing coun-

204. See Krueger, *supra* note 12, at 462.

205. Akanmu Gafaru Adebayo, *Postwar Economy and Foreign Policy: Gowon and the Oil Boom, 1970-1975*, in *NIGERIA AND THE INTERNATIONAL CAPITALIST SYSTEM* 57, 64 (Toyin Falola & Julius O. Ihonvbere eds., 1988).

206. STRANGE, *supra* note 163, at 7.

207. See, e.g., Thomas J. Goliber, *Africa's Expanding Population: Old Problems, New Policies*, 44 *POPULATION BULL.* 1 (November 1989).

208. STRANGE, *supra* note 163, at 7. An example is Jamaica.

209. *Aid to Africa: Nothing to Lose But Your Chains*, *THE ECONOMIST*, May 1, 1993, at 44 ("Africa is the only continent in the poor world where people ended the 1980s worse off than they were at the start.").

210. World Bank's own study found that "Africa had hardly benefitted from Bank programmes; though exports had improved, there had been no perceptible impact on growth or inflation." *Id.*

211. Laura T. Reynolds, et al., *The "New" Internationalization of Agriculture: A Reformulation*, 21 *WORLD DEV.* 1101, 1111 (1993).

212. *Id.*

tries indulge in this practice at the expense of their national food security.²¹³ The results have been disappointing. In Sub-Saharan Africa, for example, exports increased but living standards and employment were dismal.

V. GATT AND AGRICULTURE

The GATT does not define agriculture. It mentions foodstuffs,²¹⁴ agricultural or fisheries products,²¹⁵ primary products,²¹⁶ animal or plant life or health,²¹⁷ and "any intergovernment commodity agreement."²¹⁸ However, these terms are not defined. Consequently, the GATT organization comes up with the meaning and scope of agriculture during negotiations. During the Uruguay Round, for example, agricultural issues overlap among three groups: the Negotiating Group on Agriculture, the Negotiating Group on Tropical Products, and the Negotiating Group on Natural Resource-based Products.²¹⁹

GATT's agriculture provisions were written to protect U.S. agricultural programs from possible dismantling by the GATT agreement.²²⁰ Unlike other provisions of the GATT, the agriculture provisions were written to suit the then existing programs in America and other developed countries.²²¹ Outside agriculture, "GATT rules relate to how governments may intervene to protect domestic markets and industries. They also spell out how countries relate to each other in terms of rights and obligations under trade rules. These general rules were agreed to . . . and governments brought their practices in line with these rules."²²²

213. *Id.* at 1117-18.

214. GATT art. XI(2)(a).

215. GATT art. XI(2)(c).

216. GATT art. XVI.

217. GATT art. XX(b).

218. GATT art. XX(h).

219. See Rosine M. Plank, *Proposals for Reforming GATT Rules and Disciplines on Agriculture in the Uruguay Round: Implications For and Needs of Developing Countries*, in URUGUAY ROUND: FURTHER PAPERS ON SELECTED ISSUES 3, 6-7 (United Nations Conference on Trade and Development ed., 1990) ("For purposes of negotiations, agricultural products are by and large deemed to be those falling within chapters 1 to 24 of the Common Classification Nomenclature, now the Harmonized System, with participants free to indicate differences between this definition and their own.").

220. WILLIAM A. BROWN, JR., *THE UNITED STATES AND THE RESTORATION OF WORLD TRADE: AN ANALYSIS AND APPRAISAL OF THE ITO CHARTER AND THE GENERAL AGREEMENT ON TARIFFS AND TRADE 22-28* (1950).

221. HATHAWAY, *supra* note 179, at 103.

222. HATHAWAY, *supra* note 179, at 103.

The United States was able to assert this power because it was the strongest world commercial power at that time.²²³ The GATT accommodated the wishes of the United States because a world trading organization without the world's greatest trading power would have been ineffective. To see why a free-trader like the United States switched to protectionism in agriculture, it is necessary to review the political and social environment in the United States in 1947.

A. *Review of the Agricultural Regulatory Environment*

From the early 1900s until the years following the First World War, American farmers rejected government intervention in agriculture.²²⁴ They subscribed to the rural-agrarian creed.²²⁵ This thought pattern became moribund in the 1920s as agricultural prices declined and political agitation to treat agriculture specially followed.²²⁶ The farmers sought high tariffs for agricultural imports.²²⁷

"Accordingly much of the debate and political staging in agriculture concerned how to get either the equivalent of industry's tariff protection or international 'two pricing,' a method of expanding markets abroad by pricing farm products higher in the inelastic domestic market and lower in the elastic export market."²²⁸ By the 1930s the stock market crash and the depression forced farmers to seek help from the government.²²⁹

By the mid-1930s, the farm sector had become politically charged.²³⁰ Unrest in the countryside,²³¹ the large proportion of Americans engaged in agricultural labor, and the abundance of senators and representatives fighting for farm issues, caused the American government to look into agricultural problems promptly.²³²

223. HATHAWAY, *supra* note 179, at 110-11 ("Realistically, no country now has the dominant economic and political position enjoyed by the United States at the time of the GATT's founding."); TUSSIE, *supra* note 54, at 9 ("The 1930s [and beyond] had revealed beyond doubt the new weight of the United States in the world economy.").

224. H.F. Breimyer, *Agricultural Philosophies and Policies in the New Deal*, 68 MINN. L. REV. 333, 334 (1983).

225. *Id.* at 334-35. ("In its purest form, the rural-agrarian creed upon which these thought patterns were based emphasized the non-necessity and even noxiousness of giving central direction to economic and social systems.").

226. BROWN, *supra* note 220, at 22.

227. Breimyer, *supra* note 224, at 337.

228. Breimyer, *supra* note 224, at 337.

229. Breimyer, *supra* note 224, at 339.

230. Breimyer, *supra* note 224, at 340.

231. Breimyer, *supra* note 224, at 333.

232. Breimyer, *supra* note 224, at 333.

As a result of farmers' pressures, the Agricultural Adjustment Act of 1933 was enacted.²³³ It established acreage and production controls that manipulate supply for higher prices.²³⁴

The Commodity Credit Corporation was also established to buy excess produce.²³⁵ Artificial price relationships were achieved.²³⁶ In 1936, the United States Supreme Court held portions of the Act unconstitutional.²³⁷ Nevertheless, it had built the structure of further farm legislation.²³⁸ Soon, the first omnibus law for agriculture in U.S. history, the Agricultural Adjustment Act of 1938, was enacted.²³⁹ It was also a compendium of subsidies, price supports, acreage reduction mechanisms, and crop insurance. The United States Supreme Court declared this Act constitutional.²⁴⁰ Consequently, "[t]he foundation for agricultural regulation, at the farm level, was now . . . firmly established."²⁴¹

This Act was in force as the International Trade Organization, and the GATT agreement after it, were being negotiated. The U.S. delegation to the ITO conference knew that the Senate was not going to ratify any agreement that would have jeopardized the United States' agricultural programs.²⁴² The same consideration accounts for the nature of the agriculture provisions in the GATT agreement. A United States government official described the government's albatross in the matter of agriculture:

233. Breimyer, *supra* note 224, at 342. See Agricultural Adjustment Act, ch. 25, 48 Stat. 31 (1933).

234. Breimyer, *supra* note 224, at 342.

235. Breimyer, *supra* note 224, at 346.

236. BROWN, *supra* note 220, at 24.

237. *United States v. Butler*, 297 U.S. 1 (1936). According to the Court, the production control mandated by the Act "invades the reserved rights of the states. . . . Regula[tion] and control [of] agricultural production [is] a matter beyond the powers delegated to the federal government." *Id.* at 68. The Court declared provisions of the Act authorizing a processing tax as a "means to an unconstitutional end." *Id.* It is noteworthy that the United States government did not base the Agricultural Adjustment Act on the Commerce Clause of the United States Constitution.

238. J.W. Looney, *The Changing Focus of Government Regulation of Agriculture in the United States*, 44 MERCER L. REV. 763, 765 (1993).

239. Breimyer, *supra* note 224, at 349. See Agricultural Adjustment Act of 1938, ch. 30, 52 Stat. 31 (1938).

240. *Wickard, Sec'y of Agriculture v. Filburn*, 317 U.S. 111 (1942). The Court held that government may regulate agriculture within the Commerce power of Congress. *Id.* at 118.

241. Looney, *supra* note 238, at 766.

242. HATHAWAY, *supra* note 179, at 103.

We know the great effort which our government has devoted to breaking down the barriers to trade throughout the world. We know that price supports for farm commodities here in the United States also require a certain protection through tariffs or other trade barriers. Without them foreign producers might flood our domestic market with our governments buying the domestic production. . . . [I]t tends to become difficult to export farm products without an export subsidy. These trade barriers are in conflict . . . with our repeated declarations of a national policy which seeks international co-operation in reducing trade barriers.²⁴³

B. *GATT Subsidies Rules, Agriculture and Developing Countries*

The original GATT Article XVI did not prohibit the use of subsidies at all.²⁴⁴ It required only reporting the use of subsidies to the GATT organization. This does not mean that the GATT agreement or organization encourages the use of subsidies. It just does not have enough political muscle to outlaw it.

In the 1955 review session, other provisions were added to this article. One of the additions, Article XVI(2),²⁴⁵ noted that subsidies

243. *Long Range Agricultural Policy, 1948: Hearings Before the Subcomm. of the Senate Comm. on Agriculture and Forestry and the House Comm. on Agriculture*, 80th Cong., 1st Sess. 171 (Oct. 7, 1948) (statement of Carl C. Farrington, Assistant Administrator of Production and Marketing Administration) (quoted in BROWN, *supra* note 220, at 27). Of course, the United States' position has changed. It wants farm subsidies phased out in every country. American agricultural policy is increasingly outward looking. See generally Looney, *supra* note 238.

244. GATT art. XVI states:

1. If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the contracting parties in writing of the extent and nature of the subsidization, of the estimated effect of subsidization on the quantity of the affected product or products imported or exported from its territory and of the circumstances making subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the contracting parties, the possibility of limiting the subsidization.

GATT art. XVI.

245. GATT art. XVI(2) provides:

The contracting parties recognize that the granting by a contracting party of a

harm international trade. Following it is Article XVI(3),²⁴⁶ which timidly asks contracting parties to "avoid" using subsidies rather than banning them.

Attempts to utilize Article XVI(3) have included the enactment of the GATT Subsidies Code which resulted from the Tokyo Round.²⁴⁷ However, controversy surrounds the terms "equitable market share" and "representative period," both of which appear in the article.²⁴⁸ An attempt to define the agricultural export subsidies provisions of the Subsidies Code negotiated in the Kennedy Round failed.²⁴⁹ The ambiguity in this provision has made it unworkable.²⁵⁰ "Until this concept . . . is resolved, the Subsidies Code as it now pertains to agricultural export subsidies is likely to continue to be a bone of contention."²⁵¹ This is one aspect of the GATT agreement's agricultural trade paralysis.

Article XVI(4) states:

Further, as from 1 January 1958 or the earliest practicable date thereafter, contracting parties shall cease to grant either directly or indirectly any form of subsidy on the export of any product other than a primary product which subsidy results in the sale of such product for export at a price lower than the comparable price charged for the like product to buyers in the domestic market.²⁵²

subsidy on the export of any product may have harmful effects for other contracting parties, both importing and exporting, may cause undue disturbance to their normal commercial interests, and may hinder the achievement of the objectives of this Agreement.

GATT art. XVI(2).

246. GATT art. XVI(3) provides:

Accordingly, contracting parties should seek to avoid the use of subsidies on the export of primary goods. If however, a contracting party grants directly or indirectly any form of subsidy which operates to increase the export of any primary product from its territory, such subsidy shall not be applied in a manner which results in that contracting party having more than an equitable share of world trade in that product, account being taken of the shares of the contracting parties in such trade in the product during a previous representative period and any special factors which may have affected or may be affecting such trade in the product.

GATT art. XVI(3).

247. The Tokyo Round was completed in 1979.

248. HATHAWAY, *supra* note 179, at 106.

249. FRED H. SANDERSON, *AGRICULTURE AND INTERNATIONAL TRADE* 36 n.51 (1988).

250. JACKSON, *supra* note 2, at 256.

251. HATHAWAY, *supra* note 179, at 107.

252. GATT art. XVI(4).

This 1955-added provision creates a controversy. It creates a fundamental dichotomy between primary products, to which export subsidies can be applied, and non-primary products, to which they are banned. Contracting parties were to take further action before this provision was to go into effect.²⁵³ Accordingly, in 1962, a declaration applying this paragraph was opened for signature by the contracting parties.²⁵⁴ Today, only the industrialized countries have signed to adopt this paragraph.²⁵⁵

Developing countries demand that developed countries cease subsidizing exports of primary goods, and would sign the provision if such an agreement is reached.²⁵⁶ The subsidies hurt developing country trade because they usually do not subsidize.²⁵⁷ Allowing the GATT agreement to permit subsidies for agricultural exports (which is all the trade of some developing countries) threatens developing countries.

C. *Analysis of the Subsidies Provision—A Developing Country Perspective*

The subsidies philosophy of the GATT agreement is neo-colonial. According to Hathaway, two assumptions underlie the agricultural subsidies provisions.²⁵⁸ First, it is assumed that many countries will distort prices by using subsidies. Second, it is assumed that nations could use subsidies and exports as long as it does not hurt others' market share.

