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# GATT AS AN INTERNATIONAL ORGANIZATION

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## CHAPTER - 01

### INTRODUCTION

The regulations regulating International trade are more complex than those applicable to domestic trade. The rules governing international trade are far more intricate. The complexity arises from the compelling needs of every nation to safeguard its own national economic territory. Until recently, the lack of international powers to enforce commitments on the national and international trade has hindered the development of international trade. States that prioritize their own self interest have rejected any form of trade restrictions based on international trade. The restriction in question encompasses both tariff and non-tariff forms, including bans and quantitative restrictions.

#### **Backdrop of GATT formation-**

Following World War II, many international initiatives were implemented to facilitate commerce and financial transactions among nations. Initiatives to establish a liberal, multilateral system of international trade were initiated throughout the ongoing war. Primarily initiated by the United States, these initiatives aimed to establish extensive economic collaboration among all nations in the areas of international commerce, payments, and investment. The International Monetary Fund (IMF) and the International Bank for Reconstruction and Development (World Bank) were established. Furthermore, there was an attempt to establish the International Trade Organisation (ITO) to address matters related to international trade. The Great Depression of the 1930s, along with the extensive distress it caused, was ascribed to the constrictive trade and exchange policies implemented at that time.<sup>1</sup>

The initial objective was to establish a third organization responsible for managing the commercial aspects of international economic collaboration, in addition to the existing "Bretton Woods" institutions, namely the World Bank and the International Monetary Fund. More than

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<sup>1</sup> MB Rao, Manjula Guru (2011) WTO and INTERNATIONAL TRADE, Vikas Publishing House PVT LTD

50 nations engaged in discussions to establish the International Trade Organisation (ITO) as a specialized organization under the United Nations. The preliminary ITO Charter was ambitious. The scope of the agreement expanded beyond regulations governing global commerce to encompass regulations pertaining to employment, commodities agreements, restrictive business practices, foreign investment, and services. The objective was to establish the International Trade Organisation (ITO) during a United Nations Conference on Trade and Employment held in Havana, Cuba in 1947.

During World War II, it was evident that the economic order after the war would need advancement in three main areas: exchange policy, trade policy, and investment. Discussions mostly took place between the United States, the United Kingdom, and Canada throughout the war to develop the key components of a new global trade system.

In 1945, the United States requested the formation of a United Nations conference to negotiate an international trade charter and establish an International Trade formation.

In February 1946, the United Nations Economic and Social Council (ECOSOC) created a preparatory Committee comprised of eighteen nations. The purpose of this committee was to lay the foundation for a United Nations Conference on trade and employment. These eighteen countries provided a comprehensive representation of the many locations around the globe.

Over the next several months, the United States, in collaboration with the United Kingdom and Canada, expanded upon its initial recommendations from December 1945 and developed a comprehensive draft trade charter. The said charter was adopted as a basis of deliberation for the first session in London during October -November 1946. The debate focused on the freedom of trade and open competition, aiming to achieve full employment and economic growth. The main questions were whether countries would be willing to give authority to an international institution and what measures could be taken to enforce compliance with the established rules. Additionally, the discussion considered the extent to which deviations from the principle of non-discrimination could be allowed to accommodate regional alliances or other political associations, such as the British Commonwealth and the emerging European grouping.

Furthermore, it should be noted that at that period, several regions around the globe were under the dominion of different Western nations. These regions had no representation at the

negotiation table until they were included by those powers. Only after more than forty years, the WTO was established due to the Uruguay round of negotiations, when the membership of the WTO was open to even the least developed countries.

To proceed with the above stated, two significant objectives needed to be accomplished during the second session. The first step was the finalization of the draft trade charter to be presented at the UN Conference on Trade and Employment in December 1947 in Havana. The second step involved a series of thorough negotiations among the main countries of the preparatory committee to eliminate or decrease tariffs and tariff preferences.<sup>2</sup>

### **Establishment of the General Agreement on Tariffs and Trade (GATT)**

The process was carried out in the following manner: pairs of nations would engage in bilateral negotiations on items where one country was the primary supplier to the other. According to the most favoured nation rule, which is a key element of the trade charter, all the concessions that were agreed during bilateral talks were required to be extended to all participating nations.

The discussions on tariffs between many pairs of nations were concluded by October, resulting in significant reductions in tariffs, preferences, and other trade barriers. The outcomes developed as a tariff schedule for each country that participated. The tariff schedules, together with certain sections of the draft charter that were necessary to safeguard the integrity of the trade concessions, were combined in an instrument entitled the “General Agreement on tariffs and trade”, or GATT for short. The articles derived from the charter encompassed the customary provisions found in most bilateral trade agreements. These provisions addressed topics such as duty valuation, internal taxes and regulation, quantitative limits, subsidies, antidumping measures, countervailing duties, and state trading. Czechoslovakia was the sole nation engaged in business among the group of countries.

The GATT draft chapter did not incorporate additional elements such as employment, investment, restrictive business practices, commodities agreements, or the organizational requirements pertaining to the envisaged International Trade Organisation.<sup>3</sup>

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<sup>2</sup> Supra note 1.

<sup>3</sup> The Birth of World Trading System: ITO and GATT. By Simon Reisman, The Bretton Woods- GATT system, Retrospect and prospect after fifty years, pages84-85 , M.E Sharpe Inc, 1996

The initial round of discussions yielded a set of trade regulations and 45,000 reductions in tariffs, impacting \$10 billion worth of commerce, which accounts for around 20% of the global trade volume.

The Final Act creating GATT was signed by all twenty-three participants of the preparatory committee. The "protocol of provisional application" was implemented on January 1, 1948, leading to its enforcement. This protocol was specifically created to be implementable by governments, such as the United States, in accordance with the powers delegated to the executive branch of the government. In the instance of the United States, this is done through the Reciprocal Trade Agreements Act, without the need for congressional approval. This protocol serves as the legal basis for the United States' involvement in the General Agreement on Tariffs and Trade (GATT).

The "provisional application" protocol was designed to be a temporary measure that would eventually be replaced by the World Trade Charter, which was currently being negotiated. The World Trade Charter was anticipated to be more extensive, including tariff schedules as appendices, and would become effective after being ratified by the member nations.<sup>4</sup>

### **Proposal to establish an International Trade Organisation (I.T.O.)-**

Although the GATT Agreement was achieved by the negotiating parties, the original concept of establishing an International Trade Organisation was also pursued simultaneously. The pre-war discussions that established the foundation for the 1946-48 negotiations of the General Agreement on Tariffs and Trade (GATT) and the International Trade Organisation (ITO) were primarily conducted between the United States and the United Kingdom under Article VII of the United States-United Kingdom lend-lease agreement. The meeting was informal, allowing policy experts to freely discuss matters without requiring official clearance for each position.

The US position to expand a bilateral trade deal with the UK into a multilateral convention that establishes a code of behavior. This would meet the broad prospectus of the creation of a new international organization to enforce the code. The implementation of the Code through multilateral adoption and enforcement appeared to be the obvious progression from the existing broad network of bilateral agreements. Experts reached a consensus on important matters such

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<sup>4</sup> Supra note 1.

as subsidies, export taxes, discrimination, tariff reductions, and quantitative constraints. They have reached a consensus that quantitative limits are to be forbidden, with the sole exception being in cases of balance of payments crises. The elimination of export taxes and subsidies is required; The prohibition of discrimination is necessary, and a significant reduction in tariffs needs to be implemented. The objective was to promote state trading businesses to adopt the behaviour of private dealers. The ITO charter encompassed several issues, including employment policies, economic development agreements, and restrictive corporate practices.

In December 1945, the United States and the United Kingdom. The nations reconvened for official discussions and presented a comprehensive set of proposals as a basis for initiating negotiations on an International Trade Agreement. The ideas were approved by the United Nations Economic and Social Council in early 1946. A United Nations conference titled "UN Conference as Trade and Employment" was organised, and a Preparatory Committee consisting of trade and government representatives was assigned to create a proposal. The committee was comprised of eighteen influential governments, to create a draft charter for selected for the deliberation by the plenary conference.

The ITO's Charter formal negotiation took place between October 1946 to March 1948. The Preparatory committee met in London, and, started to work on the suggested charter, that was submitted to it by the US. The Preparatory committee produced a charter of its own.

The second draft was to be produced by the technical drafting committee, that met in New York in between January- February 1947.

The third drafts, which were also the final one were made by the preparatory committee in April-August 1947 for submission to the plenary meeting (it was in Geneva that the participants took a pause to establish GATT).

The plenary conference commenced in Havana on November 18, 1947. The event was attended by fifty-four countries, which constituted the majority of the sixty-one countries that were members of the United Nations at that time. The ITO charter was officially ratified on March 24, 1948.

The final outcomes of the discussions on trade policy demonstrated a peculiar form of political dedication from the main trading nations. The governments' inability to embrace significant

policy changes or even accept rigorous oversight demonstrated their skepticism regarding the political influence of the charter's ideals. Based on their behavior, the governments believed that the charter had very little chance of being successful against any significant domestic interest that was already enjoying more protection than what a desired norm would have permitted.

