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Kabir-Ur-Rahman Khan

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THE INTERNATIONAL RIGHT TO DEVELOPMENT AND THE LAW OF G.A.T.T.

Kabir-Ur-Rahman Khan

This paper deals with two inter-related questions: what are the legal implications of the international right to development, and how this right is being implemented through the law of the General Agreement on Tariffs and Trade (GATT). Since there is, as yet, no generally agreed content of the international right to development, it is necessary to deal with this question first.

International Right to Development

The International Right to Development, sometimes referred to as a "third generation right" is of comparatively recent origin. Although some of its elements may be traced back to the Charter of the United Nations 1945,¹ the Philadelphia Declaration 1944² (now contained in the constitution of the International Labour Organization), the Universal Declaration of Human Rights 1948³ and resolutions of the General Assembly and Economic and Social Council of the United Nations,⁴ the term was first used by the Commission of Human Rights in 1977. In its Resolution 4 (XXXIII) the Commission makes a direct reference to their right to development. The Secretary General was invited to prepare in conjunction with UNESCO a report on the "international dimension of the right to development as a human right in relation with other human rights based on international co-operation."⁵ Its contents are not fixed. A Working Party of government experts⁶ established by the Economic and Social Council prepared a Draft Declaration in 1982. This provides a useful guide to the contemporary thinking about this right. The right has individual, national as well as international dimensions. The term "development" is understood "as a global economic, social, cultural, political and juridical process, both in its collective and individual dimensions, for the welfare of all people." More specifically, the development "is understood as a process aiming at the improvement of the material and spiritual standards of living of all members of society so as to promote and protect human dignity."⁷

The Right to Development is based on, or inferred from, several existing rights, such as the right to life in human dignity and peace, the right of self-determination, the right of each nation to choose its own development model and its political economic and social system, the principle of sovereignty over natural resources, wealth and economy and the right of people to an active and peaceful existence.⁸

The responsibility to implement this right rests with states; but the international community has responsibilities as well. This is recognised in the Charter of the United Nations. Article 55 of the Charter states:

"...the United Nations shall promote ... (b) higher standard of living, full employment, and conditions of economic and social progress and development."⁹ This obligation of the United Nations is the obligation of the international community and, in law, is distinct from the obligation of individual members of the United Nations. The Draft Declaration on The Right to Development, similarly, recognises that the right to development implies that states and the international community as a whole should aim at the creation of local and national conditions¹⁰ for the enjoyment of this right. States and the international community also have similar responsibility for the creation of international conditions for the promotion and protection of this right. "States", the Draft Declaration holds, "shall have the duty, individually and collectively, to ensure the exercise of the right to development."¹¹

The Draft Declaration also presents the means for the realisation of the right to development at the international level. These include the establishment of a new international economic order providing for:

- (a) individual and collective measures to strengthen economic trade and technical co-operation among developing countries;
- (b) the just and equitable international division of labour which requires the industrialisation of developing countries, freer access to markets of developed countries, food security, transfer of adequate resources through trade ... equitable remuneration for primary commodities, the protection of the purchasing capacity of developing countries and just terms of trade;
- (c) democratic participation in international economic institutions, particularly ... the General Agreement;
- (d) the granting of generalised preferential, non-reciprocal and non-discriminatory treatment to developing countries in international economic relations, wherever feasible.¹²

The above account gives sufficient indication as to the contents, bases, and nature of the right to development, and some of the means by which it is envisaged the right is to be achieved and implemented. It also demonstrates some of its deficiencies. The Declaration is not formally accepted. Even among the Working Party, there is a vast divergence of views.¹³

There is a certain inconsistency in the Draft Declaration: on the one hand it recognises and elaborates the right to development as an independent right, and on the other when dealing with its implementation, reference is made not to this right or the Declaration but to the Universal Declaration of Human Rights¹⁴ and to the UN Covenants of

Human Rights. This is perhaps done to accommodate those states, mainly western powers, who see human rights specifically in the terms of the individual.