On the first assumption, it is well known that developing countries cannot afford to subsidize. Therefore, the sub-norm of this assumption is that the developing countries can be ignored for these

253. JACKSON, *supra* note 2, at 256.

254. JACKSON, *supra* note 2, at 256.

255. *Declaration Giving Effect to the Provisions of Article XVI(4), 1960, Agreement No. 69, BASIC INSTRUMENTS & SELECTED DOCUMENTS (GATT, Geneva, Switzerland), 9th Supp., 1961, at 32.* Sixteen industrialized countries signed the document. JOHN H. JACKSON, *WORLD TRADE AND THE LAW OF GATT: A LEGAL ANALYSIS OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 373-74 (1969)*. Thirty years later the numbers have not changed. See JACKSON, *supra* note 2, at 256.

256. See JACKSON, *supra* note 255, at 667. In fairness, there is another side to this argument. The developing countries *can* subsidize both primary and non primary goods. This, the reasoning goes, makes up for developed country subsidy-abilities. JACKSON, *supra* note 255, at 666-67. This argument overlooks the very poor economic positions of the developing countries. They are not subsidizing agriculture because they cannot afford to do so.

257. JACKSON, *supra* note 255, at 666-67.

258. HATHAWAY, *supra* note 179, at 107.

purposes. However, the former colonial powers and the United States are free to hold on to developing countries markets unless another former colonial power or the United States complains. In an organization which purports to represent most nations of the world, it is a remarkable philosophical oversight.²⁵⁹

As the former President of Tanzania put it:

[Traditional colonialism is over], [b]ut powerful nations still seek to spread their domination, and as far as possible their control, over other nations and areas. They still seek to ensure that their domestic interests are served regardless of the interests, or needs, of weaker nations and peoples. . . .

The new strategy is based on the use of economic strength against weakness and dependency; on technological domination face to face with technological backwardness; and on inherited cultural domination combined with control of international information structures.²⁶⁰

The present Uruguay Round was initiated by developed countries to protect their interests in the market.²⁶¹ An example of a developed country self interest can be found in the commodities trade. When it affects developed countries, there is one treatment; and when it affects developing countries, the treatment is different. The Uruguay Round will try not to eliminate export subsidies.²⁶²

The second assumption identified by Hathaway parallels "partition"²⁶³ in colonial parlance. The major exporters of food products are developed countries.²⁶⁴ The effect of the use of subsidies is to create dependency on cheap imports in client developing countries. This reduces the countries' abilities to create a sustainable agricultural base.

259. This is in spite of the provisions of Part IV.

260. Julius Nyerere, *Forward*, in RAGHAVAN, *supra* note 4, at 20.

261. Gunewarde, *supra* note 113, at 45, 49 ("Recent developments in the world economy have prompted a new round of negotiations. . . . It is in the best interests of the developed countries, particularly the United States, to halt the negative impact of these unsettling factors.").

262. *Address by Mr. Peter Sutherland, Director-General, GATT, to the Irish Co-operative Organization Society's Conference on the International Factors Affecting the Food Sector*, NEWS OF THE URUGUAY ROUND (GATT, Geneva, Switzerland), vol. 65, 1993, at 4 ("For products other than the processed products, the concept of total elimination of export subsidies is no longer on the table.").

263. Partition is the process by which the colonial powers of France, the Netherlands, Belgium, etc., shared the territories of Africa that each would administer.

264. SARTAJ AZIZ, *AGRICULTURAL POLICIES FOR THE 1990s* 47 (1990).

Self sufficiency in agriculture is a legitimate goal of many countries.²⁶⁵ It is often cheaper to import subsidized products than to build an indigenous base. Yet, no country can assure a constant supply of goods to another.²⁶⁶ When the subsidies are removed after citizens acquire the taste for an imported product, prices escalate resulting in a reduction of welfare.²⁶⁷ This reduction in welfare has political and social costs.²⁶⁸ Therefore, poor countries dependent on subsidized primary goods give up some quantum of their sovereignty to meet the costs. Without any base to feed its citizens, the affected country gets heavily indebted and/or involuntarily managed by the IMF or other lenders.

A developing country which can afford to subsidize exports will run into problems as soon as it gets started. Being previously a net importer,²⁶⁹ any attempt to export would arguably upset its "equitable share" of the market. Even if it does not export, its domestic market is still subject to bombardment from cheaper (subsidized) products from the developed countries.²⁷⁰ Developing countries object vehemently to the subsidies provisions.²⁷¹ A developing country's spokesperson declared, "by referring to equitable 'shares of world trade' and not [to] 'individual markets' [the GATT's subsidies provision] sought to solve the problem of primary products from the wrong end, since the danger of export subsidies was greatest in individual markets."²⁷²

265. Bernard M. Hoekman, *Agriculture and the Uruguay Round*, 23 J. WORLD TRADE 83, 93 n.1 (1989).

266. *Id.* The use of agricultural food supply as a foreign policy tool makes matters worse.

267. *Id.* at 86. This is precisely one of the expected result of agricultural trade liberalization for the poorest countries and the net food importing countries.

268. Urban unrest is typical.

269. Developing countries account for forty percent of all world imports. RAGHAVAN, *supra* note 4, at 163.

270. Experience shows that government prohibition of imports does not keep cheap products away. An example is Nigeria. It banned imported wheat, a product that had become popular although newly introduced. See T. Ademola Oyejide, *Resource Exports, Adjustment Problems and Liberalization Prospects in Nigeria*, in 2 DEVELOPING COUNTRIES AND THE GLOBAL TRADING SYSTEM: THEMATIC STUDIES FROM A FORD FOUNDATION PROJECT 40, 55-57 (John Whalley ed., 1989) (noting Nigeria's concerns about "recently acquired tastes for wheat"). As a result of the popularity of imported wheat, Nigerian bans on U.S. wheat "have been compromised by widespread smuggling." 1992 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 189 (United States Trade Representative, 1992). Nigeria has abandoned the ban on wheat. 1993 NATIONAL TRADE ESTIMATE REPORT ON FOREIGN TRADE BARRIERS 199 (United States Trade Representative, 1993).

271. JACKSON, *supra* note 255, at 372.

272. JACKSON, *supra* note 255, at 372 (quoting statement of Australia representing the

D. *Commodities: A Critical Problem*

The most important aspect of trade for the smaller developing countries exporting commodities is their terms of trade.²⁷³ Prices of these commodities are unstable.²⁷⁴ The income earned by upswings in export earnings does not offset the damage inflicted by downward fluctuations, even if the upward and downward fluctuations appear equal in magnitude.²⁷⁵ Therefore, the developing countries ask for a scheme for the stabilization of prices.²⁷⁶ The developed countries object to this demand on the grounds that stabilization is not a trade barrier issue and hence not properly a GATT concern.²⁷⁷

However, when over-production by developed countries depressed world prices, GATT gleefully helped with stabilization measures. This happened at the International Wheat Agreement of the Kennedy Round (1967) and at the Agreements on Bovine Meat and Dairy Products of the Tokyo Round (1979).²⁷⁸ Furthermore, stabilization has been negotiated under the International Monetary Fund's Compensatory Financing Facility, and under the stabilization of exports (STABEX) provisions of the Lomé conventions between the European Economic Community and some developing countries.²⁷⁹

E. *Quantitative Restrictions*

The GATT rule restricting quantitative restrictions is another area where agriculture is given special treatment. Article XI bans the use of quotas but leaves some exceptions. The agricultural exceptions to Article XI(2) are as follows:

sentiments of developing countries during the GATT Ninth Session, during which the subsidies provision was expanded. GATT Doc. SR.9/41 at 3 (1955)).

273. Terms of trade means:

the ratio of a country's average export price to its average import price. A country's *terms of trade* are said to improve when this ratio increases and to worsen when it decreases, i.e., when import prices rise at a relatively faster rate than export prices (the experience of most [developing countries] over the past two decades).

TODARO, *supra* note 72, at 650.

274. THE BRANDT COMMISSION, COMMON CRISIS: NORTH-SOUTH CO-OPERATION FOR WORLD RECOVERY 103 (1983) ("Market prices are still largely unstable" for commodities exporters.).

275. Fourth ACP-EEC Convention of Lomé, in STABEX BENEFICIARIES' HANDBOOK Annex 2 (1990).

276. WHALLEY, *supra* note 7, at 78.

277. WHALLEY, *supra* note 7, at 78.

278. WHALLEY, *supra* note 7, at 78.

279. WHALLEY, *supra* note 7, at 78.

1. Export restriction to prevent critical shortages of foodstuff or other products can be employed.

2. Import and export restriction may be used to ensure standards of "classification, grading, or marketing of commodities in international trade."

3. Import restrictions may be used to prevent subversion of government programs that restrict production or reduce a temporary surplus.²⁸⁰

About this, Dale Hathaway notes:

In practice, as was the case of the article on export subsidies, the programs were written to fit the U.S. agricultural programs that were in place at the time. Anyone familiar with U.S. agricultural programs will recognize that one set of provisions is to protect crops that have domestic marketing orders or agreements operating under the U.S. system. Another is to allow import controls on products that have domestic price support and production-control programs.²⁸¹

Article XII provides exceptions from GATT discipline for balance of payment difficulties.²⁸² The GATT was negotiated at a time when balance of payments difficulties were rampant.²⁸³ Developing countries demand that the same rule govern both agricultural and non-agricultural trade under the GATT.²⁸⁴

To make a complete ban of imports difficult, Article XI(2)(c) provides that imports may not be restricted unless production of the domestic product is also restricted.²⁸⁵ The restrictions must be equal.²⁸⁶ In 1955, the United States threatened to withdraw from GATT, unless the GATT granted a waiver permitting it to impose quotas on certain agricultural imports.²⁸⁷ The United States imposed quotas on dairy products, sugar, cotton, tobacco, and peanuts.²⁸⁸ This waiver

280. GATT art. XI(2).

281. HATHAWAY, *supra* note 179, at 109.

282. GATT art. XII.

283. JACKSON, *supra* note 2, at 213.

284. HATHAWAY, *supra* note 179, at 108.

285. GATT art. XI(2)(c).

286. *Id.*

287. HATHAWAY, *supra* note 179, at 109.

288. Looney, *supra* note 238, at 810. The GATT had found the United States guilty of violating Article XI because of the United States' restricted importation of dairy products without restricting domestic production. See Thomas J. Schoenbaum, *Agricultural Trade Wars: A Threat to the GATT and Global Free Trade*, 24 ST. MARY'S L.J. 1165, 1168 (1993).

was necessary because the GATT agreement calls for a concomitant reduction in the domestic production of the goods subject to the quota.²⁸⁹ Unfortunately, production controls were not favored in American Agricultural policy.²⁹⁰

Section 22 of the Agricultural Adjustment Act reflected this policy.²⁹¹ The provision, as amended, conferred on the President the powers to restrict agricultural imports that interfered negatively with domestic farm programs.²⁹² The section would operate as if GATT, or any other agreement before or after it, did not exist.²⁹³ Although political realism and the United States prevailed, the granting of this waiver shattered GATT'S credibility and lends credence to charges of American hypocrisy.²⁹⁴

Because import quotas appeared inevitable in agriculture, Article XIII of the GATT agreement set up rules for applying them.²⁹⁵ Under Article XIII, the most favored nation principle is to apply to quotas. If quotas are used, they must apply to all imports and exports from all sources,²⁹⁶ and must maintain market shares as they would have been without quotas.²⁹⁷ The quota provisions have not worked well in practice.²⁹⁸ On the whole, the GATT's quantitative restrictions favor developed countries by far.

Agricultural trade is critical for developing countries. However, it is clear that developed countries have controlled agricultural trade in the GATT. This is reflected in GATT articles and norms that appear to support the programs of developed countries.

VI. DEVELOPING COUNTRY RESPONSES

Agricultural trade has been a pillar for the developing country coalition. As the developed countries crafted the rules to suit them-

289. GATT art. XI(2)(c).

290. *Id.*

291. 7 U.S.C. § 624 (1988). See generally Rex J. Zedalis, *Agricultural Trade and Section 22*, 31 *DRAKE L. REV.* 587 (1982).

292. See JACKSON, *supra* note 255, at 733-34.

293. See JACKSON, *supra* note 255, at 233-34.

294. During the Uruguay Round, the United States is suddenly calling for a complete withdrawal of all subsidies in a ten year period. This reflects some of the changes in American Farm policy.

295. HATHAWAY, *supra* note 179, at 110.

296. GATT art. XIII(1).

297. GATT art. XIII(2).

298. See Strating, *supra* note 17, at 313 n.52 ("The contracting parties have mostly ignored this provision.").

selves, developing countries devised various strategies for defending themselves.²⁹⁹ There are mainly three overlapping methods that have been employed: (1) legalistic reactions based on the procedures of the GATT itself; (2) calls for Special and Differential status; and (3) "pragmatic" strategies.³⁰⁰ In the 1980s, the developing countries' demands were not very effective. This weakness is inherent in large, multinational interest groups operating in the global arena.³⁰¹ How developing countries have managed under GATT deserves examination.

A. Legal Reactions

Many legal reactions aim to question, if not use, the structure of the agreement in the interest of developing countries. The challenges attempt to expose the inequities in these structures.

Examples of this method can be seen in the Uruguayan and the Sri Lankan recourse to Article XXII. The Uruguay recourse occurred in 1961. This article deals with the nullification and impairment of the benefits conferred under the GATT.