However, these governments did agree to specific legal commitments that did not necessitate significant alterations to current laws or practices. In the short term, fulfilling these duties did not need significant political support, particularly for governments facing balance of payments challenges. For these administrations, postponing any substantial commitment was a viable option until a more convenient future period. However, in the long term, these specific commitments need a political capacity to maintain the existing state of affairs. It appears that governments were confident that the charter would succeed, especially when the resistance to change was in favour of maintaining the current situation. It should be noted that the Havana Charter is not an ideal example of global free trade. "It has exceptions and escape clauses."<sup>5</sup> Undoubtedly, that is the optimal outcome that could be attained given the prevailing conditions.

### **The downfall of the ITO setup-**

However, the establishment of I.T.O. was not possible as it did not receive a vote from the U.S. Congress. The authorization of the US government requires consent from the US Congress to endorse the Havana World Trade Charter and join the International Trade Organisation. The entire initiative was unsuccessful due to the dominant position of the United States. The initiative failed to attract the central character's interest in the different aspects of the typical US trade argument. The charter had an excessive number of concessions and pledges, which compromised its effectiveness in providing protection, for the protectionists. For proponents of free trade, the charter had several exclusions and loopholes. Many observers believed that the challenges of rebuilding Europe and other regions after the war had been significantly underestimated. Focus has switched from the long-term objective of establishing a worldwide system of multilateral trade to the more pressing concern of the economic misery in western Europe. The ambitious international planning concluded when the U.S. Congress refused to adopt the treaty establishing an International Trading Organisation (ITO) in 1950. The World Trade Charter, however ambitious, included a wide range of themes including commercial

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<sup>5</sup> MB Rao, Manjula Guru (2011) WTO and INTERNATIONAL TRADE, Vikas Publishing House PVT LTD

policy, employment, economic growth, state trade, cartels, and inter-governmental commodities agreements.

The result of this ambitious endeavor is the General Agreement on Tariffs and Trade (GATT). Upon the signing of the Havana Final Act, the parties involved in the General Agreement on Tariffs and Trade (GATT). They had their first session and reached a consensus to revise the pertinent GATT provisions to include the various modifications that were made to the charter at the Havana summit. However, GATT was solely backed by the transitory protocol of provisional application, without any framework to build a fully developed organization. It only received short-term backing and had a limited position inside the U.N. System. However, it managed to survive. The institution that has governed international trade relations over the previous fifty years, until the World Trade Organisation (WTO) assumed control in 1995, is the principal governing body.

In 1950, the United States administration said that it would not pursue Congressional approval of the Havana Charter, essentially rendering the International Trade Organisation (ITO) defunct. The General Agreement on Tariffs and Trade (GATT) served as the sole multilateral mechanism regulating international commerce from 1948 until the establishment of the World Trade Organisation (WTO) in 1995.<sup>6</sup>

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<sup>6</sup> Supra note 1.

## **CHAPTER-02**

### **GATT AND IT'S HISTORICAL OVERVIEW**

#### **History of GATT-**

In 1944, the worldwide economy was in a state of disarray. A total of forty-four nations convened in Bretton Woods, New Hampshire, to deliberate on strategies to reconstruct an economy that had been severely damaged by a prolonged economic downturn and two global conflicts. The establishment of new institutions such as the International Monetary Fund, World Bank, and International Trade Organisation (ITO) aimed to stabilize the international financial system, facilitate the reconstruction of economies affected by war, and establish regulations for a global trading system that would foster peaceful commercial relations among nations. The primary objective of the ITO was to reduce or eliminate both tariff and non-tariff barriers, as well as to put a stop to discriminatory trade practices that were enacted by individual countries in response to the war and the great depression. Although participants did not consent to form an International Trade Organisation (ITO), the fundamental rules of the ITO were included in a treaty called the General Agreement on Tariffs and Trade (GATT) in 1947.

The General Agreement on Tariffs and Trade (GATT) was a specialized entity with distinct economic and technological characteristics. The treaty is a multilateral agreement that creates a universal set of rules for international commerce, to establish and maintain stable tariffs and other trade barriers, as well as engage in talks regarding trade-related matters. During the 1930s, during a severe global economic downturn, some countries sought solace by implementing a range of protective measures such as imposing high tariffs, implementing quantitative limitations on imports, and enforcing exchange controls. Throughout the Second World War, it became evident that these limitations would continue to burden the globe unless proactive efforts were undertaken to deconstruct and prohibit them. In addition to the founding of the International Bank for Reconstruction and Development (IBRD), which is now known as the World Bank, and the International Monetary Fund (IMF), some nations contemplated the development of a regulatory body for international commerce called the International Trade Organisation (ITO).

The General Agreement on Tariffs and Trade (GATT) became effective in 1948 and included a total of twenty-three industrialized nations as members. An entity that signs the General



Agreement on Tariffs and Trade (GATT) is referred to as a contracting party, but it is informally called a member. It is important to note that GATT does not have legal status as an organisation. By the mid-1980s, the number of countries that were members of the organisation had increased to 90. These countries represented more than 80% of global commerce. Furthermore, more than 30 nations adhere to GATT regulations in conducting commerce, whereas about 120 countries are signatories to GATT trading norms.<sup>7</sup>

**Trade Negotiation Rounds-**

The General Agreement on Tariffs and Trade (GATT) consists of a multitude of articles and annexes. The schedules of concessions, which detail the numerous agreements reached by member nations, are included in the agreement. While most of the negotiations focused on reducing tariffs, the decrease in tariffs led to an increase in non-tariff obstacles. The Kennedy round (1964-67) reached a consensus on the issue of anti-dumping. The Tokyo round of negotiations addressed several topics including subsidies, countervailing measures, technical barriers to trade, import licensing procedures, government procurement, and other non-tariff areas of concern. However, these agreements were only signed by a limited number of developed countries, mostly members of the OECD, who were the contracting parties to GATT. There were eight rounds of negotiations that took place from 1947, i.e., Geneva round to 1994, i.e., the Uruguay round , to count the tariffs that were originally reduced, and to prepare rules to govern international trade. The table shown below displays the eight trade conferences and their respective outcomes-

**GATT TRADE ROUNDS:-**

<b>YEAR</b>	<b>PLACE/NAME</b>	<b>SUBJECT COVERED</b>	<b>COUNTRIES</b>
1947	GENEVA	TARIFFS	23
1949	ANNECY	TARIFFS	13

<sup>7</sup> Autar Krishen Koul(2010) Guide to the WTO and GATT, Satyam Law International

1951	TORQUAY	TARIFFS	38
1956	GENEVA	TARIFFS	26
1960-1961	GENEVA DILLON ROUND	TARIFFS	26
1964- 1967	GENEVA KENNEDY ROUND	TARIFFS AND ANTI DUMPING MEASURES	62
1973- 1979	GENEVA TOKYO ROUND	TARIFFS, NON TARIFF MEASURES, FRAMEWORK AGREEMENTS	102
1231986- 1994	GENEVA URUGUAY ROUND	TARIFFS, NON-TARIFF MEASURES, RULES, SERVICES, INTELLECTUAL PROPERTY, DISPUTE SETTLEMENTS, TEXTILES, AGRICULTURE, CREATION OF WTO, ETC.	123

**TABLE 1- Trade negotiation rounds of GATT<sup>8</sup>**

### **ROUND 1- The Geneva Trade Round (First Trade Round)**

The inaugural trade round took place in 1947 in Geneva, Switzerland and was attended by the initial 23 member nations of GATT. These countries were subsequently among the 50 signatories of the draft charter for the formation of the International Trade Organisation (ITO). A gathering of twenty-three nations took place in Geneva with the purpose of defining the mission of the General Agreement on Tariffs and Trade (GATT). The mission was to enhance

<sup>8</sup> The GATT years: from Havana to Marrakesh, [https://www.wto.org/english/thewto\\_e/whatis\\_e/tif\\_e/fact4\\_e.htm](https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm), Accessed on 15 April 2024

the standard of living and achieve full employment by engaging in mutually beneficial agreements aimed at significantly reducing tariffs and other trade barriers, as well as eliminating discriminatory practices in international commerce. According to the provisions of the General Agreement on Tariffs and Trade (GATT), every country would provide the most-favored-nation treatment (MFN) to all other parties. The agreement also established regulations to limit countries from establishing new trade barriers, and a non-binding procedure was developed to promote the settlement of disputes. The 1947 meeting resulted in the establishment of a lasting framework for post-war commercial ties, which involved the containment and subsequent progressive reduction of trade barriers. The decreased tariffs on imports were extended to all member nations under GATT on a non-discriminatory basis.

The initial Geneva Round was widely seen as a major success. These nations reached a consensus on 45,000 tariff reductions, with the United States taking the lead and decreasing its duties by up to 35%.<sup>9</sup>

### **ROUND 2 and 3 - The Annecy and Torquay Rounds (Second and Third GATT trade rounds)-**

The Annecy Round, which commenced in 1949 in Annecy, France, was the second round of discussions. The primary objective of these talks was to achieve a more substantial decrease in tariffs. Aside from the decrease in tariffs, this round of agreements specifically addressed the most favored nation (MFN) status of occupied nations, including West Germany. The second round of negotiations mostly centered over concessions and trade policies, namely import restrictions, that had been implemented by member countries, including South Africa. During the Annecy round, a total of 5,000 concessions were reached and eleven additional nations, including Uruguay and Italy, ratified the General Agreement on Tariffs and Trade (GATT).