Furthermore, since the GATT, strictly speaking, is not a specialised agency of the United Nations, the Declaration, even when adopted, can at best have approbative value vis-a-vis the GATT; it cannot in itself obviate a need to demonstrate that the GATT has, through legal transplantation or direct adoption, accepted the implications of the international Right to Development.

This paper deals with international aspects of the right to development, which is termed an International Right to Development. Therefore, the focus concentrates upon the measures which states have taken severally or collectively, including through and by the GATT, towards the implementation of this right.

As a preface to the discussion on the implementation, it may be noted that international economic institutions are based on certain economic policies and precepts, often tacit and subterranean. The institutions created at Bretton Woods, the World Bank and IMF,¹⁵ and those instituted in the early fifties, including the GATT, are largely rooted in laissez-faire precepts. The implementation of the International Right to Development thus necessitates not only the modification of existing instruments and the adoption of new ones but it also requires the modification or even replacement of the precepts and policies on which these organisations are based. Thus international economic policy has itself become an essential part of the legal process of change.

* * * * *

With all its complexities, the General Agreement on Tariffs and Trade is rooted in two major principles of International Economic Law: reciprocity and the most-favoured nations (MFN) procedures. In order to guard against the unfair application of domestic laws, the principles of national treatment, equitable treatment and the principles of good neighbourliness are also used. The principles of reciprocity and MFN are in themselves sound, but because of the special situation of the developing countries and because of the peculiar application of some of the provisions of the GATT, these principles have hindered the development of the poor countries. The solution, therefore, lies in modification, even if temporary, in their application, or where such modification is not forthcoming, at least some circumnavigation of these principles. Recognition of some alternative principles is also called for. Let us take the recognised principles separately and examine their functions.

Reciprocity

In the exchange of tariff concessions through multilateral trade negotiations under the auspices of the GATT, the principle of reciprocity has a cardinal role. The expansion of world trade and what in contemporary terms may be described as development, are to be achieved through "entering into reciprocal and mutually advantageous arrangements."¹⁶ This provision, contained in the preamble of the GATT, has further been reiterated in Article XXVIII which specifically states that the negotiations under the GATT will be on a "reciprocal and mutually advantageous basis."¹⁷ This principle is further reenforced by the rules of negotiations which require inter alia that offers of concessions are made by and to principal suppliers of items under negotiation.¹⁸ A fundamental assumption underlying this principle is that the members of GATT are able to reciprocate and thereby offer and secure trade concessions and that the economies of the member countries, are more or less homogeneous. Both the elements of this assumption, in relation to the developing countries, are largely false.¹⁹

Most of the developing countries rely, for their domestic revenues and foreign exchange earnings, on one or two primary commodities which they produce. These are the only assets which they can bring to the multilateral trade negotiations. But these assets have long been made almost worthless insofar as the operation of the GATT is concerned. Agricultural products, the mainstay of the economies of most of the developing countries, have long been virtually excluded from the framework of the multilateral trade negotiations of the GATT. This dates back to 1955 when the United States, in order to provide protection to its domestic agricultural products, secured exemptions from certain obligations under the GATT including the cardinal obligation to give MFN treatment on such products.

This was not the only deficiency. The developing countries were disadvantaged in other ways. In the early years of its existence, the GATT carried a doctrinal assumption that with the reduction of tariffs, the expansion of world trade and the achievement of other objectives of the GATT almost followed automatically. It was not sufficiently recognised that some countries, especially developing countries, were not able to reduce their tariffs and that the problems of these countries were such they could not be cured by the reduction of tariffs alone. The Harberler Report in 1958 recognised that "there is some substance in the feeling of disquiet among primary producing countries that the present rules and conventions about commercial policy are relatively unfavourable to them."²⁰ The Action Programme, initiated in response to this report, recognised the need, inter alia, to deal with the problem of the widespread use of protectionist measures against primary products of developing countries, and in particular, the need to deal with the question of export earnings of developing countries.²¹ Later in 1963, the ministers of the member countries recognised "the need for an adequate legal and institutional framework in connection with the

