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**Implications of the Uruguay Round on
Tanzania's Development**

By Marwa Kisiri

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EXECUTIVE SUMMARY:

Tanzania ratified the Final Act of the Uruguay Round in early 1994; and became one of original members of WTO. Tanzania and other developing countries by acceding to WTO have committed themselves to higher levels of multilateral obligations by way of notifications; surveillance of policies and compliance requirements stipulated in the agreements and instruments constituting the WTO were bound by fewer agreements. In terms of the general implications, the conclusion of the Uruguay Round as a major global agreement of the 20th century creates an environment of trade and economic predictability which has to be viewed positively as regards its contribution to the creation of rules for an orderly international trading system with less tensions and trade restrictions. Due to the tremendous momentum of liberalization that emanates from the Round, the Uruguay Round also opens up new long-term trading opportunities in major markets of, for example, the USA and Japan, as well as South-South trade. With the liberalization of trade comes competition which can, at the same time, lead to an increase in economic efficiency in terms of resource allocation and utilization.

KEY WORDS: *Uruguay Round*

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LIST OF ABBREVIATIONS

ACP	-	African, Caribbean and Pacific States
ASEAN	-	Association of South East Asian Nations
CAP	-	Common Agricultural Policy
COMESA	-	Common Market for Eastern and Southern Africa
DSU	-	Dispute Settlement Understanding
EES	-	European Economic Space
EFTA	-	European Free Trade Area
EU	-	European Union
FAO	-	Food and Agricultural Organization
FOGS	-	Functioning of the GATT Systems
GATT	-	General Agreement on Tariffs and Trade
GATS	-	General Agreement on Trade in Services
GNG	-	Group on Goods
GNS	-	Group on Services
GSP	-	Generalized System of Preferences
GSTP	-	Global System of Trade Preferences
IBID	-	International Bank for Reconstruction and Development
LCD	-	Least Development Countries
MFN	-	Most Favoured Nation
MTN	-	Multilateral Trade Negotiations
MTO	-	Multilateral Trade Organization (later on became the WTO)
NAFTA	-	North American Free Trade Area
NICs	-	Newly Industrialized Countries
NTMs	-	Non Tariff Measures
OECD	-	Organization for Economic Cooperation and Development
PSI	-	Pre-shipment Inspection
PTA	-	Plurilateral Trade Agreement
SADC	-	Southern Africa Development Community
SPS	-	Sanitary and Phytosanitary
TBT	-	Technical Barriers to Trade
TDR	-	Trade and Development Report
TNC	-	Trade Negotiations Committee
TPRM	-	Trade Policy Review Mechanism
TRIMs	-	Trade Related Investment Measures
TRIPs	-	Trade Related Aspects of Intellectual Property Rights
UNCED	-	United Nations Conference on Environment and Development
UNCTAD	-	United Nations Conference on Trade and Development
UNDP	-	United Nations Development Programme
WIPO	-	World Intellectual Property Organization
WHO	-	World Health Organization
WTO	-	World Trade Organization
VERs	-	Voluntary Export Restraints

PREFACE

Prior to the Uruguay Round Agreement, Tanzania as a contracting party to GATT, and being in the list of twenty four Least Developed Countries, was receiving preferential treatment under UNCTAD's Generalized System of Trade Preferences (GSTP) and under the European Community's Lome Convention. In essence, therefore, these countries had no special attraction to join fresh negotiations.

Other countries, however, had pressed for the convening of the Round. Among the reasons was the fact that increasingly more countries were adopting unilateral measures in their handling of external trade. At the same time, the rising number of GATT members from 23 in the 1940s to 80 in the mid-1980s and the changing composition and structure of international trade in goods called for these measures. There was also a tendency towards regionalism and there were "new issues that were tugging at the hearts of countries (like the USA) which were desirous of protecting their technologies, patents, copyrights and other aspects of intellectual property. GATT rules also needed re-examination; especially those that dealt with balance of payment problems, subsidies, dispute settlement, and how to remove technical barriers to trade.

It is not so surprising therefore, that due to the complex issues that needed to be resolved, the negotiations were concluded in April 1994, four years after the December 1990 date that had earlier been set for the conclusion of the Round.

This paper is an initial attempt to assess the implications of the Uruguay Round on Tanzania's development.

I. BACKGROUND

In the late hours of the evening of 20 September 1986 at the Punta del Este resort town of Uruguay, the ministers responsible for trade from some 100 countries agreed to launch the eighth Round of Multilateral Trade Negotiations (MTNs) under the General Agreement on Tariffs and Trade (GATT). The Round -- called the Uruguay Round -- was planned to last for four years. The United Republic of Tanzania was represented by the then Minister for Industries and Trade, Mr. B. P. Mramba who was assisted by two senior government officials. This paper attempts an initial evaluation of the Round -- in terms of its implications on the socio-economic development of Tanzania based on the experience of the author who participated in the negotiations. The negotiations were concluded in April 1994.

Tanzania belongs to the category of Least Developed Countries; the LDCs, which according to the United Nations, presently number 47. The economic structure of the country is still dominated by agriculture, with a big share of the national product and foreign trade being accounted for by this sector followed by the manufacturing sector and other service-providing industries such as those dealing with tourism, shipment, rail and general transport. In terms of trade, the agricultural sector is characterized by the existence of a few agricultural export products (cotton, coffee, tea, and tobacco); which, in 1990, accounted for almost 70% of the export earnings. On the side of imports, a large part is accounted for by manufactured items such as machinery, chemicals and finished products. The direction of trade, remains typically dominated by a few traditional import and export markets namely the European Union (EU), Japan and USA. There are efforts to diversify this trend through programmes of trade especially within the sub-regional framework under the Southern African Development Community (SADC) and the Common Market for Eastern and Southern Africa (COMESA)¹.

In undertaking an Uruguay Round evaluation exercise in the context of Tanzania, the following issues (as per the sections below) will be presented in this paper:-

- The specific problems that led to the launching of the Uruguay Round (the Multilateral Trade Negotiations/MTNS);
- The process of negotiations and the main elements of the Final Act embodying the Uruguay Round results;
- An initial assessment of the outcome's implications; and
- Concluding remarks.

¹ See *Trade Statistics* (various issues), of the Central Bureau of Statistics, URT.

The launching of the Round in 1986 was in fact, a culmination of a process of consultations, discussions and the work of a Preparatory Committee between 1985-1986, under the General Agreement on Tariffs and Trade. The factors/problems that led to the demand of the Round are multifaceted and varied. Mainly, these originated from a number of developed countries led by the USA and most of which are already documented in the available literature on this particular aspect of the Round. They include:-

- Market Access;
- Tendency to Unilateralism;
- GATT Rules;
- Regionalism; and
- New Issues.

1.1. Market Access

Within the philosophy of GATT, contracting parties that have undertaken trade and tariff negotiations through the previous seven Rounds conducted since GATT came into existence in 1948. Although these previous Rounds resulted in a substantial reduction in global trade tariffs, trade protectionism and tariffs still remained high in a number of cases; for example in agricultural products, as well as in the textile and clothing trade. There were also incidences of tariff escalation in the case of some products manufactured in developing countries. The existence of tariffs or tariff peaks and escalation was thus a source of concern which deserved urgent attention; how was trade to be conducted amongst the contracting parties under GATT? For example, estimates by GATT show that the pre-Uruguay Round tariff treatment of imports from African countries by developed countries was characterized by significantly high tariffs in some cases in the manner shown in Table 1.

The African experience was sometimes even more pronounced in the treatment meted out by many other contracting parties (besides the developed countries) such as the more advanced developing countries like the Newly Industrialized Countries (NICs), the Association of South East Asian Nations (ASEAN), and those in Latin America. It should be added here that an equally important problem in international trade relations concerns the increasing incidence of non-tariff measures (NTMs) that arose as the successive rounds took place. The NTMs exerted considerable constraints in the conduct of trade and the application of GATT rules (e.g. on non-discrimination). The need for launching negotiations in this area therefore contributed to the pressure for new negotiations.

Table 1: Tariff Treatment for Imports from African Countries

	Value	Pre UR			Post UR		
		0%	0.1-3%	>3%	0%	0.1-3%	>3%
European Union's Imports From							
South Africa	13058.9	86	5	9	93	2	5
Other Africa	13056.3	43	13	44	49	15	36
Total Africa	26115.2	65	9	26	71	9	20
Japan's Imports From							
South Africa	1737.6	69	9	22	83	5	11
Other Africa	1364.9	18	7	75	24	40	35
Total Africa	3102	47	8	45	57	21	22
United States's Imports From							
South Africa	1501.9	71	17	11	75	15	10
Other Africa	1374.7	62	12	26	69	9	22
Total Africa	2876.5	67	15	18	72	13	15

Source: Table 6, Tunis Document.

1.2. The Tendency Towards Unilateralism

The period prior to the launching of the Uruguay Round witnessed an increase in the adoption of policies which promoted unilateralism and bilateralism in the conduct of external trade by some contracting parties. One such measure was the US Super 301 legislation under which countries viewed as unfair trading partners were targeted for trade retaliation. This and other such measures were seen to contradict the principles of multilateralism and non-discrimination as practiced under GATT and contributed to the consensus that a new round of multilateral trade negotiations be launched.

1.3. GATT Rules

Over its years in existence, GATT has been based on certain fundamental rules in the way trade should be conducted among its contracting parties. These rules, as laid down in various GATT articles (for instance, how to deal with balance of payments problems, subsidies, dispute settlement, and how to remove technical barriers to trade), were either becoming less effective or deserved re-examination. This was because of the constantly increasing global trade, the

enlargement of GATT membership which rose from the original 23 in the 1940s to around 80 contracting parties by the mid 1980s; and equally important, the changing composition and structure of international trade in goods. The launching of a fresh round on these rules was thus seen as a priority area in the international trade agenda and hence propelled the movement towards the Uruguay Round.

Related to the above was the surge in "Grey Area Measures" which were being applied by some contracting parties in the conduct of trade. The grey area measures were those trade-restricting actions (e.g. under the safeguard provisions), which could not be categorically ruled out as being consistent or inconsistent with GATT rules and articles.

The UNCTAD Trade and Development Report (TDR, of 1994)² correctly notes that:-

"One of the principal means of avoiding the disciplines of Article XIX has been to negotiate bilateral export restraint arrangements e.g. voluntary export restraints, orderly marketing arrangements and price monitoring systems. The danger for developing countries and weaker trading partners in such arrangements is twofold. First, such measures have no legal status in GATT and have not been effectively challenged in it increases. This tempts importing countries to achieve the goals of restraining imports in this extra-GATT fashion. Secondly, the bilateral nature of such arrangements clears the way for arbitrary solutions. Imports of the major trading partners can be omitted from GATT actions. There is an exertion of pressure on weaker trading partners. The proliferation of these so-called 'grey area measures' has been one of the major factors undermining the credibility of GATT."

The period prior to the Uruguay Round and the first two years of the Round were marked by an increase in "grey area measures" - around 191 actions (about 80% by EU, USA and Canada) were in place in 1988. The prevalence of such "grey area measures" thus added momentum to the efforts by GATT contracting parties calling for action on this front.

1.4. Regionalism

Due to a variety of economic and political factors, the period prior to the launching of the Round was also characterized by the efforts of several countries to create regional trading blocs under the North American Free Trade Area (NAFTA), the European Union, and the European Economic Space (EES); just to mention a few. Although the creation of free trade and other regional arrangements is allowed under GATT; the increase in these arrangements posed the need to re-examine GATT rules in this area because of the multiplicity and complexity of issues as well as the potential danger of regionalism associated with these new arrangements. This development was therefore another contributory factor for considering the launching of a new round of MTNs.

The UNCTAD Trade Development Report, p. 42.

1.5. New Issues

Some developed countries, led by the USA, were interested in the formulation of GATT rules on certain new issues. These issues which came to constitute the major driving force for the (new) round were on:-

- (i) trade-related investment,
- (ii) high technology goods or trade-related aspects of intellectual property (TRIPS), and
- (iii) trade in services.

These issues were referred to as "new" because they were being introduced in GATT for the first time. Traditionally, GATT had limited its work to international trade-in-goods. Thus the growth of international trade in services and the significance attached to the three new issues led to calls by some developed countries for the establishment of multilateral rules in the three areas whereby GATT rules and principles would also apply. These were:-

- (i) transparency;
- (ii) Most-Favoured Nation (MFN) treatment and
- (iii) dispute settlement procedures.

In order to secure the incorporation of trade in services in the GATT mandate, the USA launched a campaign on both the domestic and foreign fronts aimed at achieving this objective. According to the Trade and Development Report (TDR) of 1994,

"the United States' advocacy of liberalization of trade in services and investments appears to have been the result of three factors; response to pressures from a group of transnational corporations; its desire to strengthen the 'free trade lobby' to offset the growing political power of protectionist interest; and the recognition that services were of growing importance in the United States' exports and investments abroad".

On the foreign front, the USA initially worked with the group of countries that make up the Organization for Economic Cooperation and Development (OECD), and later on continued to seek the expansion of this group. At a ministerial meeting convened by GATT (in Geneva) in 1982, the USA proposed the establishment of a work-programme on trade in services within GATT. However, this proposal was not acceptable to the developing countries and a few developed countries due to a number of factors including the mandate of GATT which only concerned trade-in-goods as well as other potential difficulties. An example is the expected cross-sectoral retaliation that would be expected once trade in services became accepted within the GATT framework.

Due to these divergences, the compromise reached during the 1982 meeting was to undertake national studies on trade in services, and have an exchange of information by interested contracting parties. Subsequently, a report on this compromise process was submitted to

Contracting Parties to the GATT in 1984; and subsequently, a senior officials' group of the Preparatory Committee of the Uruguay Round took over the issue as one of its agenda items. Unlike services, the other new areas of TRIPs and TRIMs had been the subject of negotiations under the new Economic Order agenda under UNCTAD and WIPO. In a nutshell, it can be said that contributory factors to the launching of the Uruguay Round related both to the traditional domain of goods as handled by GATT, as well as the growth dynamics and global balance in the new issues.

It should be noted here that the initiation and thrust for momentum towards a new round of MTNs came from some developed countries. As the preparatory process gathered pace, consensus was on the rise. This was due to a variety of factors from other contracting parties such as:-

- (i) Latin American interests in the trade of tropical products, and
- (ii) ASEAN benefits from trade in services.

In the case of Tanzania and most African countries, there was minimum "attraction" to join the round. This was partly due to the preferential treatment already provided through agreements negotiated under the European Community (namely the Lome Convention) and under UNCTAD and GATT which benefitted LDCs³. It should be noted that under new issues the interest of Tanzania and other developing countries would be was to avoid extending the mandate of GATT into the new areas due to the above mentioned reasons.

e.g. the Generalized Systems of Preferences(GSP) and the Global Systems of Trade Preferences Among Developing Countries (GSTP)and other special trade provisions under UNCTAD and GATT.