The third round of negotiations occurred in Torquay, a coastal town in South West England, from September 1950 to April 1951. Similar to the Annecy round, the Torquay round entailed modest tariff concessions among the contracting parties and the inclusion of several new countries in GATT. It was during this round that the limitations of the bilateral product-by-product negotiation method under GATT became apparent.

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<sup>9</sup> GATT Trade Agreements Rounds – 1940s to 1960s, <https://fieconsult.com/gatt-trade-agreements-rounds-1940s-to-1960s/>, Accessed on 15 April 2024

In addition to declaring that its parliament had not ratified the agreement to form the ITO, the United States also did not reach a deal with the United Kingdom over tariff reduction. The United States has demonstrated example by setting an example in cutting existing tariffs. Nevertheless, the United Kingdom believed that it had the capacity to take further action and insisted for unilateral agreements from the United States, with the aim of enhancing the UK economy, which was still in the process of getting back from the aftermath of World War 2. Conversely, the United States insisted on the abolition or significant decrease of tariff favours inside the British Commonwealth. Both the United States and the United Kingdom did not make major concessions on their positions, resulting in no mutual reduction of tariffs between the two countries.

In addition, low-tariff nations in this round voiced their concerns about their weak bargaining strength due to their lack of substantial concessions. An advantageous aspect of this round was the expansion of the obligatory nature of the tariff reductions from the Geneva and Annecy rounds to 1954 and subsequently to the conclusion of the 1950s. Some nations had the chance to ease or retract concessions, although only a limited number of countries utilized this provision in certain cases. Germany and Turkey were among the new nations that became members of GATT during the Torquay round.<sup>10</sup>

#### **ROUND 4 AND 5- Geneva And Dillon Rounds**

Geneva hosted another round of trade negotiations that started in 1955. In this round, a further 2.5 billion USD worth of tariffs were decreased, with a primary focus on the new member countries, particularly West Germany. A total of 26 countries took part in the discussions. Japan, despite opposition from the British Commonwealth, became a member of the GATT to take part in the second Geneva trade round. Nevertheless, the concept of free trade at that period was closely associated with the promotion of world peace and security, particularly in the Asian region.

During this period, the General Agreement on Tariffs and Trade (GATT) had challenges in gaining acceptability, particularly at the national level. Countries like the US, who were experiencing internal protectionism, were resistant to embracing comprehensive trade liberalisation. In the mid-1950s, a paper titled "Trends in International Trade" was authored by

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<sup>10</sup> Supra note 9.

four renowned economists affiliated with GATT. The paper addressed the trade and payment difficulties encountered by non-industrialized nations, the agricultural protectionist policies prevalent in industrialised nations, and the necessity for stability in the global markets for basic products in industrialised nations. Based on this study, three committees were established to tackle these challenges, including a group specifically tasked with organising more tariff negotiations.

The fifth round of trade negotiations, known as the Dillon round, occurred in 1960, continuing to be held in Geneva. The round was called in honour of C. Douglas Dillon, the United States Secretary of State who had put up the proposal for the discussions. The trade round led to an additional decrease of tariffs worth USD 4.9 billion. The European Economic Community (EEC), consisting of six members, had been established at that time. Concerns arose over the legitimacy of the EEC customs union in accordance with Article XXIV of the General Agreement on Tariffs and Trade (GATT), which allowed for the establishment of customs unions and free trade areas. However, the creators of the agreement did not anticipate the creation of such a substantial preferential trading arrangement as the EEC.

Furthermore, there was renewed concern about agricultural protectionist measures, as the laws that governed the structure of the European Economic Community (EEC) stipulated a unified agriculture policy and agreements with overseas territories and nations that had preferential trade arrangements with member states. The EEC has suggested a gradual substitution of national tariffs and a transition to one common external tariff (CET). As a result, the tariff rates that were previously agreed upon in GATT discussions would be altered, leading to a disturbance of the previously established balance of concessions.

The creation of the EEC posed several challenges, which led to a significant portion of the Dillon round being dedicated to negotiations with the EEC bloc. The objective was to ensure that the EEC complied with the GATT articles, particularly in terms of promoting fairness. This involved reducing the Common External Tariff (CET) to decrease the level of economic preference granted to EEC members and territories. The Dillon round had a considerable level of success, as evidenced by the adoption of a Common External Tariff (CET) by the European Economic Community (EEC) and the United States making substantial concessions on duties

on agricultural exports.<sup>11</sup>

### **ROUND 6- Kennedy round-**

The GATT trade rounds were becoming increasingly long and intricate. During the sixth round of negotiations, known as the Kennedy Round, the number of participating countries significantly increased to over 60. Specifically, 66 nations were present for the opening ceremony, which took place on 4 May 1964 in Geneva.

The range of topics covered also broadened, encompassing not only the traditional reduction of tariffs but also the establishment of new regulations pertaining to the implementation of anti-dumping procedures.

The Kennedy Round was named in honour of the deceased US president who had passed away the year before. The decision to have these discussions was motivated both by the desire to honour his memory and by the fact that President Kennedy had successfully passed the 1962 US Trade Expansion Act, which granted the US government the authority to negotiate reductions in tariffs of up to 50%. This legislation played a crucial role in enabling the talks to occur.<sup>12</sup>

### **ROUND 7- Tokyo Round**

The Tokyo Round, which took place from 1973 to 1979, was a series of negotiations aimed at reducing trade barriers and promoting international trade. In a subsequent decade, the discussions of the General Agreement on Tariffs and Trade (GATT) turned their focus from Europe to other regions for the first time. The seventh round was initiated during a ministerial conference in Tokyo, held from 12 to 14 September 1973.

Nevertheless, the negotiations did not address the essential changes needed in agricultural trade and did not reach a new agreement for "safeguards".<sup>13</sup>

### **ROUND 8- The Uruguay Round, 1986-94: the last and biggest GATT round**

The year 1986 marked the start of a GATT round in a developing nation, which was a first-

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<sup>11</sup> Supra note 9

<sup>12</sup> Supra note 9

<sup>13</sup> Supra note 9

time occurrence. At this point, developing nations had become the majority in the GATT system. In this round of talks, they were expected to take on a significant and unprecedented role, participating actively alongside their more influential counterparts.

In September 1986, trade ministers convened at Punta del Este, Uruguay. Following a week of rigorous discussions, they reached a consensus to initiate fresh negotiations. Similar to prior rounds, these events primarily occurred in Geneva.

The Uruguay Round proved to be the lengthiest, most intricate, and last of the GATT rounds.

It took seven and a half years to complete, and it led to the most fundamental reform of world trade rules since GATT itself was created in 1948.<sup>14</sup>

## **CHAPTER-03**

### **PRINCIPLES OF GATT**

The GATT 1947 was a multilateral treaty with rights and obligations.<sup>15</sup> The General Agreement on Tariffs and Trade (GATT) of 1947 was a convention that established both rights and obligations for several nations. The principles on which it is founded are as follows: a) Non-discrimination. This principle encompasses the principle of the most favored nation (MFN) requires each contractual party to provide the same benefits to any other contracting party as it does to another party or country. It also implies a restriction on unfairly disadvantaging any party to the prejudice of other parties. Furthermore, the signing nations pledge to refrain from imposing stricter measures on imported goods compared to those applied to domestic goods in terms of taxation and regulation. b) the obligation on parties to consider tariffs as only permissible means of protecting domestic production. Thus, the use of quantitative restrictions is generally condemned; c) consultation between the contracting parties is a rule that relates to all the arrangements. It prohibits measures published by surprise without taking into account the interests of others. So there are rules of procedures which notably include information

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<sup>14</sup> GATT rounds: Who, what, when, [www.hinrichfoundation.com](http://www.hinrichfoundation.com), Accessed on 15 April 2024.

<sup>15</sup>The GATT in Historical Perspective Author(s): Douglas A. Irwin Source: *The American Economic Review*, May, 1995, Vol. 85, No. 2, Papers and Proceedings of the Hundredth and Seventh Annual Meeting of the American Economic Association Washington, DC, January 6-8, 1995 (May, 1995), pp. 323-328

exchange, consultation and dispute settlement. These cardinal principles are common to GATT, 1947, and, GATT, 1996.

## **PRINCIPLES OF GATT-**

It is founded upon subsequent key principles-

### 1) Non- discrimination:-

This concept encompasses the application of the Most favored nation (MFN) clause which requires every contracting party to extend the same advantage it grants to the other party. It also indicates a restriction on treating any party unfairly to the detriment of the other parties.

It can also be referred to as the commitment made by the nations to ensure that their internal rules don't discriminate against the goods of another country, and they don't provide preferential treatment to their own goods over imported goods.