work of expanding the trade of less developed countries."²² This and further considerations in the GATT resulted in the addition of some new provisions as Part IV to the General Agreement.²³ Significantly, almost contemporaneous to these changes in the GATT was the establishment of United Nations Conference on Trade and Development (UNCTAD) which recognised and gave emphasis to, the development needs of developing countries and prescribed development goals and specified principles for achieving those goals.²⁴ The developments in the UNCTAD were, strictly speaking, not related to the GATT, but as Jackson observes, "have had a psychological impact on national representatives to GATT ... Perhaps it was realised that the developing countries had some moral force behind their position, even though they had little economic force."²⁵

Part IV introduces or reiterates the development objectives in the GATT, and provides for, albeit temporary and unilateral, measures for achieving those goals.²⁶ The actual practice of these provisions, and subsequent developments in the GATT and elsewhere, have led to the improvement of the implementation machinery.

For a considerable time in the practice of the GATT, reciprocal tariff concessions, based on the precept of laissez-faire, have dominated negotiations. Part IV of the GATT rectifies this imbalance. It recalls and reiterates the objective of the GATT which, though contained in the original agreement, have slipped into oblivion. Among these is the objective that relations "in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, developing the full use of the resources of the world and expanding the production and exchange of goods."²⁷ It is now recognised that these development objectives have specific and greater relevance to developing countries.²⁸

Furthermore, Part IV draws upon and gives status to certain fundamentals which should have been recognised as a matter of logic in the first place, namely that developing countries constitute a special case and need special treatment; that their economic situation is not at par with that of the developed countries; that export earnings constitute an important element in bringing development, and that rules of international trade "should be consistent with the objectives set forth in Article XXXVI". In other words, it is now conceded that the principle of reciprocity is not for universal application; indeed when applied among unequals it fails to bring reciprocal benefits. The departure from reciprocity is heralded in these words:

The developed contracting parties do not expect reciprocity for commitments made by them in trade negotiations to reduce or remove tariffs and other barriers to the trade of less-developed contracting parties.²⁹

One of the tangible products of Part IV is the Generalised System of Preferences (GSP). The salient elements of the GSP are: it is voluntary, unilateral, its scope, terms and beneficiaries are determined by the preference-giving country.³⁰ Originally the GSP was treated as a deviation from the main provisions of the GATT and hence it could be operated and implemented only through special dispensation by the GATT.³¹ The benefits which accrued through preferences granted under this system even if the EEC is taken into account are not significant. In 1980 it amounted to U.S. \$27 billion.³²

One of the consequences of the unilateral application of the GSP in recent years has been that the preference-giving countries have introduced a "graduating" mechanism. The beneficiaries who attain a specified proportion of the market in the preference-giving countries are automatically excluded from further benefits relating to that commodity.³³

Improvements in the GSP are now sought to achieve some stability, objectivity and uniformity in the scheme of individual countries. Co-ordination is also considered desirable. One legal development emanating from the Tokyo Round is that there is now a general legal basis for the GSP. The Decision of 28 November, 1979 of the GATT provides that the contracting parties "may accord differential and more favourable treatment to developing countries without according such a treatment to other contracting parties."³⁴ The principle of non-reciprocity in relation to developing countries is also reiterated:

Developed contracting parties shall therefore not seek, neither shall less-developed contracting parties be required to make, concessions that are consistent with the latter's development, financial and trade needs.³⁵