2. NEGOTIATIONS AND ELEMENTS OF THE FINAL ACT

2.1. Launching

The period preceding the launching of the Uruguay Round involved intensive work on very divergent views under the Round's Preparatory Committee on the Round which held several meetings in Geneva between November 1985 and (the Punta del Este meeting in) September 1986. The Committee ended by recommending two agenda items for the ministerial meeting of GATT Contracting Parties in the launching of the Round. The agenda consisted first, of the objectives, principles, modalities, subject matter and other issues related to a new round of MTNs, and secondly, a consideration of the report on an exchange of information on trade in services in order to decide whether multilateral action on trade services was necessary and desirable⁴.

Due to varied positions in the Preparatory Committee, particularly on agriculture and new issues; the Punta del Este meeting was presented with three different drafts which were transmitted by the Committee from Geneva and witnessed a continued deadlock of the Preparatory Committees divergences throughout the week-long meeting leading to the launching of the Round. It is worth recollecting here how the main deadlocks were sorted out in Punta del Este.

In the agricultural sector, intensive negotiations finally led to an acceptable objective as reflected in the Punta del Este ministerial declaration whereby it was agreed that greater agricultural trade liberalization would be attained through, among others:-

- (i) the improvement of market access; and
- (ii) increasing the competitive environment through the exercise of discipline in the use of all direct and indirect subsidies and other such measures affecting agricultural trade including reducing their negative effects by phase, and dealing with their causes.

As regards how "new issues" should be included in the Round, there were two sharply-divided camps among the different delegations (as happened during the Geneva Preparatory Committee phase). One major camp consisted of delegations which favoured a comprehensive GATT involvement (mainly the from the developed countries) and those who maintained that the GATT mandate and competence did not permit it to handle the new issues. In the latter category were developing countries especially those which were popularly referred to as the Group of 10 (Argentina, Brazil, Cuba, Egypt, India, Nicaragua, Nigeria, Peru, Tanzania and the former

⁴ The preparatory Committee was created by Contracting Parties in November 1985 and charged with the task of preparing the modalities and contents for a ministerial meeting in MTNs while taking into account elements of the GATT ministerial programme adopted in 1982 as well as views expressed in a senior officials group which functioned in the period prior to the establishment of the Preparatory Committee.

Yugoslavia)⁵. The ministerial decision on trade in services, as reflected in Part II of the Ministerial Declaration was a carefully negotiated and balanced compromise capturing the concerns of the delegations; including those of the above-mentioned groups.

The agreed compromise on trade in services stipulated that:

"Negotiations in this area shall aim at establishing a multilateral framework of principles and rules for trade in services; including an elaboration of the possible disciplines for the individual sectors. The main aim here is to expand such trade under conditions of transparency and facilitate its progressive liberalization as a means of promoting the economic growth of all the trading partners and the development of developing countries. The framework shall respect the policy objectives of the national laws and the regulations applying to trade in services and shall take into account the work of relevant international organizations".

An understanding that GATT procedures and practices should apply to these negotiations was also referred to in the text. It should be noted here that while Part I of the Declaration (Trade-in-goods) was effected as a decision of GATT CONTRACTING PARTIES⁶, while the text in Part II of the Declaration (on trade in services) was a ministerial decision. This formal distinction was a very important aspect in the process of negotiations including how the question of GATT's competency in the field of trade in services was handled, and a final decision on whether trade in services was to be incorporated in GATT.

The overall package from Punta del Este was reflected in the Ministerial Declaration of the Uruguay Round⁷ outlining the Round's structure, objectives, general principles, standstill and rollback commitments as well as the subjects for negotiations (which totalled 15 and which included the separate group on trade in services); participation; organization of the negotiations; and how the recommendations would be implemented. Following the launching in Punta del Este, negotiations immediately commenced in Geneva.

It was targeted that the Round would be concluded within four years. Out of the fifteen subjects (up for negotiations) were agreed upon, the first group belonged to the cluster of market access and dealt with five issues:-

- (i) tariffs;
- (ii) non-tariff measures (in which texts on rules-of-origin and pre-shipment inspection belonged);
- (iii) tropical products;

⁵ At Punta del Este, Nigeria did not attend, and Argentina did not participate in the Group because it opted to submit its separate proposal from the Group of 10. The Delegations of Kenya and Zimbabwe participated in the Group of 10 during the Punta del Este meeting.

⁶ GATT CONTRACTING PARTIES is a term which refers to the several contracting parties "acting as a group".

⁷ Document MIN. DEC of 20 September 1986 Parts I and II.

- (iv) natural resource-based products; and
- (v) textiles and clothing.

The second cluster was what could be termed the rule-making cluster; it consisted of six of the 15 issues up for negotiations:-

- (i) agriculture;
- (ii) GATT articles;
- (iii) safeguards;
- (iv) MTN agreements and arrangements;
- (v) subsidies and countervailing measures; and
- (vi) functioning of the GATT systems (FOGS).

The third cluster consisted of "new issues". These were:

- (i) trade-related aspects of intellectual property rights (TRIPs), including trade counter-fait goods;
- (ii) trade-related investment measures (TRIMS);
- (iii) trade in services.

In addition, there was also the Surveillance Body. In Geneva, Negotiating Groups were created for each of these subjects of negotiations and the negotiating process was set in motion in accordance with the relevant understandings, including section G of the Ministerial Declaration (on the organization of the negotiations) under the negotiating structure. A Group on Goods (GNG) and a Group on Services (GNS) provided the main organs through which the Trade Negotiations Committee (TNC) was regularly informed of the progress in the negotiations. The TNC -- the Round's supreme body -- met regularly at official level and also at ministerial level in Montreal for a Mid-Term Review, in December 1988 and in Brussels, with the objective to complete the Round, in December 1990. But alas, the Round passed its deadline and remained to be concluded until December 1993. The approval of the final results by Ministers came later -- in April 1994.

It should also be recalled that on the part of the LDCs including Tanzania, the need for special measures for these countries and the participants in the Uruguay Round was specifically recognized by the Ministers as per Section B (vii) of Part I of the Ministerial Declaration on the Uruguay Round whereby it was decided that:-

"Special attention shall be given to the particular situation and problems of the Least Developed Countries and the need to encourage positive measures to facilitate the expansion of their trading opportunities. The expeditious implementation of the relevant provisions of the 1982 Ministerial Declaration concerning the least developed countries shall also be given appropriate attention."

Prior to this, there had been two other decisions in GATT which stipulated that specific provisions be made in the case of the LDCs; namely the 1979 Enabling Clause and the 1982 Ministerial Declarations.

It should be noted here that not all the 47 LDCs are contracting parties to GATT or participated in the Uruguay Round. The following twenty-four LDCs are contracting parties to GATT; Bangladesh, Benin, Botswana, Burkina Faso, Burundi, Chad, Gambia, Haiti, Lesotho, Malawi, Mali, Maldives, Mauritania, Mozambique, Myanmar, Madagascar, Niger, Rwanda, Sierra Leone, Tanzania, Togo, Uganda, Zambia and Zaire. During the Uruguay Round negotiations, participants from the LDCs with Permanent Missions in Geneva -- a major factor in their regular attendance and involvement in the negotiations were Bangladesh, Burundi, Haiti, Myanmar, Tanzania, Zaire and Zambia (for the latter, this was in the last year). The significance of this presence in Geneva for purposes of the negotiations will be discussed later on in this document.

Following the launching of the Round and the establishment of the negotiating structures in Geneva, intensive negotiations were undertaken on the various subjects with different outcomes. The Mid-Term Review provided the first ministerial opportunity, after Punta del Este, for a common assessment of what had been achieved over the preceding two years.

2.2. The Mid-Term Review

The Mid-Term Review meeting of the Trade Negotiations Committee (TNC) at Ministerial level was held at Palais de Congress, Montreal, Canada from 5-9 December 1988. The objective of the meeting was to take stock of the progress in the Uruguay Round since 1986 as well as to provide further guidance/political impetus to the negotiations for the phase ahead.

The Montreal meeting was preceded by very intensive preparations in Geneva which eventually resulted in a submission of reports by the Surveillance Body, the Group on Negotiations on Goods (GNG), and the Group on Negotiations on Services (GNS) in Montreal. The Surveillance Body report summarized several standstill/rollback measures which had been notified to it and brought attention to the increasing tendency of some participants to violate the standstill and rollback undertakings of the Punta del Este agreement.

The report of the GNG⁸ covered both the aspects of progress and matters requiring decisions in all the fourteen negotiation groups under GNG for consideration in Montreal. The report of the GNS negotiated to the late hours prior to the departure for Montreal -- consisted of a review of work done that far, and showed a list of issues requiring ministerial guidance to facilitate negotiations. The Report aimed at establishing a multilateral framework of principles and rules for trade in services. It contained around one hundred and thirty brackets due to a serious divergence of views that persisted among the negotiators/participants from developed countries versus those from developing ones on the modalities of achieving the stipulated objectives under GNS.

Most participants from the former group, spearheaded by the USA, had been pressing for a GATT-type framework without due regard to the agreed upon five elements (definition, statistics, concepts/principles, international arrangements and coverage) under the GNS as per the Punta declaration. Thus this type of approach was opposed by a number of participants and especially those from developing ones on grounds that it lacked a balanced consideration of the agreed upon five elements.

Following very intensive work during both formal and informal sessions of the TNC in Montreal, agreements were reached on matters concerning the Surveillance Body, trade in services and the ten negotiating groups under GNG. By the morning of Thursday, 8 December 1988, compromise texts had been attained in all these areas as reflected in the final report⁹. The negotiating groups under the GNG on which agreements had been reached were:-

- (i) tariffs;
- (ii) non-tariff measures;
- (iii) natural resource-based products;
- (iv) tropical products;
- (v) GATT Articles;
- (vi) MTN agreements and arrangements;
- (vii) subsidies and countervailing measures;
- (viii) TRIMs;
- (ix) dispute settlement; and
- (x) FOGS.

⁸ MTN.GNG/13

⁹ MTN.TNC/7 (Min)

By deduction therefore, it is evident that the areas that were not agreed upon were:-

- (i) agriculture;
- (ii) TRIPs;
- (iii) textiles and clothing;
- (iv) safeguards; and
- (v) trade in services.

Through the respective final reports, the Ministers provided guidance to each group regarding how further work and the finalization of negotiations should be conducted. In the case of tariffs, the Ministers agreed on, *inter alia*, a deadline (July 1989) for substantive negotiations to commence; there was to be a substantial increase in the scope of bindings and they reiterated the principles governing the participation of developing countries in paragraphs (iv) to (vii) of Part I-B of the Punta del Este Declaration.

Negotiations in tropical products resulted in a list of offers by developed and some developing countries which were approved by the Ministers. Specific results from the negotiations were submitted by Australia, Austria, Brazil, Canada, Central American countries, Colombia, the European Economic Community, Finland, Japan, Malaysia, Mexico, New Zealand, Norway, Philippines, Sweden, Switzerland and Thailand. The presentation of the results on tropical products was in line with the objective for the fullest liberalization within the tropical products sector. In general, the results on tropical products were received with enthusiasm by the majority of developing countries with perhaps the exception of Africa, and the Caribbean and Pacific States (members of the Lome Convention). These countries formally expressed their reservations because the tropical products package contained a significant reduction in the advantages they enjoyed on account of the Lome Contractual Agreement¹⁰.

However, by late Thursday afternoon on 8 December 1988, the TNC still had yet to resolve four outstanding groups¹¹. Difficulties here varied from one group to another. In the case of agriculture, the negotiations had been stalemated since the Montreal sessions (and indeed from Geneva) mainly because of significant divergences between the European Economic Community and the USA. The USA insisted on a commitment to eliminate all trade distorting measures in a time frame to be negotiated. The EEC, on the other hand, was prepared to discuss only a commitment to reduce trade distorting measures in a long-run time frame.

In the case of TRIPs, there were fundamental differences regarding the mandate; it was not agreed whether or not GATT should be involved in the elaboration of intellectual property standards. The differences were particularly evident in the positions of the USA and some developing countries such as Brazil and reflected in the various texts submitted in Montreal. As the TNC in Montreal came to an end on the afternoon of 9 December 1988, the differences in these four areas had not been resolved and a procedural decision had to be taken to enable the Montreal results to be maintained, and negotiations to continue as they did, in Geneva.

¹⁰ document MTN.TNC/W/15, of 8 December 1988.

¹¹ namely textiles and clothing, agriculture, safeguards, and trade-related intellectual property - TRIPs

What actually happened? On the evening of 8 December 1988, the Chairman TNC; the Uruguay Minister of Economy, had put forward an informal proposal in the green room¹² that agriculture should be left out of further consultations in Geneva. The specific decision would have been that:-

"Ministers noted that after intensive discussions on trade in agriculture some important differences in position remained outstanding, particularly on long-term goals of the reform process. They reaffirmed their commitment to the objectives of this sector as agreed at Punta del Este and resolved to maintain their efforts to achieve these objectives through the continuing work of the Negotiating Group on Agriculture pursuant to its agreed upon negotiating plan, and using Part B of the mid-term report written by its Chairman as a basis for the Group's further examination and negotiation".

The above proposal by the Chairman of TNC was out rightly challenged and rejected by five Latin American countries (Argentina, Brazil, Chile, Colombia and Uruguay) who said that they were not prepared to discuss that proposal. Two main reasons which were presented in support of this position:-

- (i) First, the proposed decision on agriculture neglected the element of the globality (totality) of the Uruguay Round negotiations; and
- (ii) secondly, if the above proposal was to be adopted then it would have negative consequences on the balance of interests because already, developing countries had made the biggest "sacrifices" in the consensus on the 10 negotiating groups under the trade in goods, and trade in services. By evading a decision on the agricultural interests of several developing countries, the Cairns group, and the net food importers would be totally neglected.

Thus in a single statement read by Argentina, in the green room in Montreal; the five Latin American countries declared that there was no point in discussing the remaining three unresolved groups (textiles, safeguards and TRIPS) unless a resolve was made on agriculture.

Furthermore, the Latin American countries stated that the agreement reached earlier in the other ten groups should also be suspended except for that on tropical products. (The position drew sympathy from some developing countries as well). After an hour's suspension and consultations, the green room meeting resumed and agreed to a procedural four-point decision¹³ of 9 December 1988 which *inter alia* "put on hold" the results of Montreal, called for the Director-General of GATT to consult, and the TNC to resume in the first week of April 1989. Having been approved in green room meetings in the late hours of 8 December 1988, and by the heads of delegations early on Friday 9 December 1988, the procedural decision was finally endorsed by the TNC

¹² The term "green room" is used in reference to informal discussions.

¹³ as reflected in MTN.TNC/7(MIN).

plenary of ministers on the same day. The TNC had thus concluded its Montreal meeting. In the words of the International Herald Tribune (10-11 December 1988), the Montreal meeting had collapsed. It wrote:

"The collapse of the Montreal Trade talks... had derailed the most ambitious attempt in 40 years, to rewrite the rules of the trading system.... The major question left unanswered that Friday was whether officials in Geneva could now get the train moving again by settling the major disputes that Ministers failed to resolve in Montreal.

The interpretation of the Montreal results varied. Obviously the USA and EEC were disappointed by the results -- it was doubtful whether they had foreseen that their continuing rigidity and bickering over agricultural issues could have led to such a webbed blockade in all other areas (as the results of Montreal turned out to be) -- including in those areas where faster progress was being craved out (e.g. services, TRIPs and dispute settlement). Indeed, the desperate pleading that followed (in the green room) after the Latin American position became clear is standing testimony to the shock they felt. Subsequently, the negotiating process was sent back to Geneva for further consultations for the period of January to early April before the TNC met again in April 1989.