There are two specific ways in which non discrimination is applied: most-favored nation and national treatment.<sup>16</sup>

#### a) Most favoured nation ( MFN)

The Most Favoured Nation (MFN) rule is fundamental to the whole structure of the General Agreement on Tariffs and Trade (GATT). Article I of the GATT stipulates that if one member of the GATT (now WTO) provides another nation with "more favourable treatment," such as a decrease in customs charge for a specific product, it must be done promptly and without delay, provide equal treatment to imports from all signatories without any conditions.

Put simply, all members of GATT/WTO have the right to get the most advantageous treatment provided by any member. Conversely, they also have the right to not be subjected to discrimination.

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<sup>16</sup> Supra note 15.



The MFN, or most favoured country, requirement pertains to customs taxes and levies of any nature that are associated

Regarding the act of importing and exporting, as well as internal taxes and charges, and all the regulations governing the application of such duties, taxes, and charges.

The primary exceptions to the Most-Favored Nation (MFN) norm are Article XXIV, which empowers members of customs unions and free trade zones to provide more favourable treatment to imports from each other, and a 1979 decision<sup>17</sup> that provides preferences for and among developing nations.<sup>18</sup>

b) National treatment-

The principle of national treatment, as outlined in Article III of the General Agreement on Tariffs and Trade (GATT), is also of paramount significance. It serves as a supplement to the Most Favoured Nation (MFN) rule. Article I mandates Most Favoured Nation (MFN) treatment, which ensures that a country treats the products of all its trading partners equally. On the other hand, the national treatment concept ensures that the products of other countries are treated the same as domestic products on same footing with those of the importing country. National treatment is the practice of treating locally produced goods and imported goods in a non-discriminatory manner, once the foreign items have gone through customs, even if they are identical or highly substitutable. Therefore, it is permissible to differentiate by imposing a duty on imported items that would not be imposed on domestic goods. However, after the product has cleared customs, it must be treated in the same manner. This rule is applicable to both state and municipal taxes, as well as laws pertaining to health and safety requirements.

The statement asserts that when imports have crossed the national border and paid the required import tariff, they must be treated with equal fairness as local products. The levies imposed on imported goods, as well as any other fees, should not exceed those

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<sup>17</sup> Decision on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries adopted by the Contracting Parties on 28 November 1979, GATT document I/4903, in BISD 26S, pages 203-205 .

<sup>18</sup> GENERAL AGREEMENT ON TARIFFS AND TRADE THE W T O AGREEMENTS SERIES 2, [https://www.wto.org/english/res\\_e/booksp\\_e/agrmntseries2\\_gatt\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf), Accessed on 15 April 2024

imposed on local items. Additionally, the rules and regulations governing the sale, acquisition, transit, distribution, and use of imported goods should be equally advantageous as those for goods of national origin.

For instance, if a state or provincial government imposes a tax on cigarettes, the principle of national treatment mandates that the same tax rate must be uniformly applied to both local and imported cigarettes. Similarly, the principle of national treatment would prohibit a government from imposing regulations on imported toys with lead paint while exempting local toys with lead paint. If regulations on lead are to be implemented, they must be applied equally to all toys.<sup>19</sup>

## 2) Tariff reductions and bindings-

The second fundamental premise is that the members make commitments in which they declare the maximum amount of import tariff or any other charge or restriction that they would impose on imports of certain categories of products.

These agreements, also known as "bindings," can be established through bilateral discussions. In these negotiations, a government may agree to another country's request to decrease the import tariff on specific items. Nevertheless, the promises are subsequently documented in national schedules which, by virtue of the requirements outlined in Article II, form an integral component of each country's duties under the General Agreement on Tariffs and Trade (GATT). Furthermore, due to the application of the Most-Favoured Nation (MFN) rule, these commitments are applicable to imports from any member country.

The regulations outlined in Article II, along with the technical guidelines in Article XXVIII regarding schedule modifications, formed the framework that enabled developed nations to participate in multiple rounds of GATT negotiations. These negotiations aimed to decrease tariffs, with the outcomes being legally binding and subject to increasingly stringent schedules.

Developing nations mostly remained uninvolved in this process, with many of them having no set commitments or obligations. Within the framework of the World Trade

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<sup>19</sup> Supra note 14

Organisation (WTO), all member countries are obligated to establish schedules. It is worth noting that the percentage of items that are subject to binding agreements is typically larger compared to previous periods. The discussions under the World Trade Organisation (WTO) for reducing trade barriers in products will be guided by the Article II and XXVIII regulations.<sup>20</sup>

### 3) Transperancy-

Another concept that was included in GATT 1994 is that of transparency. The concept of multilateral review and transparency is a fundamental component of the World Trade Organisation (WTO), as outlined in the Agreement Establishing the WTO. It is also preserved.

GATT Article X establishes the overall standards for trade policies and regulations that impact the exchange of products. Additionally, there are additional detailed rules included in other agreements from the Uruguay Round.

The major features that influenced the operation of the previous GATT system, and that continue to exist in the GATT 1994, will not be further examined in this discussion. Many comprehensive and advanced studies on these principles, covering various levels of depth and complexity, have been published since the establishment of the GATT. These studies have evaluated the economic and political impact of these principles. The reason for mentioning them here is just to emphasise that they will persist and likely have comparable outcomes inside the framework of the WTO. The subsequent discussion will focus on the modifications made to the GATT regulations through the Uruguay Round accords.<sup>21</sup>

### **Exceptions to the principles of General Agreement on Tariffs and Trade (GATT)**

There are many scenarios in which nations are permitted to breach GATT's principles of non-discrimination and their prior obligations, including tariff bindings. These exceptions are considered permissible and in compliance with the criteria, making them

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<sup>20</sup> Supra note 14

<sup>21</sup> Supra note 14

sanctioned or lawful under GATT. Notable exceptions are trade remedies and allowances for free trade areas.

#### A) Trade Remedies-

Trade remedies are a significant category of exceptions. These rules allow domestic industries to ask for higher import tariffs that exceed the maximum agreed rates and are implemented in a biased manner. The term "remedies" is used to refer to measures that aim to rectify unfair trade practices and unforeseen shifts in trade patterns that cause harm to sectors that face competition from imports.

The inclusion of these remedies in the GATT may be attributed to the fact that they were previously established as part of the legal systems of the United States and other allied nations at the time of the GATT's inception. Exceptions were included in the original agreement to account for the fact that applying these rules would plainly go against the fundamental principles of non-discrimination in the General Agreement on Tariffs and Trade (GATT), and these exceptions are still in effect today. Since more nations have become members of the GATT/WTO in the course of time, they have likewise embraced these identical regulations, since the agreement permits them to do so. Consequently, this legal structure, which was created in the United States and other advanced nations about a century ago, has been adopted by most countries worldwide and has become the fundamental approach to modifying trade policy based on the commitments made in prior GATT negotiations.

Currently, the trade remedy rules serve as the main legal mechanism that nations belonging to the World Trade Organisation (WTO) can employ to enhance the degree of protection for their domestic sectors. The GATT and WTO accords restrict nations' national sovereignty by imposing strict limits on their ability to implement greater trade barriers. It should be noted that governments have the freedom to unilaterally reduce trade barriers without breaching any agreements. The trade remedy rules provide a mechanism for nations to deviate from their commitments under specific conditions.<sup>22</sup>

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<sup>22</sup> The General Agreement on Tariffs and Trade (GATT), <https://saylordotorg.github.io>, Accessed on 15 April 2023.

## B) Antidumping

Antidumping rules offer safeguard to local domestic import-competing companies that can demonstrate the occurrence of "dumping" of foreign imported goods in the domestic market. Antidumping is seen as an unfair trade rule due to the perception that dumping is frequently regarded as an unfair trade practice. Dumping is defined by many definitions. Dumping, in essence, refers to the act of selling a product at a price that is deemed unjust or below what is considered acceptable. Dumping is specifically defined as (1) selling products in a foreign market at a price lower than in the domestic market, (2) selling products in a foreign market at a price lower than the average production costs, or (3) if there are no sales in the domestic market, selling products in one foreign market at a price lower than the price charged in another foreign market. The dumping margin refers to the proportion by which the current price has to be increased in order to attain the fair or reasonable price.

Any import-competing industry has the right to request protection from its own government via the use of antidumping legislation. An antidumping (AD) duty, which is a levy on imports, can be implemented to offer protection if two specific requirements are met. Initially, the government must provide evidence that the act of dumping, as previously described, is indeed taking place. Furthermore, the government needs to demonstrate that the enterprises who compete with the imported goods are experiencing actual or potential harm of significant magnitude due to the influx of these goods being sold at unfairly low prices.

An injury can result in decreased sales, decreased profits, reduced employment, or other signs of decreased well-being. If all requirements are met, an anti-dumping charge equal to the dumping margin can be imposed. Following the Uruguay Round, nations reached a consensus that anti-dumping (AD) duties should be maintained for a maximum of five years before undergoing a review, known as a sunset review, to assess the likelihood of further dumping. If there is a high probability of dumping happening again, the anti-dumping measures may be prolonged.

