The first part of this paper updates the material contained in the author's "World Trade and the International Economy: Trends, Prospects, and Policies" (World Bank Staff Working Paper No. 282), subsequently published in a revised form under the title "The 'New Protectionism' and the International Economy," (World Bank Reprint Series No. 70). It is suggested that, since early 1978, the trend toward increased protectionism in the developed countries on their trade with the developing countries has not continued and, in some respects, it has been reversed.

Tariff reductions undertaken in the framework of the Tokyo Round will further lower barriers to trade and benefit the developing countries. The adoption by GATT of the statements and declarations formulated by the so-called framework group also represents a step in this direction. Finally, the application of the Codes on non-tariff barriers, negotiated in the Tokyo Round, will benefit the developing countries through the liberalization of administrative regulations on trade as well as through the special and differential treatment these countries are to receive under the Codes.

At the same time, in order to enjoy the benefits provided under the Codes on non-tariff barriers, the developing countries will need to subscribe to them. This is also desirable to ensure the implementation of the Codes and to effect future revisions in the interest of the developing countries. In turn, the developed countries are exhorted to abide by the obligations they have taken under the Codes and to make a concerted effort towards the establishment of equitable safeguard procedures.
THE TOKYO ROUND AND THE DEVELOPING COUNTRIES

Bela Balassa

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THE TOKYO ROUND AND THE DEVELOPING COUNTRIES

Bela Balassa

This paper will review the results of the Tokyo Round of Multilateral Trade Negotiations (MTN) from the point-of-view of the developing countries. It will further make recommendations for actions that may be taken in order to ensure that the developing countries can fully exploit the opportunities the international trade framework provides following the completion of the Tokyo Round.

As an introduction to the discussion, Section I will examine recent trends in protectionism in the developed nations as they concern the developing countries. This will be followed by an evaluation of tariff reductions in the MTN on export products of interest to the developing countries, with attention given to the erosion of preferences these countries now receive under the Generalized System of Preferences or GSP (Section II). In Section III, the implications for the developing countries of the codes on non-tariff measures, established in the framework of the MTN, will be reviewed. Finally, in Section IV, the texts formulated by the so-called framework group will be examined and recommendations will be made for policies that may be applied by developing and by developed countries in matters of trade interest to the former group of countries.

I. Recent Trends in Protectionism in the Developed Countries

In the years following the oil crisis of 1973, protectionist actions by the developed countries multiplied. They included various forms of non-tariff restrictions, government aids to industry, as well as efforts made to establish international cartels. The actions taken until early 1978 were reviewed in the author's "The 'New Protectionism' and the International
Economy.\textsuperscript{1} In the same paper, it was stated that the continuation of protectionist trends presents grave dangers for the developing and the developed countries alike.

Since early 1978, however, there have been some favorable signs. Of particular importance is the completion of the Multilateral Trade Negotiations carried out in the framework of the Tokyo Round. This has followed earlier, rather pessimistic, forecasts about the prospective failure of the negotiations that had been given wide coverage.\textsuperscript{2}

At the same time, fears that too much has been given away by the U.S. government to protectionist interests in exchange for their support for the MTN\textsuperscript{3} have proved to be exaggerated. To begin with, while the U.S. Administration promised the domestic textile industry to "tighten controls for the remaining life" of the Multifiber Arrangement and to hold 1979 textile imports at 1978 levels "where necessary to preclude further disruption," the limitations actually imposed on the subsequent use of partially-filled quotas and on quota transfers among categories do not appear to have materially affected textile imports from the developing countries. Also, the House of Representatives has defeated legislation to raise domestic sugar prices, and the quota on stainless steel and other specialty steel products has been extended for only eight months and has, at the same time, been increased by 24 percent. Finally, the removal of a major stumbling block in Congress through the continued preferential treatment to small-scale and minority-owned firms in government

\textsuperscript{1} Journal of World Trade Law, September-October, 1978, pp. 409-36.


\textsuperscript{3} Cf. e.g. "Too Many Goodies to the Trade Sharks?" (The Washington Post, June 14, 1979).
procurement will have limited impact on imports.¹

Furthermore, since early 1978, the United States had made less use of non-tariff restrictions that are particularly objectionable from the point-of-view of the developing countries. Thus, a review of the measures applied has led to the conclusion that "the earlier reliance on OMAs /orderly marketing agreements/ appears to have given way to a preference for the traditional remedy of tariff measures. The change constitutes a return to reliance on the price system (as opposed to quantitative restrictions under OMAs) and to the principle of non-discrimination in commercial policy."²

In fact, in the seven affirmative "escape clause" decisions taken by President Carter between January 1978 and October 1979, four have entailed raising tariffs on a temporary basis and on a degressive scale and but three have involved limiting imports in quantitative terms. At the same time, the latter decisions have affected developing countries only in the case of quotas on clothespins imported from Taiwan and the OMAs on color television sets originating in Korea and Taiwan, accounting for less than 1 percent of U.S. imports from the two countries.

In the same period, the President has rejected recommendations for escape clause action by the International Trade Commission in six cases, all of which would have affected developing country exports. And, after an


upsurge in 1976, the total number of recommendations on escape-clause actions by the ITC has declined from 14 in that year to 12 in 1977, 10 in 1978, and 1 in the first three quarters of 1979.\footnote{Office of the Special Representative for Trade Negotiations, \textit{Trade Actions Monitoring System Report}, various issues.}

Furthermore, few of the applications for countervailing action against developing country exports have been positively acted upon. Thus, while the Amalgamated Clothing and Textile Workers Union initiated countervailing duty procedures against Argentina, Colombia, India, Korea, the Philippines, Taiwan and Uruguay, the Treasury made a positive finding in the case of Uruguay only and countervailing duties have subsequently been eliminated in the latter case also.\footnote{The Wall Street Journal, November 9, 1978 and \textit{Trade Actions Monitoring System Report}, October 1979.} More recently, the U.S. Customs Service has revoked an earlier finding that certain Mexican textile exports are subsidized by the Mexican government,\footnote{OAS-CECON \textit{Trade News}, Washington, D.C. Secretariat of American States, August, 1979, p. 5.} and the U.S. Treasury has rejected a petition by Florida growers who alleged that Mexico was selling tomatoes and other produce at unfairly low prices.\footnote{\textit{The New York Times}, October 31, 1979.} However, a positive finding has been made on the existence of subsidies to pig iron in Brazil.\footnote{\textit{Ibid.}, November 21, 1979.}

Following bilateral agreements on textiles and steel, negotiated in the framework of the Multifiber Arrangement and of the Community's steel programme, there have been few cases of the application of safeguard measures in the European Common Market and none of them have involved developing countries.\footnote{Riedel and Gard, \textit{op. cit.}, Table 2.} And, although the practice of "occult" import restrictions by
national authorities has continued, there are indications of an easing on the part of the two countries, France and the United Kingdom, where protectionist actions had been the most prevalent. In this connection, reference may be made to the liberal attitude taken in regard to trade with the developing countries in the orientations of the VIIth Plan in France¹/ and to the turn toward liberalism in the United Kingdom following the advent of the conservative government of Margaret Thatcher.