Uruguay presented a complaint against fifteen developed countries, citing 562 restrictions,³⁰² some of which constrained agricultural trade. This complaint has been described as requesting the GATT to put itself on trial.³⁰³ As a public relations action, the complaint was successful. It called attention to developed countries' protectionism.³⁰⁴

The Uruguay complaint is a case of GATT's pragmatism. It went before the GATT panel between 1962 and 1964. Its main weaknesses were its generality,³⁰⁵ its insistence on the concept of "overall imbalance,"³⁰⁶ and its call for positive action to dismantle the restrictions.³⁰⁷ The GATT panel dismissed this bold complaint.³⁰⁸

299. Braga & Vasconcellos, *supra* note 13, at 261.

300. Braga & Vasconcellos, *supra* note 13, at 261.

301. Raymond F. Hopkins, *Developing Countries in the Uruguay Round: Bargaining Under Uncertainty and Inequality*, in *WORLD AGRICULTURE AND THE GATT* 143, 144 (William P. Avery ed., 1993).

302. Braga and Vasconcellos, *supra* note 13, at 261.

303. Braga and Vasconcellos, *supra* note 13, at 261 (quoting ROBERT E. HUDEC, *THE GATT LEGAL SYSTEM AND WORLD TRADE DIPLOMACY* 221 (1975)).

304. Braga and Vasconcellos, *supra* note 13, at 261.

305. Braga and Vasconcellos, *supra* note 13, at 261. The complaint did not show what benefits negotiated under the General Agreement had been denied to Uruguay.

306. Braga and Vasconcellos, *supra* note 13, at 261.

307. GATT art. XXIII merely provides that in cases where impairment has been confirmed, the contracting parties may authorize the suspension by the plaintiff of any concession or other obligation negotiated under the agreement to the infringing party.

308. Braga & Vasconcellos, *supra* note 13, at 262.

However, during consultations relating to this matter, some of the restraints were dropped.³⁰⁹

Sri Lanka requested formal waivers in 1952.³¹⁰ The GATT Working Party insisted that Sri Lanka follow formal procedures.³¹¹ In addition, Sri Lanka was asked to withdraw some of its original requests.³¹² The Sri Lankan delegation issued a statement that the formality of Article XVIII inherently destroys any benefit that it confers.³¹³ It has been noted that the GATT's system of dispute settlement has matured.³¹⁴ This is in part because of the developing countries' pressures.³¹⁵

B. *The Special and Differential Approach*

The term "Special and Differential" comes from the 1973 Tokyo Round Declaration, which recognized "the importance of the application of *differential* measures to developing countries in ways which will provide *special* and more favorable treatment for them in areas of negotiation where this is feasible and appropriate."³¹⁶

Special and Differential treatment refers to various rights and privileges extended to developing country contracting parties but not to the developed countries. In practice, it means that developing countries have more freedom to protect their domestic markets than do developed countries. The products of developing countries are

309. Braga & Vasconcellos, *supra* note 13, at 262.

310. Gunewardene, *supra* note 113, at 46.

311. Gunewardene, *supra* note 113, at 46.

312. Gunewardene, *supra* note 113, at 46.

313. Gunewardene, *supra* note 113, at 46. On Article XVIII, the so called developing country provision, it has been written: "contracting parties continued to regard Article XVIII as an exception to be controlled very carefully—and, quite possibly, even to be discouraged." HUDEC, *supra* note 5, at 28.

314. Jan Klabbbers, *Jurisprudence in International Trade Law: Article XX of GATT*, 26 J. WORLD TRADE 63, 93 (1992).

315. See, e.g., the tuna-dolphin case between Mexico and the United States. In this case, the United States imposed an embargo on imports of tuna from Mexico. The stated ground was that Mexican fishing practices endangered dolphins. Mexico filed a complaint under the GATT stating that its fishing practices met international standards but not American unilateral laws. Accordingly, Mexico charged that the United States violated Article XI which bans such embargoes on the exports of a contracting party. Mexico won. John H. Jackson, *Dolphins and Hormones: GATT and the Legal Environment for International Trade After the Uruguay Round*, 14 U. ARK. LITTLE ROCK L.J. 429, 434 (1992) (citing GATT, *Restrictions on Imports of Tuna from Mexico*, GATT Doc., Sept. 3, 1991, at 21).

316. John Whalley, *Special and Differential Treatment, Agriculture, and the Developing Countries*, in THE GATT, AGRICULTURE & THE DEVELOPING COUNTRIES 11-14 (Nurul Islam & Alberto Valdes eds., 1990).

also granted preferential access into developed country markets.

This approach had been used by the developing countries from the beginning. The logic behind this approach focuses on the problems of developing countries which deserve Special and Differential treatment. This approach is not agriculture specific.

Recall that the *Harbeler Report* identified that international trade was not helping developmental efforts.³¹⁷ One of the reasons was that agricultural products of the developing countries had no access to developed countries' markets. This way, "the campaign for Special and Differential [treatment] was closely associated with LDCs' frustrations concerning agricultural trade."³¹⁸ Developing countries achieved political victory during the Kennedy Round (1964-67) with the addition of Part IV to the GATT.³¹⁹ There is some question about the necessity of Part IV since Article XVIII accomplishes the same thing.³²⁰ However, in the normative development of the GATT's developing countries' jurisprudence, the addition of Part IV was a formidable development.

Part IV outlawed reciprocity as a basis for developed-developing country trade. It is a cornerstone of the United Nations' call for a New International Economic Order. As a result of principles embedded in Part IV, the Generalized System of Preferences³²¹ was negotiated under the auspices of the United Nations Conference on Trade

317. See *supra* Part II(B).

318. Braga & Vasconcellos, *supra* note 13, at 263.

319. GATT art. XXXVI(1)(b) states:

that export earnings of the less developed contracting parties can play a vital part in their economic development and the extent of this contribution depends on the prices paid by the less-developed contracting parties for essential imports, the volume of their exports, and the prices received for these exports.

GATT art. XXXVI(1)(b). This is interpreted as an access to agricultural trade provision. Most of the developing countries at this time were essentially primary goods exporters.

320. See WHALLEY, *supra* note 7, at 117; See also Brian Hindley, *Different and More Favorable Treatment—and Graduation*, in URUGUAY ROUND: A HANDBOOK FOR THE MULTILATERAL TRADE NEGOTIATIONS 68, 67-74 (J. Michael Finger & Andrzej Olechowski eds., 1987) [hereinafter HANDBOOK]. This contributor to the World Bank could claim only that Article XVIII "limit[s]" Part IV, stating: "As long as Article XVIII opens the door to . . . tariff increases by developing countries, the strictures of non-reciprocity in Part IV and elsewhere play a limited role." *Id.* He dismisses any legal analysis as "not operationally significant." *Id.*

321. These are plans by developed countries which offer non-reciprocal, general tariff reductions usually on semi-manufactured and manufactured goods from identified developing countries. See M. Reza Benham, *Development and Structure of the Generalized System of Preferences*, 9 J. WORLD TRADE 442, 443 (1975). See generally MURRAY, *supra* note 130; YESUF, *supra* note 128.

and Development. The GATT made it possible by granting a ten year waiver in 1971 of the Most Favored Nation Principle.³²² A permanent legal basis was established in 1979 for continuing Special and Differential treatment.³²³ In the GATT, Special and Differential treatment is found in: Articles XVIII, XXVIII(3), Part IV, the 1979 Enabling Clause, and the *Ministerial Declaration on the Uruguay Round*. Also, the European Communities' Lomé conventions and the United States' Caribbean Basin Initiative indirectly elaborate this principle. Both are preferential programs specially benefitting developing countries. This principle is part of the emerging customary international trade law.

In the Uruguay Round, developing countries insist that any agricultural liberation must not hurt development efforts.³²⁴ Also, they have called for financial compensation from developed countries since global trade liberalization will hurt them.³²⁵ Countries that benefit from trade preferences want to be compensated for the benefits that will be eroded as a result of liberalization.³²⁶

C. *The Pragmatic Reaction*

Pragmatic strategies are inevitable because the GATT organization appears to embrace pragmatic solutions across the board. According to Kenneth Dam, "'pragmatism' has governed the interpretation and administration of the General Agreement by the GATT Secretariat and by some of the most influential contracting parties."³²⁷ Developing countries' pragmatic reactions include two major strategies. The first is adaptation.³²⁸ The second is supporting Special and Differential practices.³²⁹

322. *Waivers: Generalized System of Preferences, Decision of 25 June 1971*, BASIC INSTRUMENTS & SELECTED DOCUMENTS (GATT, Geneva Switzerland), 18th Supp., 1972, at 24.

323. The Enabling Clause (clause I) of November 28, 1979 waives the MFN principle located in Article I of the GATT. *Differential and More Favorable Treatment Reciprocity and Fuller Participation of Developing Countries, Decision of 28 November 1979*, BASIC INSTRUMENTS & SELECTED DOCUMENTS (GATT, Geneva, Switzerland), 26th Supp., 1980, at 203 ("Notwithstanding the provisions of Article I of the General Agreement, contracting parties may accord differential and more favourable treatment to developing countries, without according such treatment to other contracting parties.').

324. Whalley, *supra* note 316, at 13.

325. Hopkins, *supra* note 301, at 149.

326. Hopkins, *supra* note 301, at 149; *see also* YUSUF, *supra* note 128, at 98 (showing that multilateral tariff reduction eroded GSP benefits of developing countries following the Tokyo Round).

327. DAM, *supra* note 1, at 4.

328. Braga & Vasconcellos, *supra* note 13, at 261.

329. Braga and Vasconcellos, *supra* note 13, at 264.

Adaptation is the realization that farm supports are here to stay for good or bad reasons. The second best option, then, is to identify those products which are less prone to the farm support practices of the developed world.

After they are identified, efforts are intensified for marketing those farm products produced by developing countries but that are not part of developed countries' farm programs. For example, apart from that of "agriculture," there is a trade negotiating group for "tropical products" in the Uruguay Round. The latter group deals with products not specifically dealt with in the agriculture or the Natural Resource-based Products groups.³³⁰ The tropical negotiation group formally became one of the negotiating areas under the Trade Negotiation Committee of the Tokyo Round.³³¹ Of course, the "tropical products"³³² are more relevant to the less developed countries.³³³ Adaptation prevents negotiating on temperate agricultural products which have little value for most developing countries.³³⁴

The second type of pragmatic approach is the support for discriminatory policies. Former French and English colonies are notorious for promoting preferential policies such as the Lomé Conventions.³³⁵ This is largely because special trade preferences as those enjoyed under the Lomé Convention are more beneficial than either the GSP schemes or the most favored nation standards.³³⁶

The pragmatic reaction has been successful.³³⁷ Negotiations in the Tropical Products Group produced agreements on a larger num-

330. RAGHAVAN, *supra* note 4, at 162.

331. See GILBERT R. WINHAM, *INTERNATIONAL TRADE AND THE TOKYO ROUND NEGOTIATION* 125-27 (1986).

332. Tropical agricultural products are: beverages (tea, cocoa and coffee), spices, cut flowers, plants, different types of oil seeds and vegetable oils (e.g. palm and coconut), tobacco and tobacco products, rice, manioc and other tropical roots, tropical fruits (e.g. bananas, pineapples and mangoes), tropical nuts, tropical wood and wood products, natural rubber and rubber products, jute, and hard fibers. Vincent Cable, *Tropical Products*, in *HANDBOOK*, *supra* note 320, at 171-72.

333. Koekkoek, *supra* note 8, at 129.

334. Cable, *Tropical Products*, in *HANDBOOK*, *supra* note 320, at 171; Koekkoek, *supra* note 8, at 131 (explaining that this approach is very successful; during the Tokyo Round, tariff concessions were granted for 3,000 products, on a tariff line basis, corresponding to sixty percent of the requests submitted to developing countries).

335. It has resulted in continuing friction between the developing countries of Latin America and the mentioned former colonies. See Augustine Oyowe, *The 17th ACP-EC Council of Ministers: Lomé IV Under Test*, *THE COURIER*, no. 134, July/August 1992, at 8; JACKSON, *supra* note 255, at 666 ("The Latin American countries can argue . . . that the . . . various world preferential systems—Commonwealth, EEC-African, etc.—is to leave the Latin Americans as the only less-developed area without market preferences for their exports.")

336. Plank, *supra* note 219, at 3.

337. It is also a source of weakness for the developing countries. See Hopkins *supra*

ber of concessions than the ones negotiated under the agriculture group on temperate products during the Tokyo Round.³³⁸ Preferential systems have also increased in large part because of this approach.

In 1975, the first Lomé Convention was signed.³³⁹ The Lomé Conventions provide for very wide product coverage, stabilization measures for developing country export earnings, industrial cooperation, and financial and technical cooperation. The United States also has a special preferential scheme comparable to the Lomé Conventions called the *Caribbean Basin Economic Recovery Act*.³⁴⁰

VII. TRADE LIBERALIZATION IN AGRICULTURE AND THE DEVELOPING COUNTRIES

The aim of this section is to rebut the proposition that all developing countries will benefit from trade liberalization.³⁴¹ It is also

note 301, at 161 ("Although coalitions might make greater international gains possible, they may not materialize as long as it pays for individual countries to defect from a coalition. That is a central reason for establishing enforceable rules, that is, penalties that facilitate cooperation toward mutual gain.").

338. Cable, *Tropical Products*, in HANDBOOK, *supra* note 320, at 171. This does not mean that the developed countries were by any means satisfied with the outcome of that Round in general.