Typically, anti-dumping investigations determine varying levels of dumping margins, even among enterprises from the same nation. When anti-dumping duties are imposed,

each of these distinct companies will be subject to individual tariffs on their products. Therefore, the conduct is extremely biased and tends to infringe upon Most-Favoured Nation (MFN) treatment. The tariff hike would surpass the country's bound tariff rate achieved in the most recent round of negotiations. Nevertheless, the original General Agreement on Tariffs and Trade (GATT) included Article 6, which permits this exemption.<sup>23</sup>

#### C) Anti subsidy-

Antisubsidy rules offer safeguard to local import-competing companies that can demonstrate that foreign imported goods are receiving direct financial assistance from their respective governments. Due to the fact that foreign subsidies are regarded as an inequitable trade practice, antisubsidy is regarded as an unfair trade law. The subsidies must be specifically aimed at promoting the export of a certain product. These subsidies are referred to as specific subsidies. Conversely, subsidies that are widely accessible and apply to both export enterprises and local firms without discrimination are not subject to legal action under this clause. The subsidy margin refers to the proportion of the subsidy that is granted by the government.<sup>24</sup>

#### D) Safeguards

Safeguard laws (aka escape clauses) provide protection to domestic import-competing firms that can demonstrate two things: (1) that a surge of imported products has caused disruption in the market for a particular product and (2) that the surge has substantially caused, or threatens to cause, serious injury to the domestic import-competing firms. The use of the term serious injury means that the injury must be more severe than the injury caused in AD and anti subsidy cases. Since import surges are not generally considered to be under the control of the exporting firms or government, safeguard laws are not considered unfair trade laws.

In the event both conditions are satisfied, a country may respond by implementing either tariffs or quotas to protect its domestic industry. If tariffs are used, they are to be implemented in a non discriminatory fashion, meaning they are executed equally

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<sup>23</sup> Supra note 22

<sup>24</sup> Supra note 22

against all countries. However, if quotas are used, they may be allocated in a way that favours some trading partners more than others. Safeguard actions are also intended to be temporary, lasting no more than four years.

As with antidumping and anti subsidy cases, because a safeguard response involves higher levels of protection, it will likely conflict with the previously agreed bound tariff rates and thus violate the GATT principles. However, Article 19 of the GATT, the so-called escape clause, provides for an exception to the general rules in this case.

Because safeguard actions in effect take away some of the concessions a country has made to others, countries are supposed to give something back in return. An example of acceptable compensation would be the reduction of tariffs on some other items. This extra requirement, together with the need to establish serious rather than material injury, have contributed to making the use of safeguard actions less common relative to antidumping and anti subsidy actions.<sup>25</sup>

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<sup>25</sup> Supra note 22

## **CHAPTER-04**

### **GATT TO WTO**

The General Agreement on Tariffs and Trade (GATT) was the first multilateral agreement promoting free trade between nations. The agreement was initially implemented in 1948 with the participation of 23 nations. It continued to be in force until 1995, during which its membership expanded to include 128 countries.

A significant portion of the historical events that occurred throughout those 47 years took place in Geneva. However, it also records a journey that covered many continents, starting tentatively in 1948 in Havana (Cuba), and passing through Annecy (France), Torquay (UK), Tokyo (Japan), Punta del Este (Uruguay), Montreal (Canada), Brussels (Belgium), and ultimately concluding in Marrakesh (Morocco) in 1994. During that time, the trade system was brought under the General Agreement on Tariffs and Trade (GATT), which was saved from the failed attempt to establish the International Trade Organisation (ITO). The General Agreement on Tariff and Trade (GATT) played a crucial role in creating a robust and lucrative system of international commerce that progressively became more open and unrestricted via successive rounds of trade negotiations.

Between 1948 and 1994, the General Agreement on Tariffs and Trade (GATT) established regulations for a significant portion of global trade and oversaw eras characterised by very high growth rates in international commerce. Despite appearing to be thoroughly formed, the agreement and organisation remained temporary during the span of 47 years.

The initial objective was to establish a third organisation responsible for managing the trade aspect of international economic cooperation, in addition to the existing "Bretton Woods" institutions, namely the World Bank and the International Monetary Fund. More than 50 nations engaged in discussions to establish an International Trade Organisation (ITO) as a specialised body under the United Nations. The preliminary ITO Charter was ambitious. It encompassed more than only regulations on global commerce but also included regulations on employment, commodities agreements, restrictive business practices, foreign investment, and services. The objective was to establish the International Trade Organisation (ITO) during a United Nations Conference on Trade and Employment held in Havana, Cuba in 1947.



Simultaneously, in December 1945, discussions were initiated among 15 nations with the aim of lowering and establishing fixed customs tariffs. With the recent conclusion of the Second World War, there was a desire to quickly accelerate economic liberalisation and address the ongoing consequences of protectionist policies implemented in the early 1930s.

The initial round of discussions produced a set of trade regulations and 45,000 tariff concessions that impacted \$10 billion worth of commerce, equivalent to around one-fifth of the global total. By the time the contract was signed on 30 October 1947, the group had grown to a total of 23 members. The tariff concessions were implemented on 30 June 1948 by a "Protocol of Provisional Application". The new General Agreement on Tariffs and Trade was established, consisting of 23 founding members referred to as "contracting parties".

The twenty-three nations were also members of the broader group involved in developing the ITO Charter. One of the stipulations of the General Agreement on Tariffs and Trade (GATT) states that they must adhere to certain trade regulations outlined in the draft. The nations had the belief that this action should be executed promptly and temporarily to safeguard the significance of the tariff concessions they had bargained for. The individuals clearly outlined their perception of the connection between GATT and the ITO Charter, while also acknowledging the possibility of non-existence of the ITO. Their statement was correct.<sup>26</sup>

The Havana meeting commenced on 21 November 1947, in a timeframe of less than one month following the signing of GATT. The ITO Charter was ultimately approved in Havana in March 1948, however it was not feasible to obtain ratification in certain national legislatures. The US Congress posed the most significant opposition, despite the fact that the US government had played a prominent role in promoting the initiative. In 1950, the United States administration declared that it would not pursue Congressional approval of the Havana Charter, resulting in the demise of the ITO. The General Agreement on Tariffs and commerce (GATT) served as the sole multilateral mechanism regulating international commerce from 1948 until the establishment of the World Trade Organisation (WTO) in 1995.

The fundamental legal concepts of the GATT remained largely unchanged from 1948 for over 50 years. In the 1960s, a section on development was included as an addition, and in the 1970s, "plurilateral" agreements with optional participation were introduced. Additionally, attempts

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<sup>26</sup> Supra note 1.

to further decrease tariffs were ongoing. A significant portion of this progress was accomplished through a sequence of multilateral talks referred to as "trade rounds." The most substantial advancements in multilateral trade negotiations have been made through these rounds, which were conducted under the guidelines of the General Agreement on Tariffs and Trade (GATT).

During the initial years, the GATT trade negotiations focused on the continued reduction of tariffs. Subsequently, during the mid-sixties, the Kennedy Round resulted in the establishment of a GATT Anti-Dumping Agreement, as well as the inclusion of a section dedicated to development. The Tokyo Round, which took place in the 1970s, was the initial significant endeavor to address non-tariff trade obstacles and enhance the existing system. The Uruguay Round in 1986-94, which was the eighth round of negotiations, was the final and most comprehensive round of all. However, in the 1980s, it became necessary to completely restructure the system. As a result, the Uruguay Round was initiated, which eventually led to the establishment of the World Trade Organisation (WTO) and a fresh set of accords.<sup>27</sup>

### **Success of GATT-**

The General Agreement on Tariffs and trade (GATT) initially had a restricted scope, but its evident effectiveness over a span of 47 years in advancing and ensuring the liberalisation of a significant portion of international trade cannot be disputed. The consistent decrease in tariffs had a significant role in driving the substantial increase in global trade throughout the 1950s and 1960s, with an average annual growth rate of almost 8%. The impetus of trade liberalisation during the GATT era ensured that trade growth continuously exceeded output growth. This indicates that nations were more able to trade with each other and gain from trade. . The rush of new members during the Uruguay Round demonstrated that the multilateral trading system was recognized as an anchor for development and an instrument of economic and trade reform.<sup>28</sup>

However, the situation was not satisfactory. Over time, further challenges emerged. The Tokyo Round, which took place in the 1970s, aimed to address certain issues, however its successes

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<sup>27</sup> Supra note 1.

<sup>28</sup> What Was the GATT? By Kimberly Amadeo; <https://www.thebalancemoney.com/gatt-purpose-history-pros-cons-3305578#:~:text=The%20benefits%20of%20the%20GATT,of%20the%20free%20trade%20agreement.,> Accessed on 15 April 2024.

were limited. This anticipated upcoming challenges. The success of GATT in significantly decreasing tariffs, together with a string of economic recessions in the 1970s and early 1980s, compelled governments to develop alternative methods of safeguarding industries that were seeing heightened competition from foreign nations. Governments in Western Europe and North America, faced with high unemployment rates and frequent manufacturing closures, pursued bilateral market-sharing agreements with rivals and engaged in a race to provide subsidies in order to retain their dominance in agricultural commerce. Both of these alterations eroded the legitimacy and efficacy of GATT.