At the same time, the International Monetary Fund has concluded that Japan significantly liberalized imports in 1978, involving the elimination of import quotas, tariff reductions in advance of the conclusion of the Tokyo Round negotiations, as well as the expansion of credit availabilities and improvements in credit conditions for imports.²/ The process of liberalization has continued in 1979, contributing to the rapid expansion of Japanese imports from the developing countries, albeit from a relatively low base.³/

After the proliferation of government aids to industry in the years following the oil crisis, changes in the opposite direction have occurred in this

³/ Between 1977 and 1978, the dollar value of Japanese imports of all commodities and of manufactured products, respectively, increased by 42.7 and 53.8 percent from Hong Kong, 22.8 and 43.4 percent from Korea, 26.5 and 43.7 percent from Singapore, and 35.7 and 56.7 percent from Taiwan. Increases were even larger in the first nine months of 1978, for which only data on total imports from the four Far Eastern countries are available. The relevant figures are: Hong Kong, 49.4 percent, Korea, 40.6 percent, Singapore, 53.2 percent; and Taiwan, 54.9 percent. (The author is indebted to Susan MacKnight of the United States-Japan Trade Council for providing him with the relevant information.)
regard also. First, in France decisions have been reached to reduce the number
of workers in its high-cost steel industry and to lower industrial subsidies
in general.\(^1\) Subsequently, the Conservative Government of Margaret Thatcher
has embarked on a programme of denationalization and has announced a cutback
in regional aids from $1.4 billion by $530 million over a period of three years.\(^2\)
Also, indications are that government intervention in industry is on the
decline in Japan in conjunction with the increased opening of its economy.
Finally, apart from shipbuilding, government intervention in industry has not
been prevalent in the United States.

As far as the establishment of *cartels* is concerned, the refusal
of the EEC Commission to accept the cartel for synthetic fibers proposed by
Commissioner Etienne Davignon\(^3\) has implications beyond this industry. The
decision has discouraged other industries, such as automobiles, chemicals,
shoes, zinc, pulp and paper, and hosiery, from proposing the establishment
of cartels they had reportedly contemplated in the event that the establishment
of the synthetic fiber cartel had been countenanced.\(^4\) Also, France has
ceased to promote its earlier proposals for world-wide "organized trade"
and efforts made to establish cartels on shipbuilding and steel in the
framework of the OECD have not met with success.

All in all, available information on non-tariff restrictions,
government aids to industry, and attempts at cartellization point to the

\(^1\) Cf. the declaration made by President Giscârd D'Estaing in *Le Monde*,
October 18, 1978, as well as subsequent statements by Prime Minister
Raymond Barre.

\(^2\) *Business Week*, August 6, 1979. See also the article in the October 16,
1979 issue of *The Wall Street Journal*, entitled "Going Private: Western
Europe Acts to Take More Firms Off the Public Dole."

\(^3\) *The Economist*, July 29, 1978.

\(^4\) Bela Balassa, "The 'New Protectionism' and the International Economy"
*op. cit.*, p. 425.
conclusion that, since early 1978, the trend toward increased protectionism in the developed countries has not continued further and, in some respects, it has even been reversed. These changes have, in turn, contributed to an upswing in the exports of manufactured goods from the developing countries to the developed countries. While the volume of these exports grew by only 7-8 percent in 1977, the increase was 15-16 percent in 1978.

Increases were especially pronounced in engineering products, where the value of the exports of the developing countries to the developed countries rose by 24 percent in 1977 and 37 percent in 1978, corresponding to a volume increase of about 15 percent in the first year and 30 percent in the second. And, notwithstanding the restrictions applied, the textile and clothing exports of the developing countries to the developed countries rose by 24 percent in value terms and by 8-9 percent in volume terms in 1978. This followed a near-stagnation in volume in the previous year, and compares with increases of 2-3 percent in the consumption of textiles and clothing in the developed countries.

These, relatively favorable, changes should not give rise to complacency. To begin with, import restrictions on textiles and clothing, steel, and several other products of interest to the developing countries remain in effect. Also, while recent events appear to reflect an increased understanding of the adverse effects of protectionism, the time-period elapsed is too short to speak of a durable reversal of protectionist trends.

Thus, economic changes, in particular the U.S. recession, as well as political developments, will influence actions that may be taken in the future, and sectoral interests continue to push for protection.

At the same time, in years to come, trade policy actions will be influenced by the rules established in the framework of the MTN. In the following, we will review the results of the Tokyo Round of negotiations from the point-of-view of the developing countries, examining actions related to tariffs first and the codes on non-tariff measures afterwards.

II. Tariff Reductions Under the Tokyo Round

The United States originally proposed a tariff cut of 60 percent on industrial products, whereas the European Common Market put forward a harmonization formula that would have cut higher tariffs to a greater extent. After protracted negotiations, the Swiss formula has been accepted, under which the rate of tariff reduction is calculated as the ratio of the old tariff to itself plus 14 percent. This formula provides for less of a tariff harmonization than proposed by the Common Market, and it results in a smaller average tariff cut than recommended by the United States. Under the formula, a 20 percent duty will be reduced by 59 percent, a 10 percent duty by 42 percent, and a 5 percent duty by 26 percent. These tariff cuts are extended to developing countries under the most-favored-nation (MFN) clause.

Preliminary estimates show an average tariff reduction on industrial products of 38 or 33 percent, depending on whether simple or import-weighted averages are calculated. Tariff reductions are smaller on industrial products of interest to the developing countries, for which the simple average of tariff reductions is 37 percent and their weighted average 26 percent.\(^1\)

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\(^1\) GATT, *The Tokyo Round of Multilateral Trade Negotiations*, Geneva, General Agreement on Tariffs and Trade, April 1979, pp. 120-22 -- to be cited as the GATT Report. It should be recalled that weighting by imports entails a downward bias as low tariffs leading to increased imports have a large weight and highly protective tariffs a low weight.
At the same time, developing countries would experience an erosion of preferences for products that receive GSP treatment. According to an UNCTAD report,

"practically all industrial products covered by GSP will be subject to MFN tariff cuts and there will be a significant erosion of existing GSP margins. And, in contrast to the GSP-covered products, there would be a less radical shift in the structure of tariffs affecting the bulk of the value of non-GSP-covered imports from the developing countries in the post-Tokyo period."

The same UNCTAD Report presented estimates on the effects of tariff reductions in the MTN on the industrial exports of the developing countries. According to the estimates, the $1.7 billion expansion in these exports due to tariff reductions on non-GSP products, or trade creation, would be more than offset by the $2.1 billion decline in exports due to the erosion of preferences under GSP, representing a decrease in trade diversion in the markets of the preference-granting countries vis-à-vis competing developed country exporters.  