Following intensive informal and formal negotiations, agreement in the four areas (deferred from Montreal; i.e. agriculture, textiles and clothing, safeguards and TRIPs), was reached at an official level TNC meeting on 5-8 April 1989. This enabled the attainment of an outcome consisting of the whole Mid-Term Review package¹⁴ and formed a significant contribution to revitalizing the process of negotiations.

In this paper we will later review what the major aspects and implications of that package were for the LDCs. It should be recalled here that during their participation in the Round, the LDCs had submitted several informal suggestions and formal proposals¹⁵.

2.3. The Brussels Meeting

The Brussels meeting of the Trade Negotiations Committee (TNC) which was held between 3-7 December 1990 was the third ministerial meeting on the Uruguay Round. The meeting (attended by some 106 countries), was intended to conclude the Uruguay Round. However, negotiations could not be finalized due to disagreements over agricultural issues. Organizationally, the meeting consisted of a formal plenary, an overall "greenroom" under the Chairman of the TNC (the Uruguay Minister, Mr. Hector Gros-Espiel) and consisted of a number of mini-greenrooms/small groups chaired by ministers. The small groups, and (in brackets), the respective countries of the Ministers chairing them were: market access (Malaysia), agriculture (Sweden), textiles and clothing (Morocco), rules of origin, tariffs and non-tariff measures

¹⁴. GATT document MTN.TNC/11

¹⁵. including those in MTN.TNC/W/14 Rev.1 of 23 November 1988 and the communication from the chairman of the GATT Sub-Committee on the least developed countries contained in MTN.TNC/W/15 dated 7th November 1988 in which their concerns as well as the need for special and more differential treatment was emphasized.

(Netherlands); TRIPs and TRIMs (Sweden), Services (Mexico) and GATT articles (Canada). The overall greenroom also held some consultations on the Draft Final Act - which was a 391-page document¹⁶ on the results of the Round as transmitted at official TNC level from Geneva. The Draft Final Act¹⁷ was actually papered with numerous brackets. The Draft Final Act covered all the fifteen issues under negotiation.

Although all the groups were covered in the "Draft Final Act" there was considerable variation in the type of progress made under each group. In all the groups, issues on which TNC sought political guidance from the Ministers were identified. These areas were shown by way of commentaries in the Draft Final Act. The concept and procedure of a Draft Final Act covering all areas (and which participants were being asked to accept in its entirety) posed a major problem to many developing countries. Difficulties stemmed from both the legal and procedural questions on the implications of such an acceptance. Questions relating to this approach included how the legal separation of goods and services was to be secured; and how the case(s) of any participant(s) who had no mandate nor intention to join certain GATT codes/arrangements (e.g. the Tokyo MTNs) was to be handled.

In order to address the single undertaking approach, a number of proposals were introduced by some developed participants (e.g. EEC, Canada and the USA) prior to the Brussels' meeting concerning the manner in which the Uruguay Round was to be successfully implemented as a single undertaking. The purpose of these proposals was to ensure, first, that unlike in the previous rounds of MTNs, especially the Tokyo Round, contracting parties would not have the option of adopting an *à la carte* approach in accepting the negotiations' results. Rather, the objective was to ensure the acceptance of all or most results of the negotiations by the maximum number possible (if not all), of GATT contracting parties (and also by participants who are not yet Contracting Parties/CPs). Secondly, unlike in the previous Tokyo Round which resulted in MTN Agreements and the acceptance of Arrangements only by interested parties (which gives rise to variations in the level of rights and obligations amongst the contracting parties, the Uruguay Round was to seek the avoidance of this kind of scenario.

Right from the onset, the Brussels meeting was faced with the formidable task of establishing agreements within the several groups in outstanding issues -- these were numerous -- as well as forging a convergence of views where no common platform for negotiations existed, e.g. with regard to agriculture, anti-dumping, TRIMs and balance-of-payment articles. As the TNC (as well as the global and mini-greenrooms) got into motion, the issue of disagreements over agricultural reform (especially between EEC and USA) which had in fact clouded earlier negotiations became a big stumbling block to progress. The EEC's offer on agriculture was viewed, by other participants, as being inadequate and falling short of the Montreal/mid-term understanding whereby a long-term reform programme in agricultural trade under the mid-term review had been provided¹⁸.

In the context of a mid-term review, commitments on import access subsidies and export competition, the Ministers agreed (in Montreal), that in realizing the long-term objective stated above, strengthened and more operationally effective GATT rules and disciplines, which would be equally applicable to all contracting parties, and the commitments to be negotiated, should

¹⁶ Referenced MTN.TNC/W/35.

¹⁷ Corrected and changed at Brussels to MTN.TNC/W/35 Rev.1.

¹⁸ MTN.TNC/11.

encompass all measures directly or indirectly affecting import access/market access and export competition¹⁹, in particular quantitative areas, market access restrictions, and tariffs (including bindings), internal support measures, other forms of agricultural subsidies, export restrictions and competition²⁰.

Ministers had also agreed in Montreal²¹ that:-

- ◆ special and differential treatment to developing countries was an integral element of the negotiations particularly on the strengthened and more operationally effective GATT rules and disciplines;
- ◆ government measures on assistance, whether direct or indirect, to encourage agricultural and rural development are an integral part of development programmes of developing countries;
- ◆ ways should be developed to take into account the possible negative effects of the reform process on net food-importing members from the developing countries.

After some delay that went beyond the 15 October 1990 deadline, the EEC, on 7 November 1990 submitted an agricultural-related offer which was not accepted as providing the basis for negotiations on the above areas by other participants. The EEC's offer was, in the view of many, a preservation of its position of not making any significant changes in agricultural reform, and retaining the dual-price system on which the Common Agricultural Policy (CAP) is founded. The USA was said to have stated informally, that the EEC offer was an attempt to incorporate CAP into GATT. The offer was seen as being inadequate in other elements such as internal support and export competition. By Tuesday, 4 December 1990, the impact of the *impasse* on the issue of agriculture was already being felt in the Brussels negotiations, with accusations and counter-accusations especially between the major participants; politics was cited as being responsible for the failure in the negotiations.

It was increasingly clear that the Brussels negotiations faced an imminent danger of not concluding, and as one senior USA official put it, already the Round was²²:

"very close to collapse".

¹⁹ export competition is a term which refers to the ability of the a country to sell its exports in the world market.

²⁰ paragraph 7 of the Montreal text.

²¹ Paragraph 8 of Montreal text.

²² Herald Tribune, 49/90 Wednesday 5 December, 1990 .

The EEC tried to persuade its trading partners that its offer to cut farm support by 30% was more generous than it appeared and would contribute to the liberalization they were seeking. None of the trading partners would buy that. One minister from a developed party dismissed the Community's logic as "mumbo jumbo".

The EEC maintained further that the Round negotiations were not on agriculture alone but about other groups as well. The EEC argued that all areas should be fairly discussed without singling out agriculture. In spite of these difficulties, efforts were made in the first four days of the conference (in the global and mini-greenrooms) to achieve headway in other negotiation areas. These efforts were extended with the hope that a solution would also be in sight in the most difficult areas; and specifically in the area of agriculture.

In market access, attempts were made to settle the many outstanding areas in tariffs (where negotiations continued on the Uruguay Round draft protocol on tariffs); and non-tariff measures (where negotiations continued on rules of origin and pre-shipment inspection).

In the latter case, agreement was reached in the respective greenrooms on all the outstanding issues, as well as in the other access groups. Rule-making groups, (excluding the group dealing with agriculture), also extended their negotiating efforts with the hope of obtaining results in Brussels. There was no compromise nor basis available for negotiations on the balance of payments, GATT articles, and anti-dumping. In the case of new issues, there were genuine negotiations aimed at reducing the existing divergences of which there were several. The Geneva negotiation process on services had been seriously affected by a last-minute proposal by the United States regarding what type of Most Favoured Nation (MFN) clause it wished to be inscribed in a General Agreement on Trade in Services (GATS). The USA had proposed in an alternative formulation to the MFN article, an idea that departed from the traditional unconditional GATT-type MFN to a new, conditional MFN.

In Brussels, a USA delegate informally stated his delegation's readiness to reconsider this position if Brussels led to some "political commitment" on the liberalization of the services sector (this informal position however, did not appear in the formal plenary statement of the United States as delivered by Ambassador Carla A. Hill, United States' Trade Representative).

In Brussels, inconclusive discussions on TRIPs were based on outstanding issues listed in the commentary sent from Geneva²³. These issues were divided into two categories. The first category was composed of issues that required ministerial political decisions:-

- (i) Patents - including patentable subject matter, terms of protection and exclusions;
- (ii) Institutional arrangements/implementation of the TRIPS agreement;
- (iii) Dispute settlement closely connected with (ii) above; and
- (iv) Transitional arrangements.

The second category was composed of issues that were technical, requiring further negotiations and drafting. These latter issues as listed in the commentary sent from Geneva were considered by the Chairman as manageable and not requiring the direct involvement of Ministers. In Brussels, the Chairman reactivated the Geneva process of informal consultations on the above issues by

²³ in document MTN.TNC/W/35 Rev.10

involving the many delegations who had been very active in the TRIPs negotiations in Geneva. This process however, was interrupted following the break-up of negotiations on account of failure to reach a consensus on how to proceed in the case of agriculture. The results of TRIPs consultations working draft group were, as a consequence, not officially recorded.

In all the draft provisions that were revisited in Brussels; no major shift in positions was shown by the delegations. Perhaps, this was due to the unresolved key political issues and how they were linked with other issues (e.g. agriculture, textiles and clothing, and services). With respect to TRIMs, the stalemate from Geneva concerning prohibition had not been resolved by the time the Brussels meeting ended. The Chairman had initiated informal bilateral consultations after having listened, in an informal setting, to the various positions held by the different delegations on the key and decisive question of whether or not to allow the prohibition of TRIMs, and the related problem of how TRIMs should be dealt with in the context of GATT Articles III and XI which dealt with national treatment and quantitative trade restrictions respectively. So far, therefore, no further basis for negotiations existed on the subject as none could be evolved at the Brussels meeting.

In the course of the overall negotiations, interventions by participants outlined or re-emphasized their interests and concerns. Of the numerous interventions made, we should record here the pronouncements by African countries and the informal group of developing countries delivered by Madagascar and Brazil respectively through their respective Chairmen. The African statement insisted that the TNC should ensure that African interests are taken on board²⁴. On the other hand, the extremely brief six-point press statement issued by developing countries correctly summarized the state of uncertainty and the concern they found themselves in on Wednesday evening on the 5 December 1990, when they decided to release it. They expressed

"...very deep concern on the extreme seriousness of the situation reached in the negotiations...."

and then stressed their:-

- ◆ willingness to continue to contribute towards a fair, positive and balanced outcome of the Uruguay Round, as they had already been doing through their constructive offers;
- ◆ dissatisfaction with the inadequate attention given to the areas of special interest to them, particularly in market access, as well as to the specific requests made by the LDCs;
- ◆ preoccupation with the lack of transparency in the negotiations due to, among other factors, the attempt to solve outstanding issues through bilateral consultations among the major trading partners;
- ◆ firm decision to resist any attempt to impose a ready-made package put together by a few participants which would be presented at the last minute on a "take it or leave it" basis; and

²⁴ Document MTN...ST/33.

agreed to in the Uruguay Round for the LDCs, improvements in the General System of Preferences (GSP) and rules of origin.

- in the text on trade in services, the Draft agreement on trade in services, submitted in Brussels the LLDCs had sought specific Articles namely:-
 - (i) Article IV(3) for the exemption from initial commitments. At Brussels the article remained in brackets because some developed countries objected to granting LLDCs a "waiver".
 - (ii) Article XVIII(1) - where an additional proposal had been included in Geneva to entitle LDCs to benefits from all concessions exchanged in the agreement. Some participants (e.g. Canada) had argued that this addition was not necessary because it was taken care of by MFN.
 - (iii) Article XVIII(3)(d) - relating to how the interests of the LLDCs were to be secured in future rounds. The LDCs hoped to refine it further in Brussels and be consistent to their decision not to make any commitments as LLDCs.
 - (iv) Paragraph 4 of the initial commitments text - concerning modalities for the Uruguay Round's initial commitments. The LDCs proposal, consistent with article IV(3) - was introduced in the Geneva consultations with a view to seek exemptions for the LLDCs in any initial commitments undertaking.

2.4. The Post-Brussels Negotiations

On Tuesday, 26 February 1991, the Trade Negotiations Committee (TNC) of the Uruguay Round met in Geneva in its first post-Brussels meeting at official level. This was a follow-up of the Ministerial decision in Brussels which, *inter alia*, had officially requested the Chairman of the TNC to pursue intensive consultations (based on the Draft Final Act as submitted to the Ministers), with the objective of achieving agreement in all negotiation areas in which differences remained outstanding. The consultations by the Chairman of the TNC, Mr. Dunkel, mainly comprised of visits to some capitals, as well as a series of informal bilateral, multilateral and plurilateral meetings in Geneva. The consultations principally focused on the area of agriculture - the deadlock of which had led to the extension of the Uruguay Round at the meeting in Brussels. The Chairman's consultations with developing countries were effected mainly through meetings of both the informal TNC (formal TNC meetings did not take place during this period), and a number of meetings of the developing countries' informal group.

The above resumption of the negotiations was made possible through the TNC Chairman's two-stage procedural process following the above initial consultations. The stage involved, first, the

securing of the support of all participants through informal consultations, on the organization and the agenda to be addressed and then, formally convening the TNC²⁹. Besides this, the TNC also agreed on the following:-

- a procedure for evolving the agenda of the negotiating groups;
- the need to confirm that negotiations proceeded on the basis of the then existing mandate (as adopted at Punta del Este);
- the need to undertake an evaluation on the special and more favourable treatment of developing countries as per part G of the Ministerial Declaration which launched the Round; and
- a formal extension of the negotiating period beyond that earlier planned (which was December 1990), and the necessity to continue negotiations with the aim of reaching a conclusion as soon as possible³⁰.

From the above, therefore the package that was adopted by the TNC consisted of the agreed upon elements in agricultural negotiations, as well as other issues requiring the TNC's decision like the time-frame for negotiations and the importance of evaluating the results of the Round from the point of view of developing countries. The report, *inter alia*, also detailed agriculture-related issues, textiles and clothing, rule-making, TRIPs, dispute settlement, services trade, and the Draft Final Act. In the field of agriculture, the TNC thus decided on the following points:-

- (i) First, that consultations by the TNC Chairman (as described above) confirmed that participants agreed to conduct negotiations to achieve binding commitments on each of these areas; domestic support, market access, export competition, and to reach an agreement on sanitary and phytosanitary issues. Technical work to facilitate these negotiations was to begin immediately.
- (ii) Secondly, to ensure progress in achieving the above results, the Chairman also confirmed that participants were committed to pursuing consultations, as necessary, at senior policy-making levels to address the outstanding aspects of the negotiations which required such guidance.
- (iii) Finally, the TNC accepted the Chairman's proposal for a tentative consultations agenda on specific technical issues in the areas of domestic support, market access (including tariffication), as well as sanitary and phytosanitary measures. It was also agreed that in each of these areas the particular concern to developing countries, net food-importing developing countries, and those related to food security be examined.