339. *ACP-EEC Convention of Lomé I*, reprinted in 14 INT'L LEGAL MATERIALS 595 (1975). Lomé I was signed in 1975 between the European Economic Community and forty-six nations in Africa, the Caribbean and the Pacific. The latter countries are called the ACP countries. Lomé II was signed in 1979 with fifty-nine ACP countries. Lomé III was signed in 1984 with the EEC ten (Spain and Portugal excepted) and sixty-six ACP states. Lomé IV, signed in 1984 between the EEC twelve and sixty-nine ACP states, is in effect until the year 2000. For a discussion of these conventions, see Kenneth R. Simmonds, *The Lomé Convention and the New International Economic Order*, 13 COMMON MKT. L. REV. 315 (1976). *The Second Lomé Convention: The Innovative Features*, 17 COMMON MKT. L. REV. 415 (1980), *The Third Lomé Convention*, 22 COMMON MKT. L. REV. 389 (1985), and *The Fourth Lomé Convention*, 28 COMMON MKT. L. REV. 521 (1991).

340. 19 U.S.C. § 2701 (1988). For a discussion of the act, see Wolfgang Benedek, *The Caribbean Basin Economic Recovery Act: A New Type of Preference in GATT?* 20 J. WORLD TRADE 29 (1986).

341. See, e.g., John S. Markle, *Slaying the Sacred Cow: Looking For Consensus in the Reformation of World Agricultural Trade*, 68 N.D. L. REV. 607, 621 (1992) ("Less developed nations and developing nations would be forced to pay more for the food they import, due to increases in world prices, but also would receive higher prices for the food that they sold in the world market."). The article cites to REFORMING WORLD AGRICULTURAL TRADE: A POLICY STATEMENT BY TWENTY-NINE PROFESSIONALS FROM SEVENTEEN COUNTRIES (Institute for International Economics & Institute for Research on Public Policy, 1988). However, the full professionals' report, in my view, cannot support unfettered liberalization. It states:

Developing countries are rightly concerned that any new rules limiting domestic agricultural policies should not limit their ability to develop their agricultural poten-

to show that trade liberalization in agriculture is a dubious way for raising the standard of living in developing countries.³⁴²

*A. Beyond Propaganda: The Benefits of Liberalization
Are Controversial*

The assertions promoting the notion that developing countries will benefit from the Uruguay Round are usually glittering generalizations of the benefits of liberalization. *The Economist*, the free trade megaphone, casts this dangerous generalization in the context of the Uruguay Round as follows: "On a conservative estimate, the Uruguay Round would permanently raise global welfare by more than \$100 billion a year, spur economic growth everywhere (especially in the world's poorest countries) and extend competition to hitherto sheltered, and therefore backward, parts of all economies."³⁴³

tial, increase productivity of their agricultural industry, and ensure food security for the poor. . . . For the poorest developing countries, their concerns can be dealt with by strengthening the Food Aid Convention.

Id. at 21-22.

On participation, the professionals state, "longer transition periods and the continuation of higher levels of protection and infrastructure development should be permitted . . ." *Id.* at 15. See also Strating, *supra* note 17, at 306 ("no one will gain by a GATT failure"). In an interesting footnote, we are informed that the net effect of liberalization "is expected to be positive," although consumers in developing countries "will be worse off as a result of higher commodity prices." Strating, *supra* note 17, at n.2. How would citizens of developing countries, for whom adequate food is too expensive, afford the higher prices?

342. See Schoenbaum, *supra* note 228, at 1193 ("[I]nternational agricultural trade must be reformed to stimulate industrial development in developing countries.').

343. *Freer Trade, With Luck*, THE ECONOMIST, Oct. 17, 1992, at 13. *Contra* DUNKEL DRAFT, *supra* note 1, at L.53. The basic assumption of *The Economist* that liberalization of trade will bring about "global welfare" is not without criticism. See, e.g., SAMIR AMIN, EMPIRE OF CHAOS 61-62 (W.H. Locke Anderson trans., 1992):

The underlying hypothesis is that although development necessarily depends to an important extent on internal circumstances peculiar to each society, integration into the world economy is necessary if a country is to develop its resources. . . . Liberal economic theory demonstrates that maintaining the mobility of a single factor of production, capital, while two other factors, labor and natural resources, are imprisoned by natural and political geography, cannot lead to uniform world productivity and social conditions.

Under such circumstances, the worldwide law of value can only produce and reproduce polarization. In this sense, integration into the world system is by nature unfavorable and becomes increasingly so.

Id. See also Ndiva Kofele-Kale, *The Principles of Preferential Treatment in the Law of GATT: Toward Achieving the Objective of an Equitable World Trading System*, 18 CAL. W. INT'L L.J. 291, 317 (1988).

The GATT organization's Trade Negotiations Committee is not that bold.³⁴⁴ It is fairly certain that developing countries, especially net food importers and least developed countries, will not benefit from any "global welfare." Clearly, for most net food importing countries (which is almost all developing countries), all studies indicate that they will have difficulties following liberalization. This is because it would cost them more to purchase food and other items. This is aggravated because most of these countries carry a heavy debt burden. The GATT itself agrees to the need for differential treatment for certain developing countries.³⁴⁵ Additionally, liberalization in agricultural products may not work very well in practice.³⁴⁶

Furthermore, one undisputed effect of liberalization would be higher food prices. Among the poor in developing countries, this means lower levels of food consumption.³⁴⁷ The effect in developed countries will probably be the reverse. When artificial farm price supports are removed, the consumer saves doubly. The government puts its taxes to other purposes, if the taxes are not lowered, and the groceries are less expensive.³⁴⁸

Apart from higher food prices, hunger could worsen because of the effect of liberalization on food aid policies in the developing countries. The impetus for food aid legislation, for example in the United States, is largely the disposal of surplus accumulated by the current agricultural support programs.³⁴⁹ These will have to be torn down by liberalization.³⁵⁰ Hunger follows. Therefore, the issues raised

344. See *infra* Part X.

345. See the DUNKEL DRAFT's special measures for net food importing countries, *supra* note 7.

346. TUSSIE, *supra* note 54, at 6. Tussie writes:

Oligapolic production enables some concertation among producers; it also allows for supply management, so that friction may be ironed out at the production stage before it spills over onto trade. For this reason, GATT could free industrial trade far better than agricultural trade, which essentially retains price competitive features and where the normal rules of supply and demand prevail.

TUSSIE, *supra* note 54, at 6.

347. Nicole Ballenger & Carl Mabbs-Zeno, *Treating Food Security and Food Aid Issues at the GATT*, FOOD POL'Y, Aug. 1992, at 264-65.

348. See *Sutherland Calls on Governments to Come Clean on Consumer Interests on the Uruguay Round*, NEWS OF THE URUGUAY ROUND (GATT, Geneva, Switzerland) vol. 60, 1993, at 1 (stating that consumers pay more when tariffs are imposed).

349. See DON F. HADWIGER, FEDERAL WHEAT COMMODITY PROGRAMS 328 (1970) ("Wheat was the instrument of food aid because it was the abundant food in the food surplus nations.").

350. Ballenger & Mabbs-Zeno, *supra* note 347, at 264.

by liberalization for developing countries are far more complex than GATT's free trade promoters tell. In order not to consign large parts of humanity to hunger, the consequences of agricultural trade liberalization should be reconsidered carefully.³⁵¹

Liberalization's value for developing countries' agriculture is questionable. It has been asserted that if the developed countries' markets were opened to tropical products, it would not lead to higher world prices for these products.³⁵² The much advertised increased earning will probably not occur. The predominant exports of developing countries—primary commodities—experience frequent price fluctuations.³⁵³ The GATT has no mechanism for stabilizing prices. Therefore, there is little basis for expecting significantly higher incomes for developing countries.

An assault on the wisdom of free trade has appeared.³⁵⁴ It asserts that free trade destroys the environment. According to this position, the tankers and airplanes needed for transporting commodities simply pollute the environment intolerably. As such opinions appear, the wisest course is to rethink our assumptions about free trade.

The potential effects of trade liberalization on developing countries are controversial. It has been asserted that liberalization would theoretically benefit world trade enormously.³⁵⁵ This is because with-

351. Any meaningful food aid may not stifle local production. See *Overstuffing Africa*, THE ECONOMIST, May 8, 1993, at 50 (local farmers are victimized by food aid).

352. RAGHAVAN, *supra* note 4, at 174. See TODARO, *supra* note 72, at 375:

[I]t has been estimated that a 1% increase in developed country incomes will normally raise their imports of foodstuffs by 0.6%, agricultural raw materials such as rubber and vegetable oils by 0.5%, petroleum . . . by 2.4% Consequently, when incomes rise in rich countries their demand for food, [and] food products . . . goes up relatively slowly

TODARO, *supra* note 72, at 375.

353. TODARO, *supra* note 72, at 375.

354. RAVI BATRA, THE MYTH OF FREE TRADE 215 (1993) (The pollution caused by free trade is greater than any benefit). The present author does not necessarily endorse Professor Batra's views. However, the fact that scholars are discussing the issue appears to have put the trade bar on notice about the need to reassess old ideas.

355. Ian Goldin & Odin Knudsen, *The Implications of Agricultural Trade Liberalization for Developing Countries*, in AGRICULTURAL TRADE LIBERALIZATION: IMPLICATION FOR DEVELOPING COUNTRIES 475, 479 (1990) ("Liberalization offers the world a potential dividend estimated at well over \$200 billion a year . . ."). But see Kym Anderson & Rod Tyers, *How Developing Countries Could Gain From Agricultural Trade Liberalization in the Uruguay Round*, in *id.* at 41 (if developing countries liberalize, "[w]hether food consumers or producers in developing countries would be better or worse off depends on whether the change in the terms of trade more than or less than offsets the effects on domestic prices of elimination the country's own food policy."). Anderson and Tyers support liberalization in developing countries' agriculture. Even they realize the future of developing countries following liberalization can be uncertain.

out tariffs and subsidies producers will produce more efficiently and consumers will save money following reduced prices.³⁵⁶ Important qualifications to these studies do not appear as prominently in the literature. A close look at one of the influential studies supporting liberalization shows that uncritical acceptance of its conclusion is unwarranted. The authors studied trade in wheat, coarse grains, rice, ruminant meat, dairy products and sugar.³⁵⁷ It is enough to note that this is a small list of developing country agricultural exports.³⁵⁸ Of course, there is always the question whether these studies, carried out with computer models, work well on the ground.

Other studies show that liberalization would only hurt some economies.³⁵⁹ The developing countries that do not export sugar or meat will lose if the developed countries liberalize trade.³⁶⁰ If the product coverage of the liberalization scheme is widened to include all developing countries' products, benefits conferred on developing countries equally widen.³⁶¹ If tropical products such as tobacco, coffee, and cocoa are included, the number of developing countries that gain would increase.³⁶² If developing countries liberalize along with developed countries, it is expected that the negative effects to the former would be minimized.³⁶³ Forecasts by the United States Department of Agriculture and by the United Nations Conference on Trade and Development show that if developed countries liberalize unilaterally, the developing countries would experience net losses.³⁶⁴ There are a lot of "ifs."

356. Anderson & Tyers, *supra* note 355, at 41-75.

357. Hugh Corbet, *Preface*, in KYM ANDERSON & RODNEY TYERS, *supra* note 178, at xiv.

358. The authors of the study note the "omission of [developing country] non-staple export crops." ANDERSON & TYERS, *supra* note 178, at 82. However, they then speculate that these unstudied commodities would have added to the gains of liberalization and confirmed their study. Furthermore, the authors used a partial equilibrium model, which is narrower than the general equilibrium model. ANDERSON & TYERS, *supra* note 178, at 83. Using a partial equilibrium model, they could not determine the effects of liberalization on other sectors. They could not establish the effect on employment, for example. Again they speculate that the methods would "probably generate similar effects . . . but [the general equilibrium model] would also provide insights into effects of agricultural distortions on other sectors" ANDERSON & TYERS, *supra* note 178, at 83.

359. Hoekman, *supra* note 265, at 86.

360. Hoekman, *supra* note 265, at 87.

361. Hoekman, *supra* note 265, at 87.

362. Hoekman, *supra* note 265, at 87.

363. Hoekman, *supra* note 265, at 87.

364. Hopkins, *supra* note 301, at 150. A third study shows that there will be net gains for developing countries even if liberalization is undertaken by developed countries only. Hopkins, *supra* note 301, at 150.