The UNCTAD Report does not give an indication of the methodology utilized in arriving at these results. The methodology is described in a subsequent study that updated the UNCTAD estimates. It involves utilizing estimates of price elasticities of import demand derived in an earlier

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2/ Ibid., pp. 14-15 -- The estimates have been made on the basis of 1976 trade flows.

3/ Peter J. Ginman, Thomas A. Pugel, and Ingo Walter, "Implications of the Tokyo Round of Trade Negotiations for Exports from the Developing Countries," August 1979 (mimeo):
Brookings study,\(^1\) together with data on reductions in preference margins on the GSP exports; and reductions in tariffs on the non-GSP exports, of the developing countries, and relating these to the value of imports from competing developed countries in the first case and from developing countries in the second.\(^2\)

The authors estimate the decline in exports due to the partial loss of preference margins in GSP products at $1.8 billion, and the increase in industrial exports due to tariff-reductions on non-GSP products at $0.9 billion, giving rise to a net decline of $0.9 billion in the industrial exports of the developing countries to the developed countries.

The methodology used in arriving at the estimates seriously biases the results, however. This is because the decline in the exports of GSP-products due to the partial loss of preferences is calculated with respect to the exports of the competing developed countries while the new trade created is estimated with respect to the exports of the developing countries in non-GSP products.


\(^2\) The decline in exports due to reductions in preference margins has been estimated as the difference between trade diversion vis-à-vis competing developed countries under (a) pre-Tokyo round and (b) post-Tokyo round tariffs.

\[
DTD = \sum_{i \in N} M_{Ni} (\Delta t_i | 1 + t_i) - \sum_{i \in N_i} M_{Ni} (\Delta t_i' | 1 + t_i'),
\]

where DTD is the decrease in trade diversion, \(M_{Ni}\) the 1976 level of the imports of preference-giving countries from competing exporters, \(t_i\) and \(t_i'\) the nonpreferential tariffs before and after the Tokyo Round, and \(\Delta t_i\) and \(\Delta t_i'\) the preferential margins.

In turn, trade creation in non-GSP products (TC) is estimated as

\[
TC = \sum_{i \in b} M_{bi} (\Delta t_i | 1 + t_i'),
\]

where \(M_{bi}\) denotes the 1976 imports of non-GSP products from developing countries, \(t_i\) the pre-Tokyo Round tariff and \(\Delta t_i\) the reduction in the tariff.
products. Under the assumption of identical import demand elasticities and calculating with similar percentage rates of preference reduction and tariff reduction for GSP-and non-GSP products, respectively, the estimated decline in developing country exports of GSP goods exceeds the increase in their non-GSP exports since the exports of GSP-products by the competing developed countries is much greater than the exports of non-GSP products by the developing countries.

The trouble lies in the authors' failure to follow their own approach to its logical conclusion. Thus, they note that "the assumption underlying this approach is that the degree of substitutability between domestic products and those from all sources of imports (i.e. both developed and developing countries) embodied in elasticities for trade creation estimates holds as well for the trade diversion estimates."\(^1\) Now, while in the case of GSP products there is substitution against imports from competing suppliers, in the case of non-GSP products substitution takes place against domestic production in the importing countries. With the latter exceeding the former several times, it follows that the expansion of developing country exports in non-GSP products in response to tariff reductions in the MTN will much exceed the decline in their exports in GSP-products due to reductions in their preference margin.\(^2\)

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1/ Ibid., p. 5.

2/ In this connection, note that in the European Common Market extra-area imports account for only about 10 percent of the consumption of industrial goods and the comparable figures for the United States and Japan are 9 percent and 6 percent, respectively (United Nations, Commodity Trade Statistics and World Bank World Development Report, 1979). Note further that, excluding duty-free exports under MFN, the industrial exports of the developing countries to developed countries amounted to $28.9 billion in 1976, of which $10.4 billion were non-GSP products (GATT Report, p. 123), and these proportions have changed at the expense of GSP products following the reclassification effected by the United States in 1979. Also, the data do not allow for the application of tariff quotas by the European Common Market and Japan.
An additional shortcoming of the estimates is that the authors fail to allow for the limitations imposed on imports from developing countries under GSP. In the United States, the imports of a particular product from a beneficiary country cannot exceed $35 million or 50 percent of total U.S. imports of the product under the so-called "competitive need" formula. In turn, in Western Europe and Japan, imports under GSP are limited by tariff quotas.

In estimating the effects of a 50 percent across-the-board tariff cut, Baldwin and Murray related imports from both beneficiaries and non-beneficiaries to domestic demand and took account of the limitations imposed on imports under GSP in the developed countries. According to their results, the $32 million decline in the developing countries' 1971 industrial exports due to the partial loss of preference margins would be far exceeded by increases in exports due to tariff reductions on non-GSP products ($27 million) and the absence of limitations on the exports of GSP-products ($106 million), to which increases in the exports of developing countries that do not enjoy GSP-treatment ($268 million) should be added.1/ At the same time, Baldwin and Murray underestimate potential increases in the exports of non-GSP products by excluding textiles and shoes from the calculations.

Using the same methodology, but including textiles and shoes in the calculations, Murray has subsequently estimated the effects of the Tokyo Round on U.S. imports of industrial goods from Latin America. According to

1/ Robert F. Baldwin and Tracy Murray, "MFN Tariff Reductions and Developing Country Trade Benefits under the GSP," *Economic Journal*, March 1977, pp. 30-46 -- The non-beneficiary developing countries include most Southern European countries in the U.S. and EEC scheme, Taiwan in the EEC scheme, and, partially, Hong Kong in the Japanese scheme.
his results, U.S. imports of non-GSP products from Latin American countries would rise by $52 million from their 1978 level while the decline in GSP exports due to the partial loss of preferential margins would be only $10 million. The latter figure is smaller than the $24 million fall in GSP exports due to the loss of preferences on products that have been reclassified from the GSP to the non-GSP category on the basis of the "competitive need" formula in 1979. And, the expansion of Latin American exports due to the reduction of tariffs on these, recently reclassified, products has been estimated at $64 million.\(^1\)

These results are supported by Birnberg's estimates of the effects of a 60 percent across-the-board tariff undertaken by the developed countries. The results show a $866 million increase in the 1974-75 industrial exports of the developing countries, even though textiles have been excluded from the calculations, as against a $83 million decline in their exports due to the partial loss of preferential margins. And, manufactured exports to the United States have been estimated to increase by another $111 million as a result of the application of tariff reductions to items that have been excluded from GSP under the "competitive need" formula. Estimates of export expansion for products whose exports under GSP are limited by tariff-quotas have not been made for European countries and Japan.\(^2\)


\(^2\) Thomas B. Birnberg, "Tariff Reform Options: Economic Effects on Developing and Developed Countries" in Policy Alternatives for a New International Economic Order (William R. Cline, ed.), New York, Prager Publications to the Overseas Development Council, 1979, pp. 237-39 -- Birnberg has also made estimates for agricultural products on the assumption of a 60 percent tariff cut. But, tariff reductions on these products have apparently been substantially smaller and, in the absence of detailed information, an estimate cannot be attempted. It may be added that the developed countries granted significant tariff concessions on tropical beverages and spices but not on vegetable oil, sugar, and tobacco (GATT Report, p. 157).
We may conclude that the opposition expressed to MFN-type tariff reductions on the grounds that the partial loss of preference margins would more than offset the increased exports of the developing countries resulting from these tariff reductions is mistaken. Under reasonable assumptions, the latter will exceed the former several times. Further gains will be obtained by reason of the fact that MFN-type tariff reductions apply to products that have lost their GSP status in the United States as well as to products whose imports are limited by tariff-quotas in Western Europe and Japan.