The issue extended beyond a declining trade policy environment. By the early 1980s, the General Agreement had become less relevant to the actualities of international trade compared to its significance in the 1940s. Initially, it is worth noting that international commerce had grown significantly more intricate and significant compared to four decades earlier. The process of globalising the world economy had started, and an increasing number of nations were showing great interest in trade in services, which were not regulated by GATT regulations. Furthermore, foreign investment had seen substantial growth. The growth of services trade was strongly linked to additional rises in global merchandise trade. However, GATT was found to be deficient in other aspects.

For example, in the field of agriculture, the multilateral system had significant vulnerabilities that were extensively taken advantage of, and attempts to promote liberalisation of agricultural trade were mostly ineffective. The Multifibre Arrangement was established in the 1960s and early 1970s as an exemption to the standard regulations of the General Agreement on Tariffs and Trade (GATT) in the textiles and apparel sector. The institutional framework and dispute settlement procedures of GATT were raising concern.

These and additional causes persuaded the members of GATT that a fresh endeavour to strengthen and expand the multilateral system should be undertaken. The Uruguay Round, the Marrakesh Declaration, and the establishment of the WTO were the outcomes of that endeavour.

The GATT had established an institutional structure framework, for, dispute resolution. It had also established a secretariat, much like other international organizations. It also provided a platform, to facilitate regular meetings among the trade countries.

GATT has started as a trade agreement, but , gradually it's powers and functions expanded it's ambit, and it began to function as an international organisation.<sup>29</sup>

### **Organisational Structure of GATT-**

The General Agreement on Tariffs and Trade (GATT) primarily functioned through several prominent organs-

a) Contracting Parties-

The entities or the member countries which signed and ratified the General Agreement on Trade and Tariff (GATT) are called the contracting parties. They are informally called as members. These contracting nations participated in various trade rounds of the GATT, and worked collaboratively to reduce various trade barriers, i.e., tariff and non tariff barriers , so as to promote international trade.

“Since GATT was only an interim arrangement pending the entry into force of the ITO, no provisions were made for institutions through which the arrangement would function. The CONTRACTING PARTIES were to meet from time to time and by their “joint action” under article XXV were to facilitate and further the objectives of the Agreement. Each contracting party was to have one vote and decisions were to be taken by majority vote, although the practice developed of consensus decision-making. The only specific power granted to the CONTRACTING PARTIES under article XXV was to authorize waivers of GATT obligations. When the CONTRACTING PARTIES acted collectively like this, they were known as the GATT Council, a plenary and not an executive organ, and for which there is no provision in GATT itself.

One thing that GATT did address was how disagreements between the parties over the operation of the Agreement were to be dealt with. Article XXII provides for the parties to consult. A contracting party is to give “sympathetic consideration” to representations of another contracting party “with respect to any matter affecting the operation of the Agreement”. If no satisfactory solution can be reached through

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<sup>29</sup> Supra note 28.

consultation, then a contracting party can consult with the full membership the CONTRACTING PARTIES about the matter.

Headed “Nullification or Impairment”, article XXIII provides more specifically for disagreements between contracting parties. It deals with circumstances where a contracting party considers that a benefit accruing to it under the Agreement has been “nullified or impaired” or the attainment of an objective under the Agreement has been impaired. This can result from the failure of another contracting party “to carry out its obligations under this Agreement” or action taken by another contracting party “whether or not it conflicts with the provisions of this Agreement”, or “the existence of any other situation”.

In such circumstances, the contracting party may make written representations to the other contracting party with a view to achieving a satisfactory settlement of the matter. If the matter has still not been resolved, the contracting party can refer it to the CONTRACTING PARTIES. The CONTRACTING PARTIES are to investigate the matter and can make recommendations to the parties or make a ruling. If the CONTRACTING PARTIES consider the matter sufficiently serious it can authorize a contracting party to suspend the application to another contracting party of concessions or other obligations under the Agreement.

There are three important aspect to the provisions of article XXIII.

First, the right to make representations to another party and to go to the CONTRACTING PARTIES applied both where the other contracting party had allegedly violated the terms of the Agreement, and where that contracting party had taken action that did not violate the terms of the Agreement, known as “non-violation nullification or impairment”. This was a response to one of the principal concerns of the negotiators, that tariff concessions could be undermined by action taken by a government that was not inconsistent with the Agreement, but which effectively took away the benefit that another contracting party was expecting from an agreed tariff concession, for example through the introduction of a tariff classification which took a contracting party’s products outside the products benefitting from the concession.

Second, while the CONTRACTING PARTIES were to investigate complaints, make recommendations to a contracting party and make rulings, no process was provided on how this was to be done. The CONTRACTING PARTIES comprised all of the parties to GATT and thus investigations, recommendations and rulings were to be made collectively.

Third, article XXIII provides for retaliation against a contracting party that has acted to nullify or impair benefits to another contracting party. The CONTRACTING PARTIES can authorize a contracting party to suspend concessions or other obligations to another contracting party. Article XXIII therefore includes a sanctioning system where nullification or impairment has been established.”<sup>30</sup>

b) Secretariat-

The secretariat served as the administrative aid of the GATT. Due to its nature as a trade agreement rather than an international organisation, the GATT lacked the ability to establish its own secretariat. Instead, member nations of the General Agreement on Tariffs and Trade (GATT) borrowed the secretariat that had been established by the United Nations to oversee the discussions of the International Trade Organisation (ITO). The secretariat of the ITO negotiations had stayed in existence after the Havana Conference as the secretariat of an ad hoc organization called the Interim Commission for the International Trade Organization (ICITO) that had been created to prepare the ground for the ITO. Following the abandonment of the International Trade Organisation (ITO) in 1950, the Interim Commission for the International Trade Organisation (ICITO) lost its practical role. However, it remained in existence for the following fifty years mainly to provide as a legal foundation for the GATT Secretariat. The lending arrangement continued until the establishment of the WTO in 1995, at which point the WTO assumed control of the GATT Secretariat. Eric Wyndham-White, of the United Kingdom, served as the first Executive Director of the GATT Secretariat. White, who had a legal background, had been serving as the director of the secretariat from the start of the ITO discussions. He continued in his position as the head of the GATT Secretariat

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<sup>30</sup> Donald M. McRae, General Agreement on Tariffs and Trade, <https://legal.un.org/avl/ha/gatt/gatt.html>, Accessed on 15 April 2024

from 1948 to 1968. Jean Royer, a French trade diplomat, held the position of Deputy Executive Secretary from 1948 until 1958. The Secretariat would have played a more significant role in the working groups that were assigned to address the initial legal claims. The Secretariat is responsible for organising the working party meetings and is also required to provide the necessary background information and documents. Typically, it also prepares any necessary reports to communicate the outcomes accomplished by the working group.<sup>31</sup>

c) **Dispute Settlement Mechanism-**

The dispute settlement mechanism under the GATT 1947 framework that underwent significant development over a span of over five decades, primarily relying on Articles XXII and XXIII of GATT 1947. Over time, many ideas and practices that developed under the GATT dispute settlement system were officially established and documented in judgements and understandings made by the contracting parties to GATT 1947. The existing World Trade Organisation (WTO) system is based on and follows the rules for resolving disputes that were established in Articles XXII and XXIII of the General Agreement on Tariffs and Trade (GATT) in 1947. This is stated in Article 3.1 of the Dispute Settlement Understanding (DSU).

According to Article XXIII:2 of GATT 1947, the basic regulations stated that the contractual parties were required to collectively handle any disputes between individual contracting parties. Therefore, conflicts that arose in the initial stages of GATT 1947 were resolved by decisions made by the Chairman of the GATT Council. Subsequently, they were assigned to working groups consisting of representatives from all relevant contracting parties, including those involved in the dispute. The working parties unanimously approved their findings by consensus decisions. These working parties were promptly substituted with panels consisting of three or five impartial experts who had no affiliation with the disputing parties. The panels authored autonomous reports including suggestions and decisions for settling the conflict, and subsequently forwarded them to the GATT Council. These

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<sup>31</sup> Robert E. Hudec , *The Role of the GATT Secretariat in the Evolution of the WTO Dispute Settlement Procedure*, <https://citeseerx.ist.psu.edu/>, Accessed on 15 April 2024.

reports only became legally binding on the parties involved in the dispute after receiving approval from the GATT Council. The GATT panels established a body of jurisprudence, which continues to be significant in the present day. They used a more structured method and legalistic style of reasoning in their findings.<sup>32</sup>

d) Council for Trade in Goods-

This council is responsible for regulating the implementation of GATT agreements related to trade in goods. Presently, The Council for Trade in Goods (CTG) is a prominent subsidiary body of the WTO and has a directly reports to the General Council. Article IV:5 of the WTO Agreement stipulated that the CTG is responsible for supervising the execution of all agreements pertaining to trade in goods, which includes the GATT 1994.