²⁹ The Report of TNC (consisting of the Chairman's statement in MTN.TNC/19 and document MTN.TNC/W/69 dated 25 February 1991) contained the package that led to the reconvening of the Uruguay Round.

³⁰ No fixed deadline was set by the TNC; probably as a precaution against the earlier experience of an inability to adhere to such deadlines in the Round.

With the afore-mentioned progress achieved, the Trade Negotiations Committee decided (in April of 1991) to resume the multilateral negotiations in all areas in order to bring the Uruguay Round to its successful conclusion. In addition, the TNC decided to reduce the number of Negotiating Groups from the original fifteen to seven. These were:-

- Market access (embracing tariffs, non-tariff measures, natural resources-based products and tropical products). Difficulties had emerged in this area between Montreal (December 1988) and Geneva (April 1991);
- Textile and clothing, a previously unresolved issue;
- Agriculture, also previously unresolved;
- Rule-making (grouping subsidies and countervailing duties, anti-dumping, safeguards, pre-shipment inspection, rules of origin, technical barriers to trade, import licensing, customs valuation, government procurement, and GATT articles, as well as trade-related investment measures);
- Trade-Related Aspects of Intellectual Property Rights (TRIPs);
- Institutions (covering the Uruguay Round Draft Final Act, improvement of the dispute settlement mechanism, and FOGS -Functioning of the GATT System); and
- Trade in Services, also previously unresolved.

After the establishment of these new Negotiating Groups, considerable efforts were made to find broader areas of agreement and delimit the issues that were most difficult and sensitive from the political standpoint. By early December 1991, the state of the negotiations in the seven Negotiating groups depicted a mixed scenario. In market access, taken as a whole, the negotiations had scarcely progressed since the post-Brussels work resumed. This was mainly because participants still encountered serious obstacles in:-

- (i) achieving greater market liberalization, in particular as regards the scope of the negotiations³¹;
- (ii) establishing linkages with other negotiating groups regarding agriculture and textiles, for example, some countries insisted that certain products covered by market access negotiations should be discussed in the context of progress in other Negotiating Groups;
- (iii) obtaining the expected contributions of participants (here the problem concerned especially those proposals made by developed countries and which other participants did not view as fulfilling the Special and Differential commitments made at Punta del Este and Montreal);

³¹. the exclusions of certain products or sectors from the negotiations has been a moot point from the outset.

(iv) the legal problems that were existing³²; and

(v) being predictable due to the conditional nature of the country offers submitted.

In textiles and clothing, the mandate, and hence the negotiations were focused on bringing this sector under the rules and principles of the General Agreement. The discussions still concerned issues left outstanding in the text proposed in Brussels in December 1990 for the re-integration of textiles and clothing into GATT rules and principles. These related to, *inter alia*, transitional safeguard measures and the length of the transitional period (of which the seventeen-month prolongation of the MFA from July 1991 was part); the pace, extent and timing of restriction elimination, and the growth rates of the allocated quotas that should be applied during the successive stages in the transition period prior to the full integration of the sector into GATT rules and disciplines. Concerning agriculture, by early December 1991, considerable technical progress had been made in clarifying certain technical concepts such as the tariffication of border protection measures, and the definition of the "green" category (measures that were to be excluded from the reduction in internal support). In spite of this, agricultural negotiations still faced a major problem due to the lack of political will underlying all the technical points being discussed.

Under trade-related intellectual property rights, negotiations in this area continued on the basis of the Brussels text. By December 1991, no new formal texts had been agreed upon, and a number of fundamental questions still had not been resolved. These included such issues as:-

- (i) dispute settlement;
- (ii) the scope and duration of patent protection (particularly of pharmaceutical products);
- (iii) the confidentiality of information;
- (iv) geographical indications of origin;
- (v) technology transfers; and
- (vi) restrictive business practices.

As regards rule making, discussions had been based on the Brussels text in those areas where texts existed and efforts were made to get texts (where none existed)³³ such as those concerning re-shipment inspection, rules of origin, and MTN agreements. In the area of institutions, work in this Group had addressed outstanding issues related to the dispute settlement text, functioning

³² such as the re-negotiations of concessions under Article XXVIII of the General Agreement, recognition for the autonomous liberalization measures adopted by developing countries under the structural adjustment programmes; the determination of GATT-consistency in certain non-tariff measures tabled in the negotiations.

³³ i.e. in Article XVIII B; Anti-Dumping and TRIMS. There were no significant changes made in the other Brussels texts (MTN.TNC/W35 Rev. 1).

of the GATT system/FOGS and a new proposal to establish a Multilateral Trade Organization (MTO). The proposal to create an MTO was introduced by some developed countries particularly Canada and the EEC. This proposal was later on supported by the USA, and aimed at having a comprehensive organization and legal framework to implement all the results of the Uruguay Round (concerning goods, TRIPS and Services) for all participants. This approach was presented as the developed countries' interpretation of a commitment to a single undertaking which was contained in the Ministerial Declaration on the Round. As we explained earlier, their principal target was seen to limit the ability of participants to choose which agreements from the Round were acceptable and could be acceded by them (as was the case of the Tokyo Round Agreements). On the other hand, many developing countries were reluctant to accept the above interpretation of commitment to a single undertaking and the linked MTO proposal which they saw as having a mandatory and basic function (e.g. on a single dispute settlement system) that were contrary to the Uruguay Round Declaration. These countries also argued that there were potential problems like cross-sectoral retaliation if this kind of approach was adopted for the MTO proposal. Developing countries saw the single undertaking mandate as only relating to the timing and procedures involved in the negotiations of the Uruguay Round rather than the above one put forward by developed countries.

In the area of services, the GNS continued. With increasing intensity and technical complexity, the GNS continued to address three inter-related areas of the Draft Agreement on Trade in Services (GATS) and sectoral annexes as submitted in Brussels, the question of methodology, and aspects relating to the scheduling of the initial commitments under GATS.

Negotiations continued in all areas until a new Draft of the Final Act was issued. This was on 20 December 1991; and the Draft was popularly referred to as the Dunkel text.

2.5. The December '91 - April '94 Period

The process of negotiations picked momentum after 20 December 1991 with a new deadline of April 1992 set for the conclusion of the Round. However, due to several factors, including the continuing divergences in agriculture, the incomplete negotiations on market access, the negotiations of other groups as well as the inter-linkages that were created by participants in seeking balances in the outcome, this deadline was again not adhered to. In view of this situation, the negotiations continued until 15 December 1993 when the TNC met (at the official level) in Geneva to conclude the Uruguay Round.

The Trade Negotiations Committee (TNC) meeting on the afternoon of 15 December 1993 was held at the International Conference Centre, Geneva (CICG), and ended with the formal acceptance of the outcome of the Uruguay Round as contained in the Final Act³⁴. It will be recalled that the TNC (the supreme organ responsible for overseeing the negotiations) met regularly at both official and ministerial levels. The negotiations had lasted far beyond the four-year period originally envisaged and were marked by a high degree of technical complexity probably unforeseen by many participants and negotiators when the trade ministers adopted the Punta del Este Declaration. The Final Act which consisted of some 550 pages was adopted in Geneva replacing the earlier text (the so-called Dunkel text) and covering the final outcome in the several areas. The agreements were classified in three broad clusters -- trade in goods, TRIPs

³⁴

document MTN/FA dated 15 December 1993.

and trade in services -- as the principal negotiated areas, as well as an Agreement establishing the Multilateral Trade Organization (MTO) which was renamed the World Trade Organization (WTO) on the final days of the Round as a compromise that would take into account USA's reservations regarding the MTO. Besides the agreement to establish the WTO, other Final Acts, legal texts and instruments accepted at Geneva included:-

- Some fourteen agreements under the Agreements on Trade in Goods/Annex 1A of the Final Act (which were basically the GATT instruments in all GATT areas which were re-negotiated in the Round, and the Uruguay Round Protocol of GATT 1994);
- The general agreement on Trade in Services (Annex 1B);
- Agreement on TRIPs (Annex 1C of the Final Act);
- An understanding on the Rules and Procedures governing the Settlement of Disputes (Annex 2);
- A Trade Policy Review Mechanism/TPRM (Annex 3);
- Plurilateral Trade Agreements (Annex 4) concerning Trade in Civil Aircrafts, Government Procurement, International Dairy Arrangements, Arrangements Regarding Bovine Meat; and
- Several ministerial decisions and declarations (Section III of the Final Act) consisting of, *inter alia*, decisions on measures in favour of LDCs, greater coherence in global economic policy-making, net-food importers and LLDCs, and the General Agreement on Trade in Services' issues (for instance, work programmes on dispute settlement, financial services and basic telecommunications).

Both the timing and outcome of this TNC merit highlighting in international trade diplomacy on account of, among others, the following:-

- (i) The significance of the momentum created by bilateral agreements between the European Union (EU) and the USA concerning agriculture. Agriculture had been one of the most contentious issues throughout the negotiations as a relevant factor. The bilateral agreement between the European Union and the USA in Brussels (early December 1993) involved a number of flexibilities (for example a peace clause under which the USA agreed not to raise any dispute with the Common Agricultural Policy (CAP), which allowed the EEC/EU to sell the package to its member states especially France which was consistently opposed to an earlier/Blair House Accord on agriculture. This critical momentum from Brussels thus contributed to the overall acceleration of negotiations in Geneva -- in an intensive and round the clock fashion -- to the extent that a final settlement was attained by noon of the new deadline of 15 December 1993. This deadline was based on the requirements of USA's fast-track negotiating authority; Congress had to be notified of intention by the US President, to submit an Uruguay Round package for scrutiny.

(ii) The volatility and persistent blockages, besides agriculture, which characterized the process of negotiations meant that nobody was sure, up to the final hours of negotiations, when and how the final agreement of the Round would be settled. The other contentious issues which featured predominantly between the EU and USA included:-

- Late amendments and revisions sought by the USA particularly in areas like textiles and clothing, TRIPs, anti-dumping and services (where the US wanted a total carve out -- departure from the commonly-agreed practice--- on MFN obligations in financial services and a derogation with regard to maritime transport while the EU and many others vehemently rejected this approach).
- Numerous areas of continuing disagreement between major participants; for example on audio-visual services, where the EU (at France's insistence), wanted to introduce a cultural exception clause in the GATS. The opening of the rice market in Japan (and South Korea) which always proved sensitive to the countries concerned was also another example, with Japanese and South Koreans maintaining that the rice market should be exempted from trade liberalization (tariffication) in their markets on grounds of food security and cultural sensitivity. It was argued that the Japanese and Koreans only allowed the promotion and consumption of their domestically produced rice. In the final event, the governments of Japan and South Korea had to accept some commitment in this area based on the Uruguay Round's market access agreements. In South Korea's case, the decision to allow rice imports led to a domestic outcry and the subsequent resignation of the Korean Prime Minister some two days after the conclusion of the Uruguay Round.
- The question of environment and how this was to be handled in the Uruguay Round. The trade-environment link had received particular attention³⁵ due to the interest shown by the industrialized countries especially the European Free Trade Area (EFTA) countries, EU and the USA. The Rio Conference (under UNCED) had also contributed to GATT's involvement in addition to the earlier/GATT Working Group on the same which was revived in 1991 at the request of the industrialized countries. Within the parameters of the Final Act of the Uruguay Round, developed countries sought the creation of a Committee on Environment, a proposal which was not readily acceptable to developing countries on grounds of the mandate from Punta del Este as well as the fear that the environment criterion could be used to limit trade from developing countries.

(iii) As the Round came to an end, there were still several of the problematic areas, whereby the only compromise option available to the TNC was to allow for the establishment of Working Groups on such issues as audiovisual, basic telecommunications, maritime transport, and environment³⁶, and agree to receive progress reports directly or from the

³⁵ from the Brussels (1990) meeting and afterwards.

³⁶ for example, audiovisual, basic telecommunications, maritime transport, and environment (as mentioned above).

relevant Uruguay Round bodies at future dates. The concerned decisions were listed in the section on ministerial declarations/decisions. With regard to the environment, the TNC decided that a work programme should be drawn under GATT in order to:-

- identify the relationship between trade and environmental and other measures to promote sustainable development;
- make appropriate recommendations on whether any modifications of the provisions of the Multilateral Trading System were required. Any such provisions were to be compatible with the open, equitable and non-discriminatory nature of the system. In particular, provisions were to see to the avoidance of protectionist trade measures, as well as unilateral actions to deal with environmental challenges outside the jurisdiction of importing countries;
- establish the need for rules to enhance a positive interaction between trade and environment measures, for the promotion of sustainable development, giving special consideration to the needs of developing countries, in particular the LDCs; and
- maintain a surveillance of trade measures used for environmental purposes and the effective enforcement of multilateral disciplines governing those measures.

The TNC agreed that the programme of work on the environment as well as recommendations for its execution, would be presented for adoption as soon as possible and not later than at the Ministerial Conference of April 1994.

The above outcome of the Uruguay Round as adopted at the TNC meeting was subsequently presented to the Ministerial Conference convened in Marrakesh, Morocco, in April 1994 with the objective of approving the results of the Uruguay Round. The Marrakesh Conference ended with the Final Act on the Uruguay Round whose details are outlined below.

2.6. The Final Act of the Uruguay Round

The Marrakesh Ministerial Conference set the seal to the Uruguay Round of MTNs through its adoption of the Final Act containing the Agreement on a World Trade Organization (WTO); several Multilateral Agreements on Trade in Goods (MTAs); a General Agreement on Trade in Services (GATS), an Agreement on Trade-Related Aspects of Intellectual Property (TRIPS); an

understanding on Dispute Settlement; a Trade Policy Review Mechanism (TPRM) as well as a number of ministerial decisions and declarations. The full list of the Final Act instruments consists of the following:-

- The Agreement Establishing WTO to which are annexed all substantive agreements and understandings/decisions on the Uruguay Round.
- ANNEX 1A composed of the Agreement on Trade in Goods and containing all the Multilateral Agreements in goods listed below:-
 - (a) General Agreement on Tariffs and Trade 1994 (GATT 1994) which includes:-
 - (i) The Marrakesh Protocol to the GATT 1994;
 - (ii) Understanding on Balance-of-Payments of the GATT 1994;
 - (iii) Other understandings on GATT 1994 Articles relating to:-
 - Article II 1(b) on schedules of concessions;
 - Article XVII (on state trading enterprises);
 - Article XXIV dealing with Free Trade Areas;
 - Article XXV concerning waivers;
 - Article XXVIII to do with withdrawal of concessions; and
 - Article XXXV on non-application of GATT.
 - (b) Agreement on Agriculture,
 - (c) Agreement on Sanitary and Phytosanitary Measures,
 - (d) Agreement on Textiles and Clothing,
 - (e) Agreement on Trade-Related Investment Measures (TRIMS),
 - (f) Agreement on the Implementation of Article VI of GATT 1994 (concerning Anti-Dumping),
 - (g) Agreement on the Implementation of Article VII of GATT 1994,
 - (h) Agreement on Pre-shipment Inspection,
 - (i) Agreement on Rules of Origin,
 - (j) Agreement on Import Licensing Procedures,
 - (k) Agreement on Subsidies and Countervailing Measures, and
 - (l) Agreement on Safeguards.
- Annex 1B: The General Agreement on Trade in Services (GATS).
- Annex 1C: An Agreement on Trade-related Aspects of Intellectual Property Rights including Trade in Counterfeit Goods.
- Annex 2: An Understanding on the Rules and Procedures to Govern the Settlement of Disputes.
- Annex 3: Trade Policy Review Mechanism/TPRM.