An additional consideration is the fragility of the concessions under GSP as evidenced by the substantial shift from the GSP to the non-GSP category in the United States and by recent reductions in tariff quotas in the European Common Market. By contrast, tariff reductions in the framework of the Tokyo Round are "bound" in the sense that tariffs cannot be unilaterally raised again under GATT rules. Finally, while developing countries that "graduate" will lose GSP status, they will continue to benefit from MFN-type tariff reductions undertaken in the framework of the Tokyo Round.

III. The Codes on Nontariff Measures

In the postwar period, trade negotiations conducted in the GATT framework concentrated on reductions in tariff barriers.\(^1\) With reductions in tariff levels, the restrictive effects of existing nontariff barriers became increasingly apparent (the usual simile is with the iceberg emerging as the sea level recedes). Also, increases in imports resulting from tariff reductions gave rise to the application of new nontariff measures in favor of some adversely affected industries. Finally, in the years following the oil

\(^1\) In the immediate postwar years the OEEC, later transformed into the OECD, was, however, instrumental in eliminating quantitative import restrictions on manufactured goods in Western Europe.
crisis, the desire to improve the balance of payments and to increase employment led to the use of various nontariff measures.1/

The Tokyo Round represents an effort to limit the use and misuse of non-tariff measures and to establish international machinery of conflict resolution on their application. This has been done in the framework of codes dealing with subsidies and countervailing measures, customs valuation, import licensing, technical barriers to trade, and government procurement. The provisions of the individual codes will be discussed in the following, with emphasis given to their implications for developing countries.2/

Code on Subsidies and Countervailing Measures

Section B of Article XVI of GATT, added in 1955, contains the provision that "contracting parties shall cease to grant either directly or indirectly any form of subsidies on the export of any product other than a primary product." This provision has been subscribed to by the developed countries only and it has been honored in its breach as evidenced by the number of countervailing actions since taken. Countervailing actions, involving the imposition of duties not exceeding the rate of the subsidy, may be taken under Article VI of GATT, whenever subsidies "cause or threaten material injury to an established domestic industry, or ... retard materially the establishment of a domestic industry." Under a grandfather clause in

1/ Cf. Bela Balassa, "The 'New Protectionism' and the International Economy" op. cit., -- In the following, the expression "nontariff measures" will be utilized to refer to non-tariff barriers to trade, government aids to industry, and administrative measures that affect the conduct of international trade.

2/ The discussion will not cover the agricultural codes on beef and dairy products that concern few developing countries, the code on anti-dumping that basically aims at securing conformity with the Code on Subsidies and Countervailing Measures, and the code on safeguards on which no agreement has been reached. The latter will be discussed in Section IV below.
GATT, however, the United States has not applied the injury test;¹ in fact, the imposition of countervailing duties by the Treasury has been mandatory once the existence of foreign subsidization had been established.

The Agreement on Interpretation and Application of Articles VI, XVI, and XXIII¹ of the General Agreement on Tariffs and Trade (for short, the Code on Subsidies and Countervailing Measures) reaffirms the ban on export subsidies on industrial products, further extending this to mineral products. The Annex to the Code also provides an illustrative list of export subsidy measures.

The ban does not apply to domestic subsidies, although the signatories are exhorted to attempt avoiding the adverse effects of such subsidies on foreign industries. Thus, according to the Code,

"Signatories recognize that subsidies other than export subsidies are widely used as important instruments for the promotion of social and economic policy objectives and do not intend to restrict the right of signatories to use such subsidies to achieve these and other important policy objectives ... Signatories recognize, however, that subsidies other than export subsidies ... may cause or threaten to cause injury to a domestic industry of another signatory or serious prejudice to the interests of another signatory or may nullify or impair benefits accruing to another signatory under the General Agreement ... Signatories shall therefore seek to avoid causing such effects through the use of subsidies ..." (Article 11, Paras. 1 and 2).

The Code further provides for dispute settlement procedures concerning the use of export as well as domestic subsidies:

"Whenever a signatory has reason to believe that an export subsidy is being granted or maintained by another signatory in a manner inconsistent with the provisions of this Agreement /or/ that any subsidy is being granted or maintained by another signatory and that such subsidy either causes injury to its domestic industry, nullification or impairment of benefits accruing to it under the General Agreement, or serious prejudice to its interests, such signatory may request consultations with such other signatory" (Article 12, Paras. 1 and 3).

¹/ But, in extending the application of countervailing action to products that enter duty free, the 1974 Trade Act has introduced an injury test in such cases.

²/ GATT provides for a dispute settlement mechanism under Article XXIII, whenever subsidization has the effect of "nullifying and impairing" the benefit from tariff reductions accruing to a contracting party, but this provision has remained practically unused.
If a mutually acceptable solution is not reached, the matter may be referred to the Committee of Signatories that will make recommendations to the parties concerned and, "in the event the recommendations are not followed, it may authorize such countermeasures as may be appropriate, taking into account the degree and nature of the adverse effects found to exist" (Article 13, Para. 4). This authorization is expressed in discretionary language; thus, the Code does not allow for unilateral retaliation by signatories in the event that the Committee has not authorized countermeasures. Correspondingly, the use of countermeasures under Section 301 of the 1974 Trade Act would put the United States in violation of its obligation under the Code.1/

Developing countries are exempted from the obligation to forego the use of export subsidies and hence are not subject to any action by reason of the granting of export subsidies per se. Nor are developing countries subject to countervailing action in the event that their use of subsidies leads to the displacement of the exports of another signatory in third-country markets.