Most-Favoured-Nation Treatment

The MFN principle has a two-fold function in the GATT. When applied to tariff concessions and other benefits relating to trade, it is a principle of distribution, aiming to ensure that benefits are applicable to all members of the GATT. In the context of domestic measures impinging upon concessions and benefits, the most-favoured-nation principle transforms itself into a shelf of non-discrimination. Thus, a member having a valid ground for imposing quantitative restrictions on imports, say for balance of payment reasons, is required, according to the MFN principle, to apply these restrictions on a non-discriminatory basis.³⁶

Insofar as the distributive function of the MFN clause is concerned, any digression from the principle of reciprocity, is also a digression

from the MFN principle. The GSP is, however, a valid exception to the MFN. The developed members of the GATT who operate this scheme in relation to developing countries are not required to extend benefits under it to all members of the GATT.³⁷

Another exception to the MFN principle relates to custom unions, free trade areas or arrangements with a view to their formation.³⁸ The rationale for this exception is rooted in the theory of custom unions, which inter alia assumes that the removal of custom and other barriers among two or more nations and the formation of a single economic unit is conducive to the expansion of trade among the parties of such a union, and eventually leads to the expansion of world trade. Thus any temporary inconvenience or loss resulting from such an association is justifiable, provided the loss is adequately compensated.

Because of this theoretical approbation, the GATT has given a very loose and acquiescent interpretation to Article XXIV which deals with regional arrangements. Any benefit that developing countries have received from such interpretation of Article XXIV³⁹ is not exclusive to them but is shared with all members of the GATT. In fact the greatest beneficiaries of this lax interpretation are the developed industrialised countries who are parties to such associations. The European Economic Community with its vast network of free trade areas and other preferential arrangements is a notable example.

Two points relating to regional arrangements should be made. First, the consequences of an unbridled use of regional arrangements were unforeseen at the time of the negotiations of the General Agreement. The custom unions in the nineteenth century and in the period preceding the establishment of the GATT were few in number, their scope was limited, and they certainly did not involve, as the EEC and its related trading groups do, multiple layers of varied preferences.⁴⁰ Article XXIV recognises the desirability of increasing freedom of trade by the development of "closer integration" between the economies of countries "who are parties to voluntary agreements establishing such arrangements."⁴¹ The "closer integration", it may be argued is the operative condition.

Secondly, the operation of Article XXIV has led to some results which though speciously justifiable in the narrow confines of economic theory are not necessarily conducive to the establishment of a global system for the expansion of world trade or to the achievement of the development objectives of the GATT. Some of these consequences may be noted:

(1) The purpose of a custom union, Article XXIV requires, should be "to facilitate trade between the constituting territories and not to raise barriers to the trade of other contracting parties with such territories."⁴² Whether a proposed custom union or free trade area is trade-diverting or not cannot be proved at the inception of a plan, therefore, every plan in practice carries a favourable assumption that it

is trade-creating.

(2) The requirement of "closer integration", with its corollary that "substantially all trade" among constituting parties should be covered by such arrangements has been steadily whittled down. The phrase "substantially all trade" now has strange connotations. For example it may not mean the sector for which custom union is formed, say coal and steel, and similarly, it may exclude the agricultural sector altogether, as with the European Free Trade Area.⁴³

(3) Article XXIV validates custom unions, free trade area/or interim arrangements leading to the formation of custom unions or free trade areas. The EEC is all three: a custom union among its ten members, a network of free trade areas in relation to the African Caribbean and Pacific Countries who are parties to the Lomé Convention regime, and an "interim arrangement" in respect of certain countries in Southern Europe and the Middle East.⁴⁴

Such an open-ended interpretation has two consequences which violate the design of the GATT. It turns the MFN regime established by the GATT into a least-favoured-nation regime. Secondly, which is more relevant to the question of development, it leads to inevitable discrimination among developing countries, favouring the ACP countries at the expense of those countries who are not parties to the Lomé Convention. Such a fluid interpretation of Article XXIV, though formally valid, violates the precepts of Part IV whose raison d'être is the establishment of a non-discriminatory and differential and more favourable treatment for the developing countries, as a whole.