- **Annex 4: Plurilateral Trade Agreements (PTAs) which were themselves composed of:-**
 - (a) **Agreement on Trade in Civil Aircraft;**
 - (b) **International Dairy Agreement;**
 - (c) **International Bovine Meat Agreement; and**
 - (d) **Agreement on Government Procurement.**

- **Ministerial Decisions and Declarations namely:-**
 - (a) **Decision on Measures in Favour of LDCs,**
 - (b) **Declaration on the Contribution of the World Trade Organization to Achieve Greater Coherence in Global Economic Policy-Making,**
 - (c) **Decision on Notification Procedures,**
 - (d) **Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least Developed and Net Food-Importing Developing Countries,**
 - (e) **Decisions Relating to the Agreement on the Implementation of Article VII of GATT 1994:-**
 - (i) **Decision Regarding Cases where Customs Administrations have Reasons to Doubt the Truth or Accuracy of the Declared Value.**
 - (ii) **Decision on Texts Relating to Minimum Values and Imports by Sole Agents, Sole Distributors and Sole Concessionaires.**
 - (f) **Decisions Relating to the GATS including:-**
 - (i) **Decision on Institutional Arrangements for the General Agreement on Trade in Services;**
 - (ii) **Decision on Negotiations on the Movement of Natural Persons;**
 - (iii) **Other decisions/Annexes relating to GATS.**

Decisions on the latter concerned procedures or clarifications on dispute settlement, trade in services and the environment (this was an area of special interest to the developed countries) financial services; modification of offers once WTO becomes effective, maritime transport negotiations which were expected to be conducted and concluded not later than June 1996; negotiations on basic telecommunications; and professional services.

- **A number of other decisions were made at the conclusion of the Uruguay Round including those on WTO and IMF relationships; notifications under Article 2.6 of the Agreement on Textiles and clothing; WTO/ISO Standards Information System; ISO/IEC Information Center Publications; Anti-Circumvention and Article 17.6 of the Agreement on Article VI (both from the Anti-Dumping Agreement) plus two other decisions on consistency in dispute settlement relating to Article VI of GATT 1994 on Part V of the Agreement on Subsidies, and the need for an overall review of the dispute settlement system within four years after entry of the WTO into force. Finally, a decision concerning procedures that would apply if a country wanted to accede to the Agreement on Government procurement.**

The above comprehensive list of instruments and decisions relating to the Final Act of the Uruguay Round can be grouped in the following six categories:-

- (a) Agreement on WTO
- (b) Market Access Issues
- (c) Rules of the GATT 1994
- (d) Trade Policy Review Mechanism
- (e) New issues of TRIMs, TRIPs and Trade in Services
- (f) Several other elements which are included in the Agreement on the WTO (e.g. the Plurilateral Agreements/PTAs and the Agreement on Government Procurement).

In terms of contents of the above cluster of issues, these can be summarized in the following manner. The Agreement on WTO provides a single and umbrella framework to facilitate the implementation of the Uruguay Round's outcome. As stated previously in this paper, the WTO was sought by some participants in the negotiations as an instrument for effecting the single undertaking envisaged in the Uruguay Round negotiations.

The creation of WTO was therefore brought in for reasons to do with the modified and expanded scope of the outcome of the Uruguay Round which went beyond the traditional (goods) areas handled by GATT, to cover other areas on new issues as well as the need for a dispute settlement system encompassing that expanded scope and role. The WTO therefore is envisaged to provide a single and common institutional framework to cater for the implementation of the Uruguay Round results consisting of all the agreements and instruments negotiated therein³⁷. The WTO itself consists of a preamble, some sixteen articles, and four annexes dealing with issues such as its functions, decisions-making, membership (original and new); amendments as well as annexes.

Subject to accepting both the Agreement on WTO and the Multilateral Agreements as well as submitting schedules of commitments on goods and services, original membership to the WTO is open to contracting parties to the earlier GATT of 1947 and the European Communities. Tanzania and other LDCs recognized as such by the United Nations will have special treatment explained below. The WTO will have a Ministerial Conference meeting once every two years as its leading organ. Under the Ministerial Conferences, there will be other bodies consisting of a General Council of the WTO which will oversee the day-to-day tasks between the Ministerial Conferences. The General Council will serve also as the Dispute Settlement Body and the Trade Policy Review Body.

There are other Councils and Standing Bodies which will assist the General Council; namely the Council for Goods (for GATT of 1994); the Council for Services (to deal with GATS); Council for TRIPS as well as various Committees established under the Multilateral Trade Agreements under Annex 1; a Committee on Trade and Development with a mandate related to the monitoring of trade development in developing countries; and two Committees on Balance of Payments and Budget Matters.

³⁷ . i.e. GATT 1994, GATS, TRIPS and the Dispute Settlement System, TPRM and other decisions as enumerated above

The WTO will have five main functions³⁸:-

- (i) to facilitate the implementation, administration, and operation of the WTO and to further the objectives of the Agreement establishing the WTO. It shall also provide the framework for the implementation, administration and operation of the Plurilateral Trade Agreements (PTA)s;
- (ii) to provide the forum for negotiations concerning the multilateral trade relations of its members;
- (iii) to administer the Understanding on Rules and Procedures Governing the Settlement of Disputes;
- (iv) to administer the Trade Policy Review Mechanism; and
- (v) to cooperate, as appropriate; with the International Bank for Reconstruction and Development (IBRD) and its affiliated agencies.

Besides the above mentioned aspects on the structure and functions of the WTO; it is worth underlining the treatment accorded to new accessions as well as provisions relating to developing countries and LDCs like Tanzania. As already mentioned concerning original accessions; the Agreement sets membership of GATT 1947, acceptance of MTO and concessions in goods and services as conditions for original membership.

On the other hand, the WTO Agreement provides for the accession, by any state, or separate customs territories possessing full autonomy in the conduct of external trade on terms to be agreed upon and approved by the Ministerial Conference. New members will accede to WTO on a decision voted for and supported by two-thirds of WTO members. Regarding WTO provisions on special and more favourable treatment; it should be noted that the growth in trade of developing countries was stipulated as one of the objectives of the WTO.

Additionally, the WTO shall undertake a periodic review of the trade problems of the LDCs under the Committee on Trade and Development as per Article IV:7 and some flexibility has been afforded to the LDCs³⁹ whereby they were allowed an extension of one year to submit their token schedules of commitments in the trade of goods and services. Countries belonging to the LLDCs will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities. The significance of these special treatment provisions in the conduct of international trade will be analyzed in the next sections of this paper.

³⁸ as listed in GATT document COMTD/W/510.

³⁹ WTO's Article XI:2.

2.7. Market access

The finalization of the Uruguay Round implied several accomplishments on the various subjects related to market access that were mandated from Punta del Este and negotiated with the objective of lowering the level of tariff and non-tariff barrier for different categories of products in the different countries. It will be recalled that under this cluster, the subjects concern tariffs; non-tariff measures; trade of tropical products and natural resources-based products; trade in agriculture; textiles and clothing trade; and other elements of trade liberalization contained in the Marrakesh Protocol to GATT 1994.

The Protocol contains commitments to eliminate or reduce tariffs and non-tariff measures applicable to trade in goods for which there is a schedule of concessions (annexed to the Protocol) for each member, and which becomes a schedule of GATT 1994 upon the enforcement of the WTO agreement by that particular member. The overall impact of these market liberalization commitments will be to increase growth in international trade (both domestically for many countries, and globally for the trading community as a whole).

The specific market access commitments of the Uruguay Round will entail the following elements:-

2.7.1. Agricultural products

Under this sector the following will be effected:-

- Tariffication of all non-tariff border measures and the binding of the new tariff rates (it is estimated that at the time the Uruguay Round began, around one third of protection bordering agriculture consisted of forms other than tariffs).
- Tariffs from the "tariffication" process and other tariffs in agriculture are to be reduced by a simple average of 36% and 25% respectively for the developed and developing countries. LDCs like Tanzania are exempted from this reduction commitment.
- A reduction in the value of direct export subsidies below the 1986-90 levels; by 36% for developed countries within six years and 21% in the quantity of subsidized exports over the same period. For developing countries, the reductions are two-thirds of the reductions for developed countries (for a ten year period) while the LDCs like Tanzania are exempted from such commitments.
- Reductions in domestic support to agriculture through total Aggregate Measure of Support (AMS) commitments. There will be reductions of 20% for developed countries and 13.3% for developing countries in the AMS over the implementation period. AMS covers all non-exempted domestic support extended to agriculture. Certain measures termed as "green-box" items, such as research, are excluded from AMS reductions. The LDCs are exempted from a domestic support reduction commitment.

2.7.2. The liberalization of industrial products

- There will be a 38% overall reduction in the tariffs of developed countries (and 26% in the case of developing countries).
- The value of imported products that receive duty-free treatment will increase from 20% to 43%.
- Non-tariff measures affecting industrial products will decrease as a result of the phasing-out of the MFA over a ten-year period as well as the phasing-out of Voluntary Export Restraints (VERs) and orderly marketing arrangements within four years pursuant to the Safeguards Agreement⁴⁰.

The overall consequence of the liberalization measures for both industrial and agricultural products will be an increase in security and prosperity in international trade on a global scale. In the case of agricultural products, the level of tariff bindings from the Uruguay Round, standing at 100%, will be higher than those of industrial products (about 87%) for the first time in the history of GATT. When one examines the tariff treatment for African countries it is established that reductions will be at the level at the level indicated in Table 2.

⁴⁰ Under the Textiles and Clothing Agreement, trade restrictions on textiles and clothing items will be eliminated in four stages over a ten-year period by the end of which GATT rules and disciplines would apply.

Table 2: Simple Average Tariff Reductions on Agricultural Product Categories (in %)

	Developed Countries	European Union	United States	Japan
All Agricultural Products	37	37	39	36
Fruits and Vegetables	36	28	39	39
Coffee, tea, cocoa, mate	35	41	39	39
Sugars	30	27	23	27
Spices and cereal preparations	35	43	38	30
Grains	39	44	50	31
Animals and Products	32	42	34	34
Oilseeds, fats and oils	40	42	42	46
Flowers, plants, vegetable materials	48	53	42	42
Beverges and spirits	38	28	50	40
Dairy Products	26	26	15	18
Tobacco	36	25	41	16
Other agricultural products	48	48	51	43
Tropical Products	43	40	42	45
Tropical Beverages	46	53	39	35
Spices, flowers and plants	52	61	47	55
Certain oilseeds, oils	40	41	48	51
Roots, Rice, tobacco	40	30	42	24
Tropical nuts and fruits	37	26	38	42

The difference between the reductions on coffee, cocoa, tea and mate" and "tropical beverages" is due primarily to the inclusion in the former of chocolate.

Note: Figures refer to reductions in simple as opposed to trade-weighted tariff averages.

Source: GATT Secretariat, Table 10 from Document for Tunis Meeting 24-27 October 1994.

In the case of Tanzania, products of export interest presented in the above list⁴¹ include coffee, tobacco and tea in the very high group (51-100%); followed by other agricultural products, the high interest group (21-50%) or high interest group and then a medium cluster (11-20%) consisting of vegetables and fruits. The approximate share of these products in Tanzania's export earnings is around 71.4% which provides a long-term potential increase in earnings for some of the products which will experience price increases in the world market. Certainly, the effect of the Uruguay Round on the trade in exports of Tanzania will, *inter alia*, create the dual challenge of coping with the increased global competition and facing the loss in preferences and hence competitiveness. In a later part of this paper, the overall balance that emerges from the market access package of the Uruguay Round (from the point of view of African countries in general and Tanzania in particular) will be examined. It is estimated that by the year 2002, world agricultural prices for selected products will have changed in the manner shown in Table 3.

Table 3: Percentage Change for Selected Products

Wheat	5.5
Dairy Products	7.2
Coarse Grain (maize + barley)	3.6
Sugar	10.2
Beef, veal + lamb	4.7
Tea	3.0
Vegetable oils	4.1
Cotton	3.7
Rice	- 1.9
Coffee	- 6.1
Cocoa	- 4.0

Source: Ministry of Industries and Trade.

GATT and other international organizations have made estimates of the anticipated impact from the Uruguay Round trade liberalization and ended with a position of increased global trade and incomes. There is no agreement, however, on a single figure in this regard. A recent study by Rege and Konate (1994)⁴² summarizes some of the studies on these estimates (See Table 4).

⁴¹ as presented in table 11 of the Tunis document.

⁴² ITC document - page 32 of ITC/INF/73 of 3 November 1994.

Table 4: Estimates of the Impact of the Uruguay Round on Merchandise Trade and Incomes*

	a.
	Increase in Global Income/Welfare
GATT Secretariat	US \$109 billion to US \$315 billion annually by the year 2005 on the basis of a static model (excluding increased investment in production due to liberalization); and US \$184 billion to US \$510 billion annually on the basis of a dynamic model.
World Bank/OECD (1993)	US \$213 billion annually by the year 2002 from liberalization of industrial tariffs and agriculture (1992 dollars).
OECD (1993)	US \$274 billion annually by the year 2002 from the full market access package (1992 dollars).

*Source: Page 32 of V. Rege & T. Konate document - ITC/INF/73.

It was mentioned earlier, that although there will be global increases in market access and international trade, the distribution of these expected gains among the various participants in the Uruguay Round comes out unevenly. While there are foreseen benefits to developed countries and some developing countries; African countries including Tanzania are likely to be net losers in the short and medium-term. A number of evaluations have been made. For example:-

- (a) the ECA paper⁴³ to the African Trade Ministers' meeting in Tunis in 1994;
- (b) A study by an NGO called Christian Aid; and
- (c) The Trade and Development Report of 1994 that was prepared by UNCTAD.

All these evaluations reaffirm the conclusion that African countries are likely to be net losers in the market access packages of the Uruguay Round.

The factors that have led to this state of affairs are multiple; including the erosion of trade preferences, particularly on the tropical products being granted to the African countries; and the short-term impact of agricultural reform emanating from the Agreement on Agriculture especially on price increases of imported food in the case of net-food importing countries and least developed countries. The Trade and Development Report⁴⁴ presents an estimated overall average loss to African countries; on a trade-weighted basis as 50% for tropical products and 60% in the case of natural-resource based products in terms of GSP margins within the three major markets of the European Union, Japan and the USA. There are even higher losses for a number of

⁴³ reference E/ECA/CM 20/31 of 8 April 1994.