Article 14 of the Code further recognizes that "subsidies are an integral part of economic development programmes of developing countries" (Para. 1) and states that various measures of government intervention in the developing countries, such as government grants, loans, and guarantees, "shall not, per se, be considered subsidies" (Para. 7). And while "developing country signatories agree that export subsidies on their industrial products shall not be used in a manner which causes serious prejudice to the trade

1/ For such an interpretation, cf. MTN Studies 6, Part 1. A Report prepared at the Request of the Committee on Finance, United States Senate, Washington, D.C., August, 1979, pp. 195, 212. -- However, as noted below, export subsidies are subject to countervailing action if the injury test is met.
or production of another signatory" (Para. 3) and "a developing country signatory should agree or enter into a commitment to reduce or eliminate export subsidies when the use of such export subsidies is inconsistent with its competitive needs" (Para. 5), these are hortatory rather than mandatory provisions and do not create obligations for developing countries. Finally, the provision of Para. 8 that "the Committee shall, upon the request by an interested signatory, undertake a review of a specific export subsidy practice of a developing country signatory to examine the extent to which the practice is in conformity with the obligations of this Agreement" is balanced by the provision of Para 9 allowing for "periodic reviews of measures maintained or taken by developed country signatories under the provisions of this Agreement which affect interest of a developing country signatory."

Developing countries, too, are subject to countervailing action, however, if their subsidized exports cause "material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry" (Article 2, Para. 1, footnote 2). At the same time, through the adoption of this provision, the United States has agreed to apply an injury test as pre-condition for taking countervailing action. Also, in limiting the application of the injury test to a "like product" (Article 6, Para. 2), the conditions for the application of countervailing duties are more stringent under the Code than under present U.S. law applied in the event of the subsidization of products that enter duty free. 1/

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1/ Cf. MTN Studies 6, Part 1, p. 152.
From the point-of-view of the developing countries, the principal benefit to be obtained from the Code on Subsidies and Countervailing Measures is the application of the injury test by the United States, in the absence of which producers and labor unions have repeatedly petitioned for countervailing action in the past. It should be added, however, that the United States may refrain from applying the injury test with respect to countries that are not signatories to the Code and the latter could not participate in the dispute mechanism of the Committee of Signatories.1/

As noted above, the developing countries also enjoy "special and differential" treatment through the codification of their right to grant export subsidies, the exclusion of actions against them in the event that their subsidies adversely affect the exports of other signatories in third country markets, and the exclusion of certain measures they may apply from the subsidy category. In turn, the obligations taken by the developing countries in exchange for special and differential treatment under the Code remain rather vague.

Finally, developing countries may utilize the Committee procedure against developed countries if these provide export subsidies, utilize subsidies that are prejudicial to their interests, or take unilateral retaliatory measures. For example, they may request the Committee to consider the case of subsidies to shipbuilding by developed countries. The developing countries may also air their grievances during the course of the annual review of the implementation and operation of the Code. And, as in the case of all other Codes, possibilities are provided for amending the 1/

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1/ On possible challenges to the failure of the United States to apply the injury test to the case of a country that is a contracting party in GATT but is not a signatory to the Code, see MTN Studies 6 Part I, pp. 220-23.
Code "having regard, inter alia, to the experience gained in its implementation" (Article 19, Para. 7).

Code on Customs Valuation

As stated in its preamble, the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade (the Code on Customs Valuation) reflects the recognition of "the need for a fair, uniform, and neutral system for the valuation of goods for customs purposes that precludes the use of arbitrary or fictitious customs values." According to a Congressional document, it "was prompted, in large part, by longstanding complaints about U.S. valuation practices and by the desire to establish an international valuation system which would be used by all of the world's major trading countries."¹/

The Code provides a primary valuation standard based on the transaction value of imported goods and several alternative standards that are resorted to in a prescribed order whenever customs value cannot be determined under the higher ranking standard. The application of these standards will affect the valuation of about one-fifth of United States imports, including items, such as benzenoid chemicals, rubber and plastic shoes, and wool knit gloves, the customs valuation of which is presently based on the American Selling Price (ASP), as well as items on the so-called Final List, among which ball and roller bearings and certain pneumatic tires are said to be valued materially higher for customs purposes than transaction value.²/

The application of the Code will also represent a substantial reduction of Canadian and New Zealand tariffs that use a different valuation standard. It will, however,

¹/ MTN Studies 6, Part 2, p. 3.
²/ Ibid., p. 21.
make little difference for tariffs levied by the EEC and by other countries applying the Brussels Definition of Value (BDV).

At the same time, the application of the new standards will have beneficial effects overall by ensuring consistency, transparency, and simplicity in the valuation of imports. It will also permit avoiding abuses that have involved arbitrarily raising customs values by national authorities in the past.

In order to ensure that national practices conform to the Code, a Committee on Customs Valuation, assisted by a Technical Committee on Customs Valuation, is established to handle disputes. The Committee may authorize adversely affected parties to suspend the application of the Code to parties that have not ceased to follow action contrary to the Code. Provisions have further been made for an annual review of the implementation and operation of the Code.

For the reasons noted, the application of the Code by the developed countries will benefit the developing countries. At the same time, these countries are to receive technical assistance in implementing the Code; they may postpone implementation for five years; and they may delay the application of the provisions pertaining to trade between related parties for another three years.

Developing countries do not consider the delays provided in the proposed Code sufficiently long and have submitted an alternative text, proposing a ten-year extension instead. The alternative text also gives greater latitude to national customs authorities to value transactions by related parties (mainly transactions between multinational corporations and their subsidiaries).

**Code on Import Licensing**

Recognizing that "the inappropriate use of import licensing procedures may impede the flow of international trade," the stated aim of the Agreement on
Import Licensing Procedures is "to simplify, and bring transparency to, the administrative procedures and practices used in international trade, and to ensure the fair and equitable application and administration of such procedures and practices." The Code requires that "the rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner" (Article 3). It also calls for transparency and simplicity in regard to import licensing procedures and for the avoidance of practices used by some countries, where licenses are refused because of minor documentation errors or minor variations in value or quantity whether automatic or non-automatic. The Code does not, however, affect the existence of import licensing.

Automatic licensing (i.e. import licensing where approval of application is freely granted) "shall not be administered in a manner so as to have restricting effects on imports subject to automatic licensing," and "any person, firm or institution which fulfils the legal requirements of the importing country ... shall be equally eligible to apply for and to obtain import licenses," which "shall be approved immediately upon receipt, to the extent administratively feasible, but within a maximum of ten working days" (Article 13).

The Code further calls for transparency and simplicity in the administration of non-automatic import licenses and for their equitable distribution. In the allocation of these licenses "special consideration should be given to those importers importing products originating in developing countries and, in particular, the least developed countries" (Para. 141). Developing countries will also benefit from the simplification and greater domestic transparency of procedures applied in the administration of import licenses that has been used to protective effect by European countries and Japan.
The developing countries may make use of the dispute settlement mechanism operated by the Committee of Signatories to ensure that they receive special consideration in the allocation of non-automatic import licenses to developed countries. They may also attempt to bring under the Code the so-called "voluntary export restraints" that generally require export licenses or visas as the condition of importation.  

In the event that the Committee's recommendations are not followed, it may authorize the suspension of obligations under the Code or the adversely affected parties may resort to Article XXIII of GATT. Finally, the Committee will review as necessary, but at least once every two years, the implementation and the operation of the Code.