“The following 14 WTO bodies report to the CTG:

- Committee on Agriculture
- Committee on Anti-Dumping Practices
- Committee on Customs Valuation
- Committee on Import Licensing
- Committee on Market Access
- Committee on Rules of Origin
- Committee on Safeguards
- Committee on Sanitary and Phytosanitary Measures
- Committee on Subsidies and Countervailing Measures

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<sup>32</sup> Historic development of the WTO dispute settlement system, [https://www.wto.org/english/tratop\\_e/dispu\\_e/disp\\_settlement\\_cbt\\_e/c2s1p1\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/disp_settlement_cbt_e/c2s1p1_e.htm), Accessed on 15 April 2024



- Committee on Technical Barriers to Trade
- Committee on Trade Facilitation
- Committee on Trade-Related Investment Measures
- Committee of Participants on the Expansion of Trade in Information Technology Products
- Working Party on State Trading Enterprises.”<sup>33</sup>

### **Advantages of GATT-**

- a) Promotes international trade: The General Agreement on Tariffs and Trade (GATT) decreased tariffs, leading to an increase in trade between nations. As nations engaged in more free trade, they began to recognise the advantages of free trade and expressed interest in being part of the agreement. Upon the replacement of the GATT by the WTO, the number of countries that had joined the initial 23 signatories has increased to 100.
- b) Diminishes the probability of war : The GATT promoted global peace through the expansion of international trade. It laid the foundation for the establishment of the European Union (EU). Although the European Union has had challenges, it has effectively prevented conflicts among its member states. The underlying idea is that a nation's propensity to engage in warfare with another country diminishes when its economy relies on trade with that particular nation. Increased international trade decreases the probability of war between nations.
- c) Promotes communication: Besides mitigating the likelihood of conflict, the GATT offered inducements for nations to enhance their intercommunication. In recent times, even ordinary individuals are more inclined to acquire proficiency in a foreign language, as it enables them to tap into broader consumer markets beyond their own country. For example, several individuals acquire proficiency in English,

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<sup>33</sup> Council for Trade in Goods, [https://www.wto.org/english/tratop\\_e/gatt\\_e/gatt\\_e.htm](https://www.wto.org/english/tratop_e/gatt_e/gatt_e.htm), Accessed on 15 April 2024.

the primary language of the world's largest market for goods and services, enabling them to secure employment in companies for corporations headquartered in English-speaking nations.<sup>34</sup>

### **Disadvantages of GATT-**

- a) Domestic industries may have challenges in competing: Reduced tariffs have the potential to undermine some domestic industries, leading to elevated levels of unemployment in certain areas. Countries with more financial resources or policy authority has a greater capacity to exercise control over industry for their own advantage compared to smaller nations. A wealthy nation has the ability to allocate funds towards providing subsidies to companies in order to enhance their competitiveness on a worldwide level.
- b) Increases the vulnerability of a certain domestic industry to hazards from the global market: By the 1980s, there was a significant transformation in the character of global trade. The General Agreement on Tariffs and Trade (GATT) did not specifically deal with the trade of services that enabled them to expand beyond the capacity of a single government to regulate. Financial services, such as banking and investment, have undergone globalization. The significance of foreign direct investment has increased. The collapse of U.S. investment bank Lehman Brothers posed a significant danger to the whole global economy. Central banks rapidly collaborated to tackle the 2008 financial crisis. They were compelled to supply liquidity for fixed credit markets.
- c) Governments cede a certain degree of authority to an international agreement. Similar to other free trade agreements, the General Agreement on Tariffs and Trade (GATT) diminished a nation's sovereignty in governing its own population. In order to obtain trade benefits, they were obligated to modify their domestic legislation according to the terms of the agreement. India had granted corporations the permission to produce generic copies of pharmaceuticals without requiring them to pay a licence fee. This initiative facilitated greater accessibility to medication for a

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<sup>34</sup>Kimberly Amadeo , What Was the GATT?, <https://www.thebalancemoney.com/gatt-purpose-history-pros-cons>, Accessed on 15 April 2024

larger number of individuals. Nevertheless, due to the more stringent regulations imposed by other nations, this also resulted in conflicts with other GATT member countries.<sup>35</sup>

### **Historical context of the Marrakesh Agreement-**

The General Agreement on Tariffs and Trade (GATT 1947) was a treaty that was signed in 1947 in Geneva by a total of 23 countries. The implementation of the policy to gradually eliminate imports that are subject to import quotas and reduce tariffs on trade in products commenced on January 1st, 1948.

The General Agreement on Tariffs and Trade (GATT) of 1947 conducted a series of eight rounds of discussions on international trade. The last round, known as the Uruguay Round (1986-1994), concluded with the Marrakesh Agreement, which established the World Trade Organisation.

The World Trade Organisation Agreement, sometimes known as the "Marrakesh Agreement," was signed on April 15, 1994, in Marrakesh, Morocco, marking the conclusion of the Uruguay Round of Multilateral Trade Negotiations.

The Agreement (WTO) provides a clear description of the scope, duties, and structure of the World Trade Organisation. The agreements that were achieved during the Uruguay Round of GATT, as well as those that were previously negotiated under the General Agreement on Tariffs and Trade (GATT), were incorporated as crucial elements of the Marrakesh Agreement and may be found in its Annexes.

These agreements are presently recognised as World Trade Organisation (WTO) agreements. The Marrakesh Agreement, once signed, becomes legally obligatory for all members of the WTO, including those who have joined the organisation subsequently. The Agreement took effect on January 1st, 1995. There is no time constraint.

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<sup>35</sup> Supra note 34.

### **Importance of the Marrakesh Agreement-**

The General Agreement on Tariffs and Trade (GATT) of 1947 was a non-binding agreement among certain nations. Therefore, the provisions of the legislation applied only to the degree that they were in line with the laws of the nation. The General Agreement on Tariffs and Trade (GATT) was signed by a total of 23 nations, indicating that it was not inclusive. With the increasing involvement of states in trade negotiations facilitated by GATT, it became apparent that GATT would benefit from the establishment of a more robust institutional framework to support its operations. Therefore, the Marrakesh Agreement was signed during the Uruguay Rounds, resulting in the creation of the World Trade Organisation (WTO).

### **Rationale behind the Marrakesh Agreement-**

The signatory nations of the Marrakesh Agreement aimed to establish an all-encompassing multilateral trading system that would encompass the General Agreement on Tariffs and Trade (GATT) as well as the results of all previous trade negotiations, including the Uruguay Round, which took place after the establishment of GATT in 1947. The GATT 1947 was not legally enforceable, hence the regulations outlined in GATT were only applicable to the degree permitted by each country's legislation.

With the growing involvement of nations worldwide, there arose a necessity for the establishment of institutional structures to enhance the performance of GATT.

Consequently, the Marrakesh Agreement was ratified during the Uruguay Rounds, leading to the establishment of the World Trade Organisation (WTO).

### **Key Provisions of the Marrakesh Agreement-**

- a) Beneficiaries are individuals or entities who get benefits, assets, or advantages from a certain situation, such as a will, trust, or insurance policy. The treaty stipulates that beneficiaries are those who suffer from blindness, visual impairment, or other print impairments that hinder their ability to access regular printed documents.
- b) Designated bodies, such as libraries and organizations that cater to

individuals with disabilities, are permitted under the Marrakesh Agreement to produce accessible format reproductions of copyrighted materials without the need for consent from copyright owners.

- c) The treaty's main objective is to simplify and promote the exchange of accessible format copies across borders.
- d) The treaty establishes certain restrictions and exemptions to copyright rules in order to permit the production and dissemination of accessible format copies.
- e) Commercial Availability: The Marrakesh Agreement contains measures to guarantee that accessible format copies are primarily accessible to those with print impairments and are not utilised for commercial reasons.
- f) Notification System: It implements a system that enables nations to exchange information regarding the availability of works in accessible forms and the authorised bodies responsible for delivering these formats.
- g) The pact promotes increased accessibility while also emphasising the significance of upholding copyright laws and the rights of copyright owners.
- h) Technical measures, such as digital rights management (DRM), are acknowledged in the agreement as crucial for ensuring that accessible format copies are exclusively utilised by those with print difficulties and not unlawfully shared.
- i) The pact includes provisions for regular evaluations to determine its efficacy and implement any required modifications.

The Marrakesh Declaration signifies the transition from the General Agreement on Tariffs and Trade (GATT) to the World Trade Organisation (WTO).

The Uruguay Round of global trade talks was finished with the Marrakesh Agreement. It regulates the operations of the World Trade Organisation (WTO). The basis of the WTO is comprised of four annexe treaties.

Annexe 1A, sometimes referred to as GATT 1994, contains the General Agreement on Tariffs and Trade, which governs the trade of products.

Annexe 1B encompasses the General Agreement on Trade in Services (GATS). Annexe 1C encompasses the General Agreement on Trade-Related Aspects of Intellectual Property (TRIPS).

Annexe 2, the Dispute Settlement Understanding (DSU), delineates the protocols for resolving conflicts among members of the World Trade Organisation (WTO).