⁴⁴ see page 25 of the Trade and Development Report.

products like coffee. In the next section this point will be revisited in order to highlight its significance in the socio-economic development of Tanzania and indeed that of other African countries.

At this juncture, it is important to refer to elements of the Sanitary and Phytosanitary (SPS) Agreement within the market access cluster and the ministerial decision on net-food importing countries. The Agreement on Sanitary and Phytosanitary measures was negotiated under the Uruguay Round's agricultural group with the main objectives of ensuring that the sovereign rights of governments to protect human, plant and animal health were used without creating discrimination and trade barriers in a disguised form. Under the SPS Agreement, rules have been stipulated for promoting transparency on SPS actions by governments; observing consistency with international standards as stipulated by bodies such as FAO/WHO Codex Alimentarius Commission. The monitoring role is to be performed by a Committee on SPS measures under the WTO Secretariat. The Agreement has provisions specifically designed to assist developing countries in the application of the set rules (e.g. on the required flexibility for developing countries and LDCs in particular to delay the period of applying the Agreement for five years after the WTO enters into force (Article 14) and regular technical assistance for their various needs under the Agreement (Article 9.1), especially in the case of LDCs.

Recognizing that the Round's agricultural reform package could have a negative impact on developing countries; the Final Act of the Uruguay Round contains the Decision on Measures Concerning the Possible Negative Effects of the Reform Programme on Least-Developed and Net Food-Importing Developing Countries. In this decision, the Uruguay Round participants agreed on the following points (as summarized in the GATT document for Tunis):-

- (i) to periodically review the level of international food aid;
- (ii) to adopt guidelines to ensure that an increased proportion of basic foodstuffs is provided in fully grant form and/or on appropriate concessional terms;
- (iii) that developed countries give full consideration in the context of their aid programmes to requests for the provision of technical and financial assistance to improve the agricultural productivity and infrastructure of the net food-importing countries;
- (iv) to ensure that any agreement relating to export credits makes appropriate provisions for differential treatment in favor of net food-importing countries; and
- (v) that in order to overcome the possible short-term difficulties in financing normal levels of commercial imports, net food-importing countries be eligible to draw on the resources of international financial institutions under the existing facilities or such facilities as may be established; in the context of adjustment programmes; to address this issue.

The participants also entrusted the Committee on Agriculture with the task of monitoring the follow-up action on the above decision. The relevance of the decision on Net Food-Importers during the implementation stage of the Uruguay Round will be reviewed later in this paper.

2.8. Rules of the WTO

The Uruguay Round package also consists of a number of GATT articles and codes on various questions like Anti-Dumping; Subsidies; Pre-Shipment Inspection; Rules of Origin; Safeguards; Balance of Payments; Disciplines to Govern Trade in Agriculture as well as Textiles and Clothing; a Dispute Settlement System, and the Trade Policy Review Mechanism. It should be recognized that the overriding intention here relates to promoting GATT principles including transparency in the way these matters are dealt with by the contracting parties, and therefore create higher predictability levels and avoid any discriminatory measures that may creep into international trade when the rules are being put into application. As stated earlier, the outcome of the Uruguay Round consists of, *inter alia*, several agreements on GATT articles, decisions and understandings intended to fulfill the stipulated objectives in the area of rules in the Uruguay Round. The Agreements, decisions and understandings which are also enumerated in the preceding sections of this paper include:-

- An understanding on the Balance of Payments Provisions of GATT 1994;
- Understandings on Articles 11(b) on schedules of concessions; Article XVII concerning state trading; on waivers (Article XXV: 5) and modifications of GATT schedules (Article XXVIII); and other articles as enumerated previously;
- Agreement on Technical Barriers to Trade (TBT);
- Article VI (Anti-Dumping) Agreement;
- Agreements on Pre-Shipment Inspection (PSI); and
- Rules of Origin, Subsidies and Countervailing Measures; Import Licensing Procedures, Safeguards and Dispute Settlement Procedures.

Negotiations on balance of payments procedures which are applied by contracting parties in the event of balance of payments difficulties resulted in an Understanding on Balance of Payments in the Uruguay Round. The Understanding clarifies the procedures and criteria to be followed when countries take recourse to these provisions. Necessary institutional improvements, for example, on notifications and consultations under the WTO's new bodies are outlined. Among other things, the understanding in this area provides for simplified procedures to be followed in the case of LDCs or developing countries which are undertake TPR and BOP consultations within the same year. The Understanding also allows for technical assistance possibilities for developing countries which are members of the WTO.

The several Understandings on other (GATT) 1994 Articles are principally clarifications or additions of other criteria needed to achieve the smooth application of these rules in the conduct of international trade.

The Technical Barriers to Trade (TBT) Agreement; which is one of the instruments that were established at the Tokyo Round in late 1970s; also witnessed a revision of the Uruguay Round.

According to a summary of GATT records⁴⁵, the following are some of the features of the TBT Agreement as (per the Uruguay Round) which are an improvement of the Tokyo Round Agreement. The Uruguay Round Agreement on TBT improves on the Tokyo Round Agreement by:-

- (i) tightening obligations to ensure that technical regulations and conformity assessment procedures do not create unnecessary non-tariff barriers to trade;
- (ii) extending those obligations more clearly to sub-national government authorities and non-governmental bodies;
- (iii) encouraging the mutual recognition of every country technical regulations, standards, and conforming to the assessment procedures; and
- (iv) imposing new disciplines on voluntary standard settings.

The TBT Agreement further creates technical assistance possibilities for developing countries like Tanzania and allows some flexibility for this group of countries.

In a similar vein of promoting transparency and more predictable rules in international trade, there were modifications made to the other rules in the area mentioned previously concerning the Rules of Origin; Anti-Dumping, Subsidies; Import Licensing Procedures and Preshipment Inspection (PSI). The Anti-Dumping Agreement details how to treat issues of methodology for calculating dumping margins and the determination of injury; mechanisms for investigating anti-dumping cases, and a specification of a minimum dumping margin. Technical assistance can be utilized in the application of this Agreement by developing countries. The Agreement on PSI was negotiated as one of the issues falling under non-tariff measures, and brought into GATT 1994 mainly to address problems related to the under-invoicing and over-invoicing of goods. Several issues have been covered by the Agreement; for example, the non-discrimination, price-verification and dispute settlement procedures to be applied under the Agreement.

An analysis of these final results in the rules of the Uruguay Round reveals the following features:-

- A revision and clarification of the GATT rules and Articles has been attained through improvements in a number of aspects of the Dispute Settlement Mechanism (e.g. the conditions for establishing panels, their terms of reference and procedures and timetable to be followed in dealing with dispute settlement cases).
- Several agreements from the Uruguay Round have dispute settlement provisions for instance GATS and TRIPs. These will be linked through the Dispute Settlement Body which is expected to operate in an umbrella manner under the WTO.

⁴⁵ document COMTD 150, page 21.

The establishment of an Appellate Body for the first time under the Uruguay Round to deal with any appeals from the Dispute Settlement Body.

Regarding the Trade Policy Review Mechanism (TPRM); it can be recalled that this was decided upon at the Mid-Term Review in Montreal and applied provisionally until it was approved as part of the Uruguay Round package. The TPRM is intended to provide the contracting parties with the opportunity to assess the trade policies of the other contracting parties on a regular basis. The biggest four; the European Commission, USA, Japan and Canada are reviewed once every two years while the next 16 countries, ranked according to their trade weight, undergo a review once every four years and the rest every six years, although the LDCs can be granted longer periods. By the time the round was completed, it was evident that the majority of countries in the developed and the more advanced developing countries had had their turn. In the case of the LDCs, only Bangladesh undertook a Trade Policy Review (TPR) in 1993. One feature within the TPR involves the availability of technical assistance for the LDCs in case they desire to utilize it for the TPR exercise.

2.9. New Issues

The Uruguay Round package contains a historic infusion of Agreements on Trade in Services (The General Agreement on Trade in Services); Trade-related Aspects of Intellectual Property Rights (TRIPs) and Trade-Related Investment Measures (TRIMs). As noted in the previous sections of this paper; the initial drive to introduce the new issues (services, intellectual property, and investment) into GATT and subsequently into the Round originated from some developed countries as part of strategic efforts on their part to promote competitiveness and reaction to a stalemated process of a new international economic order. In this latter category; we recall justified demands made by developing countries in a number of fora such as WIPO and UNCTAD for the transfer of technology as well as in other UN bodies for a restructured global setup which ensures fair treatment for LDCs and other developing countries. Over the years of Uruguay Round negotiations, the negotiations on the new issues proceeded with a high degree of technical complexity and ended up with compromises as reflected in the respective Agreements establishing a WTO framework on the issues of trade in services; intellectual property and counterfeit goods, and trade-related investment measures. Highlighted below are the salient provisions and understandings in each of these new areas.

2.9.1. Trade in Services

The main features of the General Agreement on Trade-in-Service (GATS) can be summarized by its three components consisting of the 29 Articles; Annexes and Schedules of concessions which indicate the type of sectors and what liberalization commitments have been accepted. GATS covers all sectors of international trade in services such as banking, telecommunications, professional services, tourism, construction, maritime transport, and insurance. The adoption of GATS under the Uruguay Round means that for the first time in history there were multilaterally established obligations and provisions that would apply to international trade in services. What GATS has accomplished, basically relates to the application of certain principles of international trade in services; for instance on the Most-Favoured Nation (MFN) treatment, National

Treatment, Transparency, Payment Regulation; and Progressive Liberalization. The framework (Articles) of GATS are devoted to detailed elements of these various principles. There are various Annexes in the Agreement which are meant to capture the technical specifics of the sub-sectors in question on the movement of personnel, air transport, telecommunications, and financial services. It should be noted here that the Articles of the Agreement contain general obligations applicable to all member countries as well as the specific obligations which could be negotiated by them sub-sector wise. The schedules of commitments in GATS plus those in GATT were among the conditions established for any member to become an original member to the WTO as explained earlier in this paper.

A combination of the three GATS parts provides a mechanism for the increased liberalization of international trade in services under GATT-type principles. Within the agreement there are provisions that were incorporated to address the concerns of developing countries as well as the LDCs. The incorporation of these provisions can be viewed as providing both short-term exemptions and long-term developmental considerations in the newly established GATS principles. In the case of Tanzania and other LDCs the provisions on LDCs stipulate, among others, that:-

- The serious difficulties of the LDCs should be taken into account in the operation of the GATS.
- Priority should be given LDCs in the negotiation of specific commitments and on the increasing participation of developing countries in international trade in services.
- There would be special treatment and particular recognition of the LDCs in future stages of progressive liberalization in international trade in services.
- Increased technical assistance opportunities would be available to LDCs in the course of applying GATS.

There were other areas under GATS in which negotiations had been mandated to continue as mentioned in the preceding parts of this paper whereby successful conclusion would expand the scope and magnitude of international trade in services.

2.9.2. Trade-Related Aspects of Intellectual Property Rights (TRIPs)

The TRIPs Agreement consists of agreed areas which should be subjected to GATT-type of principles such as National Treatment and the Most-Favoured Nation (MFN) treatment. The negotiations of the TRIPs Agreement; as we explained earlier; was one of the most contentious and complex areas in the Uruguay Round due to a number of reasons and in particular the extent to which this question could be tackled outside a traditional and more competent body, the World Intellectual Property Organization. After considerable negotiations, the adopted Agreement on TRIPs comes out with a comprehensive framework applying GATT-type principles; for instance, the national treatment and Most-Favoured Nation (MFN) treatment to various areas of intellectual property. The Agreement also spells out the minimum standards for the substantive protection of each category of intellectual property rights that must be legally effected by each

member of the Multilateral Trade Organization (MTO) under the national treatment and MFN conditions in existence. The categories of Intellectual Property Rights covered by the agreement are Patents; Trademarks; Copyright and Related Rights; Geographical Indications; Industrial Designs; Layout of Integrated Circuits; and Undisclosed Information. In order to provide for the minimum standards, the Agreement makes it obligatory for members of the MTO to comply with the existing international conventions that have been negotiated under WIPO such as the Berne Convention on the Protection of Literary and Artistic Works; the Paris Convention on the Protection of Industrial Property; and the Treaty on Intellectual Property with Respect to Integrated Circuits (the Washington Treaty). Below is a brief description of the main standards laid down in the TRIPs Agreement.

The main standards laid down by the TRIPs Agreements⁴⁶ are:-

- **Patents**

Patents can be granted irrespective of the field of technology both for the product or process provided it involves a new inventive step and has industrial applicability. However, a country may exclude from patentability inventions contravening public morality and for inventions related to animals and plants. A country which does not grant patents for plant varieties, must protect them by a *sui generis* system. The Agreement provides for a minimum 20 year patent term.

- **Trademarks**

The Agreement defines signs, including service marks, that are eligible for protection. It establishes a minimum protection period of 7 years, which is renewable indefinitely and lays down the minimum period for their non-use that might be tantamount to the cancellation of registration.

- **Copyright**

Copyright protection should be given to expressions and not to ideas, procedures or methods of operation or mathematical concepts. Computer programmes could be protected as literary work. Recording artists and broadcasting companies can obtain copyrights to limit unwarranted recordings or broadcast of their labours. Copyrights other than for broadcasting are protected for 50 years; broadcasting copyrights are protected for 20 years.

- **Geographical indications**

Geographical indications are protected by the denial of trademarks containing misleading geographical origins. Higher levels of protection are provided for names identifying the origins of wines and spirits, by preventing their use on wines and spirits not originating in the identified areas.

⁴⁶ See page 26 of V. Rege and Konate - ITC INF/73.

- **Industrial designs**

Industrial designs are protected for the first time, with a minimum duration of five years.

- **Layout-designs of integrated circuits**

Besides requiring members to respect the substantive provisions of the Washington Treaty on the Protection of Intellectual Property with Respect to Integrated Circuits, the Agreement imposes a number of additional obligations, including a minimum protection period of 10 years.

- **Protection of undisclosed information**

Trade secrets are protected for the first time by an international agreement⁴⁷.

The TRIPs Agreement like GATS establishes new and fundamental obligations to members of the WTO in the field of intellectual property through its new standards procedure and the expanded scope of conventions to be adhered to and beyond⁴ which many countries had acceded to in their previous intellectual property relations and international trade regimes.

Additionally, there are fundamental implications on the technology transfer issue, particularly from the point of view of developing countries which will be examined in the later sections of this paper.

An important point from the side of developing countries relates to the manner in which the various provisions of the TRIPs Agreement have attempted to address their specificities. It is noted that besides the overall and general provisions provided for developing countries, there are provisions for LDCs including issues related to the transitional period; technical assistance, and transfer of technology.

Under Article 66.1 of the TRIPs Agreement LDCs are allowed to delay the application of the Agreement for 11 years (and 1 year for the general principles) as compared to 5 years for other developing countries. The Agreement obliges developed members of the WTO to provide incentives to enterprises from developed countries as a means of encouraging transfer of technology to LDCs⁴⁸.

See Box 3 page 26 of the study V. Rege and Konate - ITC/INF/73.

Article 66:1 as well as possibilities of technical assistance and cooperation in the course of applying the Agreement - Articles 66:2 and 67.