**Code on Technical Barriers to Trade**

According to Professor Baldwin, "the customs valuation and import licensing problems faced by exporters and importers are often child's play when compared with those arising from the many product standards with which these traders must contend." In fact, there is a bewildering array of technical regulations and standards, and governments have recently added new standards concerning energy efficiency and the environment to the traditional health, sanitary, and product-safety standards.

Technical regulations and standards, as well as procedures pertaining to testing and codification, constitute barriers to international trade.


in the event that they are used with a protectionist intent as well as in cases when the cost of compliance is greater for imported than for domestically produced goods. The cost of compliance is particularly burdensome for developing countries, given their more limited information-gathering, engineering, and marketing capabilities.\(^1\) Now, to the extent that this cost does not increase proportionally with volume, developing countries with smaller export volumes will bear a greater burden.

According to its Preamble, the Agreement on Technical Barriers to Trade aims "to ensure that technical regulations and standards, including packaging, marking, and labelling requirements, and methods for certifying conformity with technical regulations and standards do not create unnecessary obstacles to international trade." For this purpose, the Code calls on the signatories to adopt existing international technical regulations and standards and to contribute to the development of such regulations and standards. In the absence of international regulations and standards, the signatories should frame their national regulations and standards in terms of performance rather than design or descriptive characteristics that had been used to protective effect and to provide information on these standards and regulations to interested parties. Furthermore, imported products should be accepted for testing under conditions not less favorable than domestic products and certification systems should not be formulated or applied with a view to creating obstacles to international trade. In all these regards, national governments should ensure compliance by local government and non-governmental bodies as well.

The Code makes exceptions for developing countries that "should not be

expected to use international standards as a basis for their technical regulations or standards, including test methods, which are not appropriate to their development, financial and trade needs" (Article 12, Para. 4). "It is further recognized that the special development and trade needs of developing countries, as well as their stage of technological development, may hinder their ability to discharge fully their obligations under this Agreement" (Article 12, Para. 8). Correspondingly, these countries may receive "specified, time-limited exceptions in whole or in part from obligations under this Agreement" (Ibid). Finally, the developed countries should "provide technical assistance to developing countries to ensure that the preparation and application of technical regulations, standards, test methods, and certification systems do not create unnecessary obstacles to the expansion and diversification of exports from developing countries" (Article 12, Para. 7).

The application of the Code on Technical Barriers to Trade by the developed countries will provide benefits to the developing countries, the exports of which have been adversely affected by the existence of such barriers. Apart from increased information and technical assistance they are to receive under the Code, the developing countries are to benefit through the introduction of rules that aim at avoiding the use of technical regulations, standards, test methods, and certification system to protective effect. At the same time, they may use the grievance procedure under the Code, involving resort to Article XXIII of GATT, in order to ensure that its provisions are applied in practice. Finally, in subscribing to the Code, developing countries would take part in the annual reviews of its operation and implementation, in the periodical reviews of the special and differential treatment they are to receive under the Code, as well as in the tri-annual reviews that permit
adjusting the rights and obligations "where necessary to ensure mutual economic advantage and balance of rights and obligations" (Article 15, Para. 8).

**Code on Government Procurement**

Government procurement -- the purchase of goods and services by governmental entities for their own consumption -- is expressly excluded from the application of GATT rules, under which foreign suppliers receive national and nondiscriminatory treatment. With the rising share of governmental expenditure in GNP and the important role of publicly-owned transportation and communication facilities and utilities in most countries, this exception to GATT rules has increasingly become a limiting factor in international trade.

The United States discriminates against foreign suppliers under the Buy American Act that presently provides a 6 percent price advantage to domestic suppliers (12 percent to suppliers in depressed areas) while the Defense Department gives U.S. producers a 50 percent preference. In turn, other developed countries tend to rely on administrative action to favor domestic over foreign suppliers and may even limit tenders to domestic firms.

The Agreement on Government Procurement aims at liberalizing formal as well as informal methods of government procurement. Its Preamble states that "laws, regulations, procedures and practices regarding government procurement should not be applied so as to afford protection to domestic products or suppliers and should not discriminate among foreign products or suppliers."\(^1\) These objectives are to be served by providing national treatment and applying the MFN clause to foreign suppliers of products purchased by governmental entities subject to the Code above a limit of SDR 150,000 (approximately US$200,000).

\(^1\) The Code covers services only to the extent that these are involved in the purchase of products -- The list of governmental entities subject to the Code is provided in an annex appended to it.
The Code calls upon the signatories to state technical specifications in terms of performance rather than design, to use international standards whenever available, and to provide for open tendering procedures. It provides detailed rules of how tenders should be invited and how choice among bidders should be made. Furthermore, information requirements are specified, with the aim of ensuring the transparency of the process of public procurement.

The Code sets up machinery for consultation and for the resolution of disputes on government procurement. Whenever a mutually satisfactory solution is not reached, the Committee of Signatories will make recommendations for actions to be taken. If the Committee's recommendations are not accepted, it may authorize retaliation by the adversely affected party. The Code also provides for the annual review of its implementation and operation as well as for a tri-annual review "with a view to broadening and improving the Agreement on the basis of mutual reciprocity having regard to the provisions ... relating to developing countries." (Part IX, Article 6(b)).

The provisions in question aim to "facilitate increased imports from developing countries, bearing in mind the special problems of the least developed countries and those at low stages of economic development" (Part III, Article 3). Under the application of MFN rules, this does not however entail granting preferential margins, unless the commodities in question are GSP-products. Rather, it involves providing technical assistance and setting up information centers "to respond to reasonable requests from developing country parties for information relating to, inter alia, laws, regulations, procedures and practices regarding government procurement ..." (Article 10). These provisions also apply to suppliers in least-developed countries that are not signatories of the Code.
The Code further limits the obligations taken by developing countries. These countries may negotiate exclusions from the rule on national treatment with respect to particular governmental entities or products and may request the Committee to grant such exclusions once the Code comes into effect.

IV. Policy Actions by Developing and by Developed Countries

The Codes on Non-tariff Measures and the Developing Countries

The Codes on non-tariff measures establish rules for permissible and nonpermissible behavior, determine information requirements for ensuring the transparency of the regulations applied, and provide for dispute settlement and surveillance procedures. They also call for periodical, mostly annual, reviews of the implementation and the operation of the Codes. Furthermore, the Codes on Technical Barriers to Trade and on Government Procurement envisage holding tri-annual reviews with the aim of effecting modifications in the Codes. And, every Code contains a provision for possible future amendments, "having regard, inter alia, to the experience gained in its implementation."