B. *Developing Countries' Reluctance*

The question then becomes: If liberalization is so beneficial to them, why do developing countries not embrace it? There are several reasons why developing countries are reluctant to embrace liberalization. First, the projections are certainly contradictory, confusing, and possibly inaccurate. Second, the philosophy of liberalization may run contrary to the development needs of particular countries. Third, a projection of "net gains" of "developing countries" makes no sense to the individual negotiator as effects vary from country to country. Furthermore, the higher food prices which will be slapped on poor consumers in the developing countries as a result of liberalization are troubling. How developing countries will implement this politically repulsive measure without massive human rights abuses must be painful to observe. Finally, developing countries are discriminated against or just plain disregarded by developed countries in the negotiation process. They do not have the resources to carry out their own studies and control only a small share of world trade. Consequently, they have few comprehensive proposals and must rely on the good will of developed countries. Here is an account of the treatment developing countries endured during parts of the Uruguay Round:

In formulating ideas and strategies, [the developing countries] were essentially reacting to initiatives of others. In doing so, they were disadvantaged by seldom knowing the positions of the United States, the European Community, or even the Cairns Group in advance. *Representatives of [developed countries] invariably were given drafts of proposals in advance; some were even reviewed and changed in private discussions. Developing countries were provided drafts only on the day of the meeting at which they were to be discussed. This left virtually no time for analyzing consequences and developing responses.*³⁶⁵

This can explain some of the reluctance and the uncertainty expressed by many developing countries during the Uruguay Round. There are more traditional arguments against developing countries engaging in excessive international trade: "*Third world countries*

365. Hopkins, *supra* note 301, at 149 (emphasis added).

have in the past benefitted disproportionately less from their economic dealings with developed nations and, in the long run, many may have in fact even suffered . . . from this association."³⁶⁶

C. *The Limits of Rationality: A Taxonomy*

All other factors being constant, how developing countries would respond to liberalization varies. If developed countries liberalize unilaterally, certain developing countries will not be hurt.³⁶⁷ In every scenario, a handful of developing countries will benefit, but most will lose. Developing countries have been classified into three categories.³⁶⁸ Those with rich agroclimatic endowments, and those with poor climatic endowments, those that are in between.³⁶⁹ The way in which a developing country responds to liberalization is a function of its national interest.³⁷⁰ These categories are based on per capita income and endowments. Other factors are not considered. One factor which is not considered—debt—is of formidable importance for understanding developing countries' behavior in the last decade. The question of debt will be discussed in the next section.

A rich country like Uruguay, an agricultural exporter, would not benefit from preferential market access.³⁷¹ It is in its interest to call for trade liberalization. Its agricultural interest is close to those of some of the developed countries. The Cairns Group³⁷² provides a forum for countries like Uruguay.

On the other extreme is a country such as Chad. Chad has a very poor agroclimatic endowment. Naturally, Chad will gain less from trade liberalization. Being a net importer of agricultural products, liberalization is bad news for it.³⁷³ It is in Chad's best interest to take cover under preferential arrangements like the Lomé Convention.

Between the foregoing extremes are the majority of developing countries. As a rule, net farm product importers do not embrace

366. TODARO, *supra* note 72, at 395 (emphasis in original).

367. Braga & Vasconcellos, *supra* note 13, at 273 (examples are Argentina, Thailand, Cuba, and Bangladesh).

368. Braga & Vasconcellos, *supra* note 13, at 273-74.

369. Braga & Vasconcellos, *supra* note 13, at 274.

370. See Hopkins, *supra* note 301, at 151-58.

371. Hopkins, *supra* note 301, at 151-58.

372. The group adopted the name of the Australian city where they first met in August 1986. Its members are: Argentina, Australia, Brazil, Canada, Chile, Colombia, Fiji, Hungary, Indonesia, Malaysia, New Zealand, Philippines, Thailand, and Uruguay.

373. Notice the DUNKEL DRAFT's special provisions for food importers, *supra* note 1.

liberalization enthusiastically.³⁷⁴ Most of these countries—even the richer ones—view liberalization only in terms of access to developed country markets.³⁷⁵ This is consistent with their Special and Differential status. With tropical products, except for sugar, developing country access to developed country markets will not necessarily lead to higher world prices.³⁷⁶ This is because with large suppliers in developing countries, competition would lead to falling prices. Also, most of the tropical goods are fairly nonelastic.³⁷⁷ Coffee is an example of this type of good. Free access of this product to developed country markets would not mean dramatic increases in its consumption even if prices are lower because of its relative inelasticity. Furthermore, the development of synthetics has operated to diminish the demand for many developing country products.

D. Debt and the Crisis of Sovereignty

Developing countries are indebted to varying degrees. Twenty one of them have been termed “severely indebted” by the World Bank.³⁷⁸ To be so designated, either the value of debt to the GNP is eighty percent or the value of debt to exports is two hundred percent.³⁷⁹ For those who have not made the list there is no cheer. Countries that have debts totalling, for example forty percent of their GNP, have a tough enough problem.

It is doubtful whether a highly indebted nation is capable of discharging all its obligations to its people. Most highly indebted states comply with the ideas of (usually) foreign creditors. Usually, this leads to a zany emphasis on exportation. Such countries may have to endorse liberalization because it is grounds for debt restructuring or other benefits. Most gains made by a heavily indebted country will likely be used for debt servicing, not citizen welfare. Many nations advertised as supporting liberalization are doing so to meet the terms of their loans.

374. Examples are Egypt and Nigeria.

375. Braga and Vasconcellos, *supra* note 13, at 274.

376. RAGHAVAN, *supra* note 4, at 174.

377. A product is nonelastic if a decrease in price does not lead to increase in demand. A typical nonelastic good is common salt.

378. The severely indebted are: Albania, Algeria, Angola, Argentina, Bolivia, Brazil, Bulgaria, Congo, Cote d'Ivoire, Cuba, Ecuador, Iraq, Jamaica, Jordan, Mexico, Mongolia, Morocco, Panama, Peru, Poland, Syrian Arab Republic. WORLD DEVELOPMENT REPORT 1993 (World Bank 1993) at xi.

379. *Id.*

Countries that rely on the export of such agricultural commodities must be cautious as the projected gains will be swallowed by losses resulting from increased prices of imports.³⁸⁰ Debt is outside the scope of the GATT.³⁸¹ The moderate approach of many states to provide food security at home while participating in international trade is a welcome idea. A study by the Commonwealth Secretariat noted that:

For most developing countries, liberalization would be likely to cause or exacerbate balance of payments problems in the short, and may be, medium term, and substantial financial support would be needed to help them overcome these difficulties. . . . [S]pecial importance is attached to the concept of a "development clause" which—particularly for countries of Africa and Asia— would recognize the distinctive role of small scale farmers.³⁸²

This study is noted because it is people-oriented and raises an issue frequently ignored. Citizens of developing countries feed from numerous small farms. These farms are worked by the so-called "traditional farmer." But farming is more than economic efficiency in these parts. It is also a way of life. The meaning of life in many African and Asian villages is centered around the farm. Without special safeguards, liberalization will lead to the destruction of small "inefficient" farms. They will be replaced by large "efficient" farms. Peoples' culture will be also be replaced in search of efficiency.

To be sure, there is a place for export trade in developing countries. This section has overviewed some of the issues facing developing countries in the trade liberalization process. It brought out the unflattering consequences of liberalization that are frequently ignored in the legal literature. Against this background, this article will now examine the Uruguay Round.

VIII. THE URUGUAY ROUND³⁸³

The Uruguay Round is the most recent Round of GATT negotiations and the most ambitious. It was launched at the Atlantic

380. RAGHAVAN, *supra* note 4, at 174.

381. WHALLEY, *supra* note 7, at 79.

382. RAGHAVAN, *supra* note 4, at 174-75 (quoting Commonwealth Secretariat).

383. The multilateral negotiations within GATT to reduce trade barriers or to amend articles of the agreement are called Rounds. There have been seven other rounds: Geneva,

Seaside Resort at Punta del Este, Uruguay,³⁸⁴ on September 20, 1986. Trade ministers of GATT contracting parties had unanimously adopted a declaration stating the objectives, negotiating principles and subjects of a new trade conference. It is popularly called the Punta del Este Declaration.³⁸⁵

The declaration included a wide range of issues important to contracting parties³⁸⁶ and to the staff of GATT.³⁸⁷ It includes negotiations in services. Before the launch of the Round, developing countries had resisted it. They were suspicious of the United States' call for negotiations in services. They believed this would detract from the "backlog" issues.³⁸⁸ There was also the concern that the developed countries, who had failed to implement differential treatment, were out to undermine developing countries' Special and Differential status.

The Punta Del Este Declaration sought to correct these perceptions. Its first stated objective is to "bring about further liberalization and expansion of world trade to the benefit of all countries especially less developed contracting parties including the improvement of access to markets by the reduction and elimination of tariffs, quantitative restrictions, and other non-tariff measures and obstacles."³⁸⁹

There were fifteen "subjects for negotiation" during this Round.³⁹⁰ Agriculture, natural resources, and tropical products fell within the

Switzerland (1947); Annency, France (1949); Torquay, England (1950); Geneva, Switzerland 1956; Dillon, Switzerland (1960-62); Kennedy, Geneva, Switzerland (1962-67); and Tokyo, Geneva, Switzerland (1979). The last three discussed agriculture. The group in Tropical Products came about during the Tokyo Round.

384. The choice of Uruguay was to recognize the increased importance of developing countries in world trade.

385. MINISTERIAL DECLARATION ON THE URUGUAY ROUND, DECLARATION OF 20 SEPTEMBER 1986 [hereinafter MINISTERIAL DECLARATION], reprinted in WHALLEY, *supra* note 7, at 91-102.

386. Murray Cobban, *Tropical Products in the Uruguay Round*, 11 WORLD ECON. 233 (1988).

387. Smith, *supra* note 37, at 942. The GATT staff has an agenda to promote world trade and the prestige of the GATT. They assert their influence on the delegations who disagree with the majoritarian position. Smith, *supra* note 37, at 992. According to this participant observer, "most influence was usually exerted on newly-industrializing and or middle income developing countries." Smith, *supra* note 37, at 992 n.331.

388. These are issues of safeguards, agriculture, and textiles. Developing countries have not been able to get disciplines on these.

389. MINISTERIAL DECLARATION, reprinted in WHALLEY, *supra* note 7, at 91-102. There are four objectives. The emphasis on dealing with developing country problems is clear. The rest (in order of listing) deal with strengthening GATT rules, improving GATT's relations with other international organizations, and fostering cooperation between international trade and domestic policy.

390. MINISTERIAL DECLARATION (1)(D), reprinted in WHALLEY, *supra* note 7, at 94-98.

scope of this article. But because tropical goods are the area of highest concern to the poorest countries on earth,³⁹¹ this article will focus on this group. The Group of Negotiation on Goods (GNG) was established to carry out the Round's program of negotiations.³⁹²

The GNG created working groups in each subject area, such as the group on tropical goods. Each subject group was to report to the GNG. The latter reported to the Trade Negotiations Committee (TNC),³⁹³ which was to oversee the entire Round.³⁹⁴

IX. THE NEGOTIATIONS ON TROPICAL PRODUCTS

In this section, the negotiations in tropical products are used to illustrate some of the wider issues that affected developing countries during the Uruguay Round. The *Ministerial Declaration* called for maximum liberalization in this category:

Negotiations shall aim at the fullest liberalization of trade in tropical products, including in their processed and semi-processed forms and shall cover both tariff and all non-tariff measures affecting trade in these products. Contracting parties recognize the importance of trade in tropical products to a large number of less developed contracting parties and agree that negotiations in this area receive special attention, including the timing of negotiations and the implementation of the results as provided for in section B(ii).³⁹⁵

These are: tariffs, non-tariff measures, tropical products, natural resource based products, textile and clothing, agriculture, GATT articles, MTN agreements and arrangements, subsidies and countervailing measures, dispute settlement, trade related aspects of intellectual property rights, trade related investment measures. MINISTERIAL DECLARATION (1)(D), *reprinted in* WHALLEY, *supra* note 7, at 94-98.

391. This is because tropical products best represent the concerns of the low income developing countries. *See* Cobban, *supra* note 386, at 235. Under MINISTERIAL DECLARATION 1(B)(vii), one of the general principles governing negotiations is that "special attention shall be given to the particular situation and problems of the least-developed countries." MINISTERIAL DECLARATION (1)(B)(vii), *reprinted in* WHALLEY, *supra* note 7, at 92. Furthermore, there is a vast body of commentary on the group on Agriculture. However, wider issues concerning agriculture will be given attention.

392. MINISTERIAL DECLARATION (1)(G), *reprinted in* WHALLEY, *supra* note 7, at 99.

393. MINISTERIAL DECLARATION (1)(G)(vi), *reprinted in* WHALLEY, *supra* note 7, at 99.

394. The TNC is composed of all the senior negotiating officials from each member's delegation from all trade areas, who have the political authority to make offers and concessions. Arthur Dunkel, then GATT Director-General, was named chairman of the GNG and two chairmen were named for the TNC. The Uruguayan trade minister would chairman at the ministerial level and Arthur Dunkel at the officials' level (where the day-to-day work is done).

395. MINISTERIAL DECLARATION (1)(D), *reprinted in* WHALLEY, *supra* note 7, at 94-98.

Ministerial Declaration Section B(ii) states:

The launching, the conduct and the implementation of the outcome of the negotiations shall be treated as parts of a single undertaking. However, agreements reached at an early stage may be implemented on a provisional or a definitive basis by agreement prior to the formal conclusion of the negotiations. Early agreements shall be taken into account in assessing the overall balance of the negotiations.³⁹⁶

In view of the rhetoric of the contracting parties with respect to liberalizing tropical goods, the following discussion assesses what developing countries achieved. To fully examine this issue, it is necessary to understand the negotiations.

A. Negotiations

In the preparatory meetings leading to the Uruguay Round, trade in tropical products was one of the backlog issues that the developing countries wanted at the top of the agenda. Indeed, the declaration launching the Round created a "special" place for it. Developing countries proposed a framework for negotiations under the trade negotiating group on tropical products.