(4) Since Article XXIV does not prescribe a time limit for interim arrangements such arrangements become, in effect, preferential agreements, which, broadly speaking, are contrary to the GATT.

Preferences which developing countries receive from developed countries or give to one another thus fall in the following categories: Custom unions or free trade area freely recognised and legitimised by Article XXIV; associations which involve discrimination against the developing countries not parties to such special arrangements; and the GSP, which has development as its objective.

Preferences Based on Economic Co-operation Among Developing Countries

Another category of preferential treatment comprises preferential arrangements among developing countries themselves, the legality of which does not depend upon Article XXIV. Two such arrangements - illustrative of the contemporary development towards the implementation of International Right to Development - may be noted here.

(1) The Trade Agreement between India, United Arab Republic and Yugoslavia 1967. This Tripartite Agreement⁴⁵ is a considerable step forward towards achieving development objectives. The agreement aims to increase the trade among the three parties and provides a framework of mutual economic co-operation. At its inception it was seen as a prelude to a wider framework of economic co-operation among developing countries. The agreement provides for tariff concessions for specific products of the parties.

The Contracting Parties, by their Decision of 14 November 1968, approved the agreement on the condition, inter alia, that the participant states shall consult with any contracting party which considers that its advantages are impeded by the operation of the tripartite agreement. It also required periodic reports and review. The Decision also stated:

That a principle aim of the contracting Parties is the promotion of the trade and export earnings of developing countries for the furtherance of their economic development.⁴⁶

During the proceedings before the Working Committee, which was set up to examine the agreement, the Indian representative described the agreement as a measure of self-help in trade expansion, and pointed out some of its special features. It aimed at the rational expansion of production as well as trade. The products for tariff concessions were chosen with a view to creating trade among the participating states.⁴⁷

It was generally recognised that the tripartite agreement offered a new technique of co-operation among developing countries in the interests of trade expansion. The representatives of the three participating states reiterated that the agreement was in pursuance of their obligations under Part IV and consistent with the spirit of the General Agreement. The United States representative held that the Decision approving the tripartite agreement was intended to meet the requirements of waiver under Article XXV:5.⁴⁸ The Decision itself does not make any reference to that Article.⁴⁹

(2) The Protocol Relating to Trade Negotiations Among Developing Countries 1971. This Protocol takes measures of self-help and mutual co-operation even further. Trade expansions among the participating countries are seen as measures of expanding production and achieving benefits of specialisation and economies of scale. The Protocol reiterates that the members of the GATT have recognised that preferences among developing countries, "appropriately administered and subject to the necessary safeguards, could make an important contribution to the trade among developing countries."⁵⁰

Concessions secured under the Protocol are available to all participating countries who have participated in the negotiation of such concessions. The participating states undertake to maintain the

substantive value of the concessions. Special measures restricting trade from the participating states for balance of payment reasons are allowed; similarly, emergency measures to deal with serious injury threatened or caused by the increased imports of some products are sanctioned,⁵¹ similarly to Article XXIV of the GATT.

The Protocol is open to all developing countries. In the negotiations for accession of a new member the needs of present and future development shall be taken into account and in appropriate cases a country may be allowed to accede to the Protocol without negotiations on tariff concessions. Bangladesh was admitted in this manner.⁵² The administration of the agreement is entrusted to a committee of participating countries. Decisions are taken therein by simple majority, with the exception of modification, to the agreement. This termination, or accession require a two-third majority.⁵³

The preferential arrangements of the Protocol were approved by the Decision of 26 November 1971, (and to that extent constitute a waiver of Article I(1) of the GATT), with a proviso that "any such preferential treatment shall be designed to facilitate trade between participants and not to raise barriers to the trade of other contracting parties."⁵⁴ Notification of preferential concessions and, at the request of any contracting parties, consultation, on the rectification of impaired benefits, are required.