The dispute settlement and surveillance procedures have the function of avoiding violations and assuring the application of the Codes. While the dispute settlement mechanism was not working well in GATT, the establishment of a Committee of Signatories for each of the Codes, and the care taken in defining the procedures to be applied, provide possibilities for its efficient operation in the future. In this regard, the agreement reached by the United States and the Common Market to settle their dispute on the alleged subsidization of synthetic fibers by the United States in the framework of GATT is a favorable sign.1/

The developing countries may importantly contribute to the successful operation of the Codes in general, and the policing of the actions taken by the developed countries in particular, by participating in the dispute settlement and surveillance procedures. Such participation, in turn, presupposes that developing countries subscribe to the Codes. This is also a pre-condition for participation in the periodical reviews that provide a forum to examine the practical implementation of the Codes and, in the cases indicated, to effect revisions. And, subscribing to the Codes will allow the developing countries to invoke the provisions for future amendments of the Codes.

Participation in dispute settlement procedures and in the review of the operation of the Codes is of interest to the developing countries even in cases such as the Code on Custom Valuation, where the benefits by-and-large accrue to participants and non-participants alike. At the same time, in most instances, the benefits of the Codes are restricted to the signatories. Subscribing to the Codes is also a pre-condition for enjoying the special and differential treatment available to developing countries, the only exception being the Code on Government Procurement which includes the least developed countries among its beneficiaries even if they do not subscribe to the Code.

Among the individual Codes, the Code on Subsidies and Countervailing Measures is of particular interest to the developing countries. This is not only because they are excepted from particular obligations but also because the United States government interprets the Code so that the material injury clause applies solely to countries that subscribe to it. And, the developing countries may utilize the Committee procedure to bring up the question of subsidies to shipbuilding, and of industrial subsidies more generally, by developed country governments.
Developing signatories may further utilize the procedures established under the Code on Import Licensing to initiate action in the so-called voluntary export restraint cases. At the same time, developing country signatories can exert pressure on the developed countries to ensure that they do not use technical regulations and standards to protective effect and provide information on their application. Finally, while the provisions of the Code on Government Procurement extend to non-signatory least-developed countries, it is the industrializing developing countries that have the best chance to benefit from the Code.

The Framework Group

It appears, then, that the benefits derived from the general provisions of the Codes, from special and differential treatment, and from participation in dispute settlement and surveillance procedures point to the desirability for the developing countries to subscribe to the Codes on non-tariff measures. This conclusion is strengthened if we consider that participation will make it possible for the developing countries to contribute to shaping the Codes in the process of their practical application and modifying them through future revisions and amendments.

Similar considerations apply to the statements and declarations formulated by the so-called framework group. These statements and declarations, drafted at the behest of Brazil, establish a legal basis for providing preferential treatment to developing countries and specifically deal with trade measures taken for balance-of-payment purposes and with safeguard actions for development purposes.

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2/ The following discussion will not cover the proposed Understanding Regarding Export Restrictions and Charges on which no agreement has been reached.
To begin with, the so-called "enabling clause" in the statement on Differential and More Favorable Treatment; Reciprocity and Fuller Participation of Developing Countries provides a legal basis for "differential and more favorable treatment" of developing countries. Apart from special and differential treatment in the framework of the Codes on nontariff measures, this clause pertains to tariff preferences granted by developed countries, preferential arrangements among developing countries, and the special treatment of the least developed countries.

The "particular situation and problems" (Para. 6) of the least developed countries are also recognized in the statement as is the lack of applicability of the principle of reciprocity to relationships between developed and developing countries. Thus,

"The developed countries do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariff and other barriers to the trade of developing countries ... Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are inconsistent with the latter's development, financial, and trade needs" (Para. 5).

Developing countries are to receive special and differential treatment under the declaration on Trade Measures Taken for Balance-of-Payment Purposes, too. In applying such measures, a developed country signatory should "take into account the export interests of the less-developed contracting parties and may exempt from its measures products of export interest to those contracting parties" (Para. 2). Furthermore, in the course of its consultations, the Committee on Balance-of-Payments Restrictions should "give particular attention to the possibilities for alleviating and correcting the balance-of-payments problem" (Para. 12) of developing countries through measures taken by other (in practice, developed) countries to facilitate the expansion of export earnings.
In turn, the declaration on Safeguard Actions for Development Purposes extends the scope of application of such actions by the developing countries -- previously limited to the establishment of particular industries -- to "the development of new or the modification or extension of existing production structures with a view to achieving fuller and more efficient use of resources in accordance with the priorities of their economic development" (Para. 1). "Difficulties in the application of ... programmes and policies of economic development" (Para. 2) also represent possible grounds for the developing countries to take actions that conflict with the obligations they have assumed in GATT.

The "Graduation" Clause

The statements and declarations drafted by the framework group recognize the need for developing countries to receive special and differentiated treatment and provide a legal basis for such treatment. At the same time, the relevant provisions remain rather vague and their practical application will importantly depend on the effectiveness of the procedures for consultation and dispute settlement.

According to the Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance, "contracting parties reaffirm their resolve to strengthen and improve the effectiveness of consultative procedures." It is further stated that "during consultations, contracting parties should give special attention to the particular problems and interests of less-developed contracting parties." Developing countries may also request the intervention of the Director-General of GATT in the event that a complaint they have brought against a developed country has not
been otherwise resolved. Finally, the statement on Differential and More Favorable Treatment; Reciprocity and Fuller Participation of Developing Countries envisages a "review of the operation of these provisions, bearing in mind the need for individual and just efforts by contracting parties to meet the development needs of developing countries and the objectives of the General Agreement" (Para. 9).

At the same time, questions have been raised concerning the "principle of graduation" contained in the statement dealing with the "enabling clause."

"Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement through participation in the operation of the GATT System" (Para. 7).

According to the UNCTAD Report, "the developing countries are seriously concerned with the acceptance of this principle and reject its application. Not only are there no universally accepted criteria for such categorization, but the principle would permit developed countries to discriminate among developing countries in an arbitrary and unilateral measures."\(^1\)

Such a negative view is not warranted, however.

To begin with, the provision in question does not allow for unilateral and discriminatory actions on the part of the developed countries. Nor do signatory developing countries make any commitments as regards "graduation." They only "expect to participate more fully" in GATT, once their economic development so warrants without taking any obligations as to when and how this will happen.\(^2\) This provision will need to be interpreted

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\(^1\) Op. Cit., p. 33.

\(^2\) For a similar view, see MTN Studies 6, Part 4, p. 165.
by the signatories, when the participation of the developing countries in the relevant Committee is again of importance.

Last but not least, the idea underlying the rejection of the principle of graduation is that a two-tier system in the world economy, with corresponding rights and obligations, is an immutable fact. Yet, history tells us that countries do graduate from developing to developed country status. In the postwar period, Japan, Israel, and Ireland have made the transition and Greece, Portugal, and Spain are in the process of doing so in conjunction with their entry into the European Common Market.

More generally, it should be recognized that in the process of development the economic conditions of the individual countries change, and so does the need for particular policies. For example, while the preferential treatment of the manufacturing sector may be desirable at earlier stages of development on infant industry grounds, successful industrialization will progressively reduce the economic justification of such treatment. Adopting a more open trade system will then be in the well-conceived interest of the countries in question.