2.9.3. Trade Related Investment Measures (TRIMs)

The Agreement on TRIMs also proceeded with considerable difficulty in terms of the role GATTs plays in the regulation of investments as referred to in the introductory sections of this paper. The Agreement adopted at the conclusion of the Uruguay Round had the following features:-

- It is a GATT-based agreement which stipulates that members of the Agreement were not allowed to maintain TRIMs which are inconsistent with the national treatment (Article III) and quantitative restrictions provisions (Article XI) of the GATT 1994. Any measures unless covered by exception clauses have henceforth been prescribed as prohibited under the Agreement. However, there are flexibilities for developing countries in cases where developmental measures (e.g. infant industry promotion or balance payment constraints) are involved.
- The Agreement sets transitional periods under which measures listed to be inconsistent with TRIMs (e.g. trade balancing requirements and local content requirements) should be eliminated. The time frames stipulated are two years for developed countries while the developing countries and LDCs have been allowed five years and seven years, respectively, from the date of entry into the TRIMs Agreement. Considering the background to the TRIMs negotiations, the Agreement emanating from the Uruguay Round was a compromise text (whereby the two distant positions of these proponents of including a TRIMs framework into the negotiations and the group that initially advocated the least involvement by GATT in this field) were eventually converged to the above type of Agreement. Again we will revisit the question of implications resulting from the TRIMs Agreement.

2.10. Plurilateral Trade Agreements (PTAs)

Another important element of the Final Act (Uruguay Round) package relates to the Plurilateral Trade Agreements (PTAs) listed previously. These Agreements will apply only to those members which have accepted them. In this regard, many developing countries including Tanzania will not be bound by the Agreements' disciplines and provisions as adopted from the Round unless they decide to join in.

2.11. Decision on Least Developed Countries

One of the main features of the outcome of the Uruguay Round's Final Act which deserves consideration at this point concerns the provisions and decisions on the LDCs which are certainly of direct applicability to Tanzania's participation in the WTO. A review of the various agreements and instruments reveals two types of LDC-specific provisions and decisions whose purpose was essentially to cater for their particular trade situations namely:-

- (i) Those decisions which have been incorporated in the various Agreements to address the concerns of the LDCs in the sector(s) in question. A count in the

and instruments reveals two types of LLDC-specific provisions and decisions whose purpose was essentially to cater for their particular trade situations namely:-

- (i) Those decisions which have been incorporated in the various Agreements to address the concerns of the LDCs in the sector(s) in question. A count in the Agreements reveals these kinds of treatment in several GATT 1994 agreements; GATs, TRIPs and TRIMs, as well as the decision on TPRM and Net Food-Importing Countries.
- (ii) The specific Ministerial decision in the Final Act which is intended to highlight general policy issues of interest and relevance to the development of LDCs. The Uruguay Round Decision on Measures in Favour of LDCs falls in this category. The decision (reproduced below) recognizes the link between effective participation in world trade and the need for improved trading opportunities. It defines how or what action can facilitate the fulfillment of special and more favourable treatment of the LDCs; and provides for a mechanism to review the cases of LDCs. The Decision on the LDCs is contained in Part III of the WTO Agreement Annexes and stipulates as follows:-

Ministers,

Recognizing the plight of the LDCs and the need to ensure their effective participation in the world trading systems, and to take further measures to improve their trading opportunities;

Recognizing the specific needs of the LDCs in the area of market access where continued preferential access remains an essential means for improving their trading opportunities;

Reaffirming their commitment to fully implement the special treatment provisions concerning the LDCs⁴⁹;

Having due regard to the commitment of the participants as set out in Section B (vii) of Part I of the Punta del Este Declaration;

1. *Decide* that, if not already provided for in the instruments negotiated in the course of the Uruguay Round, notwithstanding their acceptance of these instruments, the LDCs, and for so long as they remain in that category, while complying with the general rules set out in the aforesaid instruments, will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities. LDCs shall be given an additional time of one year from the date of the Special Ministerial Session concluding the Uruguay Round of Multilateral Trade Negotiations to submit their schedules as required in Article XI of the Agreement Establishing the Multilateral Trade Organization⁵⁰.

⁴⁹ contained in paragraphs 2(d), 6 and 8 of the Decision of the CONTRACTING PARTIES of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries.

⁵⁰ We note that by April 1995, all LDC participants had submitted their schedules to the WTO.

2. Agree that:

- (i) Expeditious implementation of all special and differential measures taken in favour of the LDCs, including those taken within the context of the Uruguay Round shall be ensured through, *inter alia*, regular reviews.**
 - (ii) To the extent possible, MFN concessions on tariff and non-tariff measures agreed upon in the Uruguay Round on products of export interest to the LDCs may be implemented autonomously, in advance and without staging. Consideration shall be given to the further improvement of the Generalized System of Preferences (GSP) and other schemes for products of particular export interest to LDCs.**
 - (iii) The rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the LDCs. To this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the LDCs in the appropriate Committees and Councils.**
 - (iv) In the application of import relief measures and other measures referred to in Article XXXVII:3(c) of GATT 1947 (and the corresponding Article of GATT 1994), special consideration shall be given to the export interests of LDCs.**
 - (v) LDCs shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion to enable them to maximize the benefits from the liberalized access to markets.**
- 3. Agree to keep under review the specific needs of the LDCs and to continue to seek the adoption of positive measures which facilitate the expansion of trading opportunities in favour of these countries.**

The above-mentioned two groups of general and sector-specific decisions are of special significance to Tanzania as an LDC. The decisions and provisions for LDCs have taken varied forms; flexibility in obligations and procedures, time-limited derogations (short-term waivers or exemptions) and longer implementation periods; variations in thresholds for undertaking commitments, best endeavour clauses, and possibilities of technical assistance and advice in implementing the outcome of the Uruguay Round. Hence Tanzania has to thoroughly review and take into account these various decisions and provisions in the context of the facilitation and trade expansion opportunities offered therein for purposes of meeting the various tasks involved in the Final Act.

3. AN INITIAL ASSESSMENT OF THE IMPLICATIONS OF THE URUGUAY ROUND AND MEASURES TO BE TAKEN BY TANZANIA

Tanzania ratified the Final Act of the Uruguay Round in early 1994 and became one of the original members of the WTO. An assessment of the implications of the Uruguay Round will be fully visible with the application of the full range of instruments and agreements established in the Round supported by adequate data. This includes information on market access opportunities provided in both the goods and trade in services sectors. At this moment, only an initial assessment of the Round on Tanzania highlighting the general impact as well as cluster-specific implications with regard to market access, rules, and new issues can be meaningfully attempted. The positive and negative implications of the Uruguay Round on the socio-economic development of Tanzania in these areas will be highlighted.

In terms of the general implications, the conclusion of the Uruguay Round as one of the major global negotiations of the 20th century creates an environment of trade and economic predictability which has to be viewed positively in terms of its contribution to the creation of rules for an orderly international trading system with less tensions and trade restrictions.

In the absence of the Uruguay Round, the tendency towards trade wars and bilateralism would have increased, with weaker trading countries like Tanzania suffering the most.

Additionally, accession to the WTO Agreement at the early stages of launching the WTO can be interpreted as a desirable decision due to the fact that procrastination would have entailed facing stricter conditions for membership in the WTO the latter of which is growing to become a universal institution as a result of new entrants (non-members at the time of GATT 1947).

The Uruguay Round opens up new long-term trading opportunities in major markets such as those of the USA and Japan. It will also enhance South-South trade due to the tremendous momentum of liberalization emanating from the Round. Long-term opportunities can only be appropriately and gradually exploited by Tanzania if deliberate efforts are made to realize the potential advantages created by the Uruguay Round.

There are other implications from the Uruguay Round's Final Act which will create an additional burden on Tanzania's socio-economic development due to the increased multilateral obligations involved in membership of the WTO. As observed earlier, the establishment of WTO has compelled its members to accept all the agreements and instruments negotiated under the Uruguay Round without any choice except for the PTAs. This commitment was necessitated by the single undertaking approach which was agreed upon at the launching of the Uruguay Round. Unlike in previous cases (e.g. the Tokyo Round in the 1970s), when countries had the option of not acceding to some agreements, the Uruguay Round eliminated the so-called *à la carte* phenomenon which some experts thought had created two calibers of contracting parties under the GATT system -- namely those which applied to all GATT 1947 agreements, and others who were bound by more agreements.

By acceding to the WTO, Tanzania and other developing countries have committed themselves to higher levels of multilateral obligations by way of notifications; a surveillance of policies and a compliance to the requirements stipulated in the agreements and instruments constituting the WTO Agreement. These obligations have concomitant demands for a series of the required servicing linkages such as the financial outlays necessary to legislate, monitor and administer the various obligations. In implementing TRIPs, for example, countries will have to comply with the immediate tasks of meeting the national treatment and MFN by legislation; while the transitional stage will oblige them to take other supplementary measures in legislative, customs and

administrative requirements. Obviously this will involve considerable costs⁵¹. A major point of significance related to this concerns the need for the Tanzanian constituency to analyze and apply the Agreements within a strategic setting of trade and economic goals reflecting the changing global environment. This is important in view of the interlinkages and the increased competition in market access, technology and TRIPs, as well as trade in services.

Additionally, the WTO Agreement establishes a comprehensive Dispute Settlement System via the Dispute Settlement Understanding (DSU), as previously mentioned in this paper. This new system has several implications for Tanzania. There is danger of cross-sectoral retaliation on issues related to goods, intellectual property and services trade. This is the first time ever, under international trade relations, for such a possibility; hence there is a potential danger for harassment in the event of a trade dispute with another member of the WTO. Relatedly, since the WTO has created a number of disciplines, and transparency and notification obligations under the TPRM for example, these contribute both positively and negatively to the socio-economic development of Tanzania. In their positive contributions, these disciplines can lead to an economic efficiency increase in terms of resource allocation and utilization due to liberalization and competition.

On the other hand, the cost of constant surveillance under the WTO will add to the already existing trade and economic activities (e.g. the economic adjustment programmes) and will create additional costs and obligations terms of fulfilling the mandate of WTO Agreement.

An equally important issue connected with Tanzania's accession to the WTO relates to concessions entered into through the schedules of commitments in goods under GATT 1994 and trade in services under GATS. These two concessions, as mentioned earlier, are some of the conditions for acceding to WTO Agreement.

For Tanzania, these conditions are of particular significance because when Tanzania joined the older GATT Agreement (GATT 1947) in the 1960s, it was one of around 20 contracting parties which had joined without having to establish a schedule of tariffs in goods. This meant that Tanzania maintained more flexibility than in terms of tariff application as a revenue generation instrument for her development programmes. Within GATS, the original position of all LDCs in the Uruguay Round was to seek a complete exemption from any concessions on trade in services due to the infant nature of these economies including the services trade. However, during the final leg of the negotiations in 1993, it became clear that this position could not be sustained due to some divergences of views which had developed within the group of LDCs. Thereafter, the only fallback option left was to seek token/minimum commitments in GATS. This strategy worked (since the WTO accepted to have special provisions in the GATs for LDCs as explained above). The WTO also allowed them one more year from April 1994, to submit their schedules of concessions. In this context, the offers submitted by Tanzania on trade in goods and services are basically token in form.

Given the above global implications of WTO in the context of Tanzania, it is essential to undertake several measures in order to mitigate the burden of WTO Agreements and utilize maximally, the development potentials offered therein. A major issue in this regard is the need to further develop a domestic capacity in Tanzania to analyze; utilize; monitor and follow-up all issues involved in the WTO. As stated earlier, there are several new agreements in the WTO. There are the Tokyo Codes, TRIMs, TRIPs and GATS to which Tanzania has acceded for the first time due to her WTO membership. Those agreements and others in the WTO will require a stronger and efficient networking in undertaking the tasks at the governmental, diplomatic and

⁵¹ . cf TDR 1994 page 201.

business community levels (where the outcome of the Round is expected to be well-known) with the objective of meeting the challenges that come with WTO membership.

Among the many issues involved, it will be essential to enact domestic legislations in accordance with the various WTO Agreements, to administer strategy/policy matters implicit in the agreement, as well as tackle bottlenecks and tap opportunities that arise in the course of time. All these point to the significant need for of a growing domestic capacity at the Ministry of Industries and Trade as the international trade coordinating authority. This will have to be achieved through, *inter alia*, an increase in the training of training senior officials in the various issues following from the WTO Agreement, the mapping out of key WTO elements and the establishment of how they fit into a foreign trade strategy for Tanzania. In addition, the domestic capacity issue also sounds an echo to the need to strengthen the research and analytical capabilities of officers dealing with the international trade sector, particularly those in the Ministry of Industries and Trade, the Board of External Trade and the Bank of Tanzania. An area deserving examination by authorities concerns the relevance of establishing a Foreign Trade Institute as a supplementary measure to deal mainly with training in the development of foreign trade in Tanzania.

In terms of capacity, there is an urgent need for Tanzania and other countries belonging to the same regional and sub-regional fora such as SADC, COMESA, ECA and OAU to develop a strategy of joint participation or interventions in key multilateral negotiations. This approach has several advantages including the utilization of their limited resources to pursue common goals in trade. During the Uruguay Round, efforts to collaborate in this area were unfortunately not very adequate; leaving a situation of less coordinated and *ad-hoc* participation by African countries without any significant support from the trade secretariats of either regional or sub-regional institutions. A major improvement on this front would be of immense benefit to Tanzania and others facing the same challenge.

The follow-up stage of the Uruguay Round will also require a good data bank system on issues covered by the various agreements. This requirement poses the question of the use of computers and up-to-date information systems. These are becoming essential components for foreign trade management even for LDCs like Tanzania. In this regard, the Government should consider strengthening this field through the training of key personnel, equipment procurement and the establishment of a network for foreign trade statistics and multilateral trade negotiation issues including those of the WTO Agreements. A potential for obtaining assistance already exists to some extent (from the International Trade Center; United Nations Conference on Trade and Development and the WTO Agreement among others).

Another general implication of the Uruguay Round relates to cost of industrial and economic adjustments as a result of trade liberalization plus the increased competition; and how this will have to be taken into account (in the long-term by Tanzania), in terms of production, trade structures and strategies. It has been stated that with liberalization there would be:-

- (i) price changes of commodities in the world market;
- (ii) long term opportunities for trade diversification (of both markets and products) within, for example, the WTO and the Global Systems of Trade Preferences (GSTP) members; and
- (iii) the establishment of new regulations for instance on GATS, TRIMs and TRIPs.

It will be desirable, therefore, to take into account these implications in the development of a country strategy to effect adjustments required in the development of foreign trade and in the pattern of domestic production within agriculture and industries.

Previously, the expected negative impact of the agricultural reform package from the Uruguay Round on Net Food-Importing and LDCs was mentioned. It was indicated that the reduction of subsidies on agricultural products including some of which are imported by Tanzania would lead to an increase in world prices. In general, this will result in high food and imports bills. This would worsen the debt burden (and further weaken the debt-serving capacity). Additionally, the anticipated world price decline in some products like coffee would lead to a fall in earnings. The overall impact of these developments may be a worsening in the terms of trade and the creation of balance of payment problems for Tanzania. In order to mitigate this negative impact it will be necessary to draw up an action programme showing how the decision on Net Food-Importers would be followed-up at the domestic policy level. For example, it is important to increase domestic production and look more closely at the supplementary food aid, and recognize the link between the reform package from the Uruguay Round and other external constraints such as the external debt.