In the framework, negotiations were to be conducted on the basis of non-reciprocity. The product coverage would include everything produced in the tropical areas whether in their primary, semi-processed, or processed forms. Negotiations were to cover tariffs and non-tariff measures, including internal taxes. The timetable was to be a short one with an implementing provision for concessions. Standstill and roll back principles would apply.³⁹⁷ Special and Differential principles for developing countries must also prevail.³⁹⁸ As was expected, the developed countries were calling for more reciprocity and for graduation.³⁹⁹

396. MINISTERIAL DECLARATION (1)(B)(ii), reprinted in WHALLEY, *supra* note 7, at 92.

397. A standstill undertaking means the no party will introduce any trade distorting measure or any other conduct that unduly enhances that party's position in a manner inconsistent with GATT rules. MINISTERIAL DECLARATION (1)(C), reprinted in WHALLEY, *supra* note 7, at 93. A rollback undertaking is one where the parties agree to conform "illegal" trade practices to the requirements of the GATT at a given time but no later than by the completion of the negotiations.

398. Cobban, *supra* note 386, at 238-39.

399. For example, in the Tropical Product Group meeting on October 14, 1987, the European Economic Community's proposals were based on these conditions:

The negotiating framework was narrower than the *Ministerial Declaration* had envisaged. Notwithstanding the language of the declaration, "fullest liberalization" was not the basis of the group's work. The framework acceptable to both developing countries and developed countries was rather vague. Countries were asked to submit proposals for negotiations along these lines:

- (a) elimination of duties on unprocessed products;
- (b) elimination or substantial reduction of duties on semi-processed and processed products, including the objective of eliminating or reducing tariff escalation;
- (c) elimination or reduction of all non-tariff measures affecting trade in [tropical] products.⁴⁰⁰

Negotiations in the group on tropical products started in 1986 and were to have been completed a year later. A series of meetings took place in 1977 and 1988. During the mid term review of the Uruguay Round, agreements were finally reached. The total value of products involved was \$17 billion. The United States also agreed to remove tariffs on a large number of items but conditioned the removal on the completion of an agreement in agriculture.

Although agreements were reached, issues such as participation, coverage, access to developed country markets, graduation, and safeguards, were contentious during the work of the Tropical Products Group.⁴⁰¹ It is questionable whether it is in the interest of small countries who have such a small stake in world trade to participate in multilateral negotiations. The next discussion focuses on this issue.

B. Participation

Some developing countries export little. Therefore, it is felt, the GATT multilateral negotiations are not for them. Developed countries

First a "fair" degree of multilateral burden sharing, including an assessment of the balance of benefits to all industrial countries, centrally planned economies, and the more economically advanced countries [Graduation].

Secondly, a satisfactory level of reciprocity by the main beneficiary countries, in particular from the more advanced developing countries whose level of development, financial and trade needs allow them to participate more fully in the overall balance of rights and obligations under GATT.

Thirdly, an appropriate reduction of export restrictions by developing countries in a dominant-supplier position, matching the reduction of tariff escalation in importing countries.

Cobban, *supra* note 386, at 241.

400. *Tropical Products*, NEWS OF THE URUGUAY ROUND (GATT, Geneva, Switzerland), vol. 34, 1990, at 10.

401. These issues also apply to other negotiation groups.

have been calling for the participation of developing countries.⁴⁰² Most developing countries now agree to participate, but differ in degrees of desired participation. Some countries argue that effective participation means reciprocity.

Reciprocity "is the proposition that trade concessions by one country should be reciprocated by other countries during the course of negotiations by approximately equal concessions."⁴⁰³ Binding concessions are made by the contracting parties to GATT. They are registered in the schedules of concessions annexed to the General Agreement after each round.⁴⁰⁴ The developing countries argue, correctly, that the GATT Part IV creates a GATT law of non-reciprocity because it prohibits developed countries from seeking reciprocity.⁴⁰⁵

Developing countries do not question the need for reciprocity. They submit, however, that there is an inherent reciprocity in the trade between developed countries and developing countries.⁴⁰⁶ International trade between the two historically benefits the developed country.⁴⁰⁷ This is true even when the developed country is extending preferences.⁴⁰⁸ In testimony before the United States Senate, a United States Trade Representative stated:

402. WHALLEY, *supra* note 7, at 27.

403. WHALLEY, *supra* note 7, at 25. It is not a formal GATT rule, its basis being located at the preamble to the GATT. But it is a major norm of GATT.

404. There are two types of concessions: tariff and non-tariff concessions. Most tariff concessions are given under the Most Favored Nation principle. It cannot be changed unless renegotiated. Under the Enabling Clause, preferential duties were permitted but only for trade among developing countries. Non tariff concession may be exchanged where tariffs are meaningless. An example is where the tariff is zero but health regulations are impossible. There are few of these registered in the GATT. However, its use will likely increase because during this round, in negotiations on agriculture and tropical products, everything affecting access including non tariff measures is on the table and will be bound. *See* Takase, *supra* note 7, at 68-70. In any event, some developing countries do not want this because such binding makes it difficult for them to adjust tariffs quickly to meet changing economic circumstances.

405. GATT art. XXXVI(8) prohibits developed countries from seeking reciprocity. The interpretative note states: "The less developed contracting parties should not be expected, in the course of trade negotiations, to make contributions which are inconsistent with their individual development, financial and trade needs, taking into consideration past trade developments." *Id.*

406. UNITED NATIONS, TOWARDS A NEW TRADE POLICY FOR DEVELOPMENT 31 (1964) states:

The developing economies, given their great potential demand for imports, can import more than they would otherwise have been able to do had those concessions not been granted. Thus there is a real or implicit reciprocity, independent of the play of conventional concessions. And this is what must be recognized in international trade policy.

Id.

407. *Id.*

408. *More Competition, Less Confrontation—Remarks by Peter Sutherland Director-*

I think first of all I would state that based on conviction that this program [the Generalized System of Preferences] has been of enormous benefit to the United States. . . . If you've looked at the foreign sector . . . last year we brought in, I think, \$721 million worth of agricultural products under the GSP. We exported in the same year to those same countries \$15 billion worth of agricultural products, or 20 to 1 cost benefit ratio. That's not bad. That's good business.⁴⁰⁹

The declarations launching the Kennedy, Tokyo, and the Uruguay Rounds affirm this principle of non-reciprocity, but many developed countries in practice have not wholly accepted it.⁴¹⁰ Developed countries prefer concessions to be exchanged under the Most Favored Nation principle. After lengthy negotiations, the developed countries agreed to utilize Part IV of the GATT agreement by introducing the Generalized System of Preferences for developing countries. Through this program goods from a developing country would enter developed country markets with little or no tariffs and without reciprocity.

During this round the question has been whether developing countries should attempt to perpetuate their GSP benefits or to negotiate under the MFN principle. To understand these issues, it is necessary to examine the two propositions.

1. *Generalized System of Preferences (GSP) and Other Preferences*

GSP schemes are preferential tariff systems set up by individual developed countries in the interests of qualifying developing countries. They have worked a significant role in the reduction—even elimination—of tariffs for some products from particular developing countries. Developing countries getting GSP treatment do not have to reciprocate, however, the grantor countries can unilaterally withdraw

General, GATT to the Villa d'Este Workshop, NEWS OF THE URUGUAY ROUND (GATT, Geneva, Switzerland), vol. 64, 1993, at 2-4 ("A much larger share of the EC exports to third countries goes to developing countries than to North America and Japan put together.").

409. *Renewal of the Generalized System of Preferences: Hearing Before the Subcomm. on Int'l Trade of the Comm. on Finance, United States Senate, 98th Cong., 1st Sess., 4* (Aug. 4, 1983) (Statement of Ambassador William Brock, United States Trade Representative), *microformed on Sup. Docs. No. Y4.F49:S.hrg.98-423*.

410. WHALLEY, *supra* note 7, at 26.

the benefits. An analysis of the GSP systems of the United States, Canada, Japan, the European Economic Community, Switzerland, and Australia shows several weaknesses.⁴¹¹

First, the schemes differ widely with the way benefits are conferred and there are severe quantitative and country restrictions. Second, they are frequently modified, causing instability and making planning difficult. Third, when the developing countries prove competitive in anything other than primary products, they are cut off. Fourth, the rules of origin are complex in each GSP scheme studied. Fifth, for each country granting GSP, the grantee developing state ended up importing more from the grantor. Finally, the complexity and variations of the GSP systems burden very small states with limited administrative capacity.⁴¹²

The gains from GSP schemes have not been spectacular.⁴¹³ Less than twenty percent of agricultural imports to the European Economic Community, United States and Japan go through the GSP scheme.⁴¹⁴ However, the GSP has helped developing countries' exports that would not have been exported without the program.⁴¹⁵ It must be noted that the GSP was not designed to cater to agriculture:

With regard to primary products, it was generally agreed that the GSP was not in principle intended to cover them. At the same time, it was recognized by all Parties that distinguishing primary from processed goods raised delicate problems. Thus, the eventual inclusion of such products in the GSP was left to the discretion of individual preference-giving countries.⁴¹⁶

However, the practice of states has made agriculture a dominant element in most GSP schemes.⁴¹⁷ The expansion of GSP coverage to agriculture is one of the features of the new international economic

411. Takase, *supra* note 7, at 78-79.

412. Takase, *supra* note 7, at 79.

413. Beverly M. Carl, *Current Trade Problems of the Developing Nations*, in *LEGAL ISSUES IN INTERNATIONAL TRADE* 100, 112 (Petar Sarcevic & Hans van Houtte eds., 1990).

414. *Id.* at 112.

415. ALAN C. SWAN & JOHN F. MURPHY, *CASES AND MATERIALS ON REGULATION OF INTERNATIONAL BUSINESS AND ECONOMIC RELATIONS* 342 (1991).

416. YUSUF, *supra* note 128, at 107.

417. See, e.g., United States' Generalized System of Preferences, 19 U.S.C. § 2461-64 (1988).

order.⁴¹⁸ In practice, agriculture had to be within the purview of GSPs for most developing countries to benefit under them. Agricultural products, not manufactured products, are still what most developing countries can trade. The widespread coverage of agricultural goods under GSP programs is an example of the evolution of customary international trade law in response to development needs.

There are other preferential arrangements apart from the GSP. The largest ones are the Lomé Conventions and the Caribbean Basin Initiative. African Caribbean and Pacific (ACP) countries, for example, want to maintain their preferences under the Lomé Conventions. They believe that their advantages will be undercut in an MFN regime.⁴¹⁹ The European Community wants to negotiate on the basis of the Most Favored Nation principle (but is sensitive to ACP pressure).⁴²⁰

2. *Most Favored Nation Principle*

The Most Favored Nation principle is based on Article I of the GATT. It is credited with the following advantages over the GSP systems. First, the multilateral trade negotiations under GATT deal with long standing commitments.⁴²¹ Secondly, the trade creating consequences of the MFN outweighs the lost benefits under a GSP scheme.⁴²² Thirdly, every country gets its goods and services from the most efficient supplier.⁴²³ Fourthly, during the rounds, the negotiating powers of the bigger countries are used to lower tariff and

418. See Program of Action on the Establishment of a New International Economic Order, G.A. Res. 3202, U.N. GAOR, 6th Sess. Special, Supp. No.1, at 5, U.N. Doc. A/9559 (1974). Article 3(a)(x) of the *Program* states:

All efforts should be made:

(a) To take the following measures for the amelioration of terms of trade of developing countries and concrete steps to eliminate chronic trade deficits of developing countries:

. . . .

(x) Implementation, improvement and enlargement of the generalized system of preferences for export of agricultural primary commodities, manufactures and semi-manufactures from developing to developed countries.

Id. at art. 3(a)(x).

419. *But see* Frank, *supra* note 8, at 15 ("To the extent that developing countries disassociate themselves from the results . . . because of their preoccupation with preserving and enlarging preferential treatment . . . they are not serving their own interests.').

420. See generally Augustine Oyowe, *The 17th ACP-EC Council of Ministers: Lomé IV Under Test*, THE COURIER, vol. 134, July-August 1992, at 7.

421. Takase, *supra* note 7, at 80.

422. Takase, *supra* note 7, at 80.

423. Takase, *supra* note 7, at 80.

non-tariff barriers whereby the smaller countries also benefit.⁴²⁴ Fifth, it is easier to plan since tariffs are visible.⁴²⁵

The MFN principle operates against developing country welfare without mechanisms for Special and Differential treatment. The principle assumes nations are equally endowed and economic factors are always within reach, both substantial flaws. The MFN principle has been tried in the GATT and its non-success has been chronicled in the *Haberler Report*.⁴²⁶

Many countries want to keep their preferential arrangements. They prefer the principle of non-reciprocity to the MFN principle. No matter the nature of a trade agreement, the products covered determines its importance.

C. Coverage

Coverage relates to the amount and type of products that come within the purview of the negotiation group. During the Tokyo Round, developing countries sought concessions covering all products produced in "tropical areas."⁴²⁷ This position has been resisted all along by developed countries. In the Uruguay Round, concessions were granted in seven categories: tropical beverages; spices, cut flowers and plants; certain oilseeds and vegetable oils; tobacco, tobacco products, rice, manioc, and tropical roots; tropical fruits and nuts; tropical wood and wood products; and Jute and hard fibers.⁴²⁸ Jute and hard fibers were added in 1984.⁴²⁹

The coverage often has more to do with power politics than with logic. Major tropical products such as cane sugar, soya, olive oil, sisal and textiles are not covered.⁴³⁰ Developing countries demanded that concessions be granted in all forms of tropical products: primary, semi-processed, or processed. Developed countries held on to old and restricted coverage.