Annexe 3 facilitates regular assessments of the trade policy of members of the World Trade Organisation (WTO). The three annexes, sometimes referred to as covered agreements, encompass a variety of agreements.

Annexe 4 comprises two multilateral agreements, namely the Agreement on Trade in Civil Aircraft and the Agreement on Government Procurement.

Contrary to the preceding three annexes, these plurilateral accords solely hold legal consequences in the WTO member states that have given their acceptance to them.

### **The General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation (WTO)-**

In 1993, the General Agreement on Tariffs and Trade (GATT) underwent revisions, known as 'GATT 1994', which included further obligations for the countries that had signed the agreement. An important transformation occurred with the establishment of the World Trade Organisation (WTO). On 1 January 1995, the World Trade Organisation (WTO) was established with the participation of the 76 existing General Agreement on Tariffs and Trade (GATT) members and the European Communities. Within the subsequent two years, the remaining 51 members of the General Agreement on Tariffs and Trade (GATT) reestablished their membership in the World Trade Organisation (WTO), with Congo being the final member to do so in 1997. Since its establishment, the World Trade Organisation (WTO) has witnessed the addition of 33 new members who were not part of the General Agreement on Tariffs and Trade (GATT). Currently, there are 22 ongoing negotiations for new membership. The World Trade Organisation (WTO) consists of a grand total of 164 member nations. As of 2018, Liberia

and Afghanistan have joined as the most recent additions to this international organisation.

Syria was one of the initial members of GATT. Lebanon and the SFR Yugoslavia are not now members of the WTO. Due to the fact that FR Yugoslavia, which was subsequently renamed as Serbia and Montenegro, is not acknowledged as a direct successor state to SFRY, its application is regarded as a new (non-GATT) one. The General Council of the World Trade Organisation (WTO) reached a consensus on May 4, 2010, to form a working group with the purpose of scrutinising Syria's application for membership in the WTO. The signatories that established the WTO terminated the formal agreement of the "GATT 1947" provisions on 31 December 1995. Montenegro joined the WTO in 2012, whereas Serbia is now in the negotiating stage and is anticipated to become a member of the WTO at a later date.

Although GATT consisted of regulations that were mutually agreed upon by governments, the WTO is an international organisation that has its own offices and personnel. The WTO's jurisdiction encompasses both the trading of commodities and services, as well as the protection of intellectual property rights. While the primary purpose of its design was to facilitate multilateral agreements, the GATT discussions, especially during the Tokyo Round, resulted in the formation of plurilateral accords that led to selective trading and division among the participating states. The World Trade Organisation (WTO) arrangements primarily serve as a multilateral forum for settling agreements established under the General Agreement on Tariffs and Trade (GATT).

**"GATT 1994" is the updated version of GATT 1947 and takes into account the substantive changes negotiated in the Uruguay Round. GATT 1994 is an integral part of the World Trade Organization established on 1 January 1995. It was agreed that there be a one-year transition period during which certain GATT 1947 bodies and commitments would co-exist with those of the World Trade Organization.**"<sup>36</sup>

### **Definition of GATT 1994**

*"The GATT 1994 is defined by a very short agreement which lists the provisions that it covers, and also offers a number of explanatory notes.<sup>5</sup> Although it would undoubtedly have been*

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<sup>36</sup> PRESS BRIEF, FIFTIETH ANNIVERSARY OF THE MULTILATERAL TRADING SYSTEM

*preferable if a single, fully revised GATT text had emerged from the Uruguay Round, this proved impracticable.*

*Even a simple rewriting of the GATT 1947 to make such changes as the replacement of references to “contracting parties” by “WTO members” raised surprisingly difficult questions. A fully satisfactory revision would have required wide-ranging changes to the substance of many GATT Articles, in order to reflect past decisions made by the GATT contracting parties as well as the agreements and understandings reached in the Uruguay Round. While some of these changes could probably have been made without difficulty, others might well have raised issues that would have demanded the reopening of painfully negotiated agreements. GATT 1994 is therefore defined as consisting of four elements (GATT 1994 para. 1 (a)–(d)):*

*a) The most obvious element is the collection of provisions of the old General Agreement on Tariffs and Trade, as adopted on 30 October 1947, but “as rectified, amended or modified” by the various legal instruments which entered into force before the WTO.*

*An important exception is that the GATT provisions carried over explicitly exclude the Protocol of Provisional Application (PPA) which in fact was the legal basis on which the GATT 1947 was generally applied. The PPA, sometimes known as the “Grandfather Clause”, permitted GATT members who in 1947 had mandatory national laws in force that were inconsistent with some important provisions in the General Agreement to continue to apply them in spite of the inconsistency.*

*By 1994, few of these pre-GATT laws remained in force. However, one was still in effect: the Jones Act which reserves United States domestic shipping routes to vessels that are American-built, American crewed, and fly the US flag. With the PPA no longer available, legal cover for the existing provisions of the Jones Act is instead provided by special provisions (para. 3 (a)–(e)) in the GATT 1994 agreement.*

*This exemption is subject to review by the WTO Ministerial Conference.*

*b) GATT 1994 is also defined as including the provisions of legal instruments setting out pre-WTO tariff agreements, the terms of accession agreements by which individual countries became signatories of the old GATT, decisions on waivers granted under Article XXV of the GATT 1947 and still in force (for a further discussion of waivers, see below), and other*



*decisions taken by the GATT contracting parties.*

*c) and d) The third and fourth elements of the GATT 1994 are agreements reached in the Uruguay Round. These are, respectively, six understandings which interpret particular points in a number of the GATT articles, and the Marrakesh Protocol which incorporates the market access commitments of each WTO member. The understandings, and the Marrakesh Protocol, are reviewed in the immediately following paragraphs. Two of the understandings are taken first, out of numerical order, because they bear on particularly important exceptions to the core GATT principles. These are the understandings related to regional trading arrangements (Article XXIV) and to the balance-of-payments provisions of the GATT".<sup>37</sup>*

### **The Distinction between the General Agreement on Tariffs and Trade (GATT) and the World Trade Organisation (WTO)-**

The General Agreement on Tariffs and Trade (GATT) is a global multilateral treaty that was signed by 23 countries with the aim of facilitating international trade and removing barriers to trade between nations. The World Trade Organisation (WTO) is a global institution that succeeded the General Agreement on Tariffs and Trade (GATT) and oversees international trade among its member nations.

The General Agreement on Tariffs and Trade (GATT) lacks an institutional framework, but it does possess a modest secretariat. Conversely, the WTO is a lasting institution that includes a secretariat.

Within the framework of the General Agreement on Tariffs and Trade (GATT), the countries involved are designated as contracting parties, whereas in the World Trade Organisation (WTO), they are referred to as member nations.

The GATT agreements are of a transitory character, allowing the government the discretion to consider them as permanent obligations after a period of 47 years. WTO requirements have been in effect since the beginning.

The scope of the WTO is more extensive than that of the GATT in that the regulations of the GATT only apply to traded items, but the WTO contains regulations that encompass both goods

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<sup>37</sup> INTRODUCTION The General Agreement on Tariffs and Trade 1994 & 1947;  
[https://www.wto.org/english/res\\_e/booksp\\_e/agrmntseries2\\_gatt\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/agrmntseries2_gatt_e.pdf)

and services, as well as some aspects of intellectual property.

The GATT agreement is primarily multilateral, although it is later broadened to encompass plurilateral agreements. WTO agreements, however, are entirely multilateral.

## **CONCLUSION-**

After World War-II, the economic state of the world was in a disarray. Primary initiated by the United States of America, there were various initiatives initiated for extensive economic collaboration. Various institutions, i.e., the International Bank for Reconstruction and Development (IBRD), and, International Monetary Fund (IMF) were established. There was a need to establish an International Trade Organisation (ITO) to address matters related to international trade. The General Agreement on Tariffs and Trade (GATT), signed on October 30, 1947, by 23 nations, was a legally binding agreement to diminish trade barriers through the elimination or reduction of quotas, tariffs, and subsidies, while still maintaining significant limitations. Although GATT Agreement was achieved by the negotiating parties, the original concept of establishing the International Trade Organisation was pursued simultaneously. However, it didn't receive any assent from the US congress, and the idea of ITO didn't come to existence. The General Agreement on Tariffs and Trade (GATT) was established to facilitate the post-World War II economic recovery by promoting the reconstruction and liberalization of international trade. The GATT remained a treaty and never became an organization. However, its functions and powers resembled that of the international organization. The General Agreement on Tariffs and Trade (GATT) became operational on January 1, 1948. Since then, significant progress has been made in its development, leading to the establishment of the World Trade Organisation (WTO) on January 1, 1995, which effectively merged and enhanced it. GATT was replaced by WTO as it suffered from various weaknesses, as it was only a provincial agreement and was limited to only product transactions. At this point, 125 nations had ratified its agreements, which encompassed about 90% of global trade. The General Agreement on Tariffs and Trade (GATT) is supervised by the Council for Trade in Goods (Goods Council), consisting of delegates from all member states of the World Trade Organisation (WTO). The council's 10 committees examine various themes including market access, agriculture, subsidies, and anti-dumping measures.

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