The least-developed countries, too, have an interest in the more industrialized developing countries adopting an increasingly open trade system. For one thing, such a system would contribute to shifts in export composition towards more sophisticated and skill or capital-intensive products in line with changing comparative advantage, thereby providing opportunities for the expansion of the exportation of simpler and unskilled-labor intensive products by the least-developed countries. For another thing, trade liberalization would permit the least-developed countries to sell on the markets of their more industrialized brethren.

Finally, the political decision-making process in the developed countries is not favorable to the maintenance of unilateral concessions in regard to countries that have established strong positions in world trade. A refusal of such countries to take any steps towards the establishment of a more open trade system may then lead to protectionist pressures in the developed countries, with adverse effects for all concerned.  

Policies by the Developed Countries

The next question concerns the actions developed countries may take in regard to the international trade system. Proposals for a new round of negotiations in the framework of UNCTAD or elsewhere are hardly practical. Such an effort, occupying decision-makers and a large technical staff over several years, could not be mounted immediately following the completion of the Tokyo Round of negotiations that began in the wake of the September 1973 Tokyo Declaration.

Rather, at this juncture, one should impress upon the developed countries to abide by the obligations they have taken, to ensure the functioning of the dispute settlement and surveillance mechanism, and to accept the resolution of disputes that concern them. And, as various provisions of the individual Codes and the texts prepared by the framework group involve considerable ambiguity, the developed countries should be induced to accept interpretations that are favorable to the developing countries.

1/ For a detailed discussion of the "graduation" issue, followed by recommendations for dealing with it, see Isaiah Frank, "The 'Graduation' Issue on Trade Policy Towards LDCs" World Bank Staff Working Paper No. 334, Washington, D.C., June 1979.

2/ For such a proposal, see UNCTAD Report, pp. 37-38.
Apart from being open to different interpretations, the individual Codes and the texts prepared by the framework group are not immutable. Thus, all the Codes are subject to periodical reviews, two of them specifically provide for revisions and every Code is open to subsequent amendments. As noted above, the statement on Differential and More Favorable Treatment; Reciprocity and Fuller Participation of Developing Countries also calls for a review of its provisions "bearing in mind" the need "to meet the development needs of developing countries." Furthermore, in the Understanding Regarding Notification, Consultation, Dispute Settlement, and Surveillance, "the Contracting Parties agree to conduct a regular and systematic review of development in the trading system," again with special reference to "matters affecting the interests of less-developed contracting parties." Such reviews provide an opportunity to safeguard the interests of the developing countries, and to exert pressure for trade liberalization by the developed countries.

The Draft Code on Safeguard Measures

The developed countries also have a responsibility to work towards the establishment of equitable safeguard procedures. The application of safeguard measures is presently regulated by Article XIX of GATT. Article XIX has rarely been utilized, however, in part because the country invoking it risks retaliation and in part because it does not permit discrimination among exporters. Instead, countries have employed protective measures in the form of Orderly Marketing Agreements and Voluntary Export Restraint programs.

The draft Code on Safeguard Measures, formulated in the framework of the Tokyo Round negotiations, was to bring all types of safeguard actions back into the GATT framework. It defined the criteria that would have to be met to
justify safeguard action; stated the procedures to be followed in taking such action; and provided for a consultation and dispute settlement mechanism.

In the event, an agreement on the Safeguard Code has not been reached. While this has largely been due to the differences in the positions of the EEC and of the developing countries on the question of selectivity, there are other issues left to be settled. They include the need for a multinational forum to countenance the application of safeguard measures; the length of the time period of application of these measures; and the taking of domestic measures of adjustment by developed countries.

An agreement on the application of safeguard measures is a task of great importance. Since the failure of the negotiating parties to agree on the Safeguard Code in the MTN, a step in this direction has been taken by the creation of a Committee in GATT that is charged to evolve a code. From the point-of-view of the developing countries such a code should fulfil certain requirements.¹/

The principal requirement for a system of safeguards should be their temporary nature. This would require setting time limits for the application of safeguards. Also, in order to ensure that adjustment does take place, the extent of the safeguards should diminish over the period of their application according to a pre-determined time table.

If time limits are set for the application of safeguards, one may forego the requirement that a multinational forum countenance their imposition. An extension of the time period of their application should, however, be

¹/ The starting point for the following discussion is Bela Balassa, "The 'New Protectionism' and the International Economy," op. cit., pp. 438-71.
subject to approval by such a forum. Extension should be granted only in exceptional circumstances and be dependent on a plan for domestic adjustment. They should not be repeated.

Imposing time limits on the application of safeguards would also reduce objections to selectivity that, at any rate, has been practiced by developed countries. At the same time, selectivity should be made dependent on the fulfilment of well-defined conditions. It should be applied, in the first place, to developed country exporters and it should under no circumstance be invoked against least-developed countries. As far as other developing countries are concerned, selectivity should be subject to the requirement that their share in the domestic consumption of the product in question in the importing countries does not decline.

Conclusions

After reviewing recent developments in the trade policies of the developed countries, this paper has set out to evaluate the results of the Tokyo Round negotiations from the point-of-view of the developing countries. It has been shown that the tariff reductions undertaken by the developed countries, and extended to the developing countries, will benefit the exports of the latter and this benefit will be offset only in part by the erosion of preferences provided under the GSP.

The developing countries will also derive benefits from the application of the texts formulated by the so-called framework group that provide a legal basis for "special and differentiated treatment" and allow them to apply measures for balance of payments purposes and safeguard actions for development purposes. For reasons noted above, these conclusions are not affected by the eventual introduction of a "graduation" procedure.
In November 1979, the Contracting Parties to GATT adopted the tariff reductions negotiated in the Tokyo Round and accepted the text of the statements and declarations drawn up by the framework group, which thus became part of GATT. Argentina alone among developing countries has so far subscribed to the Codes on nontariff measures, however. Yet, as shown above, it is in the interest of the developing countries to subscribe to the Codes, the benefits of which are generally restricted to the signatories as is special and differential treatment for the developing countries.

One should not interpret these conclusions to imply that the Codes on non-tariff measures would be without shortcomings. But, just as it would serve no useful purpose to speculate that the Codes could have been more favorable to the developing countries had they more effectively participated in the negotiations, from the point-of-view of these countries it would be counter-productive to forego participation on the grounds that the Codes have not lived up to their expectations. At any rate, while the Codes cannot be modified at the present time, the signatory developing countries can contribute to shaping them in the process of practical application and can utilize the possibilities provided for future revisions and amendments. In fact, it would be desirable that a substantial number of developing countries subscribe to the individual Codes, so that they can act as a pressure group both to ensure the implementation of the provisions which are of interest to them and to contribute to the favorable interpretation and modification of the Codes.

In turn, the developed countries should abide by the obligations they have taken, should ensure the functioning of the dispute settlement and surveillance mechanism, and accept the resolution of disputes that concern
them. Most importantly, these countries should make an effort towards the establishment of equitable safeguard procedures.
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