The European Economic Community's initial proposals to the group on tropical products is an example of restricted coverage. After it was tabled at the end of 1987, the *Financial Times* commented:

424. Takase, *supra* note 7, at 80.

425. Takase, *supra* note 7, at 80.

426. See *supra* Part IV (C)(1).

427. Cobban, *supra* note 386, at 234.

428. Cable, in *HANDBOOK*, *supra* note 320, at 171-72.

429. Cobban, *supra* note 386, at 235.

430. Cable, in *HANDBOOK*, *supra* note 320, at 172.

It explicitly excludes vegetable oils, rice, bananas, cut flowers and root crops such as manioc. Rice, it is now generally accepted, must be handled in the separate talks on agricultural trade. The same approach might be applied with less cogency to root crops. Leaving out cut flowers is designed to protect the Netherlands, which commands about half the trade. But Colombia and other developing countries have an increasingly important stake in the market, valued at no less than \$1.4 billion in 1984.⁴³¹

Restricting the coverage of the agreement to protect a developed country is only one way of restricting access to developing country exports. A persistent complaint of the developing countries is that their goods are denied access to developed country markets.

D. Access to Developed Country Markets

The fact that trade in tropical products is important to the majority of developing countries cannot be over emphasized.⁴³² Yet a variety of barriers to developed country markets make exportation difficult or impossible.⁴³³ The main barriers to trade are tariffs, variable levies,⁴³⁴ export subsidies,⁴³⁵ quotas,⁴³⁶ voluntary export restraints,⁴³⁷ phytosanitary requirements,⁴³⁸ and excise duties (hardly applied outside tropical agriculture).⁴³⁹ Tariff escalation is also a

431. Koekkoek, *supra* note 8, at 132 (quoting FINANCIAL TIMES, Dec. 10, 1987).

432. See *supra* Part IV (C).

433. These barriers apply to other developing country exports also.

434. Writes a European commentator: "The levy is probably technically legal under GATT as a tariff on products that are not *bound*. However, the variable aspect of the levy certainly defeats one of the basic policies behind the GATT's preference of fixed tariffs as trade restrictions." Strating, *supra* note 17, at 328.

435. See *supra* Part V.

436. Quotas are central to most GSP schemes. An example is the Canadian GSP which since 1981 permits the government to introduce quota limitations and country exclusions.

437. Voluntary Restraint Agreements are wholly involuntary because no seller refuses to sell. That is suicide. However it has not been used often in agricultural trade. See HATHAWAY, *supra* note 179, at 128.

438. Developing countries argue that under purported health reasons, their products cannot make it into developed countries. The latter argue that as standards of living rise with health consciousness that they are subject to intense lobbying at home for the highest levels of food safety. The United States joins the call for phytosanitary requirements based on sound scientific principles. GATT URUGUAY ROUND HIGHLIGHTS (U.S. Dept. of Agriculture, Office of Gov't and Public Aff.), June 19, 1990, at 1.

439. Koekkoek, *supra* note 8, at 129.

problem.⁴⁴⁰ In the developed countries, tariffs escalated by five points in the vegetable, fruit, tobacco, leather, and cotton markets as the chain of processing increased.⁴⁴¹ Over ninety-six percent of these increases occur in Japan, in the European Community, and in the United States.⁴⁴² Developing country exports remain mostly unprocessed: over seventy percent for meat, fish, fruit, and vegetable exports; and over ninety percent for cocoa and sugar.⁴⁴³ The tariff structure penalizes developing countries' industrialization. There are also labelling and internal tax restrictions.⁴⁴⁴

Tariffs are high in the developed countries. In the European Economic Community, the following represent their use: cigarettes (ninety percent); cigars (fifty-two percent); flowers (twenty-four percent); pineapples (twenty-three percent); and cocoa powder (sixteen percent).⁴⁴⁵ Rice import is subject to the European Community's variable levies.⁴⁴⁶ The voluntary export restraint has been used by the European Community to stifle Thai manioc exports to it.⁴⁴⁷ For each of the above mentioned items, the developing countries do not want any restrictions whatsoever.

Developing countries are concerned about the strong arm tactics of developed countries, grandly epitomized by the U.S. Trade and Tariff Act of 1974. The Act imposes duties against nations that subject American exports to so-called unfair, unjustifiable, or unreasonable restrictions, which are unacceptable to the United States.⁴⁴⁸ By 1989, India and Brazil had been singled out for punishment. Between 1980 and 1985, approximately 231 trading practices cases were initiated.⁴⁴⁹

440. The developed countries' practice is increasing tariffs progressively with the degree of processing effected on the product. Developing countries argue that it penalizes developing countries' manufacturing. For an articulation of this phenomenon in classical dependency theory, see CHERYL PAYER, *COMMODITY TRADE OF THE THIRD WORLD* vii (1975) ("The former colonial areas of the world . . . are distinguished from the affluent 'developed' nations not only by their poverty but also by their role as suppliers of a number of essential raw materials to the rich nations which are the chief consumers.").

441. Carl, *supra* note 413, at 111.

442. Carl, *supra* note 413, at 111-12.

443. Carl, *supra* note 413, at 111-12.

444. Cobban, *supra* note 386, at 238.

445. Koekkoek, *supra* note 8, at 129-30.

446. Koekkoek, *supra* note 8, at 129-30.

447. Koekkoek, *supra* note 8, at 129-30.

448. See generally JAGDISH BHAGWATI & HUGH T. PATRICK EDs., *AGGRESSIVE UNILATERALISM: AMERICA'S 301 TRADE POLICY AND THE WORLD TRADING SYSTEM* (1990) (for a discussion of Section 301 of the Act by its supporters and critics).

449. Carl, *supra* note 413, at 116.

Further, the developing countries demanded that developed countries refrain from hiding under the safeguard clause of Article XIX of the GATT. This article permits countries to restrict the importation of particular products that injure local production. When nations restrict imports, however, it should be non-discriminatory. This has not occurred: "This article has been largely bypassed as nations selectively discriminate against supplying countries, avoid compensating foreign suppliers adversely affected by their actions, and stay out of the limelight of international scrutiny."⁴⁵⁰

The lack of access to developed countries' markets is injurious to developing countries' trade. It must be emphasized that the denial of access is not intended to help developing countries reduce their export orientation. It is done to protect the developed countries' farmers. Denial of access of developed country markets to developing countries' exports stifles the trade aspects of the exporting countries' development processes. Another practice restricting developing countries' trade is graduation.

E. Graduation

Graduation is the concept that advancing developing countries reach a point where they become developed countries.⁴⁵¹ Graduation involves the notion that advancing developing countries should increasingly give up their Special and Differential benefits and move toward assuming the GATT responsibilities currently assumed by developed countries such as the United States.⁴⁵²

In the negotiations, the developed countries desire an integration of the GATT. The European Community, like the United States, is exerting pressure on advanced developing countries to share the burden of trade.⁴⁵³ As a result, its concessions on tropical products were linked to the greater liberalization in developing countries which benefitted from that concession. The European Community expects advanced developing countries to trade concessions during the multilateral agreements on an MFN basis.

450. Carl, *supra* note 413, at 113.

451. Carl, *supra* note 413, at 119.

452. Carl, *supra* note 413, at 119.

453. GLOBAL PROPOSAL OF THE EUROPEAN COMMUNITY ON THE LONG TERM OBJECTIVE FOR THE MULTILATERAL NEGOTIATION ON AGRICULTURAL QUESTIONS 7 (European Community, 1989); SUBMISSION OF THE UNITED STATES ON COMPREHENSIVE LONG-TERM AGRICULTURAL REFORM 13 (Office of the United States Trade Representative, Oct. 25, 1989) [hereinafter AGRICULTURAL REFORM].

Graduation is not expected to be sweeping.⁴⁵⁴ However, the developing countries are opposed. They fear that in practice this notion would promote unilateral and arbitrary discrimination by the industrialized countries.⁴⁵⁵ As a compromise, the developing countries want multilaterally agreed bases for differentiation of developing countries.⁴⁵⁶ They insist that such criteria should include a "graduating" country's debt burden.⁴⁵⁷ The stalemate is that debt issues are outside the scope of the GATT negotiations.⁴⁵⁸

There is support for the position of the developed countries in the Punta del Este Declaration.⁴⁵⁹ However, graduation's utilization is difficult, and if not properly defined and regulated, could lead to capricious practices.⁴⁶⁰

F. Timing of Implementation

Another point of contention is the time for implementation of the tropical products negotiations. The *Ministerial Declaration* which opened the Uruguay Round provided for early implementation of agreements. During the mid-term review in 1988, agreements were reached by the Tropical Products Group.⁴⁶¹ The European Community proposed an annual tariff cut of thirty-five percent to one hundred percent on imports of tropical products worth \$12.5 billion.⁴⁶² Further, it plans to eliminate duties on certain unprocessed agricultural products, industrial raw materials, and cut tariffs on

454. Eight developing countries that ranked among the world's twenty leading exporters appear to be the targets of this demand. They are Saudi Arabia, Taiwan, Korea, Hong Kong, Brazil, China, Mexico and Singapore. Hindley, in *HANDBOOK*, *supra* note 320, at 71. Note that if the countries' debts are considered, China and Mexico for example, will hardly be targeted.

455. Carl, *supra* note 413, at 119.

456. Carl, *supra* note 413, at 119.

457. Carl, *supra* note 413, at 119.

458. WHALLEY, *supra* note 7, at 79.

459. MINISTERIAL DECLARATION (1)(B)(vi) states:

Less developed contracting parties expect that their capacity to make contributions or negotiated concession or take other mutually agreed action under the provision and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

MINISTERIAL DECLARATION (1)(B)(vi), *reprinted in* WHALLEY, *supra* note 7, at 93.

460. See Carl, *supra* note 413, at 119.

461. See generally JOHN H. JACKSON & WILLIAM J. DAVEY, *LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS* 3 (Supp. Memo. 1993) (discussing the review).

462. Gunewardene, *supra* note 113, at 63.

semi-finished goods.⁴⁶³ Further, taxes on coffee, tea, and cocoa will be progressively removed by the European Community.⁴⁶⁴

The developed countries were given credit for market access concessions made in other negotiating groups.⁴⁶⁵ This includes the United States, of course. The United States linked most implementation action on the results of the agriculture negotiations, although it is provisionally implementing the results of negotiations on tropical goods.⁴⁶⁶ Accordingly, the full effect of agreements reached in the Tropical Products Group cannot be realized.

The Tropical Products Group met one objective: early implementation. "Fullest liberalization" was far from accomplished. Although the results went into effect in 1989, the problem of access to developed countries has persisted. A GATT study found that thousands of products are still subject to developed countries' protectionism.⁴⁶⁷ On the whole, the achievement of the tropical goods group was quite small for developing countries.

G. *The Group on Agriculture*

Agriculture has been the most discussed issue in the Uruguay Round.⁴⁶⁸ The United States and the Cairns Group and certain developing countries have made it a negotiating principle that all other agreements must be provisional until one is reached on agriculture.⁴⁶⁹ The United States called for the progressive reduction of all trade distorting subsidies and of all trade barriers.⁴⁷⁰ It called for harmonizing all sanitary and phytosanitary regulations with sound scientific evidence.⁴⁷¹ It also calls for a ten-year phase-out period of

463. Gunewardene, *supra* note 113, at 63.

464. Gunewardene, *supra* note 113, at 63.

465. *Tropical Products*, NEWS OF THE URUGUAY ROUND (GATT, Geneva, Switzerland), vol. 34, 1990, at 10.

466. To Provide for the Tariff Treatment of Goods From the Freely Associated States, To Implement Tariff Reduction on Certain Tropical Products, and for Other Purposes, 54 Fed. Reg. 40839 (Presidential Proclamation 6030 of Sept. 28, 1989) (implementing the results of the GATT tropical good group provisionally).

467. *Trade, the Uruguay Round and the Consumer*, FOCUS: GATT NEWSLETTER (GATT, Geneva, Switzerland), vol. 101, 1993, at 4.

468. A detailed analysis of the issues is beyond the scope of this paper. For details see, e.g., Plank, *supra* note 219; MacNabb & Weaver, *supra* note 106, at 761; Filipek, *supra* note 17, at 136; Markle, *supra* note 341, at 607; Schoenbaum, *supra* note 288, at 1165; Strating, *supra* note 17, at 305.

469. Strating, *supra* note 17, at 333; JEROME, ED., *supra* note 10, at 67.

470. AGRICULTURAL REFORM, *supra* note 453.

471. AGRICULTURAL REFORM, *supra* note 453, at 10.

all tariffs and non-tariff measures.⁴⁷² The European Community refuses to eliminate subsidies, and the Uruguay Round stands still.⁴⁷³ Complications with a new President in the United States, following the electoral defeat of the free trade supporting President Bush in 1992, made an uncertain matter even more uncertain.

The United States called for full participation of developing countries since the beginning of the round.⁴⁷⁴ Participation according to it would be achieved by graduating advanced developing countries.⁴⁷⁵ Under the United States' proposal, there is no right to Special and Differential treatment, rather nations seeking special treatment would have to prove need.⁴⁷⁶

The Cairns Group differs. It submits that developing countries, "in due course" should be able to participate.⁴⁷⁷ It supports Special and Differential treatment and makes special provisions for net food importing countries.⁴⁷⁸ This group calls for total elimination of all trade barriers. For developing countries, however, those measures which function to develop their agricultural base will not be eliminated.⁴⁷⁹

The European Community's proposals do not insist on the participation of all countries, especially the poorer ones.⁴⁸⁰ However, the developing countries with "significant export interests or relatively advanced economies have a genuine interest in . . . commitments."⁴⁸¹ The European Community sees a role for Special and Differential treatment which would encompass a principle of flexibility for implementing the agreement when one is reached, but Special and Differential treatment should not be the norm.⁴⁸² This means that the more advanced developing countries ought to assume commitments.