The Protocol was signed by sixteen countries and came into force in February 1973.⁵⁵ Several other countries have since then joined the agreement.⁵⁶ Trade among the participating countries has expanded significantly; from US \$242.m(1972) to US \$137.8m(1976). In 1979 it extended to US \$329m.⁵⁷

In an evaluation of the Protocol, the Committee on Trade and Development observes:

"It would appear to be the case that the initial experience of this pioneering effort at international trade relations among developing countries has demonstrated that such a system can work in favour of the developing countries on the basis of complementarities in their production and trading patterns taking into account regional and sub-regional trade and economic groupings without adversely affecting the interests of other trading partners."⁵⁸

The legal basis of the Agreement is now the Enabling Clause.⁵⁹

Other Measures for Development.

In addition to the introduction of the principle of non-reciprocity and the preferences of various categories discussed above, several other measures designed to advance development objectives are permitted under the GATT. Among these three may be noted briefly:

(1) Safeguard Action for Development Purposes. Article XXVIII of the GATT provides for the release from obligations under the agreement and protection from withdrawal of concessions where measures which might otherwise be impugned are designed to promote industries for development purposes. But the conditions are so onerous, cumbersome and time-consuming, that this device remains perhaps the least used. Only four developing countries - Sri Lanka, Cuba, Haiti and India - are reported to have utilised these provisions, all between 1949-1950.⁶⁰ The GATT has now given greater flexibility to these provisions and defined economic development more widely. In the Decision of 28 November 1979:

The CONTRACTING PARTIES recognise that the implementation by less developed contracting parties of programmes and policies of economic development aimed at raising the standard of living of the people may involve in addition to establishment of particular industries the development of new or the modification or extension of existing production structure with a view to achieving fuller and more efficient use of resources in accordance with the priorities of their economic development.⁶¹

Justification for exceptional measures now extends to economic development and is no longer confined to the establishment of new industries.

(2) Technical Assistance. Technical assistance in the form of fellowships, the organisation of courses on international commercial policy and related subjects, expert advice on the multilateral trade negotiations and the preparation of the background and statistical information relevant to such negotiations and the establishment of the joint, UNCTAD/GATT International Trade Centre⁶² are but some of the examples of evergrowing technical assistance provided under the GATT.

(3) Committee on Trade and Development. This Committee, established in 1965, provides a focus and forum for development issues and initiates within GATT policies relating to development. It, inter alia, evaluates the implementation of Part IV, the expansion of trade among developing countries and other related matters.

Conclusion

The GATT contained, albeit in embryonic form, measures for economic development but these were overshadowed by the laissez-faire precepts prevailing during its early phase. These measures were constrained by rigid conditions and were ineffective in the face of the protectionist policies of the major western powers. From 1960's progress towards development objectives is discernable. This is reflected in the International Trade Policy which now contains the elements of the International Right to Development. Among the specific changes are the principle of non-reciprocity, the various kinds of preferences given to, or enjoyed among, developing countries, safeguard actions for development, technical assistance and the Committee on Trade and Development. These measures, though important, cannot however be substitutes for some of the essential and related problems such as the stabilisation of foreign exchange earnings and market security for the primary products and manufactured goods of developing countries. There is a need for greater co-ordination between the GATT and other organisations dealing with development problems.