The market access results of the Uruguay Round will lead to a global increase in incomes and trade as pointed out in the previous sections. However, in the case of Tanzania and Sub-Saharan Africa, the market access results are likely to lead to net losses due to the several highlighted factors highlighted including the erosion of preferences. According to ECA's calculations, as far as the African continent is concerned she will suffer losses estimated at US \$2.6 billion per year due to the market access obligations as well as the fact that African countries' trade is covered mainly by preferential arrangements both within the Generalized System of Preferences (GSP) and the Lome Convention.

Furthermore, we recognize that the liberalization of major markets means that Africa will experience a lowering of its preferential margins by 28.2; 40.2 and 15.7% respectively in the European Union, Japan, and the USA⁵². For Tanzania, the Ministry of Industries and Trade has estimated⁵³ that losses in preferential treatment in the European Union, Japan and USA would be as shown in Table 5.

⁵² cf ECA document op cit page 1.

⁵³ as per a Ministry of Trade and Industries note on the Uruguay Round.

Table 5: Losses in Preferential Treatment for Tanzania in the EU, Japan and the USA

Country	Lowering of Preferential Markets	Overall Weighted Erosion in %	Overall Simple Erosion in %
European Union*	28.2	46.3	35.8
Japan	40.2	85.7	53.8
USA	15.7	80.1	51.8

Source: Ministry of Industries and Trade.

* Higher erosions e.g. to the tune of 100% expected for coffee, beans and cut flowers.

Note: It should be noted that unlike the simple average, the weighted change takes into account the share of products in the market concerned.

In order for the resulting problems to be overcome, it is essential that additional off-setting steps be pursued by Tanzania both in terms of bilateral efforts and multilateral fora with other African countries. One such step involves the seeking of compensatory facilities through additional or deeper preferences for products affected and falling under special exports. This problem was raised several times in the Round by ACPs; and should be further pursued under the framework of the ACP/EEC Contention of the Lome relations.

Besides the above, other complementary measures including those rightly highlighted by the TDR⁵⁴ can be pursued in the international community. These will serve to facilitate Tanzania's trading opportunities (and those other LDCs) through:-

- (a) an improvement of the GSP schemes through the widening of product coverage to include all products of export interest to the LDCs; provision being made for deeper tariff cuts in such areas as textiles, processed food and beverages (where the problem of tariff escalation prevails); and in leather, wood and fisheries products where tariff peaks remain;
- (b) the further liberalization of rules on origin and an elimination of the remaining non-tariff barriers to imports;
- (c) increased technical and financial assistance to improve agricultural productivity and the infrastructure; and

⁵⁴ Trade and Development Report. 1994. p 26.

- (d) concrete action in the relevant international fora towards more vigorous debt relief measures.

Among the remaining basic challenges for Tanzania is the development of a sustainable economy in the long-run; tapping from the international community where appropriate, the existing facilities to meet the tasks of the Uruguay Round.

In the area of rules of the WTO, attention was drawn to the existence of additional or strengthened rules from the three types of agreements in the Uruguay Round namely from GATT 1994 Articles; new GATT instruments such as those regarding pre-shipment inspection (the Trade Policy Review/TPR and the revised Tokyo Codes such as the Technical Barriers to Trade/TBT, Anti-Dumping, Customs Valuation and Import Licensing); as well as the new issues agreements to which Tanzania has to abide due to the single undertaking approach of the WTO. The various implications of the agreement entail, *inter alia*, the enactment of domestic legislations; the setting up administrative and technical teams to meet deadlines and deal with the various tasks of the WTO agreements related to the rules; and monitoring the application of those rules in the external markets *vis-a-vis* Tanzania's trade performance. All the rules and tasks would hence create competing elements for resources and the time of personnel already involved in the development of foreign trade plus the demand for supportive inputs on the several legal and technical issues involved in the WTO Agreements. For a small economy like Tanzania these are no easy tasks. In order to handle the WTO obligations, it will be essential to adopt a dual strategy involving the enhancement of the domestic manpower capacity and educating the business community on WTO Agreements; and for Tanzania to seek technical assistance from relevant bodies for the various functions implied in the WTO Agreements.

On new issues, as was noted earlier, LDCs secured specific favourable provisions in TRIMs, GATS and TRIPs. An assessment of the new agreements reveals, for example, that the TRIMs agreement allows flexibility to Tanzania, as an LDC, to deviate from the prohibitions of the Agreement on, for example, grounds of balance of payments. The TRIPs Agreement has several provisions favouring the development of LDCs. Articles 66 and 67 of the TRIPs Agreement stipulate specific special treatment and technical cooperation modalities for these countries. Similarly, GATS provides for measures to facilitate the development of services within the LDCs. The Agreements on new issues also contain technical assistance to LDCs.

In implementing the new issues, obstacles expected to be encountered include the inadequate capacity for Tanzania to take advantage of the many liberalized services in the global market, the danger of TNC monopolistic power, the increased prices of pharmaceutical products and the lack of incentives for the transfer of technology to developing countries due to the TRIPs agreement.

From the preceding it can be reconfirmed that the Uruguay Round (in the context of the WTO Agreement and its associated agreements on market access, rules, new issues; and other related agreements/decisions), has an important contribution to the development of Tanzania and other developing countries. However, there are several bottlenecks that will be encountered in the implementation of the results which should be carefully examined and taken into account in order to launch appropriate measures aimed at offsetting these obstacles.

4. CONCLUDING REMARKS

The conclusion of the Uruguay Round of MTNs marks a major event in international economic and trade relations. The implications of this to participants of WTO relates to the significance of establishing a comprehensive agreement to govern international trade in goods, as well as TRIPs and Services Trade. The WTO will ensure the promotion of international regulations and rules in these sectors, and the related growth in global commerce. For Tanzania and other LDCs, there were also a number of specific provisions in the Final Act; on Net Food Importers, TRIPS, and GATS which dealt specifically with the problems and particular situations of the LDCs. In addition, accession to the WTO would enable the LDCs to seek additional measures through, *inter alia*, the regular reviews of their particular problems and situations as provided for in the WTO agreement.

Tanzania's strategy and that of other LDCs during the earlier stages of negotiations was to seek complete exemption from submitting schedules of commitments (on trade liberalization in goods and services). This was not achieved, however, because several participants demanded that no member would be granted a "free ride".

It should be recorded here that the case of LDCs' representation and effective participation in Geneva was an important consideration. During the Round, only seven LDCs had missions; this meant that large amounts of resources were required for participate from outside Geneva - hence this was a big constraint which needed to be addressed (apparently, action is pending with regard to this concern under the WTO's understanding with the Swiss Government).

The submission of schedules of commitments was made a condition for original membership to the WTO⁵⁵. LDCs that could not beat the deadline of 15 December 1993 to submit schedules as original members of the WTO, managed, however, to obtain a grace period of one year from April 1994 in which to comply.

As pointed out previously there will be an enormous amount of substantive and technical work that will be required from the government in order to fully adhere, follow-up, and monitor the implementation of the Round's provisions in terms of the legal texts and instruments. It has been pointed out, for example, that numerous councils and subsidiary bodies have been provided for in the various agreements from the Round including the GATT Council, the Council on Technical Barriers to Trade and other Tokyo codes, the Council on Trade-Related aspects of Intellectual Property, Council, the Council on the General Agreement on Trade in Services, the Trade Policy Review Mechanism, the Committees on Trade Related Investment Measures, Budget, Dispute Settlement, and Trade of the LDCs. These organs will certainly call for the immediate and further strengthening of the staff teams responsible for GATT 1994 and other WTO Agreements, for the efficient and successful undertaking of the high magnitude of work concomitant with the obligations assumed in these Agreements.

The WTO obligations will call for various types of technical assistance to LDCs including Tanzania. The type and magnitude of assistance will have to be determined nationally depending on the obligation that follow. An equally important point relates to the need for a consolidated and coordinated strategy by Tanzania so that development projects and any technical assistance are sought and utilized, taking into consideration the availability of the latter from multilateral and sub-regional bodies such as UNCTAD, GATT 1994 (and the WTO), UNCTAD's Common Fund, UNDP, and ITC as well as COMESA, and SADC.

⁵⁵ Article XI of WTO.

In this context it is also extremely important that opportunities for South-South trade and economic cooperation in the framework of the Treaty establishing the African Economic Community, the GSTP and other arrangements be identified and effectively tapped. This will assist in diversifying and mitigating the negative side-effects resulting from the Round. As rightly pointed out in the TDR⁵⁶:-

"consideration should be given by aid donors and international financial institutions in their aid programmes to the special development, financial and trade needs of the Least Developed Countries with a view to ensuring that the economic and trade policy reforms of the latter are socially and economically sustainable through an appropriate blend of adjustment and external finance".

Additionally, one has to remember that in measuring the impact of the Round, and in order to keep the potential benefits of trade liberalization, African countries have to look beyond the short-term. Africa, with the largest concentration of LDCs in the world, will need to transform her production and trade structures in order to meet the challenge from an increasingly competitive global market resulting from trade liberalization.

That the competitive advantage of major export markets in African countries cannot be shielded permanently by preferential tariff margins has become evident post-Uruguay. While intensifying the use of the existing preferences and seeking to deepen them where there is scope to do so, deliberate domestic policy actions will nevertheless have to be geared towards the improvement of these countries' long-term international competitiveness in goods and service exports. A set of policy actions could be focused on a number of priority areas:-

- (i) the infrastructure for services;
- (ii) developments in support of production and trade;
- (iii) technological capacity-building aimed at improving quality and supply capabilities;
- (iv) diversification to higher, value-added production through processing; and
- (v) the improvement of investment conditions, and the strengthening of regional and sub-regional markets.

The support of the international community to complement domestic efforts in all these and related areas will be essential.

International efforts to enlarge the economic space for African countries will be determined to a large extent by the success of measures to integrate them into the international trading system, and in no small measure by the success of trade and economic reforms now underway in those countries. This requires measures that go beyond those contained in the provisions on differential and more favorable treatment in the Final Act Embodying the Results of the Uruguay Round⁵⁷.

⁵⁶ Trade and Development Report. 1994. page 26.

⁵⁷ Trade and Development Report. 1994. page 26.

Evidently, the outcome of the Uruguay Round presents a challenge to Tanzania due to the level of trade sophistication, a more comprehensive trade agenda, and an increasingly competitive world. As the Uruguay Round results sink into currency figures of shillings or dollars in terms of gains and losses and other new agenda items implicit in the Uruguay Round come to the fore (e.g. the items on trade and environment, and labour standards) and are added to the menu of issues conducted in the development of international trade and diplomacy, the challenges may indeed increase. That is the future of trade relations. In a number of Uruguay Round agreements and the new agenda, there are issues which will require further research to ensure that policy measures are effected by Tanzania and ensure that she copes with the challenging trade environment of the 21st Century. These will have also to be tackled as soon as possible in the context of a comprehensive trade agenda for Tanzania in view of the outcome and impact of the Uruguay Round and other future rounds.

END NOTES

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- 2) Document MTN. TNC/11: Mid-Term Review of the Uruguay Round.
- 3) Facing the Challenge: By the South Centre.
- 4) Document MTN.TNC/W/35Rev 1: TNC/Brussels Text.
- 5) GATT document: COMTD/LLDC/W43 of 18 September 1989.
- 6) Several LDCs' proposals to GATT (as mentioned in the paper).
- 7) ECA Document No: E/ECA/CM.20/31 of 8 April 1994: Anticipated Impact of the Uruguay Round Agreements on African Economies: A Preliminary Analysis.
- 8) Winners and Losers: A Study by Christian Aid. London, 1993.
- 9) Note by MIT on the Uruguay Round and its Impact on Tanzania. September 1994.
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- 11) Document MTN/FA of 15 December 1993: Final Act Embodying the Results of the Uruguay Round of MTNs
- 12) UNCTAD Report: The Outcome of the Uruguay Round: Initial Assessment, Trade and Development Report. 1994.
- 13) Document ITC/INF/73 of November 1994: Follow-up Action to be Taken by ITC UNCTAD/GATT to Enable Developing Countries to Take Full Advantage of the Results of the Uruguay Round of MTNs. Report by V. Rege and T. Konate.
- 14) GATT Document COM.TD/W/510 of 2 November 1994: A Description of Provisions for Developing Countries in the Uruguay Round Agreements.
- 15) The United Republic of Tanzania, Ministry of Industries and Trade: Budget Speech (1993/94) by the Minister for Industries and Trade.

- ◆ determination to carry out the evaluation called for by the Punta del Este Declaration, of the results of the Round, from the point of view of developing countries and in particular, from the perspective of applying special and differential treatment for developing countries.

The Brussels negotiating process came to a halt on late Thursday evening, 6 December 1990 when the Chairman's non-paper on agriculture failed to get the acceptance of the European Community. Once the non-paper was rejected by the EEC as not forming the basis for further negotiations, several other countries stated that there was no point in conducting further negotiations in other areas. The EEC was said to have rejected the paper mainly because it was inconsistent with CAP and a politically sensitive issue. The following morning, Friday, 7 December 1990, meetings involving the various groups (and eventually the TNC at ministerial level) were held if only to seek and announce an extension beyond Brussels (the words 'suspension', 'failure' or 'collapse' were not used in reference to the Uruguay Round).

At the TNC, the Chairman briefly explained²⁵ how the extension was to be effected whereby the Director General of GATT was authorized to conduct intensive consultations and reconvene the TNC at an appropriate level to conclude the negotiations. It was also agreed that the extension was to last into the beginning of the following year (1991), but no specific cut-off date was stipulated. With this scenario in existence, therefore, the Uruguay Round had not fulfilled its target of being concluded in 4 years.

In the period between the Mid-Term Review and the Brussels meeting of the TNC, Tanzania and other developed countries continued making a number of proposals in the negotiating process. The aim was to address their specific concerns and seek to ensure that special and more favourable treatment as agreed at Punta del Este was extended to them. Their several proposals/submissions submitted included the following:-

- those aimed at achieving improvements in trade opportunities or leverage under all areas falling under GNG (tariffs, non-tariff measures, dispute settlement, MTN agreements, agriculture, textiles and clothing, tropical products, subsidies, natural-resource based products, safeguards and GATT articles, TRIMs and TRIPs as formally presented in each of those groups in November 1989). There were also other submissions which some of the LDCs jointly made with other developing countries; for instance in TRIMs²⁶ and services (GNS) including their joint communication of January, 1990²⁷ which underscored the former (LDCs') special treatment needs in the Round.
- for purposes of attaining the general objectives, the above-mentioned submission by the LDCs were made in conjunction with other global submissions²⁸ which intended to capture other issues of a cross-sectoral nature covered under the Uruguay Round. These included the need to have an accelerated implementation of tariff and non-tariff measures

²⁵ as per the closing statement in document NUR 044.

²⁶ (MTN.GNG/NG12/W/25 of 20 March 1990).

²⁷ Document MTN.GNS/W/92.

²⁸ Produced as document MTN.TNC/W/34 dated 23 November 1990.