472. AGRICULTURAL REFORM, *supra* note 453, at 4.

473. Strating, *supra* note 17, at 332-35.

474. AGRICULTURAL REFORM, *supra* note 453, at 13.

475. AGRICULTURAL REFORM, *supra* note 453, at 13.

476. AGRICULTURAL REFORM, *supra* note 453, at 13-14 (special treatment to be "commensurate with a particular country's demonstrated need for such treatment.").

477. CAIRNS GROUP, COMPREHENSIVE PROPOSAL FOR THE LONG-TERM REFORM OF AGRICULTURAL TRADE 6 (1989).

478. *Id.* at 7.

479. *Id.*

480. GLOBAL PROPOSAL OF THE EUROPEAN COMMUNITY ON THE LONG TERM OBJECTIVES FOR THE MULTILATERAL NEGOTIATION ON AGRICULTURAL QUESTIONS 7 (European Community, 1989).

481. *Id.*

482. *Id.*

X. THE *DUNKEL DRAFT* AND ITS IMPLICATIONS FOR DEVELOPING COUNTRIES' AGRICULTURAL TRADE

The *Dunkel Draft*⁴⁸³ affirms the Special and Differential principle for developing countries as "an integral element of the negotiation."⁴⁸⁴ Special provisions are crafted for "least developed countries"⁴⁸⁵ and for "net food importing developing countries."⁴⁸⁶

A short section of the draft proposes *Measures In Favour of Least-Developed Countries*.⁴⁸⁷ Pursuant to this section, notwithstanding any contrary provisions, least developed countries "will only be required to apply individual commitments, obligations and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities."⁴⁸⁸

In the light of the self election principle, the definition of "least-developed" countries will pose difficulties. According to the *Dunkel Draft*, the term refers to countries "recognized as such by the United Nations, and for as long as they remain in that category."⁴⁸⁹ In its Section I, the *Dunkel Draft* identifies developing countries and least developing countries.⁴⁹⁰ Section I declares that countries with a GNP

483. *DUNKEL DRAFT*, *supra* note 1. This 500 page document is arranged in sections which are marked A through Y. Each alphabet section is free standing. The draft is not numbered 1 through 500. Rather, pages refer to the sections, e.g. A.13 means page 13 of section A. After section Y, pages then flow from one through 108. The topics contained in the regularly numbered pages are: trade in services, trade-related aspects of intellectual property rights, the agreement establishing the Multilateral Trade Organization, annotations, and the signatures. Persons avoiding much punishment should read the twenty seven page press summary. *The Draft Final Act of the Uruguay Round Press Summary*, NEWS OF THE URUGUAY ROUND (GATT, Geneva, Switzerland), 1992, *reprinted in* 16 *WORLD ECON.* 237 (1993).

484. *DUNKEL DRAFT*, *supra* note 1, at L.20.

485. *DUNKEL DRAFT*, *supra* note 1, at B.1.

486. *DUNKEL DRAFT*, *supra* note 1, at L.53.

487. *DUNKEL DRAFT*, *supra* note 1, at B.1.

488. *DUNKEL DRAFT*, *supra* note 1, at B.1.

489. *DUNKEL DRAFT*, *supra* note 1, at B.1.

490. *DUNKEL DRAFT*, *supra* note 1, at I.33 (dealing with subsidies and countervailing duties). The following countries are identified as least developing countries: Bangladesh, Benin, Botswana, Burkina Faso, Burundi, Chad, Central African Republic, Gambia, Haiti, Lesotho, Malawi, Maldives, Mauritania, Niger, Rwanda, Sierra Leone, Togo, United Republic of Tanzania, Uganda, Union of Myanmar. Least developed countries applying the GATT on a *de facto* basis are: Cape Verde Islands, Equatorial Guinea, Guinea, Guinea-Bissau, Kiribati, Mali, Mozambique, Soa Tome and Principe, Yemen Republic and Tuvalu.

The following developing countries will graduate—and hence participate fully—when GNP has reached \$1,000 per annum: Bolivia, Cameroon, Congo, Cote d'Ivoire, Dominican Republic,

per capita of \$1000 or more will be graduated to full participation.⁴⁹¹ Whether the resort to lists, which by no means is complete in this case, signals the death of the self-election principle remains to be seen.

There is also a proposed *Declaration on Measures Concerning the Possible Negative Effects of the Reform Programme on Net Food-Importing Developing Countries*.⁴⁹² It recognizes that "least developed and net food-importing developing countries may experience negative effects in terms of the availability of adequate supplies of basic foodstuffs from external sources on reasonable terms and conditions, including short-term difficulties in financing normal levels of commercial imports of basic foodstuffs."⁴⁹³

The *Dunkel Draft* proposes reviewing the level of food aid for adequacy, ensuring that basic food stuffs provided to net importing countries are grants and not loans, and giving "sympathetic consideration" to these countries' requests for technical and financial assistance.⁴⁹⁴ Also, the use by the net food importing countries of the International Monetary Fund, the International Bank for Reconstruction and Development, as well as other channels (existing or to be established) is encouraged.⁴⁹⁵

These provisions address the demands of developing countries, most of which are net food-importers.⁴⁹⁶ The provisions of the draft do not go far enough. It does not establish a mechanism for stabilization of export earnings of tropical products exporters. Such a mechanism would better aid development planning. In addition, it

Egypt, Ghana, India, Indonesia, Jamaica, Kenya, Madagascar, Morocco, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka, Zaire, Zambia, and Zimbabwe. *DUNKEL DRAFT*, *supra* note 1, at I.33.

491. *DUNKEL DRAFT*, *supra* note 1, at I.49.

492. *DUNKEL DRAFT*, *supra* note 1, at L.53.

493. *DUNKEL DRAFT*, *supra* note 1, at L.53.

494. *DUNKEL DRAFT*, *supra* note 1, at L.53.

495. *DUNKEL DRAFT*, *supra* note 1, at L.54.

496. Plank, *supra* note 219, at 42-43 (some of what the net food importing countries called for are: (a) enhancing purchasing capacity through concessional sales, including increased availability of low-cost export credits and grants; (b) increasing export-earning capacity of net food-importing developing countries through improved market access conditions by immediate tariff reductions and the elimination of non-tariff measures; (c) increased food aid; and (d) flexibility in structural adjustment programmes permitting establishing a multilateral funding arrangement to aid developing countries outside the normal financing channels). Although these proposals were sponsored by Egypt, Jamaica, Mexico, Morocco, and Peru, other developing countries supported them. Hopkins, *supra* note 301, at 149.

does not provide a mechanism for compensating net food importing countries for losses resulting from increases in prices following liberalization. Nor does it address compensating developing countries for loss of preferential margins as a result of the destruction of their Generalized Systems of Preferences benefits.

Developing countries' domestic support, "whether direct or indirect, to encourage agricultural and rural development are an integral part of development programmes," and are not subject to reduction commitments.⁴⁹⁷ This would have been a more useful provision if developing countries provided much domestic support for agriculture. As for sanitary and phytosanitary measures, developing countries will be given time specific exemptions to comply with set standards if it is safe to do so.⁴⁹⁸ Safeguard measures cannot be taken against a product originating from a developing country as long as its share of imports (of any developed country) does not exceed three percent, and the product's import from developing countries as a whole does not exceed nine percent of the total import of that good into a particular developed country.⁴⁹⁹ This provision will prove unacceptable to developing countries. It is inconsistent with the call in another provision for the "fullest liberalization of trade in tropical products."⁵⁰⁰

It also cuts tariffs and non-tariff barriers substantially.⁵⁰¹ If fully implemented, the *Dunkel Draft* will drastically reform world agricultural trade. However, it was rejected because its proposals for cutting subsidies (according to the European Community) went too far.⁵⁰² The *Dunkel Draft* is the basis of further negotiations during the Uruguay Round. GATT's former Director-General, Arthur Dunkel, announced that the fate of the Uruguay Round is up to America's President Clinton.⁵⁰³ The United States government indicated its willingness to conclude negotiations by December 15, 1993.⁵⁰⁴

There are important limitations in the *Dunkel Draft*. It failed to address the question of a compensatory program for stabilization

497. DUNKEL DRAFT, *supra* note 1, at L.21.

498. DUNKEL DRAFT, *supra* note 1, at L.35.

499. DUNKEL DRAFT, *supra* note 1, at M.4.

500. DUNKEL DRAFT, *supra* note 1, at L.21.

501. *See, e.g.*, DUNKEL DRAFT, *supra* note 1, at L.13.

502. *See* Strating, *supra* note 17, at 335.

503. Peter Behr, *Fate of Trade Talks Up to Clinton, GATT Head Says*, WASHINGTON POST, Jan. 15, 1993, at A29.

504. Peter Behr, *White House Speeds Push for Trade Pacts, New Urgency Seen on GATT, NAFTA Talks*, WASHINGTON POST, Apr. 10, 1993, at F1.

of export earnings, not even for the least developed countries. A stabilization program in the lines of the Lomé Convention's STABEX provisions is immediately called for at the GATT. The program would provide grants to qualifying countries that will help stabilize the recipient country's terms of trade. Stabilizing exports also benefits developed countries because their imports to the developing countries are better planned and paid for.⁵⁰⁵

The *Dunkel Draft* also failed to address the issue of developing countries' debt. To be sure, this is a complex and difficult area. However, for trade to flourish in the world, this problem must be tackled. For a start, a system of debt forgiveness should be put in place for the poorest developing countries. Developing countries complain that the distinction between trade issues and debt issues has no difference in practical terms.⁵⁰⁶ Accordingly, it is an important omission that the draft does not provide a solid mechanism for, at least, studying the trade aspects of indebtedness.

The special provisions in the draft for developing countries' agriculture are far reaching. However, more attention should have been given to promoting the special place of the small farmer in development. Food sufficiency of the world's rural people should be encouraged at the GATT.

XI. CONCLUDING REMARKS

The General Agreement on Tariffs and Trade has not been the most responsive institution to developing countries' concern. However, this "notorious[ly] classical"⁵⁰⁷ institution has made substantial attempts toward responding to developing countries concerns. This is exemplified by Article XVIII and Part IV of the agreement and their progeny. As a result of these changes, GATT law does not require unfettered trade liberalization from contracting parties, especially the developing countries. Nothing has happened for the GATT to change its special rules for developing countries. On the contrary, the GATT should do more by establishing affirmative mechanisms for ensuring development. Developing countries differ widely and this makes generalizations fairly dangerous. Although

505. WHALLEY, *supra* note 7, at 78.

506. See, e.g., WHALLEY, *supra* note 7, at 79 (noting "clear inconsistencies" in subjecting developing countries' exports to quotas, while at the same time asking them to service debts).

507. W.D. Verwey, *The Principles of a New International Economic Order and the Law of the General Agreement on Tariffs and Trade (GATT)*, 3 LEIDEN J. INT'L L. 117 (1990).

developing countries differ, they are more or less poorer than the developed countries of Europe or America.

Developing countries need international agricultural trade more than developed countries. However, they do not control the trade and are net importers. Trade volume for single developing countries, like Uganda, can be minuscule. Trade liberalization will not be in the interest of most developing countries.

The GATT has been more responsive to the wishes of developed countries. When the developed countries wanted farm subsidies, they were put in place. When the developed countries changed their minds, the Uruguay Round was called to attempt to remove them.

The negotiations in tropical goods exemplifies GATT's double standards. Although the Uruguay Round attempted "fullest liberalization" of trade in the tropical goods sector, the framework for negotiations did not even come close to accomplishing full liberalization. Although agreements in the group are supposed to have taken effect, protectionist measures abound.

Developing countries have good reasons to support the *Dunkel Draft*.⁵⁰⁸ Graduation is a welcome development, but the draft's requirement that countries achieving a Gross National Product per capita of \$1000 should graduate to full participation will prove ill advised and contentious. The use of Gross National Product per capita for calculating graduation makes the GATT open to the defects of that methodology. The most expressed criticism is that the GNP per capita ignores the quality of life of people. Hence, the standard used for graduating may be fundamentally flawed. The United States GSP Act provides for graduating countries that have very healthy Gross National Product per capitas of \$8,500 or above. The United States' figure is so high that no one will likely be hurt. The GATT should follow such an example.

Also, to make the GSP schemes more meaningful, developed countries' benefits to developing countries ought to be "bound." This will reduce arbitrary exclusions of developing country products. It will also convert the GSP principle from gratuity to contractual obligation. For those countries that are dependent on tropical goods, a stabilization of export program is necessary.

However, no developing country should abandon its need for self sufficiency. Countries that value trade over their citizens' welfare

508. See Plank, *supra* note 219, at 49-52 (listing modalities for Special and Differential treatment. Most—but by no means all—of them are addressed in the *Dunkel Draft*.)

compromise their very survival. Therefore, the Cairns Group proposals for internal restructuring for productivity in agriculture is meaningful and should be negotiated further. Furthermore, its call on the developed countries to help the developing countries in their efforts to achieve food sufficiency and exportation capacity is a wholly welcome idea. The Commonwealth proposals for exceptions for the subsistence agricultural farmer are also welcome as long as they promote household food security.

In conclusion, the developing countries should reject unfettered liberalization. Agricultural exportation without food security at home is obscene. Developing countries' differential legal rights in the GATT must be guarded, strengthened, and expanded.