FOOTNOTES

1. For example Art. 1(3), 55, 56 and Chap. IX passim.
2. See United Nations Treaty Series (UNTS) 15:40.
3. General Assembly Resolution 217 (III) of 10 December 1948.
4. See A. Peter Mutharika, The International Law of Development, Basic Documents (1978), Vol. I and II contain a comprehensive collection of the U.N. Resolutions on Development.
5. See UN Doc. E/CN.4/1334.
6. See UN Doc. E/CN.4/1489.
7. See UN Doc. E/CN.4/1983/11, Annex IV.
8. See UN Doc. E/CN.4/1489 supra.
9. For discussion on the legal significance of these provisions, see Hans Kelsen, The Law of the United Nations London (1951), and G. Schwarzenberger, World Economic Order? A Basic Problem for International Economic Law Manchester (1970). The two distinguished authors take the view that the Articles 55 and 56 are mere tautology and carry little or no legal obligation. This view is largely based on the formal analysis of the relevant provisions. O.Y. Asamoah, however, convincingly demonstrates that these provisions and resolutions do have a legal content. See his The Legal Significance of the General Assembly of the United Nations The Hague (1966) passim. See also Kabir-Ur-Rahman Khan, The Law and Organisation of International Commodity Agreements (1982), 245-249.
10. E/CN.4/1983/11.
11. Draft Declaration, Part Two, note 7 supra.
12. Ibid, and E/CN.4/1489.
13. A large number of these provisions are placed in square brackets indicating that on these consensus still has to emerge. Nevertheless they indicate that from the views formulated earlier these provisions are sustainable.
14. For example Part One, II para. 1 refers to Article 28 of the UDHR. See note 7 supra.
15. UNTS 2:1234, UNTS 2:40.
16. GATT, Basic Instruments and Selected Documents, Vol. IV Geneva (1969).

17. Ibid, 48.
18. For an extensive and authoritative discussion, see John H. Jackson, World Trade and the Law of GATT Indianapolis, 1969, especially Chap. 10.
19. For the flaws in the principle of reciprocity, see Khan, op. cit. 36, 37, 222, 223 and 234.
20. GATT, Trends in International Trade, A Report by a Panel of Experts Geneva, (1958).
21. Ibid.
22. GATT, BISD, 12 Suppl: 36-38.
23. See note 16 supra. For an excellent discussion on the development of Part IV and its legal significance, see Abdulqawi Yusuf, Legal Aspects of Trade Preferences for Developing States, The Hague, (1982), passim.
24. UNCTAD I, Proceedings, Final Act and Report Vol. I, New York (1964) and subsequent sessions.
25. Jackson, op. cit. 645.
26. For discussion of these provisions, see Yusuf, op. cit. 59-63.
27. Art. XXXVI:1(a).
28. Ibid.
29. Art. XXXVI.8.
30. For an evaluation of the various GSP's, see UNCTAD Doc. TD/B/C.5/63 (1979).
31. Yusuf, op. cit.
32. TD/B/C.5/81.
33. See UNCTAD Doc. TD/B/C.5/63, supra.
34. GATT, BISD 26S:203.
35. Ibid, 204.
36. Arts. XI and XII.
37. The USA GSP uses an interesting device by stating that in respect of Group B countries (OECD countries) no designation of "developing countries" shall be made. See TD/B/373/Add.5 App. I.

38. Art. XXIV, note 16 supra.
39. For example, EEC complex, EFTA, and ECSC.
40. W.O. Henderson, The Zollverein London (1968) passim.
41. Art. XXIV:4, note 16 supra.
42. Ibid. For the discussion of this specious criterion, see Jacob Viner, The Custom Union Issue New York (1950), 41-56.
43. See GATT, BISD 9S:20.
44. A cursory look at the Index of BISD would suffice to substantiate this point. GATT, BISD 27S:233-234.
45. GATT, BISD 16S:17.
46. Ibid.
47. Ibid, 83.
48. Ibid, 88.
49. Note 45 supra.
50. GATT, BISD 18S:26-7.
51. Ibid.
52. GATT, Doc. L/5051.
53. GATT, BISD 18S26-7.
54. Ibid.
55. Ibid.
56. GATT, Doc. L/5051.
57. GATT, Doc. L/4170 p. 17.
58. GATT, Doc. L/5051.
59. GATT, Doc. L/5051.
60. GATT, BISD 1S:26, 3S:45, and Vol. II: 21, 26, 20, 27.
61. GATT, BISD 26S:209.
62. For the details of the ITC see GATT, BISD 21S:44-76.